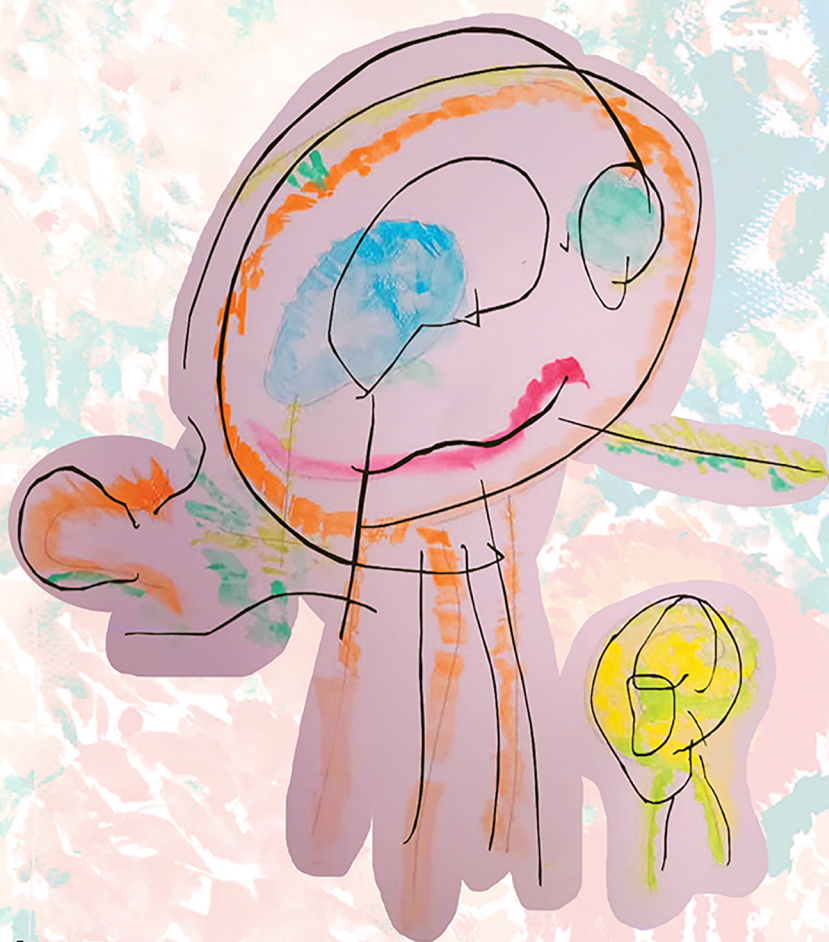# Childhood in Liberal Theory

Equality, Difference, and Children's Rights

Nicolás Brando

CHILDHOOD IN LIBERAL THEORY

A British Academy Monograph

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Para Mimí, Berni, y Chela

Contents

List of Figures and Tables

Figures

Tables

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Introduction: Just for Kids

Being perceived as a 'child' has important consequences on how others label and treat you. If you are perceived as such you will probably be judged as weaker, less rational, and maybe more curious and imaginative; people may assume that you lack certain abilities, that you are incapable of making certain decisions, and that you behave in a particular manner. Being perceived as a 'child', in short, may mean being seen as different; as a variation from a 'standard' human being (i.e., an adult human). Being labelled as a 'child' may imply, as well, that you are treated differently. Because others assume they know better than you do and think that they understand better than you what is in your interest, they may think it appropriate to make decisions that affect your life, to tell you what to do and what not to do. While the adults around you go to sleep at the time they want, watch TV for as long as they want, choose what clothes to wear and what food to eat, you usually cannot make these choices entirely by yourself. Adults are allowed to say what you can or cannot do, while you are not allowed to do the same for them.

Being seen and treated as different from a 'normal adult' is not only a feature of your day-to-day private life, but also may affect how you are perceived and treated as a legal and political subject. If you are labelled as a 'child', the system of rights, restrictions, and laws that regulate and govern your life as a citizen also define you as a variation from the 'standard' human being. You are perceived as too vulnerable to work, incapable of making political decisions, and lacking the foresight required to guide your own life. This perception leads to you being treated differently as a political and legal subject: you are endowed with certain privileges and protections not granted to the rest of the human population (i.e., free education, shelter, nourishment), you are denied rights that others are allowed to enforce and waive for themselves (i.e., the right to vote, to marry, to contract), and you are restricted from exercising many freedoms that your fellow adult citizens can exercise without coercion. The law uses different parameters to determine how you should be treated, different principles to protect you, and different limits to your scope of freedom. Justice for children, in this sense, implies a treatment different from that owed to other human beings.

But should this be so? Should there be a law just for kids? Is it a necessary and banal truth that children are so different from adults? Is it a necessary and banal truth that the rules and principles that ground justice for children should be different from those for adults? Is a unitary justice for all unachievable? The fact that different standards tend to be used to evaluate and judge what is owed as a matter of justice to children and to adults can turn out to be a problematic diversion from our basic commitments to social justice, especially if liberal egalitarian principles of justice are endorsed.

The core intuition that guides the reflections in this book is that a theory of justice that distinguishes children and adults as categorically different types of humans, with categorically different needs and interests, must be getting something wrong. Especially within theories of justice that commit themselves to protecting the freedom of all, and to treating all as equals, establishing a system (as ours) that systematically restricts the freedoms of children and systematically provides a differential treatment to children would require a very strong justification. How can a theory of justice committed to equal freedom and equal treatment for all humans (which can be termed as liberal egalitarian justice) justify the systematic exclusion of one-quarter of the world's population categorised as 'children' from equal freedom and treatment? This is the core question the book aims to answer.

Throughout its history, liberalism has claimed to endorse equality and freedom for all while systematically excluding certain groups from this freedom and equality, based on their labelling as 'different' (think, for example, of liberalism's historical treatment of women). This has been justified by claiming that, owing to the characteristics, needs, and interests of some groups, it is 'for their own good' that they are treated differently. They are too pure, too innocent, too vulnerable, too savage, or too irrational to abide by the principles and rules that govern the rest of the population. I do not intend to claim that all differential treatment is necessarily unjust; however, owing to its history of exclusion and oppression, it might be appropriate to explore whether liberalism's treatment of 'children' perpetuates biased assumptions about their difference that can be used to legitimise unjust and discriminatory practices towards them. Just as we condemn political theories that single out the group of women or of the black-skinned as deserving a differential treatment just because they are 'women' or 'black', then we must evaluate whether this condemnation might apply to the treatment of children as well.

The fact that a large part of the human population is treated differently merely based on their categorisation as 'children' poses an arduous challenge for liberal theories of justice: namely, how can a theory of justice that is grounded on equality and freedom legitimise the treatment of part of its citizenry as unequal and unfree? This book aims to explore the concept of 'childhood', its

interpretations in contemporary liberal theories, and its translation into the political and legal practice of differential treatment for children. By doing so, it seeks to establish a stronger conceptual and principled foundation for further studies on justice for children, addressing the current lack of alignment between the normative commitments of liberal egalitarianism and the differential treatment of children. It addresses this task by breaking the question into three:

1   Should the concept of 'childhood' be revised to ensure its compliance with liberal principles of justice? (This is addressed in Part I.)
2   What does a theory of rights require in order to accommodate to the needs of a revised conception of 'childhood'? (This is addressed in Part II.)
3   How should the just treatment of children be effectively implemented in terms of their status as rights-holders and their unique claims? (This is addressed in Part III.)

This book argues that children should not be categorised or treated as systematically different from adults. The traits, characteristics, and behaviours that justify differential categorisation and treatment exist throughout the whole life-course and vary greatly from individual to individual. Based on the ideological commitment of liberal egalitarianism to equal treatment and freedom, individuals can only be categorised and treated differently if their personal circumstances require it. An assessment of justified differential categorisation and treatment requires evaluation of the embodied, temporal, and spatial frameworks of the individual to understand what their fundamental interests are and what the appropriate treatment is that is owed to them. This is what I label an 'adaptive model of childhood': differential categorisation and treatment requires understanding an individual's fundamental condition and interests based on their vulnerability (embodied framework), their developmental needs (temporal framework), and their embeddedness in their social environment (spatial framework), all this while accounting for the individual's status as an agent, with a particular personality, voice, and claims. Strict categories that aim to determine separate regimes of treatment and rights for social groups cannot fully abide by the principles of equal treatment and equal freedom of liberal egalitarianism; only a system that is sensitive to the diverse condition of individuals can live up to the standards of a liberal egalitarian political project.

   In this introductory chapter, I provide a brief overview of the main building blocks and milestones in the liberal tradition as it relates to the study of childhood. I then introduce the core aims and objectives that pervade the research carried out in the book, and close by explaining the methods, and the core structure of the book's parts and chapters.

Childhood in the Liberal Tradition

It might be useful to start with a brief historical overview to clarify the concepts and traditions upon which this book is grounded. Although not in a stable or rigorous manner, children have been a recurring presence in the philosophical literature (Matthews and Turner 1998). Childhood has been studied to understand the inner nature of the human being; as an example of human behaviour in 'primitive' societies; and as a source for understanding our development processes, our creation of values, our acquisition of knowledge, and our socialisation mechanisms. Children (and their relationship with their parents) have also been used as a comparative device for understanding political authority and the relationship between citizens and the state. But it was not until the European Enlightenment, especially with Locke's work on education and Rousseau's *Émile*, that childhood started to be studied consistently for what it is, rather than as inspiration and source material for other philosophical and legal matters. How should we understand what 'childhood' is? What do our legal and political systems owe to children? How should they be treated, reared, and educated? These became relevant questions in philosophical reflection. The 20th century brought into being the philosophy of education as a rigorous discipline, and the emancipatory political movements in the 1960s and 1970s gave rise to critical theories of childhood. Subsequent decades have made childhood a fundamental subject in liberal political and legal theory and practice, with international treaties such as the 1989 United Nations Convention on the Rights of the Child (UNCRC) framing our current understandings of who children are and what they are owed as subjects of justice.

What Is a Liberal Theory of Justice?

It is important to start by clarifying some of the key terms that will be used throughout this book: 'justice', 'liberal theory', 'liberal egalitarianism', 'equality', and 'freedom'. 'Justice' serves as a fundamental concept in this book, referring to the foundational principle that shapes the interaction between individuals and social institutions (Barry and Matravers 2011). Traditionally, it is encapsulated in its Justinian definition as *suum cuique tribuere* ('give to each their own') (Miller 2023). Interpreted in this manner, justice seeks to explain 'what is owed to individuals by social institutions?' and 'what is the appropriate distribution of benefits and burdens among individuals in a society?' Here, I refer to 'justice' in this wider sense: as the system of laws, practices, and social dynamics that aim to ensure that every individual is treated in the way they deserve. What this treatment entails in practice depends on the particular content that we give to this basic precept.

When we refer to a theory of justice being grounded in the liberal egalitarian tradition, it means that it adheres to a dual normative commitment when determining what is owed to individuals as a matter of justice. First, it upholds the principle of *basic equality*, which entails treating individuals in the same way, unless relevant circumstances require differential treatment. Secondly, it upholds the principle of *basic liberty*, which places freedom as a core human interest and requires a justification for any restriction or limit to an individual's freedoms (Clayton 2002; Tan 2008; Waldron 2017). The principle of basic equality requires a liberal egalitarian theory to ensure that every individual is respected as an equal moral being and treated accordingly. On the other hand, the principle of basic liberty requires a liberal egalitarian to prioritise freedom unless there are compelling reasons to justify restricting it. These two commitments, when combined, form what I will refer to as the principle of basic liberal equality. This establishes a presumption in favour of freedom and assumes equal treatment and respect for all individuals.

Examining justice for children from a liberal egalitarian perspective therefore asks us to understand two issues. First, it involves assessing how our categorisation of children aligns with the principle of basic liberal equality. Second, it entails exploring the appropriate mechanisms needed to accommodate childhood, including its unique needs and interests, within the framework of this principle. By approaching the study of justice for children through a liberal egalitarian lens, I aim to analyse and address these fundamental aspects, striving to ensure that both the principles of basic equality and basic liberty are upheld.

Children in the Modern Liberal Tradition

Throughout history, liberal theories of justice and their earlier contractarian predecessors have faced significant challenges in addressing the inclusion of children (i.e., Hobbes [1651] 2009; Rousseau [1762] 1966; Rawls 1999). These theories have traditionally relied on certain assumptions about human traits and behaviours as prerequisites for individuals to be considered as part of a just society. To be bounded by a system of justice, citizens are expected to have roughly equal physical and mental capacities, they must be rational and capable of cooperating with others in order to maintain stable political systems, and they must be capable of consenting to rules as the foundation for legitimising political authority. However, these assumptions have posed a particular dilemma when applied to children, who are believed to possess these qualities to a lesser extent. If we consider traits such as equality, rationality, cooperation, and consent as essential components of all individuals within a just social system, how do we grapple with the inclusion of children, who are often seen as lacking these attributes to a significant degree?

The prevailing approach in the Modern tradition (between the 15th and 19th centuries) was to treat children as exceptions to the established rules. If a theory of justice was deemed correct but incompatible with the concept of childhood, then children were often excluded from its purview. For instance, Thomas Hobbes, regarded as the father of social contract theory, argued that children's inability to provide consent, likening them to brute beasts, justified their exclusion from being treated as subjects of law and justice (Hobbes [1651] 2009, II.26.8). According to Hobbes, children should be placed under 'absolute subjection' to their guardians, granting the latter complete authority over their lives, even including the freedom to kill them (Hobbes [1640] 1928, 23.8). Other philosophers, such as Immanuel Kant and John Stuart Mill, adopted similar approaches, albeit with less radical implications. Kant expressed uncertainty about children's moral status, casting doubt on their capacity to be regarded as full moral beings entitled to rights (see Zweig 1998). Meanwhile, Mill claimed that affording children the same moral and political treatment as adults would actually be detrimental to their well-being. Thus, he advocated for restrictions on their status as subjects of equality and freedom, claiming it to be in their best interests (Mill [1859] 1961, chapter 18).

John Locke and Jean-Jacques Rousseau are widely recognised as the pioneering thinkers who directly grappled with the challenges of incorporating children into theories of justice. Locke's *Treatise on Education* ([1693] 1960) offered the first systematic analysis of what is owed to children, delving into the complexities of assessing their moral and political treatment. He highlighted their potential to become fully-fledged liberal citizens while acknowledging their current limitations in achieving this status. On the other hand, Rousseau's *Émile* ([1762] 1979) introduced a unique perspective on justice for children, focusing on their present identity and entitlements as children, rather than merely considering them as future citizens. The contributions of Locke and Rousseau continue to underpin much of the contemporary discourse surrounding the philosophical study of childhood. The questions of how to define 'childhood', the role of education and upbringing in shaping our understanding of justice for children, and the specific protections and freedoms they require, are thoroughly examined by both Locke and Rousseau, providing insights that inform the approaches of contemporary liberal theorists to the topic of childhood.

While Locke and Rousseau dedicated more attention to exploring how children could be integrated, at least partially, into liberal political theory than their predecessors or many of their contemporaries, the complexities of including children within liberal theories of justice remained unresolved. Locke focused primarily on the formation of fully realised adult citizens, limiting his account of childhood to the future inclusion of children within liberal theory once they had outgrown their childhood phase. In Rousseau's case, his conception of 'childhood' lacked

universality. His ideas of justice for children were exclusively applicable to the privileged and powerful, while also excluding girls from his theoretical framework.

Liberating Children

The turn of the 20th century witnessed a significant increase in scientific research on childhood, expanding the range of sources through which children could be examined from political and legal standpoints. This development was largely driven by three disciplines, which emerged in a relatively sequential manner. First, there was a rapid growth in pedagogical theory and philosophy of education during the early decades of the century. This was followed by the advent of cognitive-developmental psychology in the 1930s and the rise of social constructivism and critical theory, including feminism, liberationist pedagogy, and sociology, in the 1960s and 1970s.

The 1910s and 1920s saw the rise of schooling systems based on alternative pedagogical principles that put children and their active participation in their learning process as the centre of concern. Maria Montessori's theoretical work, and her *Casa dei Bambini* (school for impoverished children), A. S. Neill's Summerhill democratic school in the United Kingdom, and Ovide Decroly's school for children with learning disabilities opened new paths for understanding the varieties and possibilities available to children if allowed more space to explore their abilities and limitations for themselves. Based on his own teaching experience in Chicago, and feeding from the insights that came from Europe, John Dewey's work on the philosophy of education, and on democratic and pedagogical theory (1920, [1938] 1997) became the new standard for understanding who children were, what was owed to them, and how liberal principles could trickle down and be applied to the life and development process of the younger generations.

In the 1930s, the study of child development and cognitive and moral psychological theories provided fresh perspectives on childhood by empirically analysing how children acquire fundamental human functions, including language, social behaviour, and rational agency. Jean Piaget's ground-breaking work on the stages of cognitive development in childhood (Piaget [1932] 1965) and Lawrence Kohlberg's research on moral development (Kohlberg 1984), reaffirming Piaget's findings, laid the groundwork for a renewed interest in children that extended beyond pedagogical implications to their gradual inclusion in political theory. These studies served as the foundation for understanding the intricate processes of child development, and how children's cognitive and moral capacities evolve, contributing to their growing recognition as active agents within the realm of political thought.

Social constructivism and its revision of our understanding of the source of concepts and historical narratives had a profound impact on discussions about

childhood. Historians such as Philippe Ariès (1962) challenged the notion that childhood and its characteristics were 'obvious' and 'trivial truths'. Ariès argued that the concept of 'childhood' itself was a social construct that emerged during the Enlightenment. Before then, he argued, children were treated and perceived in much the same way as adults. This recognition of the diversity of childhood experiences throughout history was further supported by sociological and anthropological research, which explored the various understandings of childhood across different cultures and caregiving traditions (James et al. 1998; Lancy 2015).

The combination of empirical research, influenced by rising neo-Marxist theory and the emancipatory activism of feminism and the civil rights movement, led to a re-evaluation of our assumptions about children, and an acknowledgement of their oppressed condition in social and political contexts. Pedagogical theorists such as Ivan Illich (1970) and Paulo Freire ([1970] 1993) utilised this research to advocate for a system of education liberated from oppressive economic and political forces. Political and social theorists such as Shulamith Firestone (1970), Richard Farson (1974), and John Holt (1974) emphasised the importance of including children in the emancipation efforts of feminists and racial activists, by ensuring that they have equal entitlement to all the rights possessed by the adult population. These thinkers challenged existing power structures and advocated for the empowerment and liberation of children within society.

By the late 20th century, the study of childhood had witnessed significant expansion, both in terms of quantity and sources of information. Gone were the days when only (male) armchair philosophers relied on isolated encounters with a single child to make broad generalisations about childhood. Instead, a more scientific approach emerged, with schoolteachers, psychologists, and sociologists employing rigorous methods to analyse children. This shift towards empirical investigation enabled a more thorough, detailed, and nuanced understanding of childhood.

No longer confined to abstract theorising, scholars now engaged with real children in diverse contexts, using systematic observation, data collection, and analysis. Schoolteachers provided valuable insights into children's experiences within educational settings, while psychologists delved into cognitive and emotional development, and sociologists explored the social and cultural dimensions of childhood. This multidisciplinary approach fostered a richer understanding of the complexities and variations inherent in the concept of 'childhood'.

The Convention and a New Liberal Standard

Even if not part of the theoretical research on the topic, the UNCRC (UNGA 1989) holds immense significance as a contribution to the study of childhood in the late 20th century. There are three key reasons why it stands out: First, the UNCRC

represented a clear affirmation of children as moral beings deserving equal treatment and recognition as valued members of society. Secondly, its status as the most widely ratified Convention within the United Nations family (all countries but the United States had ratified it by 2023) signified a global consensus on the treatment of children as moral beings with rights. This widespread adoption underscored the importance of addressing children's rights on a global scale. Thirdly, the UNCRC drew upon the wealth of knowledge accumulated throughout the 20th century, incorporating insights from fields such as psychology, sociology, pedagogy, and political and legal theory. By incorporating these into its provisions, it sought to address pressing questions and challenges that had troubled childhood research, as well as to include children within the framework of liberal egalitarian politics. The UNCRC not only established guidelines for justice about children within the international arena, but also enshrined children as active agents entitled to fair treatment and respect. Unlike earlier perspectives that either viewed children as entirely passive and in need of protection (Modern Liberal theory) or advocated for their complete emancipation from adult authority (Liberationists), the UNCRC emphasised the developmental nature of childhood. It recognised their vulnerabilities, limitations, and evolving capacities, aiming to create a system that protected them while promoting their freedom.

Building upon the principles set forth by the UNCRC, liberal theorists grappled with the philosophical question of how to incorporate children within theories of justice. Scholars such as David Archard, Samantha Brennan, Harry Brighouse, Gareth B. Matthews, Laura Purdy, and Tamar Schapiro, alongside others such as Anca Gheaus, Colin Macleod, Amy Mullin, and Adam Swift in recent years, revisited the Enlightenment-era debates and sought to reconcile the tension between childhood and liberal egalitarian principles. Their cumulative work on childhood, education, and liberal political theory, often referred to as the Standard Liberal view, advocates for the inclusion of children within theories of justice through a careful balancing of their interests as vulnerable and dependent beings with their interests as developing autonomous individuals (Matthews and Mullin 2015; Archard 2016). Rejecting the notion of children as exceptions to liberal justice, the Standard Liberal view explores ways to integrate children within liberal theory while accommodating their unique characteristics and needs.

I have briefly traced the historical development of 'childhood' as a topic within liberal political thought, from its sporadic presence in earlier philosophical and jurisprudential literature to its growing significance in contemporary liberal theories of justice, and the influence of empirical research, interdisciplinary approaches, and the UNCRC in setting the current standards for children's rights. By briefly tracing the historical development of childhood within liberal theory, I have highlighted the evolving understanding of 'childhood' and its increasing relevance in contemporary theories of justice. Empirical research, interdisciplinary approaches, and the recognition of children's rights in the international

arena have contributed to a more nuanced and inclusive understanding of justice for children. This sets the groundwork upon which this book is built and for what it aims to achieve: to flesh out the gaps and flaws of current research on childhood and children's rights within the liberal egalitarian tradition, and to propose a novel view of 'childhood' as a concept and of children's rights as a political and legal practice, in order to open our minds about who children are and how a liberal theory of justice should treat them.

Liberal Theories of Childhood and the Adaptive Model

Understanding the concept of 'childhood' and determining how children should be treated within a theory of justice is a vital consideration that affects the lives of approximately a quarter of the global population. For a theory of justice to be effective, it must recognise and include all individuals who fall under its authority, aligning its principles of basic equality and freedom with the treatment of children. Accordance between what a liberal theory of justice prescribes and how it treats its citizens is not only an important task; it is its most fundamental task.

Building upon the progress made in childhood studies over the past two centuries, this book delves further into essential questions that lie at the intersection of childhood and liberal theory. While acknowledging the significant strides made by contemporary literature in including children within the framework of liberal theories of justice, this book argues that existing models and theories fall short of providing a fully satisfactory solution for accommodating childhood within liberal egalitarianism. The prevailing accounts presented by the two most prominent liberal positions in the philosophical and jurisprudential literature on childhood and children's rights—the Standard Liberal and the Liberationist—fail to offer a conception of 'childhood', and how children should be treated as holders of rights, in strict accordance with the principles of basic liberal equality. Liberalism demands basic equality and freedom for all, and if children are not included within these core principles, then liberalism is failing to do justice to their needs and interests.

Liberal Theories of Childhood

Childhood in Liberal Theory examines the contemporary liberal philosophy of childhood through two of its most prominent strands, the Standard Liberal and the Liberationist approaches. It explores how each of them understands what 'childhood' is and how their conceptualisations of 'childhood' translate into a particular vision of how children ought to be treated as a matter of justice and concerning their rights.

Standard Liberal theorists have tended to approach these questions by attempting to justify the reasons why children can (and ought to) be categorised and treated as different from adults (Purdy 1992; Brennan 2002; Brighouse 2002; Archard 2004; Gheaus 2015a). Standard Liberals claim that the assessment of children's status relies on a balancing of their interests as beings who need protection and as developing autonomous individuals. Thus, to do justice to children's claims, a system of differential categorisation and treatment that ensures them special protections and provisions is required. An alternate, and somewhat disregarded, branch of liberal scholars of childhood, the child liberationists, have argued against this differential status of children, claiming that a truly just political system requires ensuring children the same treatment and status granted to everyone else; that is, children are not different in any relevant way, thus they should be treated in the same way as adults in all aspects of life (Firestone 1970; Farson 1974; Holt 1974; Cohen 1980). While both strands of literature offer valuable insights into the appropriate inclusion of children in theories of justice, neither provides an answer that is fully consistent with the principles of basic equality and freedom.

The Standard Liberal view heavily relies on the differences it perceives as distinguishing children from other humans to justify its departure from basic liberal equality, which renders its normative stance vulnerable. On the other hand, the Liberationist view succumbs to the opposite pitfall by neglecting certain morally relevant traits that necessitate a certain degree of particularism and differentiation in determining what justice demands for some children. Both approaches, in my analysis, inadequately consider the requirements of basic liberal equality. A radical transformation in our conception of 'childhood' is necessary to rectify this deficiency.

The Adaptive Model

A revised conception of 'childhood' and children's rights is essential to align our assessment of justice for children with the principle of basic liberal equality. This book puts forth an alternative framework called the adaptive model, which challenges the simplistic approaches of blanket differentiation and blanket equality of previous models. It contends that the moral relevance of 'childhood' lies in the intricate interplay between an individual's embodied, temporal, and spatial conditions, which shape their categorisation and appropriate treatment. The pursuit of basic liberal equality requires treating equal cases alike, demanding an understanding of our differences and how they manifest in the treatment we owe one another.

The adaptive model recognises the significant variations in individuals' needs and interests arising from their unique relationship with their vulnerability (embodied framework), their developmental needs (temporal framework), and

the social context (spatial framework). By comprehending an individual's condition and their adaptive processes in relation to these frameworks, we gain insights into their treatment as a subject of justice. The model's primary objective is to provide a conceptual structure that allows us to assess the dynamic relationships individuals have with their bodies, their temporality, and their socio-environmental context. This understanding enables us to determine their interests and how to safeguard them through the provision of rights.

Throughout our lives, we all experience different periods of heightened vulnerability and diverse circumstances that shape our adaptive responses to these vulnerabilities, developmental processes, and environment. There is therefore no fixed, normative definition of 'childhood' or predetermined treatment for individuals labelled as 'children'. Instead, the assessment of the intersections and interactions between an individual and their constitutive frameworks becomes the cornerstone for understanding their needs and the just treatment they deserve.

Methods and Structure

This book is primarily rooted in philosophical inquiry, drawing upon political, legal, and moral philosophy to examine its hypotheses and arrive at its conclusions. However, it also seeks to overcome certain biases and limitations that have affected the philosophical approach when applied to issues of childhood and children's rights. To address this, *Childhood in Liberal Theory* expands its methodological scope by incorporating conceptual and theoretical tools from feminist theory, sociology, and critical legal theory (James et al. 1998; Liebel 2004; Jenks 2005; Cudd 2006; Haslanger 2012). By integrating insights from these disciplines and approaches, the arguments put forth in the book aim to enhance consistency and clarity.

One of the key concerns with the philosophical literature on childhood and children's rights is its limited responsiveness to the diverse and subjective realities of children's lives. Recognising this, *Childhood in Liberal Theory* emphasises the social and biopolitical diversity inherent to childhood as a focal point for its normative evaluation. This requires moving beyond traditional philosophical and jurisprudential approaches to gain a more comprehensive understanding of the nature of 'childhood', who children are, and how they should be treated (Cordero Arce 2012).

The Reflective Method

This book is mostly a work of conceptual and normative analysis grounded both in the methods of reflective equilibrium (Rawls 2001), and social constructivism (Haslanger 2012). The search for reflective equilibrium (henceforth, the reflective method) aims at achieving consistency and coherence between moral judgements

about particular issues, and the general principles and normative commitments upon which the particular moral judgements are supposed to stand. Think of it as similar to the search for the surface that most accurately reflects the image of an object. Some surfaces do not reflect at all (a cement wall), others can alter the features of the material object (wavy or rippled water owing to environmental circumstances), some might reflect an incomplete picture (broken or dirty mirrors), some might alter them on purpose (concave or convex mirrors), and some might even take you to opposite worlds (as in Lewis Carroll's *Alice Through the Looking-Glass*). The reflective method is the search, in this sense, for a flat, clean, and unaltered reflective surface that best represents the original object. In political and legal theory, it asks what are the most appropriate principles, practices, and concepts (the reflective surface) that ensure the ideal objective we aim to achieve is properly reflected in political and legal practice, and in the lives of individuals.

In this respect, the reflective method assesses the validity of certain moral intuitions, and how particular concepts are used, through an evaluation of their coherence with the general principles of justice in which our particular judgements are grounded. So, if we consider that equality and freedom are basic principles of justice, the reflective method requires us to assess whether the ways in which justice is put into practice (say, by granting and limiting rights to certain groups of the human population) align and are consistent with the general moral commitments we have to equality and freedom. The reflective method is applied at various levels of analysis in this book (see Figure 0.1).
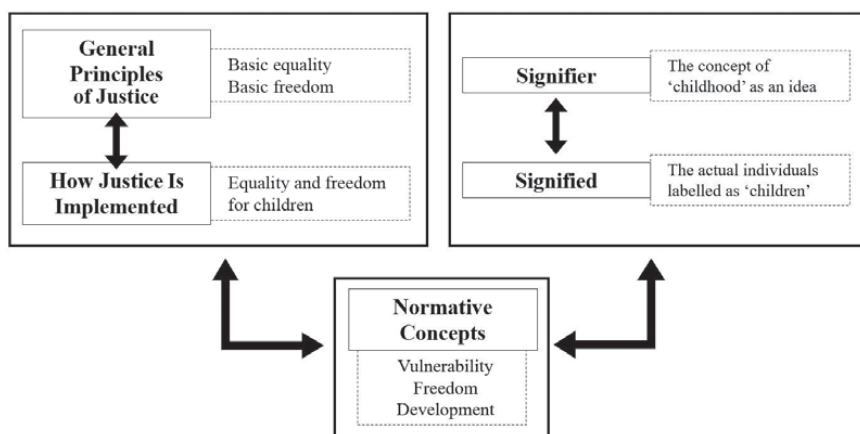
Figure 0.1 The reflective method of analysis

First, it is used to evaluate the coherence and compliance of particular moral intuitions regarding justice for children with general principles of liberal justice. Taking as a given a commitment to liberal egalitarianism, the book assesses whether the moral judgements that pop up when thinking about what is owed to children correspond to the wider commitments one endorses as a liberal theorist. The search for reflective equilibrium, in this sense, asks us to find a route for our judgements about particular issues of justice to cohere and comply with how we conceive of justice in general.

Secondly, the reflective method is applied in a particular way at the level of conceptual analysis to test the validity of concepts in relation to the signified to which they refer. A relevant criticism of John Rawls's own conception of reflective equilibrium was its lack of concern with 'facts about the world' (Daniels 2018): as long as there is consistency between our particular judgements and our general principles, according to Rawls, reflective equilibrium is achieved (Rawls 2001, 30). Here I expand the reflective method in order to test how concepts are used in relation to the actual human traits and behaviours which they intend to refer to. In the case of the concept of 'childhood' or 'children', for example, the reflective method is used to evaluate whether what is meant by 'children' actually corresponds to whom we label as 'children', their lived experience and their diverse realities. It thus explores the definitions that structure various conceptions of 'childhood' (its characteristics) and considers whether they actually correspond to how they classify and categorise individuals as being 'children'.

Finally, the book applies the reflective method to highlight what is in a concept and to assess what makes it relevant for discussions about justice. The concepts of 'vulnerability', 'development', and 'freedom', for example, are recurrently used as foundational elements in the evaluation of the legitimate treatment of children: 'children are particularly *vulnerable* so they should be protected', 'children are unable to act as autonomous agents, thus, can have certain *freedoms* legitimately restricted', or 'children are in the process of *development* so it is legitimate to treat them differently'. For these claims to make any sense, the concepts that bear the justificatory burden must be meticulously analysed in order to assess what particular features within them bestow them with justificatory relevance in relation to the human subjects they are applied to, and in the context of the general principles of justice under which they are justified.

Social Constructivism

Social constructivism recognises that any understanding of 'childhood' is not solely determined by inherent biological or developmental factors but shaped by social, cultural, and historical contexts. It emphasises that the meaning and

significance of 'childhood' are socially constructed through language, norms, and practices within a given society (James et al. 1998).

Social constructivism can help our research task in several ways. First, it allows us to critically examine the existing definitions and conceptions of 'childhood' within liberal political theory and evaluate their validity. By considering the social construction of 'childhood', the book assesses whether these conceptions align with the actual experiences, needs, and diversity of children's lives. Secondly, social constructivism enables us to investigate how power dynamics, social institutions, and cultural beliefs shape the treatment of children. It enables us, moreover, to explore how societal norms and practices influence the categorisation and treatment of children as different from adults, and to critically evaluate whether these differentiations are justified from a perspective of justice (Cudd 2006; Haslanger 2012).

Moreover, social constructivism encourages us to examine the processes through which social categories, such as 'childhood', are maintained, reproduced, and challenged. It allows us to analyse the social and discursive practices that construct and reinforce the boundaries and expectations associated with 'childhood'. This can shed light on the power dynamics that affect the rights and opportunities of children within society. By incorporating social constructivism, we can uncover the social and cultural factors that shape our understanding of 'childhood' and children's rights. This approach enhances the consistency and depth of the reflective method of analysis, ensuring that the arguments are grounded in a nuanced and context-sensitive understanding of 'childhood' and its implications for justice.

Structure

Assessing the appropriate inclusion of children within a theory of justice entails a three-step process. First, it involves evaluating the validity of the concept of 'childhood' as a social category that determines the status of individuals (see Part I, 'Defining Childhood'). This section critically examines the concept's foundations, considering its moral relevance and normative implications. Secondly, it requires elucidating the implications of this social category, specifically regarding the treatment owed to those designated as 'children' (see Part II, 'Grounding Children's Rights'). Here, the focus is on establishing the grounds for children's rights and exploring different approaches to address their unique circumstances justly. Lastly, it involves operationalising the developed theoretical framework by demonstrating its applicability to pertinent issues (see Part III, 'Applying the Adaptive Model'). This section delves into specific contexts, examining how the theoretical framework can inform policies and practices around economic, political, and social issues.

Part I ('Defining Childhood') focuses on the conceptual analysis of 'childhood' within liberal theories of justice. It begins with an exploration of the concept of 'childhood' and its moral relevance for studies on justice (see Chapter 1). It then critically analyses different conceptions of 'childhood' in the literature, such as Life-Stage conceptions and the Liberationist view (Chapter 2 and Chapter 3). It highlights the limitations of these models and proposes an alternative understanding of 'childhood' (the adaptive model) that takes into account the embodied, temporal, and spatial frameworks that shape children's lives, and determine an individual's social categorisation (Chapter 4).

Standing on this conceptual framework, Part II ('Grounding Children's Rights') studies the implications of making use of an adaptive model of 'childhood' to explore the theoretical foundations of children's rights. Vulnerability, development, and embeddedness can greatly affect the just treatment of individuals. This part delves into the discussion of the just treatment of children in terms of their rights. It establishes fundamental interests as the grounds for right-holding and examines the main positions in the literature on the status of children as right-holders. Chapter 5 explores the justification for using a rights-based framework to evaluate the just treatment of children and proposes a capability-based conception of right-holding, drawing on Amartya Sen's account of capabilities and human value. Chapter 6 and Chapter 7 critically analyse some of the most prominent contemporary liberal approaches to children's rights (the Standard Liberal, the Liberationist, and the UNCRC), and tests them based on the conceptual structure of Part I and on the groundwork for a theory of rights defended in Chapter 5. Chapter 8 proposes a theory of children's rights consistent with basic liberal equality, and in accordance with the conception of childhood defended in Part I.

With the conceptual groundwork for childhood and children's rights established, Part III ('Applying the Adaptive Model') operationalises the theory by assessing how an Adaptive theory of children's rights would fare in particularly thorny cases of children's rights. It aims to prove the framework's capacity to normatively prescribe for relevant issues of children's rights law. Through discussions with the University of Liverpool's Young People's Advisory Group, 10- to 19-year-old volunteers who provide a child and youth standpoint to academic research, we came up with three topics that were considered 'spicy', 'controversial', and relevant for analysing the theory that the book proposes: children's right to work, children's right to vote, and children's rights in public spaces. By establishing the issues as open questions, these chapters aim to explore the justifiability of restricting certain rights and freedoms to children, testing how the book's theoretical framework fares in particular scenarios, and showing the radical results that come from taking the principle of basic liberal equality seriously.

Childhood in Liberal Theory presses readers to question their most basic assumptions about what 'childhood' is, and to revise their moral intuitions

regarding the appropriate treatment of children within liberal political theory. It provides an invaluable contribution to contemporary political philosophy through its comprehensive analysis of the status of children in liberal theories of justice, and by proposing a novel and consistent theory on how to best accommodate children within liberal political theory. The book, moreover, expands the breadth of the discussions about childhood within the liberal tradition thanks to its revisiting of the liberationist literature, and to its inclusion of the ample scholarship in the sociology of childhood and in the critical legal theory of children's rights.

Part I

Defining Childhood

1

The Concept of Childhood
and Social Ontology*

The definition of 'childhood' varies greatly from culture to culture and throughout time.[1] All legal systems define a 'child' as someone below a certain age (usually between 16 and 21 years old). Many cultures consider those who are yet to arrive at puberty as 'children', and phrases such as 'behaving like a child', used when someone is not acting as an adult should, point towards 'childhood' as a condition in which behaviours and ways of relating to the world, different from the standard adult, are prominent. Some have even argued that the concept of 'childhood', as a way of categorising a human collective, did not come to exist until the 17th century, and various African and Asian cultures (and many Western parents as well) consider that a person will always be a 'child' in relation to their elders.

Despite wide variation in the way 'childhood' is used across time and cultures, an essence which shapes the concept remains. Just as the concept of 'god' has extremely diverse interpretations (what makes an entity a god, what characteristics a god has, who is and who is not a god), we still make cross-cultural and cross-historical analyses of the concept of 'god' based on certain properties that unify the various understandings of it. We can distinguish, following John Rawls, between a *concept* and its *conceptions* (Rawls 1999, 5): while social disagreement exists among conceptions of 'childhood' or 'god', the concepts of 'childhood' or 'god' are relatively stable, like a common denominator that gives sense and functionality to the word. So while conceptions of 'childhood' may vary (what makes an entity a 'child', what characteristics do 'children' have, who is and who is not a 'child'), there are structural features within 'childhood' that allow us to consider it as a distinguishable concept and social category (Archard 2004, 27–9).

[1] Following its use in linguistics, I distinguish between the signifier with single quotation marks and the signified without them. So, when I use 'childhood', 'children', or 'child' (with quotation marks), I refer to the concept or category; when I talk about childhood, children, or child (without quotation marks), I refer to the individuals labelled under these terms.

We tend to assume that nothing is inherently wrong with classifying individuals into social categories (i.e., children, women, brown-eyed, tall). These may be seen as mere descriptive devices that enable classification based on 'natural' properties. However, some social categories bear more relevance than others to our moral intuitions (think of gender or race as opposed to eye colour or foot size); there is something about being categorised as a woman or a black person that makes these categories fundamentally different from those of the brown-eyed or wearers of size 8 shoes. From a perspective of justice, the social categories of 'women' or 'black people' bear a moral relevance that the 'brown-eyed' or 'size 8 shoe-wearers' do not.

This chapter aims to explore (1) what defines the *concept* of 'childhood' and (2) what makes it a morally relevant category for theories of justice.[2] In order to find an answer to these two questions, I first look at them from a more general perspective: I explore what is inside a concept that defines human collectives (social category), and explore the reasons why certain social categories bear moral relevance for discussions about justice.

The underlying intuition is that the classification of humans into social categories is not an innocent affair (Haslanger 2012). Even if, at face value, social categories seem to point towards descriptive, natural, and objective classifications of properties of individuals, a thorough deconstruction of the processes that determine who is categorised as part of which group and what properties are highlighted to classify individuals shows that nature plays a very small role in our understanding of reality as compared to social construction. We do not make up our own categories and its characteristics by ourselves; rather, we tend to apply the use and definition of concepts passed on to us linguistically, culturally, and ideologically (Glauser 2005, 146). This chapter therefore follows the 'debunking' project that was encouraged by the feminist constructivist tradition (i.e., Haslanger 2012; Ásta 2013; 2018). The constructivist 'debunking' project aims to flesh out and expose the social processes and structures that construct social categories (such as 'childhood'), and to reveal the problematic consequences that these constructions may entail for individuals. Deconstruction allows us to look behind the curtains of the language we use to build reality; it forces us to visualise the hidden strings that guide our construction of the world and ourselves.

My core aim in this chapter is to convince you that the concept of 'childhood' is morally charged: it is not a neutral, natural, nor a merely descriptive category; it is a social category constructed with specific purposes and ideological bases and

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[2] Discussing the moral relevance of the concept of 'childhood' is not the same as discussing the moral value of the individuals labelled by the concept. This chapter addresses the moral relevance of the concept of 'childhood' when addressing issues of justice that affect individuals labelled as such, not whether children should have moral value or not. The latter is an issue that will be addressed in Chapter 5 ('Theories of Rights: Choices, Interests, and Capabilities').

has an important impact on how those labelled as 'children' are perceived and treated. For this reason, conceptions of 'childhood' must be critically analysed in order to flesh out the potential harms and injustices that their use might cause for those labelled as 'children'. Having a clear view of what the concept of 'childhood' entails, and how it structures our discussion about children, is a foundational task in our path towards understanding what 'justice for children' requires.

The Moral Relevance of Social Categories

This section explores why concepts that refer to human collectives (generally) are important to discussions about justice. The second section looks into how this ontological question affects our understandings of 'childhood'.

Properties and Purposes of Social Categories

Human collectives can be defined and classified in two ways: through their natural or social properties. We can define and classify a collective of individuals as 'natural' kinds through their biological traits (a collective of individuals of the same age, eye colour, strength); or by social association/identity (a collective of individuals with the same political inclinations, religion, musical taste).[3] The distinguishing feature between these two forms of categorisation is that the first relies on 'natural' information while the second goes into more ambiguous territory, looking at the social features that allow classification. Natural (or biological) categories are strictly non-voluntary, while social categories tend to be conceived as voluntary (to a certain extent). In practice, however, distinguishing 'natural' from 'social' categories and characteristics might be more difficult than expected.

    Following Sally Haslanger, categories that refer to human collectives are always natural and social because any act of classification is a human linguistic practice conditioned by the social interests and purposes tied to it (Haslanger 2012, 194–8). It is nearly impossible to detach natural (and biological) features from social features in human categorisation, as there is an inevitable social element present in all categorisations of natural properties (Díaz León 2013, 1148). For example, is the place of birth of an individual a social or a natural property? There is clearly a 'natural' (geographical) side to it (I can geo-locate with precision their specific place of birth in the natural world); but it is also necessarily social, as it refers to politically determined state boundaries that are not part of the natural world.

[3] There can be a third category that develops accidentally (i.e., survivors of a terrorist attack, people trapped in a lift, lottery winners).

Categories that refer to human collectives, moreover, are not necessarily morally salient in themselves;[4] they could be used as purely descriptive devices that classify collectives based on common properties: individuals with XX chromosomes, individuals with a high level of melanin in their skin, individuals who wear size 8 shoes, individuals born between 5 am and 6 am, individuals who follow the principles of Islam, *Star Trek* fans. There is, however, an intuitive difference between some of these categories; XX chromosomes, high melanin levels, or Islam followers trigger from us radically different moral responses from size 8 shoes, birth between 5 am and 6 am, or *Star Trek* fanhood. Even if the latter are social categories just as the former, the moral salience of each of these two groups of categories varies substantially. Why is this the case? Why is it more morally salient to be a part of the collective of individuals with high melanin levels on their skin than being a wearer of size 8 shoes or a *Star Trek* fan?

Categorisation of any kind is always preceded by the *purpose* for categorising. We never categorise without a purpose; categorisation is always a goal-oriented activity. Understanding the purpose in the construction of a given social category can illuminate the reasons why some bear moral relevance while others do not (Haslanger 2012, 187). For example, if my purpose is to not eat plants that can kill me, I will create the categories of lethally toxic and non-lethally toxic plants, and then track the particular properties that a plant should have in order to distinguish between them. I cannot categorise without first determining the purpose of the distinction. The relevance of the tracked properties and distinctions chosen depends on the purpose for categorisation. The property 'colour red' of a plant may be entirely irrelevant if my purpose is not to die when eating it, because it cannot determine whether a plant is lethally toxic or not; but it may be useful if my purpose is to choose plants to decorate my house on Valentine's Day. To a great extent, the moral salience of a human category is conditioned by the purpose of the distinction and its use.

In *The Subjection of Women* (1869), John Stuart Mill argued that social categories become morally relevant once a category shifts from having a descriptive purpose to having a normative one. In the case of women addressed by Mill, the properties used to descriptively categorise female humans (the physical fact of a person's sex) were transformed into socially salient characteristics with the purpose of impacting law and social practice (through gendered norms, for example) (Mill [1869] 1988, 5). The social category of 'women' became morally relevant once it started being used *for normative purposes*.

Once descriptive facts that allow the categorising of individuals start being used to determine how the category should be treated, they become morally relevant.

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[4] By 'moral salience' and 'moral relevance' I refer to the extent to which certain human collectives are perceived as more significant or relevant in considerations about justice and morality.

Take, for example, a political system in which people who wear size 8 shoes are considered inferior and are compelled to act as servants for the rest of the human population (Sen 2006, 26); or one in which humans with XX chromosomes are forced to stay at home taking care of children; or another in which people who follow Islam are considered evil and a threat to liberal democracies. Social categories can impose a normative order on the world and, as Haslanger notes, they may 'function more like a script than a map' (Haslanger 2012, 88). If the purpose of a descriptive social category is to prescribe a particular form of social treatment that constrains and prefigures a person's life and choices, it ceases to be superfluous and becomes morally salient. Social categorisation not only maps human collectives; through its normative purpose, categorisation also has the power to transform the lives, opportunities, and (self-) perceptions of the individuals classified.

Social Grouping: The Moral Relevance of Categories

The shift from a descriptive to a normative purpose in the construction of social categories is the core phenomenon that bestows moral relevance to human collectives. This, as Jenkins notes, is a standard assumption in social ontology: social categories entail a set of constraints and enablements that partially constitute the category (Jenkins 2020, 190). The social category of 'women' not only describes the individuals classified, but it also has the purpose of prescribing who they should be, how they should behave, and how they should be treated. It assigns social roles, and establishes expectations, norms, and practices for those classified (Dembroff 2018, 24).

   This normativisation of social categories is not necessarily unjust; it may even be necessary and justified. Take, for example, the statement 'individuals who are pregnant should be ensured an appropriate pregnancy leave because they need time and support to take care of themselves and their unborn child'. We have here a social category ('individuals who are pregnant') that is being normativised, and rightly so. Social categorisation is not necessarily wrong, and prescribing to social categories may sometimes be necessary and just (Ásta 2018, 46).

   The issue of injustice unfolds when the normative purpose is taken as a natural part of the social category itself. As Jenkins claims, injustice arises from a 'mismatch' between the needs and interests of the individuals categorised and the normative treatment imposed to the social category (Jenkins 2020, 191). It is the specific content and characterisation within a social category that can create issues of justice. The concept of *reification* can clarify the processes through which a social category becomes problematic owing to the transformation of its content and characteristics.

   Reification is used in Marxist theory to denote the process through which the capitalist system transforms the economic treatment of an object or person by

introducing certain social, economic, and political practices as being a constitutive part of the object or person in itself (see Petrović 1991). For example, once an object is labelled as a 'commodity', Marx argues, it ceases to exist as it did before, because its definition (grounded on its exclusive use as a capitalist-market product) already delimits and prescribes the possible social uses and practices related to the object. A tree classified under the concept of 'commodity' implies within its definition that it is and should be treated only as a market-good. By classifying a tree as a 'commodity', the capitalist system encloses all possible practices related to a tree to those prescribed the concept of 'commodity' (Marx 1887, 1. I. 4).

The concern with the process of reification is its power to transform descriptive categories into normatively charged ones, while claiming objectivity (Lukács [1923] 1972, 83; Boonen et al. 2019, 558–9). The process of reification obliterates any moral, political, or ideological disagreement regarding the normative treatment of a category by preforming and predetermining the possible uses tied to it, as if they were inherent to the definition of the category itself. A tree ceases to be part of the natural world once it is defined as a 'commodity'; its purpose, its definition, and its uses become entirely dependent upon how it is conceptualised.

The concept of 'reification' is a useful tool to understand why certain social categories bear moral relevance. Take the case of the 'woman' category: once socially constructed characteristics and prescriptions that are not inherent to the descriptive collective ('women should stay in the kitchen', 'women are not good drivers') are introduced into the definition of the category, these become reified within any understanding of it, thus limiting the normative use of the concept to those that coincide with the reified definition. Reification of social categories has huge implications for the individuals categorised. The reified qualities that come with categorisation as 'man' or 'woman' are charged with cultural, political, or ideological associations that frame how one is perceived, how one is treated, how one self-identifies, and how one is allowed to self-identify and behave (Dembroff 2018, 44).

Social Categories and Social Groups

Distinguishing 'social groups' from 'social categories' aims to differentiate human collectives whose classification has consequences for how they are perceived and treated in social and political life (morally relevant social categories) from those that do not have moral relevance. I have argued that some categories (such as the collective of humans with high melanin levels or followers of Islam) have moral relevance, while others do not (size 8 shoe-wearers or *Star Trek* fans), because of the normativisation of their social category; I will call these morally relevant categories *social groups*.

The next subsections explore two of the most relevant accounts that attempt to explain why this normativisation bestows moral relevance to a social category: Iris Marion Young's internalist account, and Ann Cudd's externalist account of the moral relevance of social groups. Both approaches agree that reification plays a role in the creation of normativised concepts, but they differ on the process through which this happens, and on how normativisation affects the individuals classified through reification.

An Internalist Approach

Iris Marion Young argues that '[a] social group is defined not primarily by a set of shared attributes, but by a sense of identity' (Young 1990, 44). It is not necessarily the skin colour and place of birth that defines a person as part of the social group of 'African Americans'; it is a person's own identification with the status of a collective, its history, experiences, ways of life, and forms of association that determines a person's categorisation into a social group (Young 1990, 43–4). However, identification by itself is insufficient for a human collective to bear moral relevance; a *Star Trek* fan's identification with the collective does not suffice for it to be considered morally relevant. Following Heidegger, Young argues for the necessity of 'thrownness' (Young 1990, 46): not only does a person identify with the collective, but they are incapable of not identifying with it. Social structures define to a great extent who we are, and the interaction between this 'forced inclusion' and our own identification with the collective defines us as part of a social group. This approach, Young states, explains the moral relevance that group membership plays in a person's life and as a matter of justice, while not assuming anything about the characteristics or properties that individuals within the group ought to have, thus being tactful to internal differences among them (Young 1994, 723). While 'thrownness' would exclude *Star Trek* fans from being considered a social group, 'identification' would do the same for size 8 shoe-wearers. Both conditions must apply for a human collective to be morally relevant.

The internalist approach, thus, requires an individual to self-identify and to be incapable of not identifying with a group for them to be part of it. The element of 'thrownness' imposes boundaries on who is included and excluded from a social group; it forces the individual to mould and adapt to the category they are 'thrown into'; they do not have a choice regarding their inclusion (MacKinnon 1989, 123; Dembroff 2018, 26). While no objective (natural) characteristics of individuals are required for determining someone's inclusion into a social group (Young is particularly concerned with essentialist interpretations of gender or race), grouping does require at least a partial endorsement of the common goals and shared objectives that constitute the group as a whole and the identity of its individual

members (Young 1990, 9; 1994, 723–4; see also Jenkins 2020, 190). For Young, social groups have some capacity to *constitute* individuals: 'A person's particular sense of history, affinity, and separateness, even the person's mode of reasoning, evaluating, and expressing feeling, are constituted partly by her or his group affinities' (Young 1990, 45). She, of course, concedes to the fact that this identification does not necessarily define who a person is, but it does frame their modes of action and behaviour (Young 1994, 715).

Young's account, however, does not explain what makes a self-identifying and 'thrown' individual part of a morally relevant social category; it does not explain what makes self-identification and 'thrownness' structural characteristics of a normativised concept. Ann Cudd's revisions to Young's theory of social grouping can provide a deeper understanding.

An Externalist Approach

In her book *Analyzing Oppression* (2006), Ann Cudd argues that to understand what is problematic and relevant about social grouping, we need an approach to social groups that does not rely on an internalist justification for its existence (that a person identifies with the group), but one which, rather, focuses on objective facts about the world, social relations and its consequences; an externalist understanding of social group. In her own words: 'What makes a person a member of a social group is not determined by any internal states of that person, but rather by objective facts about the world, including how others perceive and behave toward that person' (Cudd 2006, 36).

Categorisations that frame and predetermine a person's life and options are externally rather than internally constructed, according to Cudd. Social and political practices (though laws, norms, stereotypes, and customs) define, first, who is part of which social group, and, second, how should each social group be treated. The core critique posed by Cudd to internalist approaches is that a person's identification with a social group does not necessarily have an impact on their suffering from the consequences of being ascribed by others as being a member of the social group. Self-identification may or may not happen in socially salient groups; the external ascription of an individual to a group, and most importantly, the externally imposed normative guidelines that frame the relation of others with the individuals grouped, is what makes it morally relevant.

A person with ethnic Arab features who is perceived as a Muslim,[5] for example, need not be conscious of the fact that the particular constraints on their

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[5] 'Arabness' (as any other ethno-cultural category) is not a natural category. It is shaped through external perceptions of the physical and behavioural assumptions of what it is to be part of the ethno-cultural category, and homogenising pressures effected by internal dominant cultures (Eickelman 2013; Magnusson 2015).

options and on the way they are treated and perceived by others are due to others grouping them as a 'Muslim' (with all the stereotypes that this may entail); their (lack of) awareness of being grouped (or their identification with Muslim cultures or ethnicities) is irrelevant to the fact that the way they are treated (for better or worse) is conditioned by others' classification of them as part of the social group of 'Muslims'. As Ásta argues, the constraints imposed on an individual ascribed to a social group are not conditioned by the presence of a property ('being Muslim'); the constraints imposed derive from the externally conferred properties that are perceived or assumed by others ('looking like an Muslim'), regardless of whether the individual actually possesses the property or not (Ásta 2013, 729). Even without one recognising oneself as part of a social group, the consequences and harms that derive from being treated as part of a social group are morally relevant and must be addressed as an issue of justice (Cudd 2006, 41).[6]

From this perspective, the core forces that determine the moral relevance of a social group are externally imposed. Cudd considers this approach more analytically appropriate because it achieves two results: first, it clearly distinguishes collectives that are morally relevant from others that are not by defining 'social groups' as only those that suffer social constraints on their actions and choices. It is the reified normative prescriptions that come with being classified as part of a social group that confers the category (of women, Black Americans, Muslims) moral relevance in justice analyses. And second, because the externalist approach avoids the issues that derive from linking social grouping to self-identification (Cudd 2006, 44–5; see also Sciaraffa 2011).

The fundamental difference between an internalist and externalist approach to social grouping lies in the weight each assigns to an individual self-identifying with the group. While internalists consider that identification is a fundamental feature, externalists claim that identification is irrelevant to the assessment of the moral relevance of the group.

Three Features of a Social Group

Both Young and Cudd highlight the ambiguous relationship between a person's grouping and their identity. Young, while considering that identification is required for a person to be part of a group, argues that this does not imply that the person must be entirely defined by it. She emphasises this through Jean-Paul Sartre's concept of 'seriality' (Young 1994): groupings are constituted through

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[6] Throughout my life, I have been harassed by people who perceived me as 'Jewish' and as 'gay'. Despite that I am neither, nor do I identify with either of these social groups, the violence I suffered can be defined as a hate crime towards these social groups because what matters is others' ascription and violence towards a perceived member of the 'Jewish' or 'gay' communities, not the fact that one identifies with them.

the structural organisation of social relations, imposing norms and treatments that force a person's social regard, while not implying a common identity nor any necessary shared social attributes (Young 1994, 723–4; 2000, 99–102). Cudd presses the claim even further, arguing that it is solely the actions, beliefs and attitudes of others that define a person's social grouping and its moral relevance, even if identification does not occur (Cudd 2006, 44). The source of social groups is externally constructed, independently of whether it leads to internalisation.

The moral relevance of groups therefore lies in the way that social and political forces frame a person's options, choices, and treatment through the normative reification of the characteristics in the collective's ascribed definition; 'What matters socially is what features you seem to have, not what you do have' (Ásta 2018, 48). It should not matter whether an individual identifies as a 'woman' or not; as long as an individual is treated as a 'woman' (implying the framing of the person's options, choices, and constraints through a particular normative reification of the concept that classifies her), her being grouped becomes morally relevant, and thus a matter of justice.

The consequences (be they in the form of privileges or disadvantages) that derive from social grouping, and the sources of normative reification of the category that refers to it, justify treating them as morally relevant categories for analyses of justice. Following Pierre Bourdieu, Amartya Sen has emphasised the need to take social groupings as morally relevant even when they are arbitrary and capricious categories that only exist to reinforce prejudicial and harmful treatment for certain individuals (Sen 2006, 26–7). Furthermore, it is actually this arbitrary and capricious characterisation of individuals through biased, overly generalised, and stereotyped definitions of who they are, how they behave, and how they should be treated that bestows moral relevance to their position (Sen 2006, 6; see also Mallon 2016). This is because they can (and usually do) lead to forms of injustice: social grouping is morally relevant as the constraints and enablements that are imposed on individuals based on their grouping can harm their basic interests and moral standing (Jenkins 2020, 190).

Moreover, social grouping can have an impact on identity and self-identification. Social groups can (and do) have important implications for an individual's identity formation. Cudd argues that, among the consequences of social grouping, psychological harms and the internalisation of one's position as part of the social group are fundamental for understanding the breadth of the impact that such classifications may have on a person's life (see Cudd 2006, chapters 3 and 6). Part of the transformation deriving from the normative reification of social categories lies in the 'looping effect' it may have on an individual's own conception of themselves (Hacking 1999). For example, a transgender woman may be treated differently depending on whether she is perceived and categorised by others as either a 'woman', a 'man', or as 'trans' (see Eekelaar 2018, 831–6 for a legal analysis of

collective and self-identification). Regardless of how capricious and arbitrary her ascription is, the roles and expectations imposed by each category will inevitably frame how she is expected to behave and how she will be treated, thus potentially affecting how she self-regards and how she deals with her own identity (Kapusta 2016; Dembroff 2018, 24).

The constraints and social framings that come with social grouping can lead individuals to identify as part of the group (Appiah 2005, 66). This may be a positive consequence, as it creates group consciousness. But identification can also have negative implications through corrosive processes of internalisation: individuals categorised as 'women', for example, may internalise the normatively reified definitions that constitute their social grouping ('you are a woman, so you are weak'; 'you are a woman, so you should find a husband'), making them, in a sense, instruments in the perpetuation and self-fulfilment of the stereotypes normatively reified in the definition of the 'woman' category. The internal effects caused by social grouping are fundamental in understanding the manifestations of empowerment or oppression that occur through an individual's relationship with their grouping.

Social grouping works as a red flag that warns us of potential sources of injustice or oppression. By understanding the practices that frame a person's social grouping (ascription, reification, and prescription), one can identify if a category has moral relevance, and thus if it may be considered as a source of injustice (Jenkins 2020 would call this form of injustice 'ontic').

To summarise, this section has attempted to clarify why certain concepts that refer to human collectives have moral relevance, highlighting three practices that make a social category morally problematic:

1   *Ascription*: individuals are externally classified as part of a human collective. A social category is morally relevant when individuals are 'thrown' into it; endorsement or identification can be a consequence of ascription, but it is not necessary to the assessment of its moral relevance.

2   *Reification*: the possible uses of a social category are prefigured by the inclusion of socially constructed assumptions about the features, characteristics and behaviours of the individuals classified, becoming a constitutive part of the definition of the category.

3   *Prescriptive purpose*: the moral relevance of a social category depends on its use as a normative device. The category not only describes the individuals classified, but also has forward-looking implications, prescribing a particular treatment and behaviour towards those categorised. Its moral relevance derives from the normative implications reified in the category: individuals classified are (and should be) treated in a particular way, having repercussions on the constraints, options, privileges and disadvantages of grouped individuals.

Social categories can bear moral relevance depending on how they are constructed. I have argued that the core sources that bestow moral relevance to a social category are of an external nature. Individuals are *ascribed* to a social group, socially constructed practices and stereotypes are *reified* within the definition of the category, and constraints, options, and treatment are *prescribed* to individuals, based on their grouping.

The Concept of 'Childhood'

What is left of this chapter mirrors the method of analysis carried out in the previous sections while focusing on how it affects the concept of 'childhood'. The chapter claims that the conditions for the moral relevance of social groups presented in the section 'Three Features of a Social Group' apply to the concept of 'childhood', and it considers how this frames the way we should understand the use of the concept as a tool for studies of justice for children. The concept in itself already offers certain general guidelines for how individuals are classified and characterised as 'children', but the guidelines are abstract and vague enough for the conceptions of 'childhood' (to be studied in later chapters) to play most of the normative role.

Natural and Social Properties of 'Childhood'

Thinking about the properties of 'childhood', it is inevitable to consider certain seemingly biological, physical, and behavioural patterns. Even if only as a matter of degree, the collective of individuals whom we label as 'children' can be considered to share a side of the spectrum in their relative possession of certain apparently biological traits. Children seem to be relatively weaker, more dependent on others for their survival, and more vulnerable to external threats than other humans. They also seem to be more malleable and impressionable. They seem to be less prone to thinking about long-term goals, they seem to be more straightforward with their emotions, and they seem to reflect less on the possible consequences of their actions. These are relative behavioural and physical traits that could allow us to frame children as occupying a particular place in the spectrum of human physical and behavioural patterns. From this perspective, the social category of 'childhood' would aim to classify individuals who follow this physical and behavioural pattern to a significant extent. Even if the magnitude to which particular children possess these traits is up for discussion, it seems reasonable to state that, at a certain level of abstraction, the categorisation of 'children' follows these patterns.

But relative physical and behavioural properties are not what constitutes the concept; classification of individuals as 'children' has, first and foremost, a

chronological foundation, most strongly tied to an individual's living in the first period of the human life. If an individual possesses the relative physical and behavioural patterns mentioned in the previous paragraph but is living at a later period of the human life (let us say they are 45 years old), we would not classify them under the 'childhood' category. They could be referred to as 'childlike' or 'childish' but they would not be grouped with children because they do not comply with the chronological condition. Karl Mannheim called this a *generational* classification (Mannheim [1927] 1972). This is the first property that constitutes the concept of 'childhood' as social category: call it generational, age-based, or life-stage classification. The basic idea is that 'childhood' first and foremost refers to individuals at the beginning of the human life.

A categorisation of 'children' as those individuals at the beginning of the human chronology offers a partial answer to the 'who is categorised?' question, but does not say anything about the 'why they are categorised?'; that is, about the *purpose* of categorisation (Haslanger 2012, 187). As in the cases of 'individuals with XX chromosomes' or 'individuals with high melanin levels in their skin', the purpose for the existence of the social category of 'childhood' (referring to 'individuals in the first period of human life') needs to be explained by showing why it bears moral relevance, as opposed to other possible but irrelevant groupings such as 'individuals who wear size 8 shoes'.

The first element to be included, in this respect, is the social framework that embeds the chronological distinction within social practices. The category of 'childhood' is not a purely natural classification; any use of the category is conditioned by the social structures that guide relations among generations. 'Period of life' is not linked to strict oppositions or clear binaries in nature, but rather depends on socially constructed classificatory thresholds. Where we draw the line between 'white skin' and 'black skin' (to keep it simple) is a social decision; the dividing threshold is not given objectively by biology. The same happens to classification by life stage. James and Prout have argued that ageing has gone through a process of social construction that establishes a culturally and socially conditioned 'periodization of the life course' (James and Prout 2015, 203). Without this socially constructed periodisation, we would only have, as Mannheim argues, 'birth, life and death' (Mannheim [1927] 1972, 291).

Even if chronology marks the first constitutive element for the social category, it is the possession or absence of certain properties that gives a purpose to categorising by generations. Different societies assign value to particular physiological or behavioural changes (puberty, pregnancy, menstruation, self-sufficiency) and use them as classificatory thresholds for generational groups (see Broude 1975). However, even if the properties that work as thresholds are biological and can be linked and correlated to chronology, the *choice* for which of these properties (and the level to which they are deemed relevant) depends necessarily on their

junction with social constructions, practices, and expectations of what *maturity* means. Once an individual in the first period of life has achieved maturity, they stop being a child.

But what 'maturity' means is not a straightforward phenomenon either. 'Maturity' refers in its most common definition to 'completed natural growth or development'. The type of growth or development implied in 'maturity', and its moment of completion, are not necessarily biological facts. A society's family life-style, its economic system, and its social expectations frame and delimit which human characteristics are relevant for determining maturity and what thresholds are required to assess its achievement (see Lancy 2015). Thus, even if the characteristics usually referred to when classifying 'children' are biological, the choice of properties and thresholds are inevitably socially constructed (Jenks 2005, 6); different societies interpret and value different behaviours or achievements as defining features for different categorical periods of life (James et al. 1998, 62–3). Understanding how social structures constitute the category of 'childhood' is necessary to assess why it may bear moral relevance in discussions about justice.

The Moral Relevance of the Concept of 'Childhood'

I have argued that a social category must comply with three conditions for it to be morally relevant: ascription of individuals, reification of its definition, and a prescriptive purpose. Following Cudd and Young, I labelled these morally relevant social categories as 'social groups'. What is left of this section analyses the concept of 'childhood' through these three phenomena and considers its classification as a social group.

Ascription

The first condition for assigning moral relevance to a social category is that individuals are ascribed to it. Individuals do not have to endorse or identify with the category, and they cannot choose whether to be a part of it or not.

Ascription is inherent to the category of 'childhood'. One cannot choose whether one is a 'child' or not, and one's classification as part of the group happens even before one has consciousness of the existence of grouping (or consciousness of any kind for that matter). David Oswell (2013, 44), following Corsaro, argues that children are inevitably born 'into childhood as a structural form'. The concept, and their categorisation as 'children', precedes their awareness of it, and they are powerless over their ascription to the 'childhood' category. It is irrelevant whether one wishes or not to be a 'child'; one's classification depends entirely on external ascription.

One cannot choose to be excluded from or included in the 'childhood' group. An older teenager may not identify themselves as a 'child', considering their character much closer to adults than to children, but they cannot escape the categorisation, and may even be punished by law if they try to act 'as an adult'. The grouping is entirely dependent on external sources, regardless of the individual's relation to or identification with the group (Dembroff 2018, 28). On the other hand, one cannot be included in the group if one is not externally ascribed to it. Take a Michael Jackson or Peter Pan type of adult who desires to be grouped as a 'child' because he feels eternally childlike: it does not matter how much one behaves and acts as a 'child'; Michael Jackson's identification or Peter Pan's attempt to never become an adult are irrelevant to their grouping; they cannot be children because they are not ascribed externally as such.

Mannheim considered that, in this respect, generational categories are similar to economic class categories: whether one is a child, or in the lower-class does not depend on one's identification with the group; one is 'located' by external forces into the group, regardless of whether one wishes to be part of it or not (Mannheim [1927] 1972, 289–90). Children are 'thrown' into childhood; whether individuals stay in the group or become part of another one is determined entirely by ascription. It is certainly true that children can (and do) identify as 'children', and can develop some form of group consciousness as 'children' (see Mayall 2002), but this is not the creative source that constitutes their social category.

Reification

The second condition for assigning moral relevance to a social category is the reification of conferred properties into its definition. A mere descriptive and natural classification of humans by life stage or maturity does not equate to the category of 'childhood' (James and Prout 2015). There is more than simple chronology in the definition of the category owing to its inevitable dependence on how social practices conceive the human collective of 'children'. As Welshman Ncube argues, '[d]efinitions of a 'child' and 'childhood' entail more than a specification of age of majority; they articulate society's values and attitudes towards children' (Ncube 1998a, 26). The delimitation of the threshold properties that justify classification depend on how society perceives children, and what it expects from them. Insofar as the social purpose for categorisation is not included, there is nothing inherent to a human's biological condition that can classify a 'child'.

The sociology and anthropology of childhood provide important insights into the structural role that social constructions and reification play in delimiting the 'childhood' social category. The variation across historical periods, cultures and traditions regarding what 'childhood' means, proves that an 'objective' natural classification based on age or maturity does not equate to what we

mean by 'childhood' (Lancy 2015, chapter 1). As sociologists James and Prout argue: 'Childhood, as distinct from biological immaturity is neither a natural nor a universal feature of human groups, but appears as a specific structural and cultural component of many societies' (James and Prout 1997, 8). Classification based on biological chronology or maturity must pass through a process of reification for it to become useful as a classificatory tool. Unfortunately, the English language does not have different words to distinguish between the social and non-social 'childhood', but this distinction can be clarified through the example of the 'woman' social group.

We have the 'natural' category used to refer to a non-reified classification of individuals based on 'sex' (distinguishing female and male humans based on certain anatomical characteristics) and we have the social category used to refer to the *reified* classification of individuals based on 'gender' (distinguishing women and men, based on the possession or absence of a set of properties linked to particular social expectations for each group) (see Haslanger 2012, 185ff.; see also Dembroff 2021, 995–1000).[7] Through the conferral of socially constructed properties that oppose them to the 'man' category, the 'female human' category is reified into the 'woman' category. In the same line, 'childhood' can be seen as a reified version of 'biological immaturity' (as we may call it), making reference not only to the biological properties of its members, but also to their social positioning as opposed to 'adults' (Jenks 2005, 6–7). Thus, the first way in which reification takes place is through the conferral of properties that enable an opposition between the 'childhood' and 'adulthood' categories.

Just as the reified concept of 'woman' requires its opposition to 'man', 'childhood' is inevitably conditioned by its relation to 'adulthood' (Jenks 1982, 10). The purpose for classifying certain individuals as 'children' lies in establishing different (sometimes opposite) needs, behaviours, values, and moral demands for children and adults (Macleod 2010; Gheaus 2015a). It must be noted, following Archard (2004, 29), that the opposition between these two human collectives does not imply that one is taken as necessarily inferior to the other. Although many traditional conceptions of 'child' (and 'woman') have tended to reify their inferiority to 'adults' (and 'men') within their definition, this inferiority is not inherent to the concept itself but rather linked to particular conceptions. Actually, many of the most prominent contemporary conceptions of 'childhood' (or 'womanhood') have countered traditional definitions by focusing on the positive and superior values that come with being a 'child' or a 'woman' (see, for example, Dwyer 2011).

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[7] It must be noted that the sex/gender distinction is highly contested, particularly if it is considered to track a biological/social binary (Prince 2005; Mikkola 2016). It is, however, useful as a way to clarify the process of reification.

Sociologist Berry Mayall (2000; 2002) has shown the ways in which the reification process of 'childhood' mirrors that of 'womanhood' (Mayall 2002, 23–6). She argues that the position of women is socially regulated and stratified as inherently different from (and usually inferior to) men's, through the imposition of the classificatory method of 'gender', which reifies a female human's properties into the socially constructed properties of a 'woman'. Similarly, children have fallen trap to 'generational structures' that organise their differentiated (and usually inferior) status in the social world (Mayall 2002, 24). Children's properties are reified and standardised through the stereotypes of 'childishness', establishing an opposition to the 'adulthood' category.

Children, following Young's terminology, are thrown into 'childhood' by the adult population (Young 1990, 46): they are grouped as 'children', they are reified as possessing certain properties typical to 'children', and then they are treated as if they possessed these conferred properties. The descriptive classification based on 'biological maturity' is reified through the inclusion of social expectations and assumptions of the individuals grouped into the concept of 'childhood'. Children, paradoxically, are not necessarily 'children'; children do not necessarily behave as 'children', and children should not necessarily be treated as 'children'. Distinguishing between the non-reified and the reified elements within the 'childhood' category is fundamental to critically assess the biases and assumptions that may be hidden within its definition, affecting how children are perceived as moral and social beings.

Most of the reification in the definition of 'childhood' is not inherent to the concept in itself, but rather is dependent on its varied *conceptions*. That is, the particular properties that define what makes a 'child' (i.e., innocent, curious, irrational, weak, etc.), and their relevance in the assessment and classification of 'children' depend mostly on the particular interpretation of 'childhood' one endorses. As I dedicate Chapters 2, 3, and 4 to analysing the most prominent liberal conceptions of 'childhood', I will say no more here about the various ways in which the concept can be reified.

Prescriptive Purpose

The third and final condition for assessing the moral relevance of a social category is through its prescriptive purpose. A social category turns salient when normative implications are embedded in the definition of the category. Thus, the group not only describes and classifies a human collective; it also prescribes how it should be treated.

In its most minimal sense, the dependent relationship of the category of 'childhood' to that of 'adulthood' already hints at how it acquires prescriptive content in its definition: the dependence is not only semantic, but it also mirrors the

normative treatment owed to the two groups. The categorisation of 'childhood' and its opposition to 'adulthood' implies, first, a normative distinction of children and adults as 'different types of humans', and second, a subordination in terms of authority.

A structural feature of the 'childhood' category is how it prefigures the relations of authority and power between it and 'adulthood'. Beyond children being perceived as relatively weaker, more dependent and vulnerable from a purely biological perspective, this asymmetry of power and autonomy reproduces itself in a normative asymmetry between a child and an adult's authority and control over their own lives and the lives of others (both as private and public individuals) (Ncube 1998a, 26). Power in this relationship takes a one-way directionality from the adult to the child. A child's world is organised and determined by the adult population; adults decide how and in what ways is a child permitted to contribute to social life both in the private and public spheres; adults control the norms that structure their relationship to children; and, even further, adults define and regulate the relationships that children may have among themselves (Mayall 2000, 256–7; Hart and Brando 2018).

It must be mentioned that this prescription of 'childhood' being necessarily under the authority of 'adulthood' is a matter of degree: the factual constraints and prescriptions imposed by the adult population on the child population may be few and benevolent; it may even be that children are not harmed or unjustly treated by the adult monopoly of power and authority. However, one crucial element remains in any scenario: adults always decide how children should be treated. Even if the child is treated with benevolence and fairness, and even if no distributive injustice is inflicted on them, the structural asymmetry between their social category and that of those who control their treatment makes the relationship problematic, or at least morally questionable (Jenkins 2020, 191–3). As the slave who is treated fairly by their master (i.e., not being forced to work and given proper care and education) is still dependent on their master's will; a child who is treated kindly, given a voice at home, at school, and in public affairs is still dependent on the adult's will and authority to decide whether these privileges are granted to them or not. This asymmetry of power is a normative necessity inherent to the category and is what confers it with moral relevance.

Even if only in this very limited sense, 'childhood' becomes a normatively charged concept. Its use, its boundaries, and its properties are all constituted based on the normative purpose of regulating children's relationship to the adult population (Meyer 2007, 93; Herring 2018, 27). It is the idea that certain particularities about 'individuals living in the first period of life before reaching maturity' require prescriptions exclusively directed to them, and constraints exclusive to their life, that gives a purpose to the concept of 'childhood'. One should not infer from this, however, that there is something categorically wrong or necessarily

unjust in this asymmetry. As Jenkins mentions (2020, 191), the 'wrongness' of a social grouping (ontic injustice) lies in categorisations (and subsequent treatment) that impose 'a moral injury' to the ascribed individuals, diminishing their status as equal members in society. Here, I intend only to highlight the conditions that raise the moral salience of a social group (and to show how 'childhood' complies with these conditions): 'childhood' is an ascriptive, reified, and normativised category, and whether moral injury and diminishment is imposed on individuals by being classified as 'children' is a matter of further analysis (see Ásta 2013, 730; 2018, 46–7).

It may well be that abolishing the 'childhood' social category is not the best solution for protecting from injustice those ascribed to it (Jenkins 2020, 199). The category may be necessary to ensure that children are not harmed or wronged. But even if this is the case, we must be aware of the particular content that is reified within the definition, and of the particular prescriptions tied to it, in order to ensure that categorisation as 'children' is not a source of injustice for those ascribed. The difficulties that liberal theorists of justice have incurred when trying to include children within their prescriptions forces us to reflect on the processes through which the category is constructed, what is inherent to it, what is not, and how this frames and conditions our analyses of children as moral and political beings.

The Concept of 'Childhood' and Its Conceptions

I have already mentioned that social categorising is a goal-oriented activity, stemming from an underlying purpose that leads to classification and characterisation. The main purpose of the concept of 'childhood' is its normative use as a classificatory mechanism that regulates and prescribes appropriate social and political treatment for a human collective that is in the first period of life until reaching maturity. In other words, the concept exists because it allows us to distinguish a human collective that may require a social and political treatment different from the 'standard' treatment (if we did not consider that 'childhood' should be treated any differently from 'standard' social relations, the concept would have no purpose at all and would not exist). The justification behind the purpose is that 'humans in the first period of life until maturity' possess certain qualities that make them different from humans in other periods of life in a morally relevant way.

The concept itself does not give many details regarding the characteristics that define the category, nor who exactly is classified under it. The concept of 'childhood' is, rather, open to plural interpretations (conceptions) of the particular properties that define it, the boundaries that classify it, and the justifications for

who is included, and how they are classified. The concept does, however, provide a basic guideline for how it should be used: a 'child' can be defined as an individual during the first period of life until they reach maturity. But this is insufficient for characterising and classifying 'children': different interpretations and conceptions can derive from this basic definition, depending on the particular way in which the process of reification of the concept takes place, particularly through the way in which the characterisation question is addressed. This is because the concept of 'maturity' (the dividing line or threshold that classifies who is a 'child' and who is an 'adult'), and the properties that explain this distinction, vary extensively across time, across cultures, and across political and moral theories. There is no one way of interpreting 'maturity' and defining the properties that individuals must possess in order to be considered as 'adult' or 'child' without reifying particular social practices, expectations, and ideologies within the definition of the concept itself.

The dependence of the concept of 'childhood' on the content given by its conceptions implies that most of the justificatory task and the moral assessment of its legitimate use in discussions about justice lies at the conception level of analysis rather that at the level of the concept itself. What we consider as the fundamental properties that make an individual a 'child', and where we draw the line to classify between individuals who bear the properties from those who do not, is where most of the morally problematic issues arise if our purpose is to regulate and prescribe the appropriate treatment owed to individuals classified as 'children'. Different conceptions of the boundary and characteristics of 'childhood' imply that different individuals will be grouped under the concept of 'childhood', leading to a particular social and political treatment for them. As Archard argues (2004, 27), 'to have a concept of "childhood" is to recognise that children differ interestingly from adults; to have a conception of childhood is to have a view of what those interesting differences are'. The concept simply highlights the moral relevance of distinguishing 'children' from 'adults', while the conceptions play the role of characterising and classifying individuals into two groups, while justifying the confluence between their classification and the purpose that grounds it.

Opposed to most (if not all) studies of childhood, I have consciously refrained from starting with a precise definition of what a 'child' is and what characteristics make an individual a 'child'. This is because, as this chapter has tried to show, the concept of 'childhood' is an inherently normative concept, connoting already within its definition a distinction between human collectives who should be treated differently as a matter of justice. Its normative use, together with the fact that individuals are externally ascribed to the group, and that particular social practices, expectations, and ideologies are reified within its definition, makes any classification of individuals as 'children' morally ambiguous. This is analogous to the feminist concern with studying the particular treatment of women as a matter of justice without first deconstructing and morally evaluating what comes within

the definition of 'woman' (Alanen 2005; Haslanger 2012, chapter 6). The concept of 'woman' already ascribes, reifies and normatively prescribes, thus assessing the moral validity of the characterisation and classification of 'woman' is a necessary first step for any assessment of justice towards this social group before one can give a definition. Before we can assess the moral legitimacy and justifiability of the particular treatment of those labelled as 'children' (which will be addressed in Part II, 'Grounding Children's Rights'), we must assess the moral validity and justifiability of who is labelled as a 'child', and why this labelling is morally relevant and justified. Without, first, evaluating who should we be talking about when we talk about 'children', the question of how to treat them may be tainted and morally dubious.

Conclusion

This chapter has explored what is inside the *concept* of 'childhood' and why it bears moral relevance for studies about justice. Feeding from critical feminist theory and social constructivism, it has addressed the latter issues, first, by determining the moral relevance of concepts that refer to human collectives in general, and then applying this analysis to the social category of 'childhood'. I have argued that three conditions must apply in order for a human collective to be framed as morally relevant: ascription, reification, and normative prescription. I finally showed how the social category of 'childhood' follows these conditions, thus bearing moral relevance for discussions about justice. The core lesson that I wish readers to keep with them is that 'childhood' (or any other social category for that matter) must be freed from the shackles of 'biological determinism' (James et al. 1998, 27–30); what the concept of 'childhood' entails, and how it affects how children are perceived and treated, is not a neutral and naturalistic affair; social groups are externally constructed, thus a critical analysis of the content and definitions of the category is necessary to assess its validity and value.

The last section considered the relationship and dependence between the concept of 'childhood' and its varied conceptions. It claimed that, even if the concept in itself already possesses moral relevance for discussions on justice, its moral legitimacy and justification are conditioned by the particular classification and characterisation of 'children' carried out in different *conceptions* of 'childhood'. Chapters 2 and 3 explore these pressing questions as they have been addressed by contemporary liberal theories of childhood. The fact that the concept contains normative prescriptions within its definition demands from its conceptions to be consistent with the general moral and political principles that regulate our political commitments. The moral validity of a liberal conception of 'childhood' must thus be justified in accordance with the liberal principles in which it stands.

2

Childhood: Life-Stage Conceptions

'You call us the future, but we are also the present.'
Children's Statement from the UN Special Session on Children 2002

What is a child? What sets children apart from adults? The concept of 'childhood' is commonly understood as a distinct stage in human life, characterised by its own traits, behaviours, and experiences of individuals at the beginning of the life-course. Those who adhere to this perspective embrace a Life-Stage conception of 'childhood'. Within this broad agreement, the specific characteristics that define this life stage and the process through which a person transitions from it to adulthood are debated topics. Should our understanding of childhood rely on its comparison to adulthood? Which morally relevant traits warrant the differentiation between the two? And does such differentiation justify differential treatment based on life stage? In order to establish the moral justification for how children are treated, we must examine the consistency between the purpose, classification, and characterisation of 'childhood'.

This chapter critically examines three prominent Life-Stage conceptions of childhood found in liberal theory—the Sapling, Intrinsic Value, and Pragmatic views. It assesses the conditions required to legitimise their normative positions and demonstrates that none of them fully justifies the validity of their distinctions in alignment with liberal principles. Given these limitations, it may be beneficial to consider an alternative approach that transcends rigid life-stage categorisations when discussing the normative treatment of children.

A Life-Stage conception of childhood means, in short, that one considers it legitimate to conceptualise and categorise a group of individuals because they are in a specific period of life. In this case, 'childhood' is framed as a category of humans in the first period of life until maturity.[1] I claim that the ways in which 'childhood' has been defined within the liberal tradition are at odds with the

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[1] I am consciously keeping the definition of the life stage non-specific as different versions of it propose alternative boundaries and thresholds of maturity.

principled commitment of liberals to equality and freedom. The ascription of individuals into the 'childhood' human collective, based on a biased characterisation and an arbitrary threshold, demands a revision of the concept to avoid discriminating against a human collective without any morally valid justification.

This chapter examines three of the most prominent life-stage models of 'childhood' to determine whether their conceptualisation is morally valid and consistent with general liberal principles, as well as with the reality of the individuals assigned to the group. The first section introduces the Life-Stage conception of childhood, and the basic premises upon which the discussion evolves. The second section explores the Sapling model, which characterises and classifies childhood by using adulthood as its standard. The third section evaluates the Intrinsic Value model, which shifts the focus from adulthood to the goods and values of childhood itself. The fourth section addresses the Pragmatic model, which classifies and justifies the childhood life stage through considerations of feasibility and stability, defending an age threshold. The chapter shows that neither of the three models can offer a morally valid and satisfactory justification for their strict distinction between adulthood and childhood as distinct life stages, and it argues that classification based on life stage does not justify in itself differential treatment for those ascribed.

Childhood as a Life-Stage

Life-Stage conceptions of childhood agree that there is something morally relevant about being in the first period of life that renders it necessary to distinguish individuals between two stages (childhood and adulthood) for normative purposes.[2] In this sense, the stage of life called 'childhood' is understood as being endowed with some morally relevant characteristics (i.e., a given age, the possession or lack of certain competences) that justify normative categorisation.

However, the categorisation of human collectives for normative purposes must be proven to be legitimate. The fact that legal/political classification determines how individuals classified will be treated (i.e., the privileges and constraints they will be given), demands that normative theories justify the moral validity of their categorisations. In other words, if the concept of 'childhood' is to have normative implications for the individuals ascribed to it, it must prove the moral validity of its characterisation and classification of the 'childhood' category in relation to both the general principles of justice it endorses and the reality of the human subjects who are ascribed to the category.

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[2] Of course, more life-stage distinctions could be included (the elderly, infancy, youth, etc.). I focus exclusively on the opposition between adulthood and childhood.

This chapter focuses on the concept of 'childhood' in contemporary liberal theory, examining its compatibility with general liberal commitments. While there are various interpretations of liberalism, I will rely on a basic understanding that encompasses widely accepted principles. Liberal theories share a commitment to the presumption of individual freedom and the recognition of equal moral status. Any departure from these commitments requires justification. These principles are unified under the term 'basic liberal equality', which encompasses the notions of basic equality (or formal justice) and basic freedom. Basic equality asserts that individuals should be treated equally, unless morally relevant differences justify differential treatment.[3] Basic freedom emphasises a presumption in favour of freedom, with restrictions requiring justification.

The second issue that arises in defining 'childhood' is ensuring that the way we describe and categorise individuals as 'children' aligns with their actual realities and circumstances. This entails addressing two crucial questions. First is the issue of characterisation: if 'childhood' is considered a distinct life stage, we must identify the specific characteristics that morally and definitively define a person as a 'child'. Second is the issue of classification: if 'childhood' is a distinct category, separate from 'adulthood', we must establish boundaries and justify the criteria for transitioning between these stages, and the moral validity of this classification.

Characterisation refers to the morally relevant properties or traits that determine the categorisation of individuals. For example, 'age' is often considered a morally relevant characteristic for categorising individuals as 'children'. Classification, on the other hand, pertains to the standard or threshold of the characteristic used to distinguish between 'childhood' and 'adulthood'. An example of classification would be the widely accepted age of 18 as a threshold for 'adulthood'. Any approach that advocates for differential categorisation and treatment of individuals must provide a justification for why the characteristics chosen are morally relevant ('why is age a valid characteristic?'), and why the selected classificatory threshold is appropriate ('why is the 18-year-old threshold valid?').

For varying reasons, I argue that the three Life-Stage conceptions of 'childhood' examined in this chapter inadequately address the questions of characterisation and classification, rendering their categorisations of 'childhood' morally dubious. Their responses are marred by issues of irrelevance and generalisation when considering their characterisation of 'childhood'. Similarly, their answers to the classification question suffer from vagueness and arbitrariness.

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[3] I take 'unequal', 'asymmetric', and 'differential' treatment to be synonymous. I prefer the use of 'differential' and 'asymmetric' because they do not have the negative connotations of 'unequal'. In this sense, 'differential or asymmetric treatment' refer to cases in which justice prescribes treating certain individuals in a way that is not the same as the standard treatment.

The Sapling Model

Just as saplings are characterised based on the plant they will become, children have tended to be conceptualised through the adults they will grow up to be. This has been the standard trend since the time of Aristotle. Because of their 'under-developed' fundamental virtues and their lack of control over their selves and their actions, children were taken as 'incomplete' humans (Aristotle [350 BC] 1998, 1260a 7–11, 30–2; [350 BC] 2001, 1097b–1098a). Their reasoning, sensorial, and aesthetic capacities were considered as closer to 'other animals, and to the majority of slaves' (Aristotle [350 BC] 1998, 13411a, 8–16), thus their rearing and education should focus on ensuring that they would escape this uncivilised condition in order to become part of the citizenry (Aristotle [350 BC] 1998, VII.17–VIII.7). This has been termed as a Sapling conception of 'childhood' (Tomlin 2018a, 35): 'normal adulthood' is used as a comparative standard to characterise what 'childhood' is. Sapling conceptions have understood children as 'incomplete', as adults-in-the-making.

The Sapling-child is defined and categorised in contrast to the adult 'standard' human. Children, as developing beings, are still in the process of maturing into adults, and their incompleteness is attributed to their physical, cognitive, and emotional limitations compared with 'normal' humans. Their characterisation is not based on their present qualities, but rather on their condition as beings in process of becoming something else. From a normative standpoint, what holds significance is the transformative process, the journey towards adulthood (Jenks 2005, 8; Peleg 2013, 524). Therefore, it is deemed acceptable to deviate from the principle of basic liberal equality in the case of children, as their 'incomplete' status justifies and necessitates differentiation.

Sapling models, in short, understand 'childhood' as the period of life in which a person grows towards adulthood. David Archard (2004, 41–3) summarises the three elements that ground this conception. The first, and most fundamental, is a teleological conception of 'childhood': children are understood as moving towards their predefined objective of becoming adults. Second, this *telos* is not only normatively outstanding, but also necessary: childhood is inevitably and vitally moving towards adulthood; it is a process that cannot be detained. And third, this teleological and necessary process is endogenous: children are, let us say, hard-wired by nature to develop and become adults. The growth and development of a child is not variable but is determined and defined by its teleology, necessity, and endogeny (Oswell 2013, 38, 40).

One way of understanding the Sapling conception of 'childhood' is as a descriptive device that simply illustrates the biological process through which humans grow. The *telos* (objective) of a child is to become a larger, stronger, and more mature self: this is an inevitable and necessary process of 'normal' human

beings; as long as the 'normal' development process takes place, children will become adult humans. The child's development towards adulthood is, in this descriptive sense, an inherent, innate, and inevitable phenomenon; it is simply a biological fact.

However, this naturalistic characterisation of 'childhood' as the stage of development towards adulthood has not been exclusively used as a descriptive device; in psychology, philosophy, and law, it gains normative content and purpose. The question 'what is a child?' has been transformed by Sapling models into the question 'what *should* a child be?' Sapling models not only describe child development; but they also prescribe how child development should take place. The Sapling conception of 'childhood' not only states certain facts about how a child grows into adulthood, but it also defines a specific set of threshold capacities, abilities, and achievements that mark the *telos* of the child within the definition of 'childhood'. Even if the Sapling growth process of humans (or any living being for that matter) is a natural phenomenon, the definition of the boundaries and characteristics that distinguish between the 'incomplete self' (the child) and the end goal (adulthood) are not natural any more; they carry normative assumptions about the way we (ought to) categorise and treat persons in different stages of life.

The Sapling conception has become the dominant paradigm of childhood since the rise of cognitive-developmental psychology, especially thanks to the theories and findings of Jean Piaget and Lawrence Kohlberg.[4] Piaget, and Kohlberg based on the former's findings, tried to prove that rational and moral development is not an open-ended affair, but rather a very strict process of incremental stages of competence acquisition determined by a person's stage of development. The capacities of judgement and reason available to individuals in the first stages do not allow them to go beyond their fear of punishment or their present interests when taking moral decisions. They are, in short, heteronomous and superficial in their decision-making, which makes them incapable of constructing 'appropriately' rational justifications for their moral judgements (Piaget [1932] 1965; Kohlberg 1976). This, however, is a temporary condition. Moral and rational development in both Piaget's and Kohlberg's theories is an invariant sequence (stricter for Kohlberg than for Piaget), which develops naturally with age from 'more primitive' to 'more evolved' moral and rational competences (Piaget [1932] 1965, 335). Kohlberg's extensive samples intended to show the inevitability and invariance of this fixed moral development: there is a predetermined developing sequence for a person's rational complexity in solving moral dilemmas 'the right way' (Kohlberg 1984, 437–8). As a child grows, their moral judgement evolves from

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[4] For a thorough analysis and philosophical critique of Piaget's and Kohlberg's stages of cognitive development see Matthews (1994).

considerations of punishment and reward, to credence of authority and social convention, and finally to reflective and self-constructed moral principles (see Gibbs 2014, 84–6). The progress of the child into adulthood is a natural process triggered by the child's own necessity and innate capacity to develop and achieve higher stages of moral development. By using the 'normal' moral capacities of an adult as a standard, children are conceptualised as 'incomplete' moral beings. They are not only different from adults; their developing condition requires them to be treated differently.

What we can take from Piaget and Kohlberg is that children are not only saplings in a naturalistic sense (of being physically and cognitively 'underdeveloped'), but also in the moral sense: they are insufficiently developed to act rationally, to make responsible choices, and to behave 'appropriately' in social situations. They are 'incomplete' rational and moral beings; therefore, they should be treated as such. This goes beyond a mere descriptive assessment of the biological development of children; the notion of *incompleteness* carries a normative claim that children need to acquire certain characteristics to be considered as 'complete'. If a standard of rational and moral capacities is required to be recognised as an equal political and social being, the child's incomplete process towards this standard justifies their exclusion from equality (Archard 1998, 86).

Tamar Schapiro (1999; 2003) offers one of the most insightful philosophical approaches to understanding childhood through this Sapling lens. Schapiro takes adulthood as the standard for the moral and political subject, and a Kantian understanding of autonomy, as 'the capacity to be a law to oneself' (Schapiro 2003, 587), as the threshold to adulthood. Basic equality requires surpassing this autonomy threshold: any individual who deviates from this standard is taken as less than fully rational, less than fully human, as incomplete, thus in need to be treated differently. Children, in this respect, are always deviants from the standard; they are 'incomplete' by definition. With adulthood as the end goal, Schapiro argues that childhood should be understood as a 'nonideal', and 'temporary deviation from the norm' (Schapiro 1999, 735), demanding specific responsibilities from the adult population to ensure that children escape this pre-political and pre-moral state, and become full, active, and equal citizens in society (Schapiro 1999, 718–20). Children are thus conceived as lacking personhood while being 'in the process of developing' it (Schapiro 1999, 716). Adulthood, in this respect, frames the way we understand who children are (defined by their lacks relative to this ideal state) and defines the normative *telos* to which children should arrive: they ought to be raised out of childhood and escape their liminal status in our society in order to become full moral and political beings (Schapiro 2003, 589).[5]

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[5] Another recent account that follows Schapiro's intuitions is Sarah Hannan's 'predicament' view of childhood (see Hannan 2018).

Rationality and Teleological Development

Development lies at the heart of the Sapling conception of 'childhood'. It acknowledges the empirical reality that children gradually acquire new competences and attain higher levels of rational capacity, autonomy, and moral understanding. This developmental process allows children to overcome the perceived 'deficiencies' associated with their stage of life and reach a threshold of adulthood where they are no longer considered 'incomplete'. Unlike individuals with significant mental disabilities or non-human animals, 'typical' children possess the necessary tools to transition out of childhood (Cowden 2012, 366). The concept of development plays a crucial role in characterising 'childhood' because it compels us to view children not solely as 'lacking', but also as having the potential to 'no longer lack'. Within the Sapling framework, 'development' is understood as a teleological, necessary, and endogenous process: childhood is defined by its progression towards mature adulthood and concludes once a threshold of moral and rational competence acquisition is reached.

The Sapling model responds to the classification question by using rationality and moral capacities as a defining threshold for distinguishing adulthood from childhood, and it responds to the characterisation question by conceptualising children as humans in the process of moral and rational development towards adulthood. To be conceived and treated as an equal moral being, one must possess a sufficient level of rational and moral competency; if these are not possessed, divergence from basic liberal equality is justified.

The classification question poses challenges to Sapling conceptions of 'childhood' when using moral and rational competency as a threshold for distinguishing adults from children. This approach can be problematic as it introduces arbitrary distinctions that oversimplify the complex process of human development. It also runs the risk of overvaluing a specific competence in the moral development of an individual. Many Sapling conceptions rely on rational capacities as the standard for moral competence and as the justificatory threshold for classification (e.g., Schapiro's Kantian account, Schapiro 1999). However, defining the specific competences required to be considered as 'full moral beings' remains a contentious and unresolved issue. The lack of consensus on what constitutes 'full moral competency' leads to vagueness or normative irrelevance in attempting to define this concept. While 'full moral competency' could potentially differentiate two groups of beings and justify deviation from basic liberal equality, determining its precise content proves challenging without falling into vagueness or normative inconsistencies.

Using a narrowly defined and measurable competence as the threshold for adulthood would overlook the multifaceted nature of moral beings. Sapling conceptions that ground moral competency solely on rational and cognitive traits

fail to capture the non-rational elements that are integral to an individual's capacity to act morally. Rational justification of moral decisions does not encompass the entirety of moral capacities. Cross-cultural analyses by Jonathan Haidt (2012, part I) reveal that morality is strongly influenced by intuitive and emotional factors, rather than purely rational ones. Martin Hoffman (2000, part V) highlights the significant role of empathy in moral behaviour, a trait that exists even in young children who have limited rational capacities, and who may exhibit greater levels of empathy than some adults. By equating moral competency solely with rationality, there is an oversimplification of moral behaviour that disregards its complex and multifaceted nature.

In addition to the classification issues, the teleological understanding of human development within the Sapling conception presents inherent biases. The assumption of a linear and unidirectional developmental process towards 'normal adulthood' as the ultimate goal is both normatively problematic and empirically inaccurate (Burman 2008). It fails to account for the variability of individuals' moral stages, as people may regress or progress at different times in their lives. Furthermore, the development process itself is not confined to the childhood or adolescence stages but continues throughout the entire lifespan (Gibbs 2014, 86–91). To this it must be added that cross-cultural comparative studies of child development have clearly proven that Kohlberg's account does not work if applied beyond the North Atlantic framework, and that it suffers from gender bias (Lancy and Strathern 1981; Gilligan 1982; Lancy 1983; Burman 2008).Consequently, conceptions of childhood that rely on a rigid stage sequence for the development of rational and moral capacities to differentiate children from adults do not align with the actual developmental experiences of diverse individuals. Such classification lacks compliance with the principle of basic equality as it arbitrarily groups individuals as 'incomplete' without substantiated justification.

If an invariant moral development that leads to 'normal adult morality' is a fiction, how can we characterise 'children' as humans who have not yet reached this 'normal adult morality'? It seems highly problematic from a normative perspective to conceptualise 'childhood' as a stage of life that develops into a specific standard of adult morality if it actually does not. This would oversimplify the possible varieties of what 'childhood' is (and can be), and the role that the actual child plays in determining the speed and the objective of their own development process (Jenks 2005, 37, 44).

The fundamental problem with the Sapling model lies in its biased reification of certain assumed properties within the concepts of 'childhood' and 'adulthood', without accounting for their actual applicability to the individuals who are ascribed in the definition. It is, moreover, incapable of fully responding to the two pressing questions: it offers a wrongful characterisation of how human moral development occurs, and it fails to offer a valid justification for the threshold it

applies to distinguish 'adulthood' from 'childhood'. The claim is that, even if there are morally valid reasons for categorising individuals depending on their moral and rational competency, this distinction cannot rely on a strict opposition of two stages of life (adulthood and childhood) that do not clearly reflect these strict boundaries in terms of moral or rational competency.

Intrinsic Value Model

In *Émile*, Jean-Jacques Rousseau introduced a conception of 'childhood' that intended to respond to those who simply saw future adults when looking at children:

> Nature wants children to be children before being men. If we want to pervert this order, we shall produce precocious fruits which will be immature and insipid and will not be long in rotting. We shall have young doctors and old children. Childhood has its ways of seeing, thinking, and feeling which are proper to it. (Rousseau [1762] 1979, 90)

The core principle of the Intrinsic Value view can be captured in Rousseau's words: children are children and should be treated as such, rather than as adults or adults-in-the-making. This perspective emphasises that our normative considerations of childhood should be grounded in the unique characteristics and experiences that are inherent to this stage of life. Children have their own distinct ways of perceiving the world, thinking, and feeling, and it is these aspects, rather than those of adults, that should shape our understanding of 'childhood' and inform how we should support and protect children. Rousseau argued against excessively focusing on a child's future self and advocated for preserving the intrinsic value of childhood itself, rather than sacrificing it for an uncertain future (Rousseau [1762] 2009, 105–6).

Despite being overshadowed by the dominant Sapling-child perspective, Rousseau's conception of 'childhood' has gained significant traction in recent decades, particularly with the emergence of the sociology of childhood and the increased philosophical interest in the subject. The concerns raised about the Sapling-child conception were not only confined to academic and scientific circles, but also permeated the vernacular understanding of 'childhood'. Expressions such as 'children are the future' or 'children are a precious resource' exemplify the prevalent Sapling perspective in our everyday lives (Campbell 1992, 18–20; Qvortrup 2005, 5). However, sociologists of childhood sought to understand the current realities of children worldwide, including their behaviours, concerns, self-perceptions, and their interactions with the social environment. These inquiries could not be adequately addressed through a future-oriented perspective but

needed a reconceptualisation of children as active beings experiencing the present (Uprichard 2008, 304). Sociologists did not outright dismiss the insights provided by developmental psychology but argued that such knowledge was necessary yet insufficient for a comprehensive understanding of children's identities, the ways we should perceive them, and the moral significance they hold as subjects of research (James and Prout 1997; Mayall 2000, 244).

A significant departure of the Intrinsic Value model lies in its approach to characterising 'childhood' based on its *positive* and *distinctive* qualities, rather than viewing it solely in terms of deficiencies. In contrast to the Sapling model, which perceived childhood as a transitional phase towards adulthood, proponents of the Intrinsic Value view attribute inherent worth to 'childhood' itself. Alison Gopnik's psychological studies with young children (2009) strongly support the intrinsic value of this life stage. Children have a unique way of engaging with the world, reasoning, and socialising. The differences in their processes should not be interpreted as inferior, defective, or incomplete; rather, their experiences and contributions are as intricate and valuable as those of adults, albeit distinct (Gopnik 2009, 9). Consequently, the goods necessary for a good and just life for children may not align entirely with those of adults. Ensuring equality for children within a liberal society entails respecting, valuing, and providing for the goods that hold value in this particular stage of life (Macleod 2002).

The Intrinsic Value model argues that childhood is a stage of life with inherent value, distinct from being a preparatory stage towards adulthood. Philosophers such as Anca Gheaus and Colin Macleod emphasise the importance of recognising the intrinsic value of childhood and acknowledging the unique benefits it brings to children. Children have interests specific to their stage of life, and these interests hold intrinsic value to the child who experiences them, highlighting the need to protect and ensure their fulfilment (Macleod 2010; 2015; Gheaus 2015a). Childhood is not solely a preparation for adulthood; it possesses its own positive traits that distinguish children from adults and confer intrinsic value upon childhood itself, sometimes even seen as having a higher value (Dwyer 2011, chapter 5). Equality requires considering the differences in valued goods for each stage of life to ensure that each group receives what truly adds value to their own lives (Macleod 2002, 222).

Characterising 'childhood' as an intrinsically valuable stage redirects the focus of analysis from adults to children themselves. Gheaus argues that the transition from child to adult represents a shift 'from one intrinsically valuable kind of human being to a different intrinsically valuable kind of human being' (Gheaus 2015b, 2). It is not a matter of superiority or inferiority, completion or deficiency; rather, it acknowledges two distinct types of beings with diverse positive traits, values, and ways of experiencing life, deserving equal respect (Gheaus 2015a). Each life stage holds unique privileges, and justice must ensure their appropriate

protection (Gheaus 2018, 2–3). As we progress from childhood to adulthood, we acquire physical, emotional, and cognitive competences, as well as self-control, enabling us to perceive life from a different perspective. However, this transition also entails the loss of certain abilities particularly significant during childhood (Gheaus 2015b, 11). Consequently, differentiating children for normative purposes becomes morally crucial, as each stage possesses its own valued goods and distinct ways of engaging with the world, necessitating distinct standards for fair treatment.[6]

Defining Valued Goods

The Intrinsic Value model asserts that there are characteristics, behaviours, and capacities that enable us to differentiate between adults and children. Play, innocence, experimentation, imagination, and curiosity, for instance, are fundamental aspects that define and bring value to the stage of 'childhood' in contrast to adulthood. Conversely, adulthood is associated with different valuable aspects, such as increased responsibilities, greater autonomy, and economic and political power, which are typically unrelated to childhood. These features are not completely absent or fully present in each life stage; rather, their *relative* significance within each stage allows for the distinction of their particular value to either childhood or adulthood. Therefore, 'childhood' is defined by assessing the relative prominence of specific valuable goods and characteristics, as well as the relative lack of other goods and characteristics.

The Intrinsic Value model posits that there is objective value associated with different goods for different life stages, and therefore that those goods should be ensured and protected. It is not a matter of children and adults subjectively valuing different goods; rather, it is the claim that certain goods hold inherent and objective value for specific life stages, in a perfectionist sense (Gheaus 2015a; Fowler 2020, chapter 8). Let's assume, for the sake of argument, that there are identifiable characteristics and goods that can be objectively categorised as valuable for either children or adults. For instance, free playtime may be objectively valuable during childhood, while working responsibilities may be objectively valuable during adulthood. These distinctions would serve as the basis for defining the boundaries and differences between 'children' and 'adults'. However, in order for this claim to have moral validity, it must demonstrate that

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[6] It must be noted that Intrinsic Value authors (to my knowledge) have not defended a position in favour or against a specific threshold for distinguishing childhood and adulthood. However, the fact that their position intends to clearly distinguish between the goods of 'childhood' and the goods of 'adulthood' should be taken as a defence of the moral legitimacy of treating both groups differently, thus implying the existence of 'some' clear standard that divides them.

the differences in objective value are indeed intrinsic to each life stage and not merely a result of potentially biased social constructions (Mayall 2002).

The differentiation between objectively valued goods in childhood and adulthood raises important questions about the source of 'objective value'. It brings into consideration whether this objectivity stems from inherent and universally true values that individuals in different life stages attach to different goods or if it arises from a paternalistic understanding of 'what is valuable?' that extends beyond individuals' personal valuations. For instance, the question arises whether work responsibilities are not considered valuable during childhood because there is something inherent to childhood that renders work valueless. Or is it because a particular societal conception of value does not recognise work responsibilities as valuable during childhood? Similarly, does the reduced value of playtime during adulthood stem from an inherent characteristic of this life stage, or is it influenced by societal conceptions that downplay the value of playtime in adulthood?

I believe that appealing to objective value in this context raises concerns regarding the preservation of equality and individual freedom, the two foundations of liberal theory. This perspective may overlook the individual's own subjective account of value, and fails to provide a sufficient justification for imposing a particular conception of value on individuals who should have the freedom to develop and define their own lives and interests (Sen 1999). Basic liberal equality prioritises individual freedom and acknowledges that individuals have the right to determine what they find valuable. Therefore, it becomes crucial to question the moral validity of imposing a predefined notion of value onto individuals, and potentially restricting their freedom to define and pursue their own understanding of what goods they value.

Sociological studies on the construction of gendered values provide useful insights into the issues that arise when defending the objective moral validity of certain conceptions of value for specific social groups, such as different life stages. Berry Mayall's work highlights the importance of distinguishing between inherent and socially constructed features that are used to group individuals together based on 'objective assessments' (Mayall 2000; 2002, chapter 2). Mayall uses the example of gender differentiations to illustrate potential biases that may also affect distinctions based on life stages.

Historically, women were categorised as different from men based on the assumption that they should objectively value different goods. Men were expected to focus on public life, making money, and providing for the family, while women were expected to prioritise the private life of the household, engaging in tasks such as cooking, cleaning, and child-rearing. This classification not only justified the gendered categorisation of women and men, but also justified differential treatment based on what each group was supposed to value. While it is true that some women may genuinely value household work, it is important to

recognise that this value may have been shaped by a social system that imposed it as an objective value of 'womanhood' (Mayall 2000). This societal influence may have led many women to consider household work as objectively valuable. However, there is no morally valid reason to deem household work as an inherently valuable part of 'womanhood' regardless of what individual women themselves consider to be valuable. A liberal conception of justice should be cautious of imposing harmful social practices as 'objectively valued' goods. The principle of freedom that underpins liberal principles is undermined when individuals are not free to choose and pursue their own conception of what is valuable to them as individuals.

Just as in the case of gender relations, we should be cautious about making similar potential mistakes when discussing the nature of 'children', their values, and what they should value (Mayall 2002, 27). Assuming that certain characteristics, such as children playing more and adults working more, should be objectively valued for different life stages is unwarranted. History has shown how harmful and unjust the imposition of objective values on human collectives can be, as seen in the reification of values based on race, gender, or religion. We must exercise caution to avoid repeating these mistakes when categorising life stages. While it is important to ensure that individuals have access to the goods they value, the rigid categorisation of 'childhood' with objectively valuable goods distinct from those of adults can be problematic (Fowler 2020, chapter 7). This approach may define and prescribe who a person is and should be without considering their own subjective conception of value.

Pragmatic Age Model

Using age as the classificatory tool to define 'childhood' is a common practice in our daily lives and legal systems. However, it raises questions about the justification for categorisation based on age while adhering to the principle of basic liberal equality. The Pragmatic life-stage model acknowledges that there are no clear biological distinctions or boundaries between childhood and adulthood but argues in favour of the political and social need to conceptualise childhood as a distinct life stage. The Pragmatics challenge the Sapling model's notion of a 'natural necessity', and instead propose using age as a pragmatic threshold to address concerns of efficiency and equality across different age groups. This approach aims to mitigate potential problems for individuals of all ages (Schrag 1977, 177; Franklin-Hall 2013, 242; Gosseries 2014; 2023).

Joel Anderson and Rutgers Claassen propose an alternative perspective on the division between childhood and adulthood. They argue that the distinction should not be grounded on a specific threshold of moral proficiency

or on the accumulation of rational and autonomous abilities. Instead, they emphasise a 'seismic shift' in the relationship between an individual and their socio-political community as the defining characteristic of the transition from childhood to adulthood (Anderson and Claassen 2012, 505). While it is true that individuals gradually develop morally and rationally over time, Anderson and Claassen assert that the division of life stages is not solely grounded in this natural developmental process. They view childhood as an institutionally and socially supported system that serves to establish expectations and facilitate more manageable, efficient, and stable social and political relations; a 'regime of childhood' (Anderson and Claassen 2012, 508). In this perspective, the age-based classification is justified and morally valid owing to the positive implications it brings to both groups while maintaining the overall integrity of the political and legal structure.

The Pragmatic view acknowledges that there are significant behavioural differences among different age groups. However, it recognises the challenge of establishing a precise and feasible distinction based on competence/incompetence. As a result, the Pragmatic perspective suggests the use of a proxy age threshold to compensate for this difficulty and avoid potential negative consequences (Gosseries 2014, 62). While there may not be a morally relevant difference between a 17-year-old and an 18-year-old, the existence of a distinct variance between a 5-year-old and a 40-year-old demands the establishment of a threshold to allocate obligations and rights to the respective groups. Although this approach may result in the relatively arbitrary categorisation and treatment of individuals in the grey areas surrounding the age threshold, the overall benefits to all outweigh the potential harms.

Even staunch proponents of the Pragmatic approach recognise that the age-based division between adults and children is essentially a proxy. When utilised in legal and political contexts, this division is primarily driven by pragmatic considerations such as efficiency and the stability of social relations (Anderson and Claassen 2012; Franklin-Hall 2013). A common analogy is drawn with speed limits while driving. Speed limits are deemed necessary because the potential harms resulting from the absence of such limits would be significant. Even if the distinction between driving at 69 mph and 70 mph does not pose a relevant difference in accident risk, establishing a threshold is crucial to mitigate the potential harm while driving (Archard 2004, 86–7). The argument asserts that without a clear division between permitted and restricted driving speeds, everyone would be worse off. Similarly, age thresholds for distinguishing adults from children are justified by the need to grant certain rights, freedoms, and responsibilities to specific segments of the population, which benefits both groups by avoiding potential issues that may arise from treating them equally (or from individually tailoring their treatment).

Anderson and Claassen consider any alternative to an age-based threshold of adulthood as fundamentally unstable from a social and political perspective. Any alternative would 'undermine the ability of parents to carry out their responsibilities effectively' (2012, 514) owing to the absence of predefined guidelines for how to treat a 5-, 10-, or 15-year-old; and they would demand constant negotiation and renegotiation of boundaries of authority between parents and children (not to mention the state). The same, they argue, would happen in the public sphere: the fact that there would be no simple way for a public official to know the appropriate treatment, rights, and duties of a person depending on their age would lead to inefficiency and problematic restrictions on the whole population (2012, 503).[7]

Pragmatic theorists acknowledge that the age-based distinction between adults and children does not entail the absolute exclusion of 'minors' from exercising certain liberties for which they are competent. They introduce a distinction between majority and licence in legal practice. Majority is the status acquired by reaching a specific age that defines one as an 'adult'; licence addresses the recognition of competence in determining legitimate categorisation and treatment of individuals. Licence pertains to the legal permission to exercise a particular competence (such as driving, drinking, marrying, engaging in sexual activities), while majority entails the complete relinquishment of anyone other than oneself from responsibility over one's actions. Becoming an 'adult' signifies the acknowledgement by one's socio-political community that one has attained the status of majority, indicating the release from supervision and legal authority of guardians, and assuming full control and responsibility over one's own person and actions (Anderson and Claassen 2012, 512–17). According to this view, having licence to exercise certain competences does not equate to adulthood. Even if adolescents in a specific country are permitted to vote, hold public office, drive, smoke, drink, and marry based on their possession of the required competences, they would still have to be considered and should be regarded as 'children'.

Pragmatic theorists provide a unified response to both the characterisation and classification questions, arguing that while a legal distinction between 'adults' and 'children' may not be exact, it is necessary. Owing to the relatively higher lack of capacities in acting as full moral beings during the early stages of life, individuals below a certain age threshold require stronger protection from certain harms, exemption from adult responsibilities, and limitations on the exercise of certain liberties (Anderson and Claassen 2012, 507–9). Establishing a pragmatic age threshold for 'adulthood' serves the purpose of avoiding potential harms and maintaining stability in the relationships between those above and below the threshold.

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[7] A similar critique was presented by Laura Purdy (1992, 214–15) to liberationist approaches to childhood. See the section 'The Harm of Equal Rights' in Chapter 6 for a more thorough analysis of her position.

Age Thresholds and Competence Acquisition

The efficiency arguments presented by the Pragmatic model for the strict distinction between 'adulthood' and 'childhood' as separate life stages raise important considerations. If it can be demonstrated that individuals both below and above the age threshold benefit significantly from its existence, even without a substantive moral justification, we may be compelled to accept its necessity. However, I see a fundamental issue with the Pragmatic response to the classification question. By acknowledging the importance of competence acquisition in conferring individual licence to exercise fundamental freedoms, rights, and responsibilities, it raises the question of whether any substantial moral content remains within the age-defined threshold of majority. I aim to demonstrate that all or most of the characteristics that could provide moral validity to the distinction between 'childhood' and 'adulthood' can be granted through licence instead of majority. If this is the case, two issues arise: first, competence acquisition would play a larger role in distinguishing collectives of individuals in a morally relevant way; but second, and in contrast to the Sapling approach, this role of competence acquisition would not necessitate the strict differentiation between adults and children as distinct life stages.[8]

Is there anything of moral relevance that is intrinsic and inherent to a majority status that cannot be gained through licence? I believe the answer is negative. If we take away all possible licences from a person with majority status, the purpose for the distinction between adults and children as morally relevant social categories would lose all its content.

Consider, for example, the comparison between children and individuals with significant mental disabilities (SMD). It is possible that a person with SMD who surpasses the age threshold is classified as an 'adult' but remains completely deprived of the freedoms, rights, and responsibilities typically associated with being treated as an 'adult' (including the relinquishment of others' authority over their life and choices).[9] An adult with SMD, despite having majority status, may be denied the right to vote, to have a voice in court, to be free from guardianship, to face imprisonment, to choose a marriage partner, to drive, to consume alcohol, and so on (the list is extensive). In this regard, they would not be distinguishable

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[8] It should be noted that proposals advocating for multiple age thresholds (Schrag 1977; Campbell 1992; Gosseries 2014), which gradually grant licences at different ages, do not necessarily encounter the same issues as the strict dichotomy between adulthood and childhood defended by the Pragmatic model. Plural age thresholds, in theory, can be compatible with any (or none) of the models discussed in this chapter. Their focus is on the effective granting of rights and freedoms, rather than the ontological validity of the categories of 'adult' and 'child' (which is the subject of analysis in this chapter). A comprehensive examination of the role that competence acquisition plays in our understanding of justice is explored in more detail in Chapters 6, 7, and 8.

[9] Bear in mind, I am not talking about their basic treatment *as human beings* (right to life, to not be tortured, to a dignified existence, etc.).

from an infant in terms of their political and legal treatment, even though they hold the status of majority. Can we truly consider such an individual as an adult when the treatment specific to that status is not granted to them?

If we consider the concept of 'majority' as the defining criterion that distinguishes a child from an adult in terms of their political, legal, and moral treatment, we must question whether an individual with SMD gains anything beyond being labelled as an 'adult'. This example highlights the possibility that, by attempting to downplay the role of competence in answering the classification question, Pragmatists may inadvertently strip the distinction between adults and children of any meaningful content. When a person with SMD reaches the age of majority, there are no tangible changes in how they interact with the socio-political world or how they are treated. The transition becomes purely arbitrary, without any implications for their life. If all the features that determine the normative treatment of a person as a political and moral subject are contingent upon possessing specific competences, the passage of an age threshold does not entail any 'seismic shift' (nor should it) in how the law and society treat or should treat an individual. The distinction loses its normative significance and becomes merely symbolic.

Beyond Life Stages

Life-Stage conceptions of 'childhood' have exerted a significant influence on our understanding of children. They shape legal definitions, inform our moral obligations towards children, and guide our perception of human development and its intended trajectory. However, I have argued that these conceptions face challenges in demonstrating the moral validity of their characterisation and classification of childhood. None of the models presented here provide a fully satisfactory justification for how they address these questions (see Table 2.1). As a result, we may need to explore alternative characterisations and classifications that do not rely on life-stage distinctions, or we must develop more robust justifications for how life stages can effectively respond to the characterisation and classification questions.

The Sapling model's focus on the adult-to-be and on a very narrow conception of what 'development' means, leads to a biased characterisation of 'childhood' and to the use of either a vague or arbitrary threshold for distinguishing 'children' from 'adults'. The assumption of rational and moral incompetence during childhood that grounds the model is empirically flawed and does not offer a clear justification for why differential treatment is owed to different life stages. I have conceded to the Sapling's use of 'development' as a core concept for understanding the first period of human life, but have argued that it should be framed in a less narrow and value-laden way for it to do justice to individuals who are in the process of development.

	Characterisation	Classification	Prescriptions	Issues
Sapling	Adult as standard	Scalar transition	Differential treatment	Adult-biased characterisation
	Children as incomplete	Competence threshold	Ensuring adulthood achievement	Irrelevant/ vague/ arbitrary boundary
Intrinsic Value	Child as standard	Transformative transition	Differential treatment	Reified characterisation
	Values and goods of childhood	Competence/ value threshold?	Ensuring goods of childhood	Vague boundary
Pragmatic	Age as standard	Transformative transition	Differential treatment	Irrelevant characterisation
	Socially determined	Age threshold	Ensuring social stability	Empty boundary

Table 2.1 Typology of life-stage models

The Intrinsic Value view corrects certain flaws of the Sapling model by focusing its characterisation of 'childhood' on the child themself; I believe this child-centred approach to characterisation is a necessary condition for any assessment of justice for children. However, the Intrinsic Value view fails to show why the characteristics it assigns to 'childhood' benefit children, and how they justify the differential treatment of the childhood social category, without falling into the problematic imposition of harmful social biases and practices.

Finally, the Pragmatic view tackles the problem of characterisation by establishing an explicitly arbitrary age threshold to distinguish adults from children, aiming to derive social benefits from this distinction. While I acknowledge the potential benefits of distinguishing between licence and majority, I argue that if taken seriously, the majority status would become merely symbolic, leaving the justification for differential treatment of adults and children solely dependent on the possession or absence of certain fundamental competences. On the other hand, if the majority status implies a fundamentally different treatment for children, its moral validity would be compromised owing to its irrelevant justification based on social benefit alone.

Conclusion

My concern with Life-Stage conceptions of childhood as ontological models does not imply that they do not have any role to play in our understanding of what is owed to children as a matter of justice. I am troubled by the assumption that a particular characterisation of who children are based on their life stage and a

particular classification that distinguishes them from 'adults' (as different life-stage groups) are relevant grounds for our normative justifications for how we ought to treat children. However, life stages may be relevant as descriptive devices that may be taken into consideration precisely because they frame the way in which society understands children, their rights, and our duties towards them. As mentioned in the section 'The Moral Relevance of the Concept of Childhood' in Chapter 1, the concept of 'childhood' bears moral relevance precisely because its current uses of it imply a particular asymmetric treatment to those ascribed to it.

I return to the analogy with gender justice in order to exemplify the role that life stages can play in our moral assessment of 'childhood'. It seems clear that we have moved beyond considering that there is any morally relevant factor in the biological differences between female and male humans that could ever justify a differential moral and political treatment for either group. Even if there are certain biological features of each that allow us to distinguish males and females, this should not bear any weight in our considerations of what is owed to them as equal moral beings. If discourses on gender justice are still prominent, it is not because gender or sex distinctions have an a priori moral relevance, but rather because gender distinctions still have an impact on the treatment that individuals who are grouped as 'women' are given in our political, social, and moral world.

I believe that the practical implications of life-stage distinctions, rather than their inherent moral validity, are what give them relevance in our assessment of what is owed to children. While certain traits and characteristics emphasised by life-stage views may indeed play a significant role in justifying differential treatment for individuals, the rigid division between generational groups should not hold weight when determining the moral status of children. If our goal is to achieve justice for individuals in different circumstances, while upholding the principle of basic liberal equality, we must move beyond simplistic generational classifications.

3

Childhood: The Liberationist Conception

'We are not just young people; we are people and citizens of this world.'
Children's Statement from the UN Special Session on Children 2002

Chapter 2 explored some of the most prominent Life-Stage conceptions of 'childhood'. Although certain insights taken from them have not been entirely dismissed, I showed the unjustifiability of characterising and classifying 'childhood' through a life-stage lens. For a conception of 'childhood' to have moral validity, it must be able to justify how its characterisation and classification of children complies with the principle of basic liberal equality. I showed that Life-Stage conceptions, however, do not offer an appropriate characterisation of 'childhood', nor do their accounts of what distinguishes children from adults comply with basic liberal equality.

This chapter examines the Liberationist conception of 'childhood', which presents a stark contrast to the life-stage views. According to the Liberationists, if there is no valid moral justification for categorising children as strictly different from adults, the principle of basic liberal equality requires treating them as equals. In adhering to liberal egalitarian theory, there should be no distinction between children and adults for political and moral purposes. The Liberationist perspective takes a comprehensive approach to the conceptualisation of 'childhood' by offering a critical analysis of the concept itself. Drawing on a social constructivist understanding of the political definition of 'childhood', Liberationists contend that 'childhood' is entirely a product of social practices and that its current characterisation is merely a myth. They argue that children are not inherently different from adults in a morally significant manner; rather, it is the construction of the childhood myth and its institutionalisation through processes of segregation, socialisation, and normalisation that have imposed artificial differences upon children. 'Childhood', in this sense, would be the unjust imposition of an authoritative regime on those who are labelled as 'children', and justice requires abolishing this conceptualisation and re-introducing children into our social and political world as equal members entitled to equal treatment.

While sympathetic to the Liberationist critique, this chapter highlights two limitations in the Liberationist conception when it comes to defining and characterising 'childhood'. First, the social constructivist critique presented by Liberationists fails to provide a comprehensive explanation of the concept of 'childhood'. It overlooks a crucial aspect: the collection of behavioural and physical traits associated with vulnerability. I argue that vulnerability is a morally significant human characteristic that must be considered when determining the appropriate categorisation and treatment of individuals within a system of justice. Liberationists may argue that vulnerability is itself a product of the social construction of 'childhood', and advocate for the elimination of oppressive sources that impose such traits. While I acknowledge the need to address and eliminate oppressive sources of vulnerability, I contend that it is necessary to distinguish between different forms of it (inherent, situational, and pathogenic). This is essential in discerning the vulnerabilities that morally justify differential treatment from those that do not. By introducing the concept of 'vulnerability', I propose the first morally relevant characteristic that may provide justification for differential categorisation and treatment of certain groups while upholding the principle of basic liberal equality.

The chapter first introduces the Liberationist conception of 'childhood', presenting its social constructivist sources, the processes through which individuals are 'converted' into children (the institution of childhood), and the Liberationist alternative conception. It then explores the concept of 'vulnerability' as a potential limit to the Liberationist position, considers their response to it, and my rebuttal to their response. The chapter closes by considering how the concept of 'vulnerability' can justify the differential treatment of some individuals, while not relying on a life-stage lens, and shows how it complies with the principle of basic equality.

The Liberationist Conception

The 1960s and 1970s were particularly active decades for anti-oppression movements around the world. The civil rights and the women's liberation movements, coupled with widespread protests against the Vietnam War, transformed the ideological climate in the United States. In France, workers joined students to fight in the streets against the alienating forces of capitalism. And in South Africa, the beginning of the end for apartheid came with the Soweto uprising, in which black students rebelled against the Bantu Education Act, followed by workers and political activists manifesting against segregation altogether. It was a time of *conscientização*, as Paulo Freire would call it,[1] in which

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[1] There is no precise translation of this term into English. It 'refers to learning to perceive social, political, and economic contradictions, and to take action against oppressive elements of reality' (Translator's note in Freire [1970] 1993, 17 fn. 1).

masses of individuals who were in a disadvantaged position came to realise that the world had not been built with them in mind; it was made by and for white wealthy adult men. Inspired by this general uprising against oppression, many thinkers, especially in the United States, began reflecting on the need to include children among the populations who were being unjustly discriminated against and oppressed by a hegemonic social group; in this case adults.

Grounded in the principles of basic equality and freedom, child liberationists assert that justice for children can only be achieved by dismantling the binary distinction between 'childhood' and 'adulthood', and destroying the social and political structures that uphold this division.[2] They advocate for the equal treatment, rights, and freedoms of all children as human beings and citizens. The Liberationist perspective involves a critical deconstruction of the social processes that have shaped the concept of 'childhood'. While they offer some positive claims about the appropriate characterisation of 'childhood', their primary focus is on critically examining the concept, its implementation in social and political realms, and its inherent injustices.

Child liberationists assert three fundamental claims. First, they argue that 'childhood' is a social construct in its entirety, meaning that its characterisation and classification are defined solely by socio-historical context. Therefore, any conception of 'childhood' is contingent upon societal factors. Secondly, they contend that the current characterisation of 'childhood' (within the liberal tradition) is a myth that inaccurately and harmfully ascribes individuals within the concept. Thirdly, they argue that this myth of childhood has been perpetuated through the socio-political institution of childhood, which shapes how children are treated and viewed. This institution utilises mechanisms of segregation, socialisation, and normalisation to enforce conformity to the myth's expectations. According to Liberationists, children are compelled to behave and conform in ways that are artificially imposed upon them, leading to differential treatment based on this imposed difference. They maintain that since these behavioural differences are not inherent to children, there is no valid reason to categorise and treat them differently from the rest of the population.

Childhood as a Social Construct

Social constructivism posits that concepts or ideas commonly perceived as 'natural' or 'objective' are actually products of social and cultural influences rather than inherent aspects of the natural world (Mallon 2014). According to this

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[2] This composite construct of the Liberationist position draws primarily from the works of Firestone (1970), Farson (1974), Holt (1974), and insights from the sociology of childhood. While their positions differ, they share a common conception of 'childhood'.

perspective, non-existent entities can be brought into reality through social forces, or existing 'natural' entities can be conceptually shaped or reified by social forces to serve particular social interests or objectives.[3] Viewing 'childhood' as a social construct suggests that it either emerged as a result of social forces or that existing individuals were transformed into 'children' through social processes. Child liberationists, drawing on insights from the history and sociology of childhood, embraced this claim to critically examine the validity of 'childhood' as a political and legal concept.

The foundation of the liberationist perspective draws heavily from Philippe Ariès's historical analysis of the concept of 'childhood' (Ariès 1962). Ariès argued that the notion of 'childhood' did not exist in medieval society and only emerged during the Enlightenment when young individuals began to be systematically categorised and treated as 'children' (Ariès 1962, 128). In medieval society, he argued, children were perceived simply as 'little people' without any distinct treatment or status; they participated in social and economic activities like any other member of society. Ariès put forth three key claims: first, 'childhood' is a historical invention rather than a natural phenomenon; second, it is a construct shaped by social interests; and third, its universal aspect lies in its function as a mechanism for classifying and contrasting the world of children with that of adults (Oswell 2013, 9ff.). These insights laid the groundwork for the liberationist critique of 'childhood'.

While Ariès's claim that 'childhood' did not exist during the Middle Ages has been widely criticised and refuted, the notions that childhood is socially constructed and has segregating implications remain valid (Lancy 2015). The understanding that 'childhood' is not an inherent, natural reality but rather a concept shaped by social, cultural, and demographic factors has been supported by empirical research (Pufall and Unsworth 2004, 18). Cross-cultural studies in anthropology and sociology reveal diverse understandings of children and their societal roles owing to the specific circumstances, needs, and interests of different social systems.[4] Consequently, there is no universally fixed notion of 'childhood' but rather multiple interpretations that vary across time and cultures. Therefore, 'childhood' can be viewed as a social construct.

One feature, however, remains across the plurality of 'childhoods' that have existed at different times and places on earth: its use as an oppositional category that normatively distinguishes the status of children and adults in society. In the words of sociologist Chris Jenks: '[Childhood] makes reference to a social status delineated by boundaries that vary through time and from society to society but

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[3] This is what has been referred to as 'the process of reification'. See the example of 'commodities' in the section 'Social Grouping: The Moral Relevance of Categories' in Chapter 1.
[4] See Lancy (2015, chapter 1) for a thorough analysis of the debate.

which are incorporated within the social structure and thus manifested through and formative of certain typical forms of conduct' (Jenks 2005, 6–7).

Even if the answers to 'who is a child?' and 'what characterises them?' vary greatly among different times and cultures, the concept has been used universally as a mechanism for distinguishing the status of two types of humans in the social world: adults and children.

The objective of child liberationists and many sociologists of childhood, in emphasising the social construction of the concept, is to draw attention to the potential harms or injustices that may arise from its use. By recognising that the notion of 'childhood' is shaped by societal beliefs and values, it becomes plausible to examine how children are treated within different social systems and to identify the normative assumptions that underlie these constructions. This focus on the social origins of the concept allows for a deeper understanding of the vested interests and power dynamics that have influenced the construction of this 'reality'.

Social constructions, it has been argued, are inherently biased as those who construct the concept hold the power to determine its usage and shape the perception of reality (Young 1990, 58–9; Haslanger 2012, 197). In the case of 'childhood', it is clear that adults are the ones constructing and defining it. They have determined its characteristics, boundaries, and distinctions. While the presence of vested interests in this construction remains a question worth exploring, it is undeniable that the construction of 'childhood' has significant implications for the lives of those identified as children (see the section 'Prescriptive Purpose' in Chapter 1). Therefore, it is essential to analyse our contemporary conception and practices regarding childhood to assess whether they result in harm or benefit for them (Alanen 1988, 58). By recognising 'childhood' as a social construct, child liberationists advocate for its deconstruction in order to evaluate its validity and justifiability as a category for political and social purposes.

The Myth of Childhood

In the words of child liberationist Richard Farson, 'Children did not always exist; they were invented' (Farson 1974, 17). This provocative statement highlights the constructed nature of the concept of 'childhood'. By categorising individuals as 'children', society imposes certain assumptions about their identity and behaviour. Farson and Firestone both refer, in this respect, to the characterisation of 'childhood' as a myth (Firestone 1970, 93; Farson 1974, 18). They argue that society has created a fictional creature called 'children', and expects those labelled as such to conform to their reified condition as innocent, naïve, weak, and unable (Farson 1974, 18).

The reification of these particular characteristics used to define the broad and heterogeneous group of individuals labelled as 'children' requires a very broad brush. It is undeniable that, as an empirical reality, not all those who are classified as 'children' actually fit into this characterisation. The lived experiences of children across different cultures and economic conditions cannot be neatly confined to the reified portrayal of 'childhood' as innocent and weak. This mythification of children has had various problematic implications, as argued by Liberationists. First, it has influenced how we study and understand children. Secondly, the prescriptive nature of the myth implies that children are not only described as they are imagined, but also that they should conform to this imagined ideal in terms of their behaviour and abilities.

Farson argued that the psychological development studies that underpin 20th-century conceptions of 'childhood' are biased owing to their inherent assumptions of difference (as Piaget and Kohlberg's explored; see the section 'The Sapling Model' in Chapter 2). He pointed out that children have not been studied in an unbiased atmosphere, free from prejudices and preconceived expectations (Farson 1974, 11). Building upon this critique, sociologist Leena Alanen has challenged the scientific framework of childhood studies, which is based on an assumption of difference, arguing that it leads to unreliable results (Alanen 2005, 36). She draws parallels to the biased scientific methods used in studying other groups such as Africans, prisoners, or homosexuals during the 19th and 20th centuries, which produced inaccurate and harmful conclusions. The assumption of children's inherent 'difference' guides scientific research to focus on finding evidence of this difference (Alanen 2005, 37).

Farson claimed that we do not know what actually characterises children, what they can do, and what their actual potentialities are, simply because our mythification of them does not allow us to perceive what is behind the facade that we have put on them (Farson 1974, 2). Childhood has been reified into 'reality' through its pervasive and all-encompassing mythification.

The Institutionalisation of the Myth

As discussed in Chapter 1, the moral relevance of social groups is rooted in the normative dimension of ascribing and classifying individuals into these groups (see the section 'Three Features of a Social Group' in Chapter 1). The act of ascribing individuals to a particular social group serves a specific purpose, leading to the implementation of social and political practices based on this categorisation. Social groups are not merely described, but they are constructed and institutionalised. According to Liberationists, the fundamental injustice in the differential categorisation and treatment of children is perpetuated through institutional practices aimed at transforming the myth of 'childhood' into reality.

This is accomplished through three key processes: segregation, socialisation, and normalisation of children.

Segregation

Through similar mechanisms and institutions that led to women being relegated to a submissive life within the household, children suffer an imposed segregation from adult affairs.[5] The institutionalisation of the myth of childhood into reality is achieved through the division of the social world into public and private spheres, with children being ascribed to the private sphere and excluded from direct participation in the public sphere of social, political, and economic life (Ennew 1986, 20; Alanen 2005, 40; James and Prout 2015, 209). Feminist theorist Shulamith Firestone highlights the interconnectedness of the myths of femininity and childishness in constructing the idea of 'family life' and excluding women and children from adult male affairs and the larger public world (Firestone 1970, 91).[6] By portraying women and children as 'pure', 'innocent', and 'incapable', adult males established a justification for confining their lives to protected and supervised spheres, shielding them from potential harm. This narrative of protecting women and children from the vices, prejudices, violence, and promiscuity of the outside world allowed adult males to assert control over them under the guise of benevolence (Firestone 1970, 79). Consequently, the natural and physical inequalities between adult males on one side and women and children on the other were not addressed through empowerment in the political and social realms, but rather reinforced through their exclusion (Firestone 1970, 89).

In addition to the seclusion of women and children within the private sphere, a crucial mechanism for the segregation of childhood is the modern system of compulsory schooling (Illich 1970, chapter 2). While the concept of 'childhood' is merely a conceptual construct, it is the institution of the modern school that solidifies its existence in reality (Firestone 1970, 81). Compulsory schooling not only mandates the segregation of children for a significant portion of their day and years while they are considered 'children', but it also creates an age-class system within childhood, further separating children from one another (Illich 1970, 26–8). The modern school enables adults to control and regulate the developmental process of children as well as their transition to adulthood. It functions as a normalising institution (discussed further in 'Normalisation'), where the unique abilities of each child are disregarded, children's interactions with other age groups

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[5] I take 'segregation' to mean 'the separation of social groups into different physical spaces or spheres of life based on ascriptive distinctions'. See Browne (2016) for a thorough assessment of the concept.

[6] Firestone's *The Dialectics of Sex* argued that the oppression of women, black people, and children stem from the same source, and must be dealt with jointly in order to overcome the unjust and oppressive hegemony of white adult males. For the case of children see Firestone (1970, chapter 4).

become hierarchical, and their journey to adulthood is guided by standardised practices and procedures (Firestone 1970, 83–7).

Individuals ascribed as 'children' are systematically and arbitrarily segregated from the rest of society and excluded from activities that adults deem unsuitable for them. This segregation is accomplished through specific institutions that are designed to keep children separate from the outside world. The institutionalisation of the myth of childhood involves imposing a specific set of behaviours and a predetermined life path on children, as well as creating designated safe spaces for them. Both Holt and Farson, drawing on Philippe Ariès's historical analysis, argue that the full implementation of childhood as an institution occurred during the 17th century, particularly with the influence of Rousseau's work, *Émile* (Holt 1974, 11). Based on the mythical classification and distinction between adults and children, the latter were removed from the adult world and confined to the home and school. Their exposure to life beyond these spaces was limited, and any interaction with adults outside the home or school was minimised (Farson 1974, 22).

Socialisation and Differential Treatment

The institution of childhood not only confines children to specific spaces determined by adults, but also imposes limitations on their actions and behaviours within these spaces, defining what is considered appropriate 'child behaviour'. This is justified based on the myth of children's incapacity and irrationality, which leads to the establishment of a distinct standard for the treatment of children as a matter of justice. This differential treatment, rooted in the myth, aims to *socialise* children by shaping their natural impulses, emotions, and behaviours to align with societal expectations. The goal of socialisation is to mould children into 'decent' adults who possess the necessary capacities, skills, and behavioural traits for maintaining social stability (Jenks 2005, 15–16).

The assumed necessity of a process of socialisation implies that it is justified to treat children differently: if we need to curb the child's natural 'savage' instincts, we are justified in restricting their beings and doings in many ways. The differential treatment of the child social group is not restricted to a specific sphere of life, nor to a particular relation; young individuals are constrained by their ascription to the 'child' group in all aspects of life. At home, even the affective union that ties them to their parents does not ground a relation of equality; rather, it reinforces their subordination and dependence, as they are bound by the precepts of the adult population, and as their behaviour is controlled by rules and standards that apply exclusively to them (Archard 2004, 122).

At school, we find one of the most explicit examples of differential treatment of the child group: they are compelled to attend, follow instructions, and do as they are told by the adult authorities. And in the public sphere, the differential

treatment goes even further, through the assignment of child-specific regulation and rights, which grants them benefits (mostly in the form of protections and limited liabilities) that the rest of the population does not have, but also restricts in a very relevant way the freedoms that they are allowed to exercise both in their public life (as political actors and citizens) and in the private sphere (as economic and social actors) (Ncube 1998a, 19).[7]

Socialisation, as a cornerstone of stability for any social system, comes at a cost: the restriction of freedoms permitted during childhood. Children are not free within their institution. Even in the realm of play, which can be considered a significant source of freedom within the institution of childhood, children are bound and limited by what the adult population deems appropriate for them (Lancy 2015, 20). Play spaces are defined by adults, play materials (and even playmates) are chosen by adults, and children's access to cultural resources such as books, TV, and films is dictated by what adults consider 'child-friendly' (Firestone 1970, 100). Ascribed as 'children', their behaviour, social relations, and identity are to a large extent shaped by the boundaries imposed by the principles of socialisation (Farson 1974, 213).

Normalisation

Segregation and socialisation have led children to be and behave as adults consider appropriate. The adult population has mythicised children as particularly innocent, incapable, troublesome, inexperienced, and frail beings, and the institution of childhood has regulated, normalised, and standardised the plurality of possible beings and doings of individual children by turning them into this 'childish' myth (Jenks 2005, 43). By isolating children within a protected environment, their 'walled garden', not only are they shielded from the perceived dangers of the outside world, but also they are constrained to behave in a manner deemed 'childish' (Holt 1974, 5). Limited exposure to the broader world restricts children's experiences, and without access to resources and tools that could foster their development, they unwittingly fulfil the very expectations and stereotypes that adults have constructed about them.

Segregation and socialisation result in children conforming to the prescribed expectations of the myth (Lancy 2015, 25), effectively normalising individuals as 'children'. According to Firestone, it is not surprising that children often behave in accordance with the myth. Their isolation from external influences and their limited interactions primarily with other socialised children or adults who enforce these mechanisms make it challenging for them to express their true selves

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[7] An in-depth critique of the impact of socialisation on the differential treatment of children is to be found in the section 'Problems with the Standard Liberal View' in Chapter 6.

(Firestone 1970, 85). Firestone suggests that glimpses of authentic behaviour may only emerge in children who exist at the margins of society, whose parents and teachers lack the time or inclination to enforce strict norms, granting them the freedom to explore the adult world (see the section 'An Adaptive Assessment of CISS' in Chapter 11). These children reveal a side of childhood that diverges significantly from the idealised image portrayed in family photographs (Firestone 1970, 100–1).

According to child liberationists, children are constructed into 'children' through the institutionalisation of childhood, effectively normalising them into this role. The myth of childhood shapes their separation from the adult world, confining them to interactions, resources, and experiences carefully controlled and limited by adults. This becomes particularly significant when it comes to the presumed incapacities of children and the subsequent curtailment of their freedom, justified by their perceived inability. The myth portrays children as lacking the capacities to exercise essential human freedoms, and the processes of segregation and socialisation ensure that their choices and actions are constrained, preventing the development of the competences necessary to exercise those freedoms (Oswell 2013, 10). Without access to the social and material resources that facilitate competence development, and without spaces for the experience of freedom, individuals are unable to cultivate the cognitive, physical, and emotional traits required, ultimately reinforcing the self-fulfilling nature of the mythical assumptions (Peleg 2013, 534).[8]

Children as Equals

To recap, the Liberationist conception of 'childhood' stands on a critical deconstruction of the use of the concept in legal and social practice in order to show its inherent injustice. If a liberal system is grounded on the assumption of basic equality ('equal treatment for alike circumstances') and basic freedom ('the burden of proof is on the restriction of freedom, rather than the opposite'), the myth of childhood and its institution, established through children's segregation, socialisation, and normalisation, cannot be justified under any circumstances by a liberal political system. The fact that any normative use of the concept of 'childhood' ascribes individuals into the concept, and characterises and classifies them through its social construction, makes doubtful its validity as a justificatory mechanism for differential treatment. The claim that individuals are normalised into 'children' means that, under present conditions, we cannot objectively assess a child's 'true' characteristics, behaviours, and traits simply because the institution of childhood already frames and delimits who children can be and what they can do. A morally valid assessment of who children are and what treatment is owed

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[8] More on this in Chapter 8, 'An Adaptive Model for Children's Rights'.

to them can only be made if they are studied under conditions free from the institution of childhood: 'Until society's views as to what a child might be undergo radical change, the child is trapped, a prisoner of childhood' (Farson 1974, 214). Only by testing their true potentialities, behaviours, and traits under conditions in which they are taken as equals can it be judged who they are, whether they are different in a morally relevant way, and what is owed to them as a matter of justice.

The fundamental claim of the Liberationist conception of 'childhood' is that the concept is tainted. The fact that individuals are ascribed into the 'childhood' group through inaccurate and biased characterisations, and the implications this has for their differential treatment in our system of justice, implies that the concept, and its use for normative purposes, is unjust. In order to treat children in compliance with basic liberal principles, argue the Liberationists, we must not treat them any differently from how everyone else is treated.

Limits to the Liberationist Conception

Although I share a sympathetic stance towards the overall Liberationist logic, I wish to explore two issues that arise when attempting to justify the Liberationist model based on liberal principles of justice. First, while I agree that ascribing individuals to the 'childhood' group based on assumed characteristics they lack can be unjust, this does not necessarily imply that all ascriptions are unjustifiable. In fact, everyday experiences and scientific evidence concerning many individuals labelled as 'children' demonstrates the moral validity of differential treatment for those individuals who possess certain particularly prominent traits and characteristics. Here, I argue that the embodied vulnerability of certain individuals justifies differential categorisation while remaining consistent with the principle of basic liberal equality.

Secondly, I consider a possible Liberationist response to the vulnerability critique, which may posit that most forms of vulnerability are socially imposed and would not exist without the institution of childhood. While I acknowledge the importance of addressing potentially oppressive sources of vulnerability, I contend that distinguishing between various manifestations of vulnerability is crucial for proper assessment. While some sources of vulnerability suffered by children are indeed socially imposed, abolishable, and unjust (pathogenic), others are inherent and situational aspects of human nature and social existence. These inherent vulnerabilities should be viewed as sources of special claims and interests for individuals who possess them.

Therefore, instead of seeking to abolish all forms of vulnerability, we must discern which vulnerabilities demand justified claims for differential categorisation and treatment, and which may require imposing restrictions on other agents.

Moreover, if we consider vulnerability, particularly the harm it may cause, as a core element legitimising differential categorisation in accordance with basic liberal equality, it should apply to all individuals who possess these vulnerabilities in a prominent degree, rather than solely to children. By taking this perspective, we can better navigate the complex terrain of differential treatment and equality while critiquing and refining the Liberationist approach.

Not Entirely Different but not Equal

Liberationists advocate that the institution of childhood unjustly discriminates against children, leading to unequal treatment and contradicting the liberal principle of basic equality. In response, some authors (e.g., Purdy 1992, part II; Archard 2004, chapter 6) argue that unequal treatment can be morally justified if it is based on valid circumstances, as the principle of basic equality posits that similar circumstances warrant equal categorisation and treatment, while dissimilar circumstances may justify differential treatment. In Chapter 2, I examined various life-stage arguments attempting to justify the moral significance of defining 'childhood' as a life-stage based on specific prominent characteristics (see Chapter 2, 'Childhood: Life-Stage Conceptions'). Although I demonstrated that these arguments do not provide a valid basis for differential categorisation of childhood as a life stage, it is worth exploring whether they may offer insights into justifying certain limitations that the Liberationist critique of 'childhood' cannot overlook.[9]

Opposing the Liberationist perspective that seeks to abolish 'childhood', Purdy argues that the assumption of equality towards children overlooks the significant differences in their needs, capacities, and interests. Insisting on absolute equality can treat vastly diverse individuals as identical cases, neglecting the distinctions that exist among children themselves, and between children and adults (Purdy 1992, 32). Justice demands that we acknowledge these differences and consider them in our theory of justice to ensure fair treatment for all.

One crucial difference that stands out when considering the unique position of children is their relative vulnerability and dependence compared with other members of society. The notion of 'childhood' as dependent and vulnerable is not novel (Brighouse 2002). The very institution of childhood, criticised by the Liberationists, is built upon the conception of 'children' as dependent and vulnerable beings (Ariès 1962). Present-day advocacy for prioritising the protection of children from harm also relies on the idea of 'childhood' as a condition marked by dependency and vulnerability (Lansdown 2005; Dixon and Nussbaum 2012; Fowler 2020). However, a comprehensive understanding of what these concepts

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[9] Here I look at vulnerability as a relevant trait; in Chapter 4 ('An Adaptive Conception of Childhood'), I address the role that development and embeddedness play in justifying differential categorisation.

entail, their inherent and social origins, and how they can morally justify the differential categorisation of children requires further investigation.

Let us first look at vulnerability. Following Colin Macleod, I understand 'vulnerability' broadly as 'some kind of susceptibility to harm' (Macleod 2015, 55). It is not an absolute characteristic but varies depending on the interaction between (1) an individual's particular traits and condition, and (2) the features defining their social and material environment. The extent to which this environment exposes someone to harm or protects them shapes how vulnerability manifests and becomes especially prominent. Vulnerability has aspects inherent to our condition as human beings, with varying degrees among individuals and social aspects that depend on the constructed social environment (Goodin 1985, 191).

Individuals in the first years of life tend to be, to a higher degree than other humans, biologically more susceptible to harms that derive from environmental factors and from decisions and actions taken by themselves and by others (Jenks 2005, 2). Their relative frailty (physical, mental, and emotional) in comparison with other humans makes them highly susceptible to harms (Benporath 2003, 135). This inherent or non-social source of vulnerability is assumed in most (I would even consider all) understandings of 'childhood', and the pursuit of justice often centres on protecting children from these 'natural' manifestations of susceptibility to harm. Owing to limited capacities, particularly in their early years, children face difficulties in protecting and providing for themselves, making them especially vulnerable to environmental circumstances. Gradual development of physical and mental competences leaves them comparatively weak and restricted in their actions compared with other humans. As a result, physical harm, injuries, maltreatment, and exploitation pose significant threats to children's well-being, with limited ability to protect themselves without appropriate support (Schweiger and Graf 2015, 7).

A particular manifestation of children's inherent vulnerability is their dependence on others. While historical, cultural, and social differences may result in varied traits for individual children, 'dependence on others for survival and development' is a common aspect of being a young human being to varying degrees (Lee 2001, 23; Arneil 2002, 88). Unlike some other animals that rapidly acquire necessary skills for self-sufficiency, young humans spend a significant amount of time relying on others to ensure their survival. Their physical limitations make them dependent on others for basic needs such as food, shelter, and protection. And even when they achieve the physical abilities to feed and protect themselves, the fact that they live in socio-economic systems that have their own rules and requirements for independent subsistence ties them to other humans until they develop higher cognitive, emotional, and social competences that allow them to effectively care for themselves in our social world (Dixon and Nussbaum 2012, 573–4).

Furthermore, children's dependence on others goes beyond biological survival and extends to their subsistence as social beings. They rely on role models to guide their emotional, social, and moral development. Observing the behaviour of others, mirroring their actions and emotions, and internalising certain behavioural patterns and communication skills are crucial aspects of how children learn to function as social beings (Hoffman 2000, chapters 6, 10; Bloom 2004, chapters 4, 5). Hence, dependence is intricately intertwined with the natural developmental process of human beings.

This should be regarded as a fundamental limit that the Liberationist critique of the concept of 'childhood' cannot surpass. If vulnerability and dependence, as argued by Eva Kittay, are inherent and unavoidable aspects of the human condition (Kittay 1999, 29), then treating everyone equally without recognising these aspects would impose an additional burden on those individuals who are vulnerable or dependent to a high degree (Lotz 2014, 244; see also Herring 2016). The constitutive role of vulnerability in the human condition provides a morally valid justification for differential categorisation (Fineman 2008). Vulnerability is a human phenomenon that, although especially prominent during the first years of life, persists throughout our entire life-course to varying degrees, impacting individuals in diverse ways (see Mackenzie et al. 2014).

The fundamental claim here is that, even if we acknowledge the Liberationist argument that the institution of childhood can be harmful and unjust in its treatment of those labelled as 'children', certain specific practices, treatments, and justifications within the institution are not inherently harmful and unjust. The Liberationist critique of the processes of segregation, socialisation, and normalisation of childhood can still stand while allowing for considerations of legitimate categorisation based on the particular vulnerability and dependence inherent in an individual's condition. Even if certain characteristics ascribed to children are not morally valid for justifying the imposition of an institution of childhood, it does not imply that they are not morally valid for the legitimate differential categorisation of individuals who do possess these characteristics.

In this regard, both Life-Stage conceptions and Liberationist perspectives fall into the trap of reifying 'childhood' in opposing directions. While Life-Stage conceptions essentialise 'childhood' as a period of incapacity, creating binary oppositions between children and adults, Liberationists end up essentialising 'childhood' as being the same as adulthood, demanding strict equal treatment for all. Both approaches miss the mark. The inherent plurality of childhood and the diverse identities of children demand a more nuanced approach that avoids such reification.

Therefore, my first amendment to the Liberationist position is as follows: the principle of basic equality does not call for equal treatment regardless of circumstances; rather, it only demands equal treatment for individuals facing like

circumstances. Vulnerability and dependence, inherent in the human condition, are morally valid characteristics for justifying differential categorisation of those who possess them in the particular circumstances where their relative vulnerability and dependence may result in undue harm. This ground for differential categorisation and treatment is legitimate and aligns with the principle of basic liberal equality because it recognises the unique circumstances of each individual (Fineman 2010).

Differential categorisation based on vulnerability does not entail generalised institutional constructs such as 'childhood'; rather, it tracks the actual possession of vulnerability in individuals and treats those with similar vulnerability levels equally. There is no reason why equally or highly vulnerable adults should not receive the same special protections and care provided to vulnerable children (Herring 2018, chapter 4). As long as the focus is on the high susceptibility to harm and the lack of control over its avoidance, the call for differential categorisation applies to all individuals with equal or relatively high levels of vulnerability. A consistent standard obliges us to treat equal cases alike.

Forms of Vulnerability

The Liberationists' core premise emphasises the need to overcome the double standard applied to children and adults, advocating for equality as the foundation for treatment. My proposed amendment, as outlined in the previous section, aligns with these principles. The vulnerability condition utilises an equal standard to assess the justified categorisation of all individuals. However, Liberationists raise a valid concern: the notion of vulnerability as an inherent aspect of the human condition is not without complexities. Susceptibility to harm is inherently relational (see Goodin 1985, 110–12). As mentioned earlier, an individual's vulnerability is not solely determined by their internal condition but is also influenced by the interactions with their external environment (see Friedman 2014; Mullin 2014).

In accepting vulnerability as a fundamental aspect of humanity, a Liberationist could argue that it leaves room for potentially oppressive social institutions to impose vulnerability on individuals, thus justifying differential categorisation. This raises the issue that an all-encompassing evaluation of vulnerability might enable powerful political and social groups to subject individuals to an institution akin to childhood, thereby perpetuating vulnerability and oppression (Herring 2018, 16–18). The dynamic nature of vulnerability within the social world means that depending on the context, anyone could potentially be labelled as 'vulnerable'. To address this concern, a clear assessment of different forms of vulnerability is necessary, each requiring distinct mechanisms to address the harm it may inflict on individuals. By discerning the various manifestations of vulnerability (Mackenzie et al. 2014), we can ensure a nuanced and contextually appropriate

response that respects the principle of equality while accounting for individual needs and circumstances.

One way to address this claim would be to try to distinguish between the social and the non-social aspects of human vulnerability.[10] Rousseau considered that, beyond our inevitable dependence on nature, humans are (and have become) a socially dependent species as well. According to Rousseau, dependence on nature does not restrict our freedom in a morally relevant way since it is an inevitable aspect of the human species' reliance on the environment and essential goods for survival. However, social dependence, stemming from cultural and societal norms, can impose unjustifiable limitations on human freedom (Rousseau [1762] 1979, 115). We could try to respond to Liberationists by arguing that non-social dependence, given its inevitability, justifies differential categorisation. Some individuals may be able to protect themselves from the harms associated with non-social dependence, while others cannot, necessitating the safeguarding of their well-being by those who can. For instance, young children, the elderly, or individuals with significant mental disabilities may require protection to ensure their health, nutrition, shelter, and bodily integrity.

On the other hand, social dependence arises from our existence as social beings and is shaped by our interactions in society. The harms stemming from social dependence are socially constructed, not inherent to nature. Liberationists argue that many of the harms children experience within the institution of childhood result from socially imposed vulnerabilities and dependencies that could be avoided. They contend that if children were free from the constraints of socialisation and normalisation imposed by adults, they would lead less vulnerable lives. While most Liberationists agree that protecting children from non-social vulnerabilities is necessary and justifiable, they assert that the restrictions imposed on children owing to their social vulnerabilities are oppressive and avoidable. They advocate for the elimination of these constraints to ensure equal treatment and opportunities for all individuals. The challenge would lie in discerning between necessary protection from non-social vulnerabilities and oppressive imposition of social vulnerabilities, striking a balance that upholds the principles of justice and equality.

Even if we were to assume that non-social and social vulnerabilities could be distinguished (which I believe is not feasible), the inevitably embedded condition of humans in their social environment would render this distinction inadequate for classifying morally valid vulnerabilities that justify differential categorisation from those that do not. Social vulnerabilities stem from diverse sources, and addressing them effectively necessitates a nuanced understanding of their

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[10] I avoid here the use of 'natural' owing to the inevitable hybridity between social and natural factors; I prefer to distinguish between socially conditioned and non-socially conditioned categories. More on this in the section 'Properties and Purposes of Social Categories' in Chapter 1.

origins. Critics of the Liberationist view have pointed out that Liberationists may not be fully considering a basic element of the human condition. The intricate interplay between social structures, cultural norms, and individual vulnerabilities shapes the human experience, and overlooking this complexity may limit their ability to grasp the implications of vulnerability for just treatment. Laura Purdy argues:

> Children, like the rest of us, are embedded within a social context: it seems one-sided to try to deduce what their legal relation to the rest of society ought to look like without trying to grasp the complex interdependence of all the elements in the picture. […] What rights children should have ought to depend in part on what they need and want. But what they need and want depends in part on social conditions and social ideals. (Purdy 1992, 12)

Establishing principles of justice without considering the contexts, relations, and particularities of the individuals affected by them is delusional and potentially harmful. We must be wary of abstracting from certain descriptive facts about the actual world in which the issue dwells to avoid falling into harmful idealisations (Young 1990, chapters 1, 2; Brando 2019, 273–6). Therefore, the treatment owed to an individual should be determined and adapted to their internal condition and the social context in which they live.

Following the Liberationist reasoning, our non-social dependence on nourishment is a universal phenomenon, tying us all to our environment and other humans. However, socially constructed dependencies require a justification for their institution. Liberationists tend to take an all-or-nothing approach regarding social dependencies and vulnerabilities, arguing that it is inherently unjust to impose them and therefore they should be eradicated. While this answer may be appealing, not all social dependencies are of the same sort, and the fact that they are socially constructed does not necessarily mean that they are avoidable, preventable, or even harmful. Some social phenomena may be inevitable and inherent to any socio-economic system, and regardless of being socially constructed, they must be considered as inherent to childhood (and humanhood) as any non-social vulnerability owing to the impossibility of escaping from them in any potential real-world scenario.

The child's socially constructed vulnerabilities are a primary concern for child liberationists. Child liberationists prioritise social manifestations of vulnerability, aiming to liberate children from harmful social institutions and practices, ensuring justice within their social environment. Children are not inherently vulnerable to most threats in the present world; rather, specific environmental constructions, such as streets, create vulnerabilities for them. For example, a child growing up on a farm faces fewer risks while walking or crawling in their surroundings alone than a child on a busy Manhattan street. Children's vulnerability, Liberationists would argue, stems from certain environmental manifestations, not inherent traits.

The typical response to these vulnerabilities has been to segregate children into 'safe spaces', both physically (schools, homes, playgrounds, cribs) and epistemically (restricting access to bars, movies, video games), aiming to shield them from harm in their social environment. However, relying solely on segregation to protect children from external harms seems problematic. Alternative mechanisms exist to abolish or reduce threats without resorting to segregation (Qvortrup 2005, 8). The current approach, treating children differently while allowing harm-causing entities unrestricted existence, fails to address the root causes of vulnerability, limiting children's freedom and recognition as equals.

I am sympathetic to taking a critical stance towards these social manifestations of vulnerability, but we cannot start a war against social vulnerability per se. We must acknowledge that there are limits to how far we can argue against certain forms of harm that threaten children. While some social vulnerabilities are contingent and unjust, others are inherent to the social world and may not be considered unjust owing to the benefits they provide to society as a whole. For example, it would be impractical to argue for the abolition of busy cities to make children less vulnerable to their environment, considering the complexities of modern life and the interests of many individuals. When addressing the social vulnerability of childhood, we need to frame children within the context of these inevitable social spaces. Finding a just prescription requires balancing the interests of children with those of other members of society. Striking a reasonable balance is essential to protect children while also respecting the needs and freedoms of others.[11]

In line with Catriona Mackenzie's work, I propose distinguishing between different sources of vulnerability and how they influence our understanding of justice (Mackenzie 2014). These sources include inherent, situational, and pathogenic vulnerabilities (2014, 35). Inherent vulnerability, akin to the non-social type mentioned earlier, arises 'from our embodiment, our inescapable human needs, and our inevitable dependence on others' (2014, 38). Being constitutive of human nature, it cannot be eradicated, but rather should be addressed to prevent harm.

On the other hand, situational and pathogenic vulnerabilities are forms of social vulnerability that depend on specific contexts and are shaped by social, political, and economic circumstances (Garrau and Laborde 2015). Pathogenic vulnerability aligns with the Liberationist concerns, encompassing the 'vulnerabilities arising from prejudice or abuse in interpersonal relationships and from social domination, oppression, or political violence' (Mackenzie 2014, 39), making it a

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[11] I will address in more detail the way that the social embeddedness of individuals should be understood in the section 'Embeddedness: Normative and Descriptive' in Chapter 4; in relation to children's use of public spaces, see Chapter 11.

prime target for eradication. Situational vulnerability, however, fluctuates based on circumstances and institutional practices, making its complete eradication unfeasible. An example of situational vulnerability is losing one's job, which can vary in probability and harm depending on how society addresses it. While situational vulnerabilities are not inherently unjust, their effects and harm depend on societal responses to it, and whether they become pathogenic. Appropriate protections and support systems (unemployment benefits, guidance, and alternative job opportunities) can prevent situational vulnerability from becoming pathogenic and perpetuating harm. Conversely, in cases where the social system fails to provide adequate protections to the unemployed, situational vulnerability can become pathogenic owing to the negative role played by the social system in perpetuating and reinforcing its harmful effects.

Situational and inherent vulnerabilities can turn sour when they are compounded into pathogenic ones (Mullin 2014, 269). Throughout history, claims of vulnerability and the need for special protection have been exploited by powerful groups to justify coercion and unjust restrictions on the lives and freedoms of large segments of the population (Mackenzie 2014, 34). For instance, men falsely claimed that women were inherently vulnerable to the public sphere, using this as a pretext to justify their segregation to the household. Similarly, the inherent and situational vulnerability of children becomes pathogenic when, in addition to their existing vulnerabilities, they are denied a voice in social, economic, and political matters that concern them. In light of this, sources of vulnerability ought to be accounted for in order to deal with them correctly: inherent vulnerabilities should be protected, situational vulnerabilities should be supported, and pathogenic vulnerabilities should be eradicated.

Feminist care ethicists have persistently argued for recognising vulnerability and dependence as universal characteristics that define every human's existence (Kittay 1999; Mackenzie et al. 2014). As social beings, we are inevitably interdependent and susceptible to the various manifestations of social life and our personal circumstances (Fineman 2013; Fineman and Grear 2013). Vulnerability to exploitation in the labour market or to sexual abuse, for instance, are issues that concern all individuals throughout their lives. Although we are concerned about children suffering harm in these conditions, it is not solely their status as children that triggers our moral intuitions; rather, it is the universality of vulnerability itself that demands that no such treatment should be permitted within a just political community. Vulnerability is inherently relational, and its potential to become a pathogenic source of harm arises from an imbalance in power and resources. A just social system should strive to reduce the correlation between vulnerability and harm by eliminating the sources of harm when possible or providing the necessary support to protect the vulnerable individual from threats posed by their vulnerability.

Equal Treatment and Vulnerability

The Liberationist critique of 'childhood' and its institutionalisation through the processes of segregation, socialisation, and normalisation has offered valuable insights into the quest for a just conception of 'childhood'. This chapter has delved into the Liberationist perspective, assessing its potential in shaping a moral and political status for children that transcends the life-stage dichotomy of childhood and adulthood. The Liberationist emphasis on addressing the unjust institutionalisation of childhood as a distinct life stage and advocating for equal treatment for all individuals represents a significant contribution. Recognising that 'childhood' is a social construct, and that prevailing assumptions about 'children' can be arbitrary and harmful to those affected, calls for a careful re-examination of our social institutions and practices concerning children. By challenging the status quo, the Liberationist view prompts us to question the underlying assumptions and biases that may perpetuate inequality and vulnerability towards the young.

However, I have argued against throwing the baby out with the bathwater. While branding a whole period of human life as 'childhood' may be unjust and arbitrary in its ascription and treatment, it does not imply that all aspects and practices within this concept are inherently harmful or unjust. My critique of Life-Stage conceptions centred on their generalised and comprehensive ascription of characteristics to children as a group, while my critique of Liberationist views is that certain human traits do justify differential treatment.

Sigal Benporath expresses a similar sentiment, emphasising that just because children are not strictly different from adults does not mean they are entirely equal (Benporath 2003, 132). This highlights the importance of clearly defining what justifies equal or unequal treatment of individuals, and accounting for the natural and social circumstances of our human condition. Differential categorisation and treatment can be justified when the circumstances of different individuals require it. The intention of Life-Stage approaches to justify generalised differential categorisation of 'children' is arbitrary, and inconsistent with basic liberal principles. On the other hand, the Liberationist intention to abolish 'childhood' altogether and treat all as equals overlooks morally relevant traits of individuals that necessitate accounting for differences.

I will propose an alternative approach that justifies differential categorisation based on morally relevant traits, such as vulnerability and dependence, rather than adopting an all-or-nothing stance. This means recognising that the particular condition of an individual, regardless of age, gender, or race, matters when assessing the moral validity of differential treatment. To do justice to the claims of all individuals based on their specific conditions, we must consider their vulnerabilities and the social institutions that may exacerbate or ameliorate their

situations. Chapter 4 delves deeper into the appropriate characterisation and classification of 'childhood' following these fundamental premises. By adopting a nuanced approach that accounts for individual circumstances, we can strive for an account of differential categorisation and treatment more in line with the principle of basic liberal equality.

4

An Adaptive Conception of Childhood

'We promise to treat each other with dignity and respect. We promise to be open and sensitive to our differences.'
Children's Statement from the UN Special Session on Children 2002

The previous chapters have explored the limitations of both Life-Stage and Liberationist conceptions of 'childhood' in justifying their categorisation of children. Life-Stage approaches fail to adequately justify the strict differentiation of children from adults, while Liberationists struggle to justify the strict equality between them. Building upon insights from both perspectives, this chapter introduces an alternative and more nuanced conception of 'childhood' (an adaptive model) that embraces diversity while upholding the principle of basic liberal equality.

The proposed conception of 'childhood' considers three fundamental frameworks that shape an individual's existence: embodiment, temporality, and space. The acute impact of these frameworks on an individual is determined by their vulnerability, developmental processes, and embeddedness respectively. Vulnerability has already been established as a justifying feature for differential categorisation (see the section 'Equal Treatment and Vulnerability' in Chapter 3). In this chapter, I explore how an individual's developmental processes (temporality) and their embedded relationship to their environment (space) may also warrant differential categorisation and treatment in accordance with basic liberal principles.

Learning from the limitations that affect Life-Stage and Liberationist conceptions, I introduce a more nuanced conception of 'childhood', one that is more sensitive to the diversity of the human condition. It accounts for the role that social constructions play in framing a human life and the capacity of individuals as agents who mould their own condition. In line with sociological research on childhood, it aims to encourage understanding 'childhood' as a radically plural phenomenon (James et al. 1998, 27). It is an account that, while grounded on universal frameworks that constitute the human condition (embodiment,

temporality, space, and agency), is sensitive to the diverse ways in which these frameworks affect the individual, and to the plural paths through which the individual relates to them. Following recent work on social biology, sociology, and psychology, the chapter claims that, even if the three frameworks structure and delimit a human life, individuals themselves, through their ability to adapt to their environment and condition, transform our preconceptions about the role that the individual plays in determining how these constitutive frameworks may impact who they are. The adaptive model of 'childhood' that is presented in this chapter appeals to the variable relationship each individual has with their own embodiment, their temporal condition, and their environment. It argues that a liberal political project must acknowledge this variability to justify differential treatment while maintaining equal respect for all individuals.

The underlying idea is that understanding 'childhood' need not involve an all-or-nothing approach to defining its specific characteristics and boundaries. By recognising certain constitutive frameworks as universal characteristics applicable to all humans, we pave the way for a moral and political account of children's status that treats them as equals while accounting for the particular circumstances that warrant differential treatment. This chapter sets the stage for a more inclusive and responsive understanding of 'childhood', moving away from rigid categorisations and embracing the dynamic and diverse nature of the human condition. It invites a reconsideration of the relationship between individuals and the frameworks that shape their lives, ultimately seeking an approach that better ensures basic freedom and equality.

Constitutive Frameworks

The human condition exists within various 'inescapable frameworks' (Taylor 1989, chapter 1). These are the physical, social, and conceptual boundaries that delimit and constitute who humans are, who they can be, and what gives value to their life. We all have bodies (embodied framework), we all exist in time (temporal framework), and we all occupy a space in the physical and social world (spatial framework). We cannot understand who humans are, or who a particular individual is, without locating them within these frameworks. However, as seen in previous chapters (Chapters 2 and 3), dominant approaches fail to fully account for the plural ways in which individuals can be located within these frameworks, despite that they should be seen as the 'inescapable contexts' from which any study of the human condition should be built upon (James et al. 1998, 34).

Building on the indisputable fact that humans have bodies, exist in time, and occupy space, I aim to explore how analysing the human condition through these frameworks can lead to a more robust understanding of 'childhood'. In Chapter 3,

vulnerability, a characteristic of the embodied framework, was introduced as a legitimate basis for differential categorisation. By examining the vulnerability of certain individuals and their relationships to the social world, I identified how it can justify differential categorisation. This chapter delves into the other two frameworks that contextualise human life: temporality and spatiality. It investigates the concepts of development within the temporal framework, and embeddedness within the spatial framework to further elucidate the necessity for differential categorisation.

Recap: Vulnerability and the Embodied Framework

The human life is inevitably determined and framed by its embodiment. Humans are conditioned by their corporeality, and its plural manifestations lead to varied influence of this framework on particular individuals. Children are usually defined as beings with particularly vulnerable embodiments.[1] This is the fundamental reason why it is considered that they are owed an especially protective and restrictive treatment: their vulnerable condition can have substantively corrosive effects on their life. Failing to consider how embodiment affects human ontology, as some Liberationist perspectives do (see the section 'Not Entirely Different but not Equal' in Chapter 3), can have serious consequences for those who are particularly susceptible to harm based on their embodied condition.

Moreover, vulnerability must be understood within the context of socio-legal structures (Mackenzie et al. 2014). While our embodiment can make us inherently vulnerable to certain forms of harm, vulnerability can stem from oppressive external sources: we are not always naturally vulnerable to social practices or environments; the particular ways in which practices and environments are constructed can make certain embodiments vulnerable to them. Intersections of gender, ethnicity, or disability can have a great influence on an individual's embodied experience, not always because of inherent vulnerabilities tied to certain human characteristics, but instead because of the problematic ways in which society and law respond to certain embodiments (Fineman 2008). Blind individuals are not inherently vulnerable to walking in urban environments; it is the lack of accommodation in urban settings for individuals without sight that creates vulnerabilities for them. For example, a blind person might be perfectly capable of navigating a city if there were tactile maps and Braille signs everywhere. But if the city does not see eye to eye with the needs of the blind, they are at a much greater risk of harm.

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[1] For a full analysis of vulnerability, see the section 'Limits to the Liberationist Conception' in Chapter 3.

Accounting for the plural sources of vulnerability that affect an individual is necessary for ensuring that their embodiment does not impose unjust burdens on their lives. Although vulnerability is a characteristic especially prominent during childhood, it is a condition that exists to varied degrees throughout the whole human life-course, and, if it is used as a justificatory mechanism for differential categorisation, it must be tracked throughout it, in order to do justice to the particular claims that all individuals may have based on their embodied condition.

The Temporal Framework and Development

The temporal framework pertains to the condition of humans as existing in time. From birth, we experience a constant state of flux. Our needs, capacities, and weaknesses undergo rapid changes, growth, and decline at different stages of our lives. Humans cannot be studied as static entities; instead, we must assess them within the evolving and dynamic context of their temporality. Similar to vulnerability being the defining characteristic of an individual's embodied framework, development plays a crucial role in shaping 'childhood' as a temporal condition. To comprehend children within the dimension of time, it is essential to understand how 'development' can be conceptualised and the role it plays in framing 'childhood' as a relevant social category.

The notion of 'development' as a central characteristic of childhood is not a novel idea. The Sapling model, previously discussed in the section 'The Sapling Model' in Chapter 2, adopts this perspective, defining 'children' as individuals in the phase of life in which they are progressing towards adulthood. According to this view, being a 'child' is merely a specific stage of human life, which concludes with the attainment of maturity. In this understanding of 'childhood', the development process is teleologically driven, necessary and endogenous. I highlighted two interconnected issues with the Sapling's understanding of 'development' and, consequently, with their notion of 'childhood': first, the arbitrary and vague distinction between 'developed' and 'developing' humans; and secondly, the characterisation of the latter based on reified assumptions of the former. In this section, I explore an alternative approach put forth by John Dewey, which retains development as structural to the temporal framework while sidestepping the problematic and unjust implications of the Sapling's interpretation of it. I aim to consider whether it is possible to maintain the idea of 'development' as integral to a conception of 'childhood' without embracing the determinism inherent in the Sapling model. The fundamental contention is that development is not exclusive to childhood, even though it may be particularly prominent during this phase, nor is it teleologically driven.

Before moving on, let me address briefly a distinction between two understandings of how 'development' may be temporally determined in order to avoid misunderstandings later on. An individual's life can be constituted by their temporal framework in two ways.[2] The first one refers to the teleo*nomy* of a person's development; that is, the natural and biological end-oriented temporal process of the human being, which forces them to grow, change, wither, and die, without human intervention and without a necessary goal or purpose. The second one refers to a teleo*logy* of human development; that is, a goal-oriented process that is triggered by particular human intentions or purposes (Mayr 1998). While the teleonomy of human development simply points to the inherent and inevitable biological fact of our temporal framing (we grow, we become taller, stronger, more cognitively developed, we die), a teleology of development, on the other hand, is a human-initiated process that directs the temporal framework in a particular socially prescribed direction (the rational, self-sufficient adult standard goal to be achieved during childhood is an example of this) (Jenks 2005, 37, 44). By standing against the understanding of 'development' endorsed by the Sapling model, I am simply saying that we must distinguish between the two ways in which the development process of humans as temporal beings can be determined by its *telos*—as a natural end (*teleonomical*) or as a socially driven (*teleological*) goal.

Dewey on 'Development'

The philosopher and pedagogue John Dewey was among the first to identify a flaw in conceptualising the temporal framework of 'childhood' as teleological and predetermined by the goal of reaching adulthood (Dewey 1920, chapters 4, 5). He argued that this comparative view of development, which juxtaposes the temporal frameworks of children and adults (with the former being temporally framed and the latter not), restricts our ability to comprehend both the intrinsic characteristics of children and the value that childhood holds in an individual's life. Additionally, it limits our understanding of the role that the temporal framework plays throughout the entire human life, including adulthood (Dewey 1920, 49–50). In contrast to the teleological perspective of development in the Sapling model, in which childhood is seen as an unfolding of 'latent powers toward a definite goal [adulthood]' (Dewey 1920, 65), Dewey proposed a teleonomy of the human temporal framework, viewing life as an ongoing process of development.

According to Dewey, all individuals are temporally framed as developing beings, and humans undergo radical changes throughout their entire life-course. Development is not a phenomenon tied exclusively to childhood; rather, it is a

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[2] See the roots of the distinction in biology in Pittendrigh (1958).

universal aspect of human life that should be taken into consideration in normative deliberations about what is owed to every individual (Dewey 1920, 49–54). This perspective does not negate the importance of prioritising the higher speed and intensity of the development process of certain individuals, such as children or the elderly. Instead, it emphasises that while development may be particularly prominent during specific periods of life, we must not overlook its impact on all periods.

Dewey viewed human beings as possessing a unique plasticity in their condition, signifying their capacity to change and adapt over time, for better or worse. While all individuals undergo transformation and growth, certain internal and external factors can make humans more or less malleable. The plasticity of children and the elderly is heightened owing to their distinct temporal framing, but throughout our entire lives we may encounter situations that reinforce our plasticity, such as an identity crisis, job loss, or becoming a parent. These elements are all part of our ongoing development as humans (Dewey 1920, 57–68). Seeing human beings as constantly developing suggests that we cannot draw a clear threshold to distinguish the needs, interests, and capacities of 'developing' and 'developed' beings. Plasticity requires viewing humans in all their temporal dimensions; it requires an understanding of what is owed to them in the present, what they will become in the future, and what they are in the process of becoming within their temporal framework.

Emphasising development as a universal trait of human life makes the temporal framework in which we locate children both ephemeral and permanent. From the moment of conception, human beings embark on an unceasing process of change. Their physical and mental abilities evolve and decline, their emotions adapt to circumstances, their future aspirations become realities or setbacks, shaping their self-understanding, and their present actions and circumstances later become memories and experiences. Additionally, even stability in human behaviour can be seen as a form of development (Bronfenbrenner and Morris 2006, 796). Stability requires reinforcement, negotiation, reflection, and affirmation of one's values, choices, and principles. It demands personal growth, the act of making choices, and the commitment to stand by those choices. In essence, 'life means growth' (Dewey 1920, 61), making development a permanent temporal framework of human life.

A 'lacking' conception of 'childhood' encourages understanding human development in a passive and negative sense that takes the latent capacities and potentialities of the child as unachieved. Opposite to this, Dewey proposed that they should be looked at as positive features:

> the terms 'capacity' and 'potentiality' have a double meaning, one sense being negative, the other positive. Capacity may denote mere receptivity … We may mean by potentiality a merely dormant or quiescent state—a capacity to become something

> different under external influences. But we also mean by capacity an ability, a power; and by potentiality potency, force. Now when we say that immaturity means the possibility of growth, we are not referring to absence of powers which may exist at a later time; we express a force positively present – the *ability* to develop. (Dewey 1920, 49)

From Dewey's perspective, 'childhood' is not a passive stage moving towards a predetermined teleology, but rather an active endeavour in which the child plays a significant role in defining the means and objectives of their development. Unlike the endogenous development suggested by Sapling theories, which assume that the child develops guided by an externally imposed objective (Dewey [1897] 1993, 105), Dewey asserts that children themselves have control over both the means and the ends of their developmental process.

According to Dewey, children's growth and development are not solely aimed at reaching a socially predetermined stage. Instead, they engage in this process to utilise their inherent abilities and potentialities, not only to adapt to their changing nature, but also to actively influence and shape their identity. In Dewey's view, the child is an agent of their own development, actively participating in the construction of their journey rather than being passively led towards a predefined destination. 'Development', in Dewey's words, 'is essentially the ability to learn from experience; the power to retain from one experience something which is of avail in coping with the difficulties of a later situation. This means power to modify actions on the basis of the results of prior experiences, the power to develop dispositions' (Dewey 1920, 53).

Indeed, the temporal framework of 'childhood' is not a passive, linear process, but rather an active endeavour that all individuals navigate for themselves. Sociologists of childhood, including Alison James and others, have provided valuable insights into this framework and its implications for 'childhood' (James and James 2004; Uprichard 2008). They have argued for an understanding of children as not static, nor reified within their life stage, but rather being situated in their own past, present, and future (James et al. 1998, 207). Moreover, awareness of the behavioural and developmental variability of humans means that, as James et al. argue (James et al. 1998, 63), 'status positions such as "child" or "adult" cannot simply be regarded as an inevitable, naturalized effect of this passing of time'. Rather, they are relative categories representing the same evolving person, who should be considered in all their temporal facets simultaneously (Uprichard 2008, 306). Taking a teleological approach to understanding development, as some models such as the Sapling conception of 'childhood' might suggest (Tomlin 2018a), fails to acknowledge the variable and negotiated realities that children experience as they grow and change (Oswell 2013, 41–2). The pace and direction of development are not uniform; individuals do not all grow at the same speed or towards the same goals. Recognising this variability in development paths and tempos is essential in respecting the diversity of human experiences.

To conceptualise children within the temporal framework, four key claims are put forward: First, the temporal framework should be seen as teleonomical rather than teleological. This means that it is not driven by a predetermined endpoint or goal (teleology), but rather by an inherent tendency for continuous development throughout the entire human life-course (teleonomy). Secondly, the development process within this temporal framework is universal and applies to the entire human life. It is not exclusive to childhood but remains present and influential throughout a person's entire existence. Thirdly, the inherently gradual nature of development means that strict binaries, such as rigid distinctions between childhood and adulthood, are inadequate to capture its complexity. Instead, development occurs along a continuum, and individuals may experience different rates and paths of growth. Lastly, individuals should be recognised as active agents in their own development process. They possess a certain degree of control over both the means and the ultimate goals of their personal growth, shaping their own identity and affecting change in their lives.

The absence of clear-cut differences between childhood and adulthood, along with the continuous and gradual nature of the human development process, calls for caution against reifying the characteristics, needs, and interests of differently positioned individuals (Archard 2004, 45). Differential treatment can still be justified based on the recognition of certain conditions, but it should be considered in a relative manner, contingent on the degree of its effects rather than a binary opposition between 'developing' and 'developed' individuals. This nuanced approach to understanding 'childhood' within the temporal framework helps avoid simplistic categorisations and recognises the diverse and evolving nature of human development. It encourages a more thoughtful consideration of individual needs and vulnerabilities, allowing for a more just and responsive approach to differential treatment.

The Spatial Framework and Embeddedness

In exploring the spatial framework as a constitutive aspect of childhood, it is crucial to acknowledge the work of communitarians and critical political theorists (Taylor 1989, part I; Young 1990, chapters 1, 2; Sandel 1998, chapters 1, 4). These scholars emphasise the significance of situating individuals within their social context and how social structures profoundly shape considerations of morality and justice (Young 1990, 5). It is undeniable that children, like all human beings, are profoundly influenced and conditioned by their social environment. Our identities, development, relationships, thoughts, and behaviours are deeply impacted by our social space, its laws, institutions, culture, and the ways in which others perceive, treat, and socialise us. Recognising the role of the spatial framework is essential to comprehending the essence of childhood.

Indeed, emphasising the social environment as constitutive to the self does not necessarily imply granting normative prominence to the collective over the individual. The claim can be more modest: to transform the current state of affairs, and gain a more profound understanding of the human condition, we must recognise the pivotal role that the social world plays in shaping human lives, rather than attempting to address it in isolation. Our human condition, as both biological and social beings, imposes certain limitations that prevent us from creating perfectly just societies. It is vital to be conscious of these limitations as descriptive facts about the world. Without such awareness, it becomes challenging to overcome the harmful effects caused by social phenomena or grasp the potential benefits that can arise from them.

Being constituted by a spatial framework can be expressed through the concept of 'embeddedness'. This concept draws from the economic-historical tradition initiated by Karl Polanyi's critique of formal economic models (Polanyi [1944] 2001, especially chapters 4 and 5). An appeal to embeddedness challenges models of behaviour and normative theories that detach themselves from specific social contexts and history, presenting themselves as mostly universal and 'universalizable' (Granovetter 1985, 483–4). These detached political theories are often referred to as 'disembedded'. In contrast, 'embedded' theories are normative and behavioural models that consider the interdependence of individuals, their social and relational context, and their historical conditions as essential to any evaluation. If our intention is to establish a workable conception of 'childhood' that can provide normative guidelines, the spatial framework that embeds childhood in a particular social context becomes a necessary feature.

Embeddedness can be approached as a social or non-social phenomenon. Non-social embeddedness refers to the natural environment that shapes human existence, rooted in our embodied condition and explaining our physical presence and dependence on the physical world. On the other hand, social embeddedness pertains to the spatial frameworks that define us not by our biology but by our immersion in specific social and cultural systems.

Children exemplify strong embeddedness from the moment of birth. Their introduction and socialisation within specific social contexts significantly influence their cognitive development, identity formation, and overall growth. This dual aspect of embeddedness holds two implications for the concept of 'childhood': first, it highlights the impact of social forces on shaping the concept itself; secondly, it emphasises the plurality and contingency of children's social embeddedness, which varies according to the specific spatial contexts they inhabit (James et al. 1998; Oswell 2013).

Anthropological, psychological, and sociological research on childhood have employed this spatial framing to challenge universal characterisations and classifications of 'childhood', recognising that each child is socially embedded in a

distinct setting. Anthropologist David Lancy's work exemplifies how 'childhood' assumes radically different forms across societies; the concept undergoes transformations, as does the understanding of it, and experience of childhood from the child's perspective (Lancy 2015, chapter 1). Different cultures delineate adulthood through various rites of passage: in some, it may involve becoming a parent, while in others, marriage, economic independence, or going to war signify the transition to adulthood (James et al. 1998, 63). Having explored the role of social frameworks in constructing the concept of 'childhood' generally (see the section 'Childhood as a Social Group' in Chapter 1), this section focuses on how the embedded nature of children shapes who they are and who they can be at the individual level.

Psychological research on human behaviour and child development reveals the strong influence of environmental factors on the cognitive development and construction of an individual's identity (Schaffer 1996, 60). This observation, when considered in conjunction with our exploration of the embodied and temporal frameworks, underscores a fundamental claim put forth by psychological literature: the embodied and temporal aspects of a child's life cannot be detached from the spatial environment in which they grow. Environmental and relational factors play a constitutive role in shaping the child's identity, just as much as their body does (Schaffer 1996, 46–50, 96).

While it may be possible to distinguish certain elements of an individual's identity as being influenced by either nature or nurture, most of our behavioural patterns, developmental processes, and identity formation are profoundly impacted by both sources. Therefore, children's social embeddedness holds equal significance in shaping 'who they are' as their genetic make-up. The spatial environment in which the child is situated interacts with their embodied and temporal frameworks, leading to a complex interplay of factors that define their individuality and development.

Sociology further elucidates how the social environment plays a crucial role in shaping the concept of 'childhood' and the identities of children. Like the temporal framework, the spatial framework acknowledges the universality of a child's embeddedness while recognising the importance of specificity in its implications for individual children (Jenks 2005, 6–7). Every conception of 'childhood' and the distinct identities, behaviours, and characteristics of children are products of their specific social environments. Consequently, childhood and its various conceptions exhibit significant variations depending on the unique aspects of local contexts and historical periods (Pufall and Unsworth 2004, 18). Moreover, how a particular child responds to, and engages with their socialisation processes also plays a vital role in shaping their childhood experience (Lee 2001, 39; Jenks 2005, 38). Young humans are remarkably receptive beings, continuously assimilating and imitating the behaviours and manners of those around them (Adams 2008, 43).

Thus, situating childhood as deeply embedded within these relational dynamics and fundamentally dependent on the social environment is essential for comprehending the complexities of who children are and how they develop.

Embeddedness: Normative and Descriptive

The concept of 'embeddedness' appears to imply a somewhat deterministic understanding of how the spatial framework shapes an individual's life. It suggests that 'children' (or all humans for that matter) are passive recipients of external influences that define and determine who they are. Philosopher Charles Taylor is one of those who advocated for a normatively embedded view of the human being (Taylor 1989, chapter 2). He goes beyond a purely descriptive account of human embeddedness, as explored in psychological, sociological, and anthropological literature. Taylor argues that an individual's embeddedness within the social context not only constitutes their personhood, but also defines their particular position in the moral universe (Taylor 1989, 27). According to this approach, children are entirely dependent on and mere reproductions of the social world within the 'horizons' it provides. The self, therefore, can only be understood as situated and determined within the social dynamics and structures that frame it (Taylor 1989, 36).

As a critique of the Liberationist position, I have argued that certain social constructions and practices must be taken into consideration (as descriptive facts) to evaluate the just normative response to their existence (see the section 'Forms of Vulnerability' in Chapter 3). Taylor's account of the role of social practices goes even further, providing a stronger critique: not only is the separation of the child from their specific socially constructed environment a descriptive fallacy (as I claim), but it is also normatively harmful to isolate the child from their particular social reality. This reality gives meaning to individuals' identity formation and shapes individuals' conception of themselves, what is right, good, and just (Taylor 1989, 25–32). Understanding embeddedness as a normative concept implies that an individual can only fully develop as a human agent through the adoption of the particular life conception within their social environment (sociologists would refer to this as 'internalisation') (see also Appiah 2005, chapters 1, 2).

The recognition of our dependence on and conditioning by the social world does not imply that we are strictly and unilaterally subjected to it. Despite being constituted through their spatial framing, individuals still retain a certain degree of control over how they relate to their external environment. Acknowledging that the human life's dependence on its social setting does not necessitate endorsing the idea that it is entirely controlled by it (Benhabib 2002, 51).

John Dewey's perspective on the process of human development and learning, tied to experience (Dewey [1938] 1997), offers an intriguing viewpoint on how

spatial frameworks during childhood could be understood beyond Taylor's perspective. Dewey recognises children's dependence on their environment while asserting their active agency in shaping it. As mentioned earlier, Dewey's main argument regarding 'human development' goes against a comparative and passive understanding of it. The mistake made by 'preparation theories' of childhood (such as Sapling conceptions) is that they view child development as a distinct stage opposed to adulthood (Dewey 1920, 59). According to this view, children unfold their potential towards achieving a set of predetermined competences based on their capacities and the social environment (Dewey 1920, 65). Dewey contends that this perspective promotes an understanding of childhood as a passive stage of life, in which children develop endogenously only to conform to the exogenous standards of adulthood imposed by a particular social setting (Dewey 1920, 60). This would be analogous to claiming that the embedded framing of children makes them merely passive recipients of their social environment and its exogenous standards.

Dewey's account of 'development as experience' offers a compelling connection between the temporal and spatial frameworks of childhood. If the temporal framework of 'development' is not predefined by a teleology, thanks to the child's active shaping of their temporal frame, then, even though their embedded condition provides a structure to the child's spatial framework, it does not do so entirely. Through the concept of 'development as experience', Dewey places children in the driver's seat of their own character-building process (see Dewey [1938] 1997). They absorb external influences and stimuli while transforming them according to their own experiences and individuality. As Dewey explains, 'purely external direction is impossible. The environment can at most only supply stimuli to call out responses. These responses proceed from tendencies already possessed by the individual' (Dewey 1920, 30).

Dewey's account of experience transforms both the temporal and spatial frameworks: development becomes an open-ended process defined by the child's active interaction with their social environment (Dewey [1938] 1997, chapter 3). This view acknowledges the child's agency in their own development, emphasising that their responses to the stimuli around them stem from their existing inclinations and tendencies. As a result, the child is not merely a passive recipient of external influences but an active participant in shaping their own growth and understanding of the world. By combining the temporal and spatial frameworks through the lens of experience, Dewey highlights the dynamic and dialectical relationship between the individual and their environment, offering a more nuanced perspective on the complexity of childhood and human development.

This understanding of the interactive relationship between individuals and their social environments finds support in both psychological and sociological

literature. While acknowledging the constitutive role of the spatial framework in influencing children's development and identity, models such as the bioecological or the transactional models of development emphasise the importance of considering not only the external properties of a social and natural space, but also 'the way in which the properties are subjectively experienced by the person living in that environment' (Bronfenbrenner and Morris 2006, 797).[3]

The same spatial framing can have dramatically different effects on different individuals, depending on their unique character, history, and experiences. Even two individuals growing up in the same household with identical education, parenting, and external influences can respond and develop in vastly different ways based on their individual tendencies and agency (Pinker 2002). For example, a parent's negative reinforcement might break one child's self-esteem but serve as a source of strength and resourcefulness for another. Similarly, living under oppressive social conditions can lead some individuals to submit, while others may be driven to rebellion. It is crucial to understand that social structures do not passively determine children's development. Instead, children can exercise 'a variety of modes of agency', and position themselves flexibly and strategically within particular social contexts, exerting some degree of control over how the environment affects them (James and Prout 1995, 78).

To illustrate this point, Dewey offers the example of an astronomer who is more embedded and situated among the stars within the range of their telescope than in the physical social life surrounding them (Dewey 1920, 13). This example highlights how individuals, including children, can selectively give relevance to certain elements of their environment, thus actively constructing and transforming their spatial framework. For instance, a sporty individual may immerse themselves in the football field, finding a sense of belonging and purpose in the sports community. Similarly, a book-loving child might seek refuge and fulfilment at the library, where they can explore the world through literature. Meanwhile, a child with religious inclinations may find a place of belonging and expression in a church or place of worship. These choices reflect how children's inherent interests and proclivities shape their spatial framework and how they actively participate in constructing their own sense of identity and place in the world.

Dewey's open-ended perspective on 'childhood' presents a significant shift in how we understand the interplay between the temporal and spatial frameworks that shape a child's life (Dewey [1938] 1997, chapters 1, 5). It recognises that a child's development and relationship with their environment are not solely individualistic and internally driven, nor are they entirely passive and determined by external social structures. Instead, Dewey's view emphasises a complex and

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[3] The bioecological and transactional models will be discussed in more detail in the section 'The Agentic Framework and Adaption'.

dialogical interaction between the self and the world, wherein the child plays an active role in shaping their own development. This perspective aligns with the concept of adaption, acknowledging that while the social environment does embed the child within a particular set of options and choices (the spatial framework), it is the child's own active interaction and transformation of themselves and their environment that guides the development process (temporal framework) (Dewey [1938] 1997, 130). In other words, children are not merely trapped in and passive recipients of their social environment; instead, they exhibit an adaptive condition, actively engaging with their surroundings and using their inherent capacities to navigate and shape their development.

The Agentic Framework and Adaption

Conceptualising 'childhood' as adaptive rejects the idea of children as passive recipients of their social environment or as entirely self-determining individuals. Instead, it acknowledges that children enter the world with innate dispositions and characteristics that interact with their social environment in complex ways. This perspective aligns with the 'transactional model of development', which considers three key factors shaping a child's developmental path: natural dispositions, environmental conditions, and the particular interactions among the two (Sameroff 1975; Schaffer 1996, 390–5; Moshman 2011).

Psychology's bioecological model of development, as well as sociological studies on the interplay between structure and agency, further refine this understanding. The bioecological model, proposed by Bronfenbrenner and Morris (2006), emphasises the dynamic relationship between a child and their environment, highlighting the reciprocal impact of each on the other. Meanwhile, sociological approaches explore how individuals actively engage with their social context and exercise agency within structural constraints (Giddens 1984; Oswell 2013).

Psychological Sources

The bioecological model of human development offers valuable psychological insights into the dynamic relationship between the child and their frameworks (Bronfenbrenner and Ceci 1994). This model aligns with the claims made in this chapter by emphasising the crucial role of environmental contexts (spatial framework), individual characteristics (embodied framework), and their dynamic interaction over time (temporal framework) in shaping human development (Bronfenbrenner and Morris 2006, 795).

Rather than isolating these elements, the bioecological model highlights the significance of their interconnectedness and dynamic relationships in

understanding the individual and their development (Bronfenbrenner and Morris 2006, 797–800). While all humans are born with certain genetic dispositions that influence their character before socialisation (Pinker 2002, especially chapter 3), the processes of mental, moral, and physical development during childhood are not uniform for every individual. Each child reacts, responds, and internalises these processes in unique ways (Hoffman 2000, chapter 2; Bloom 2004, 19–24).

The bioecological model acknowledges that specific dispositions, access to social, cultural, and material resources, and the response of social environments to an individual's inclinations all strongly impact their particular developmental outcomes (Leventhal and Brooks-Gunn 2000; Bronfenbrenner and Morris 2006, 795–6; Paat 2013). Thus, while external frameworks play a role in an individual's developmental outcomes, understanding the complex process of development and identity-formation requires a consideration of the active interplay between the environment and individual dispositions (Bronfenbrenner and Morris 2006, 797). This perspective emphasises that the individual and their environment are mutually influencing and shaping each other throughout the developmental journey.

An essential takeaway from this discussion is that the internalisation and socialisation processes, which concerned the Liberationists, are not the sole or omnipotent determinants of an individual's identity or development; they should be seen, in Gibbs's terms, as 'opportunities' available to the child, opportunities over which the individual has a significant degree of control (Gibbs 2014, 68). While our spatial framework does impose certain constraints and limits on the available options, individuals still possess the agency to construct their own life-course by making choices and taking actions within these opportunities (Bronfenbrenner and Morris 2006, 822).

Human embeddedness, despite delimiting the available options to some extent, remains an open framework that allows for adaption and transformation based on individual experiences and dispositions. Thus, in addition to the three constitutive frameworks mentioned earlier (embodied, temporal, and spatial), the person's character, their unique way of perceiving the world and themselves, and their role as an agent serve as a fourth (agentic) constitutive framework that any understanding of 'childhood' must consider.

A Philosophical Account of 'Adaption'

The concept of 'adaption', along with the inclusion of an agentic framework in our understanding of the human condition, aims to avoid two errors that arise from opposite perspectives: the unencumbered and the reified (Bhaskar 1979, 45–6). On the one hand, viewing human life as devoid of constitutive frameworks that bind and limit it (unencumbered) leads to harmful idealisations of human potential and possibilities (Brando 2020). On the other hand, ascribing all-powerful influence

to the social world and to its impact on these constitutive frameworks may lead to reifying social practices and customs as if they were objective and unchangeable. It risks portraying humans as passive recipients of external influences, entirely determined by their particular temporal, spatial, and embodied conditions.

I will not say much on the error of unencumbered conceptualisation as I have done so already.[4] Defining 'childhood' in isolation from the embodied, temporal, and spatial frameworks is indeed highly problematic. Humans are shaped by these constitutive features, and ignoring their role in defining 'childhood' can lead to serious oversights and injustices. The embodied vulnerability of children, their continuous and dynamic development over time, and their receptivity to the influences of their spatial environment are fundamental aspects of their existence. These features interact and shape the experiences and identity of each child in unique ways. Failing to acknowledge the structural role of these frameworks can result in overlooking the specific needs, vulnerabilities, and experiences of children. It may also lead to questionable normative conclusions regarding who children are, and what they deserve in terms of rights and support.

Acknowledging childhood as structured within embodied, temporal, and spatial frameworks does not imply absolute submission to any particular preconception of these frameworks or how they should shape a child's life. It is essential to avoid the error of reified conceptualisation, which would treat these frameworks as rigid and unchangeable. The role of the social environment in determining a child's identity is crucial, but it should not lead to the uncritical acceptance of all cultural practices and traditions without considering their potential impacts on children. Scholars in the African context (see Ncube 1998b), rightly emphasise the need to examine the specific interactions between children, adults, and cultural practices within a social environment to understand potential sources of discrimination and harm. For example, Kabeberi-Macharia (1998) highlights the importance of scrutinising cultural practices such as female genital mutilation and how they can hide harms to children under the guise of tradition. It is essential to recognise the spatial framework as fundamental to understanding 'childhood', but this recognition does not mean that every aspect of a given spatial framework is beneficial or just for children.

Sociological studies have shed light on the dialectical relationship between childhood and its constitutive frameworks, exploring the interplay between individual agency and social structures. For instance, Anthony Giddens (1984) critiques both reified and unencumbered views of the human condition. He argues against the notion that society solely determines an individual's identity and against the extreme belief that individuals construct themselves in isolation

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[4] As argued in Chapter 3 regarding the harmful omission of the embodied vulnerability of childhood (see the section 'Forms of Vulnerability' in Chapter 3), and earlier in this chapter on the need to account for children's development process and their embedded nature ('Embeddedness: Normative and Descriptive').

(Giddens 1984, 25). Instead, Giddens proposes a dynamic relationship of inter-dependence between the social and the individual, in which they mutually shape each other (Alderson 2013).

This dialectical perspective emphasises that any understanding of the human condition must consider the interaction between the social structures that influ-ence human behaviour, and the agency of individuals who actively engage in building, maintaining, or transforming these structures (Oswell 2013). It rejects the idea of conflicting dualism, and presents a nuanced view in which society and individuals are seen as two sides of the same coin (Oswell 2013, 45). This understanding holds true even for those who are highly vulnerable, in the process of development, and dependent on social and relational support, such as chil-dren. Children are both conditioned by their constitutive frameworks and actively influence these frameworks through their choices and actions as agents (James and Prout 1997, 7; Oswell 2013, 41).

Being embodied, temporal, and situated beings does not imply individ-uals passively adopt predetermined life scripts based on their bodies, life stage, and social environment (Sen 2006, 5). It involves actively experiencing and adapting to the life predisposed by these frameworks. The social world offers influences, stimuli, opportunities, and limitations, to which individuals respond based on their dispositions and character (Sen 1998, 23–4). 'Adapting to' means individuals possess an agentic framework, actively navigating their environment, bodies, and capacities to construct themselves. Children's consti-tutive frameworks provide a horizon of possibilities for their lives, capabilities, and choices. Yet they retain agency and control over external influences that shape them, the specific path they take, and how they confront challenges (Sen 2006, 35–6). Understanding childhood as adaptive acknowledges that children actively contribute to their development process, competence acquisition, and interactions with the social world without detaching themselves from their constitutive frameworks.

Viewing children as 'adaptive' recognises the power of constitutive frameworks in shaping human life, while acknowledging the child's central role in determining how this process unfolds. This has two normative implications: First, we must rec-ognise the impact of these frameworks in shaping who an individual can become. Second, we need to acknowledge the child's agency in shaping their interaction with these frameworks. The dialectical relationship between the child and their frameworks rejects the notion of a 'unilineal, natural, inevitable and universal pro-gression' towards predefined notions of adulthood or childhood (Nolan 2011, 2). Instead, it emphasises the child's active role in their own character development. Considering the child as an agent with inherent dispositions prior to socialisation highlights the responsibility of the socio-political community to respect the child as an active participant and to support their development in alignment with their individual traits.

An Adaptive 'Childhood'

This chapter has presented an alternative conceptualisation of 'childhood', building on the strengths and limitations of the Life-Stage and Liberationist approaches. It has introduced the three constitutive frameworks—embodied, temporal, and spatial—that underpin any classification of 'childhood'. These frameworks highlight vulnerability, development, and embeddedness, providing a basis for justifying potential differential categorisation and treatment of individuals with varying extents of these characteristics. Additionally, the chapter proposes interpreting the child's relationship to these frameworks as 'adaptive', highlighting their active role in shaping how these frameworks impact their lives. Children are not passive recipients of their constitutive frameworks; rather, they actively engage in shaping their experiences and interactions within themselves. This approach leads to three core principles for conceptualising 'childhood':

1   A framework-based assessment: 'childhood' must always be assessed based on the embodied, temporal, and spatial frameworks that constitute an individual;

2   Consideration of individual adaption: variations conditioned by an individual's agency and adaption to the frameworks must be accounted for in any assessment;

3   An interaction-based explanation: it is the interaction between the agency (2) and the constitutive frameworks (1) that explains a person's condition, thus their possible classification as 'children'.

This conception of 'childhood' challenges the validity of rigid, all-or-nothing accounts in two significant ways. First, it refutes the notion of a standard, predetermined track and pace of children's development. Instead, it asserts that the temporal and embodied frameworks of childhood are not linear and fixed but rather influenced by the child's unique character and their interaction with the specific social environment. Second, it questions the possibility of defining 'what a child is' solely based on the spatial framework in which they are situated. Recognising the active role that children play in navigating and adapting to their environment calls for an open and flexible definition of 'childhood', one that accommodates the diverse and variable adaptive processes that individual children undertake in their particular circumstances.

The relationship between the individual and the three frameworks is intricate, with each influencing and shaping the others in a dynamic dialectic. At the heart of this cycle lies the agentic self. As per the bioecological model, 'the characteristics of the person function both as an indirect producer and as a product of development' (Bronfenbrenner and Morris 2006, 798). The individual's agency, innate inclinations, traits, and characteristics impact the formation of their embodied,

temporal, and spatial frameworks, which, in turn, influence their vulnerabilities, development, and embeddedness, all contributing to the construction of the agentic self.

From the outset, each individual enters the world with inherent dispositions that shape their temporal and embodied frameworks, as well as their interaction with the social environment (spatial framework), thereby defining their opportunity sets. However, it is essential to recognise that these constitutive frameworks are not isolated; they continuously interact and influence one another. For instance, a child's specific embodiment can significantly affect their developmental trajectory, while their particular social embeddedness can influence both their vulnerabilities and development paths. Understanding the intricate ways in which these frameworks intersect and influence an individual's condition is vital for a comprehensive understanding of their claims to justice.

The principle of basic equality requires treating equal cases equally and unequal cases differently, provided that the difference is morally relevant for the assessment at hand. To establish a just and consistent categorisation of 'childhood' in line with liberal principles of justice, it requires a non-discriminatory and morally relevant understanding of what makes this category distinct, justifying differential treatment for individuals falling under this heading. Blanket differentiation, as advocated by Life-Stage approaches, and blanket equality, as supported by Liberationists, fail to account for the meaningful equalities and inequalities that render the category of 'childhood' morally significant. Instead, the complex interaction between an individual's vulnerability, development, and embeddedness justifies classifying everyone as different, and necessitates specific treatment as a matter of justice.

Throughout our lives, we may experience periods of being more or less 'children', influenced by diverse circumstances, and our unique adaption to constitutive frameworks. There is no predetermined and normative definition of 'childhood' or how individuals in this category should be treated (Oswell 2013, 40); it depends on the assessment of the intersections between an individual, their agency, and their constitutive frameworks. The legitimacy of differential categorisation and treatment is contingent upon how acute the influence of these three constitutive frameworks is across an individual's life. The impact and potential harm that an individual's vulnerability, development, and embeddedness may have on their life, dignity, and flourishing justify their differential categorisation, and the moral validity of providing them with special protections, restrictions, and provisions not guaranteed to the rest of the human population. This revised conception of 'childhood' aims to demonstrate the normative necessity of ensuring differential categorisation and treatment for certain individuals as a matter of justice, while upholding basic liberal commitments.

Closing Remarks

Joel Feinberg used the idea of 'relative-child/relative-adult' to highlight the blurry line that divides these two groups if one considers the individual's particular condition. He argued that distinctions between 'childhood' and 'adulthood' should be considered 'only useful abstractions from a continuous process of development, every phase of which differs only in degree from that preceding it' (Feinberg 1992, 95). To ensure equal respect for each individual, we must avoid reifying categories and instead develop a system that ensures appropriate categorisation and treatment based on the individual's actual living condition rather than on harmful generalisations. Revising our conceptions of 'childhood', therefore, goes beyond simply advocating for changes in the age or abilities required to be an adult; it calls for a pluralised and critical analysis of the strict category to understand what justifies its existence and apply its standards equally to all individuals.

The main objective in this part of the book has been to explain the moral relevance of the concept of 'childhood' and to assess the justifiability of prominent conceptions of 'childhood' in the literature, considering their compliance with basic liberal principles. Both Life-Stage and Liberationist conceptions have been critiqued, and an alternative, the Adaptive conception, was presented that can justify differential treatment based on morally relevant traits in certain individuals (partially aligning with Life-Stage approaches), while arguing against the imposition of strict generational classification for differential treatment (in line with Liberationists). By thoroughly exploring the concept of 'childhood' and its significance for theories of justice, Part II addresses its second objective: to provide an account of what a theory of rights requires to accommodate the needs of an Adaptive conception of 'childhood'.

Part II

Grounding Children's Rights

5

Theories of Rights: Choices, Interests, and Capabilities

Part I examined the moral significance and legitimacy of the concept of 'childhood' and its different conceptions. It argued for an Adaptive conception of 'childhood', highlighting the importance of an individual's embodied, temporal, and spatial constitutive frameworks. Building on this foundation, Part II delves into how this understanding of 'childhood' relates to children's rights.

Approaching justice for children can take various paths, such as accounting for the duties others have towards them (O'Neill 1988), assessing the distribution of fundamental goods (Macleod 2010; Gheaus 2015a), and considering the rights they should have guaranteed (Archard 2004). This book adopts a rights-based approach to explore the just treatment of children, driven by two main reasons. First, a rights-based approach acknowledges children as equal moral beings entitled to be treated as subjects of justice, not objects. Second, this approach offers more than mere entitlements, as it involves studying the grounding claims justifying these rights, the responsibilities of others to protect them, and the symmetries and differentiations in provisions, freedoms, and restrictions among various human populations. By starting with a focus on rights, I can explore the status of children within different conceptions of justice, the morally relevant characteristics that justify the differential treatment of children, and the mechanisms and justifications that legitimise treating individuals differently concerning their protections, restrictions, privileges, and freedoms.

Part II begins by introducing the basic framework that structures the study of rights. It then explores prominent approaches to children's rights within contemporary liberal philosophy. Lastly, it offers an original account of the legitimacy of differential treatment for certain individuals and how children can be accommodated within this framework. The goal is to provide a general groundwork that structures the debate on children's rights. The analyses here are informed by the insights gained from the previous section, emphasising

that children possess an a priori equal moral status. Therefore, any differential privileges or restrictions must be justified based on an individual's specific condition, considering their embodied, temporal, and spatial frameworks rather than their social grouping. In this regard, Part II lays down the guiding principles for understanding rights, the mechanisms for their acquisition, and various ways in which they may be violated.

This chapter serves two primary objectives: first, to establish the foundational aspects of the philosophical debate on rights and its application to children, and secondly, to clarify the concept of 'rights' by addressing the grounds for right-holding,[1] and the legitimate claims that should be considered in the allocation of rights. To achieve these goals, the chapter examines Amartya Sen's (1985) typology for evaluating moral claims as a useful tool to determine the content and distribution of rights.

The chapter first delves into the long-standing debate between Choice and Interest theories of rights, which is crucial for any discussion on right-holding. It advocates for Interest theory as the most justifiable grounding for rights, while acknowledging the significance of choice (and agency) in the allocation of differential rights. Building on the notion of interests as the source for right-holding, it applies Amartya Sen's typology of moral claims to elucidate the diverse interests that a theory of rights must consider when evaluating the allocation of rights. It argues that rights can be viewed as safeguards for capabilities, encompassing well-being and agency freedoms and achievements. This perspective will be employed in Chapters 6 and 7 to critically assess how the Standard Liberal, the Liberationist, and the UNCRC's literature conceptualise children's rights.

Choice and Interest Theories of Rights

The grounds that justify the possession of rights have been categorised into two overarching models: Choice and Interest theories of rights (Goodin and Gibson 1997).[2] Choice theories assert that a person has rights based on their capacity to enforce or waive the corresponding duties; in other words, rights protect an individual's choices (Goodin and Gibson 1997, 186). On the other hand, Interest theories argue that rights are not about protecting choices but safeguarding fundamental human interests that impose duties on others to enforce them (Goodin and Gibson 1997, 188). According to Interest theories, a

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[1] This chapter mainly focuses on the source of right-holding among entities with moral status, rather than delving extensively into what gives an entity moral status, which is the basic condition for any moral concern and the possession of rights (Arneson 2014; Jaworska and Tannenbaum 2014).
[2] For the overall justification for Choice or Will theories of rights see Hart (1973), and Steiner (1998). For Interest or Welfarist theories see MacCormick (1976), Raz (1984a; 1984b), and Kramer (1998). Two thorough overviews of the debate can be found in Wenar (2015) and Archard (2016).

person has a right to something if they have a fundamental interest in it being ensured and protected.

The chosen approach to justifying right-holding significantly influences who is included under its protection and the justifications behind enforcing rights. Choice theories only grant rights to individuals who can willingly and actively claim or waive them, excluding those who are incapable. In contrast, Interest theories grant rights based on fundamental human interests, regardless of the individual's capacity to claim or enforce them. This distinction leads to divergent conceptions of the rights of vulnerable and dependent individuals (such as children), as certain individuals may be entirely or partially excluded depending on the chosen grounds for right-holding.

Thick Choice Theory

Choice (or Will) theories view the core function of a right as protecting an individual's actual exercise of choice. To be considered right-holders, individuals must not only invoke a duty on others through their claims, but also possess the power and capacity to enforce or waive the right in question (Hart 1973). Thus, only those who have the ability to enforce or waive their rights can be recognised as right-holders.

Choice theories can be defended in either a thick or a thin version. A thick Choice theory asserts that rights should exclusively protect choices, while a thin version acknowledges that rights primarily safeguard choices, but also requires the protection of certain non-choice rights to ensure that choices can be made and exercised. Embracing a thick approach to Choice theory would lead to the exclusion of many children (particularly very young children, infants, and other relatively dependent individuals) as right-holders owing to their perceived inability to choose. Advocates of this view argue that having the capacity to make rational choices is a fundamental precondition for being a right-holder. This goes beyond mere expression of preferences, as even young children can express their preferences. Instead, a thick Choice theory demands certain precondition capacities for reasoning, understanding, and acting according to the consequences of one's choices (Purdy 1992, chapter 3). In essence, it requires *agency*, and an understanding of the implications of one's actions.

According to James Griffin, the basis for right-holding lies in an individual's capacity to exercise agency, which sets us apart from other beings and defines our personhood (Griffin 2002, 20–1; 2008, chapter 2). Those who lack full control of their personhood should not be considered as entitled to the rights ensured to human persons. While there may be valid reasons to show respect to individuals who lack agency and to protect them from certain threats and harms, these reasons do not qualify as rights claims (O'Neill 1988). Infants, for example, owing to their

limited ability to understand the consequences of their choices and to connect present preferences with their overall well-being in the present and future, cannot hold rights, even if there may be other justifications for safeguarding their well-being.

If we follow a thick Choice theory, a significant portion of the human population (owing to not having full personhood) would not be entitled to be considered as right-holders, while potentially highly capable apes or intelligent aliens could be included under this category and entitled to having their rights protected. Griffin argues that human rights are protections of our human standing and personhood, which can be better understood by analysing agency (2002, 20). He equates the quality of 'being human' with 'personhood', with personhood being associated with a certain threshold capacity to exercise agency (2002, 21–4).[3]

In modern economic theory and in theories of justice, it is often assumed that dignified treatment for those who cannot bear rights can be achieved through our personal moral sense of obligation, love, or sympathy towards non-right-holders.[4] For instance, some political theories of the family argue that granting individual rights to children is unnecessary, and potentially harmful, as the natural concern and care of parents will adequately protect their needs (O'Neill 1988; Rawls 2001).

However, both empirical evidence and principled considerations challenge this view, highlighting the inadequacy of relying solely on 'natural affection and goodwill' (as Rawls puts it) to safeguard the needs of the most vulnerable (Rawls 2001, 165). Empirically, practices of discrimination, neglect, and abuse within households towards children, women, the elderly, and individuals with disabilities demonstrate that this reliance is flawed. Relying on the family to care for the vulnerable overlooks existing disadvantages and inequalities within these private spaces (Deneulin 2009). For example, girls often experience the worst outcomes in such situations, facing under-nutrition, lack of education, and subordination if no public intervention or institutional protection of rights is in place (Himonga 2008, 79–80; Comim et al. 2011, 19). While an ideal world might not require reliance on rights to protect the vulnerable, our present reality demands attention to the widespread discriminatory practices affecting particularly vulnerable and dependent individuals within the private sphere (Freeman 2007a).

Beyond empirical reasons, there are principled objections to relying solely on family love and care for the protection of the vulnerable within households. A liberal theory of justice, grounded in 'ethical individualism', posits that each individual

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[3] 'Agency' being understood, following Griffin's own definition, as being capable to 'choose one's own course through life … have at least a certain minimum education and information and the chance to learn … one must have at least the minimum material provision of resource and capabilities that it takes … others must also not stop one from pursuing what one sees as a good life' (Griffin 2001, 311).
[4] This assumption stands on Gary Beckett's economic model of maximisation of utility within the family. For a thorough critique of Beckett's model, and John Rawls' endorsement of it in his theory of justice, see Nussbaum (1999, chapter 2).

should be treated as an end in themselves (Nussbaum 2000, 56–9; Robeyns 2017, 57–9). From this ethical standpoint, rights discourses that deny rights to certain individuals because they are dependent on the choices of others (as thick Choice theory does) would perpetuate the moral superiority of some individuals over others. Accounting for power dynamics, potential sources of oppression, and legal and socio-economic inequality in relation to rights is fundamental, as they could be weaponised, harming those who most need protections (Federle 1993, 986). Respecting the life and dignity of incapable individuals would only be achieved indirectly through the respect for the privileged group of right-holders.

A thick interpretation of Choice theory leads to problematic implications for how society understands its obligations to those who do not meet the agency requirements set by Choice theorists, such as young children or other particularly vulnerable and dependent individuals. This perspective suggests that some humans would not be considered right-holders simply because they are temporarily or permanently unable to claim their rights (Archard 2016, 5). Those who are permanently incapable (e.g., individuals with significant mental disabilities or terminally ill children) and those who are temporarily incapable (e.g., comatose patients or individuals with dementia) may be excluded. Such an exclusion raises questions about the justice of a theory of rights that denies protection to the sections of humanity most in need of rights, and who are most susceptible to harm and wrongdoing if not adequately safeguarded.

There are two false equivalences in Griffin's account that must be addressed to make a Choice theory more plausible. The first problem, pointed out in Matthew Kramer's Hohfeldian critique of Choice theory, questions the equivalence between holding a right and having the power to enforce it (Kramer 1998, section 2). While some agency abilities may be necessary to legitimately enforce or waive a right, the absence of these abilities does not negate the possession of the right itself. For example, a person in a coma may lack the capacity to enforce or waive their right not to be tortured, but it would be absurd to argue that they no longer possess that right (MacCormick 1976). Equating the power to enforce a right with the right's possession is flawed (Schoeman 1983, 278).

The second problematic issue with thick Choice theory is the erroneous equivalence between a species denominator ('human') and a set of capacities that do not necessarily correlate with the species (e.g., the capacity to exercise agency). Not all humans are necessarily full agents, as some very young children or severely mentally disabled individuals demonstrate. Conversely, not all agents are human, considering the potential existence of highly intelligent apes, intelligent space aliens, or advanced computers and robots. The rights we should have as 'humans' and as 'persons capable of exercising agency' need to be assessed separately. While certain limitations on conferring specific rights may be legitimately restricted to 'persons capable of exercising agency', this should not imply that all rights can and

should be justified solely based on this ability. To understand the entitlements of differently positioned individuals, the category of 'persons' (as rational agents) must be distinguished from the category of 'humans' (as the species) to account for the diverse conditions and justifications that may support an individual's possession of a right.

Interest Theory

Critics of Choice theory address the challenging implications of using rational agency as the determinant feature for a person's right-holding by shifting the source of legitimate claims from choices to interests (MacCormick 1976; Raz 1984a; Kramer 1998). While certain specific rights may be limited to those capable of exercising them as 'rational agents', other rights should be universally guaranteed to all human beings without discrimination, irrespective of their abilities. This alternative approach contends that rights are grounded on basic claims that all humans have a fundamental interest in, and these claims impose a duty on the moral community to safeguard them (Raz 1984a, 195). The entitlements bestowed upon individuals by their membership in the human species must not be violated by the rest of the community. Unlike Griffin's account, this perspective asserts that our rights are grounded in our humanity, rather than our personhood. By emphasising the foundational role of human interests instead of the choices of persons, Interest theories aim to provide a more stable foundation for granting rights, ensuring the protection of all individuals within the human species, regardless of their capacities and potentialities.[5]

A core element of Interest theories is their separation of the possession of a right from the power to enforce it. Having an interest protected as a right only requires that the interest is of sufficient importance to impose a duty on others to protect it. This does not imply that the right-holder is directly entitled to enforce or waive the right. The power to enforce a right requires being 'factually capable of making the choice' (Kramer 1998, 64). Thus, even an individual who is factually incapable of choice but possesses an interest of sufficient importance to impose a duty on others to protect it has the interest as a right, although not the power to enforce it (MacCormick 1976, 311). The enforcement of the right can be undertaken by an external party acting on the non-chooser's best interests.

Harry Brighouse provides among the strongest justifications for an Interest theory of rights, particularly as it concerns children (Brighouse 2002). He argues

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[5] Limitation to the human species is not necessary for Interest theories. One could conceive of rights for all sentient beings or for all living beings. I will not address the issues that could arise from not taking an anthropocentric approach to Interest theory, but its intuitions could be expanded so as to include non-human animals as well.

that adopting an interest-based ground for rights allows for the inclusion of non-agency-related claims in the discourse on rights while recognising the importance of agency-related ones. As humans, one of our fundamental interests is to have our choices respected and protected. Thus, capable individuals should have their choices protected as it aligns with their fundamental interest, while non-capable individuals still possess relevant interests, such as developing the capacity to choose, and having their non-choice-related interests protected (Brighouse 2002, 37–9). For instance, staying alive is a fundamental interest and should be protected as a right for all humans, while the choice of whether to waive this right (in the case of euthanasia, for example) may only be a fundamental interest for those who are capable of making such a choice.

The main achievement of Interest theories, such as Brighouse's, lies in their recognition of the significance of choice for some individuals while also accounting for other rights tied to general well-being that apply to all humans, regardless of abilities. Brighouse distinguishes between agency-based rights and well-being-based rights to untangle the specific grounds that justify rights for differently positioned individuals. Depending on our circumstances (vulnerability, dependence, and abilities), our fundamental interests and claims to hold particular rights vary. Choice-able agents have an interest in having both their well-being and their choices protected, while choice-unable individuals may have a greater interest in the protection of their well-being owing to their high dependence and vulnerability, but do not have an interest in protecting their choices and agency because of their inability to choose. However, they do have a fundamental interest in developing the capacity to choose and in becoming choice-able agents, which includes the right to develop this capacity (Brighouse 2002, 46).[6]

In short, interest theories do not necessarily exclude the relevance of choice in determining certain rights; instead, they aim to distinguish choice-related rights from those linked to well-being interests (Raz 1984b). The critique of Choice theory by Interest theories does not dismiss the importance of choice in grounding some rights; rather, it highlights the concern about excluding other non-choice-related interests that are relevant to a large part of the human population.

Thin Choice Theory

Choice theorists have responded to the Interest theory critique of thick Choice theory by maintaining their stance on agency as the fundamental ground for rights, while being more inclusive in terms of to whom it pertains. Griffin in particular argues that grounding rights on the ability to choose (agency) does not

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[6] A more in-depth exploration of Brighouse's differential rights system is in the section 'Brighouse's Differential Model' in Chapter 6.

necessarily exclude children and other vulnerable individuals from the framework (Griffin 2002, 27–8). According to Griffin, as long as a person is potentially capable of choice, regardless of their condition, the necessary requirements to enable them to become an agent in the future should be ensured. Thus, they should be considered right-holders with access to the resources and protections required to achieve full personhood (2002, 26–7).

Griffin's justification for sticking with choice as the sole ground for rights stems from his concern with the broader implications of Interest theories, which could potentially include a wide array of beings, including non-human animals, within rights discourse owing to their shared fundamental interests (2002, 26). To avoid this, Griffin argues that grounding rights on choice, while ensuring the support for those potentially capable of choice, differentiates individuals who are highly likely to become agents from those whose potentiality is merely linked to their species without actual likelihood (2002, 23). For example, a child, if potentially capable of agency and choice, would be considered a right-holder, but new-born infants, the comatose, severely mentally disabled individuals of any age, or dogs, who lack factual or potential ability to choose, would not be considered right-holders (2002, 28). Griffin acknowledges that there may be significant obligations towards all these excluded beings, but he emphasises the importance of distinguishing these obligations from rights discourses.

The 'thinner' understanding of Choice theory grounds rights on choice and a being's potential to develop the capacity to choose. Laura Purdy (1992) adopts an approach in this thin line, acknowledging that while a focus on choice as the source of rights may restrict children from having *equal* rights to adults, they still have relevant claims to have *relative* rights protected. These relative rights are essential to ensure that children develop the abilities required to exercise their full set of rights later on (Purdy 1992, chapter 1). Purdy's main contention is that choice should be the standard ground for rights, but when choice cannot be exercised, a person's interests in developing choice must take precedence. According to her, since children are unable to exercise choice in a meaningful way, they are justifiably excluded from having rights grounded solely on this ability. However, children should still have their protection from harms ensured as a right, stemming from their inability to exercise choice rights, while fostering the development of the capacities required to become choosing agents (Purdy 1992, 43–54).

The distinction between two sources of rights is crucial: the possession of the right itself, which does not require factual agency, and the right to exercise the power to enforce or waive the right. A potential agent (owing to current inabilities) can be restricted from holding the power but not from having the right. Thus, thin Choice theory justifies power-holding according to agency, while maintaining that all agents and potential agents hold rights. In this sense, children and non-agent humans have rights, and the power to enforce or waive these rights is exercised on their behalf by an appointed representative (Cohen 1980, 48;

Hart 1982, 184). Just as individuals may have a right to defend themselves in court but need to rely on a lawyer's capacities to enforce it effectively, children and other dependent individuals can borrow the power of agents to have their rights protected, even if they cannot do it themselves (Cohen 1980, 56).

When a Choice theory adopts a thin approach, separating the grounds for the power of enforcement of a right from the grounds for holding the right itself, it loses much of its distinction from the principles of an Interest theory. Once a Choice theory adopts a thin approach and separates the grounds for the power of enforcement of a right from the grounds for holding the right itself, it no longer centres solely on 'choice' as the determinant feature for right-holding. Instead, the theory has to justify the existence of some rights based on the individual's fundamental interest in developing the ability to choose (Kramer 1998, 65). A representative cannot enforce a right on behalf of an individual who is incapable of choice if not through a consideration of the right-holder's best interests. Consequently, the thin Choice theory converges strongly with Interest theories, especially when considering non-agent individuals. Both approaches recognise the importance of including the particular interests and claims of potential agents among the grounds for rights allocation, while agreeing that all humans incapable of being or becoming agents deserve their dignity to be respected and protected, whether through rights linked to their non-agent interests or through weighty societal obligations.

The concession of thin Choice theory is indeed sufficient to justify that children and other non-agent humans are entitled to hold certain fundamental rights. Therefore, for the purposes of this chapter, we can set aside the debate regarding the specific grounds for rights of particularly positioned individuals and focus on the recognition that humans are entitled to have certain fundamental choice and non-choice related interests protected as rights, imposing duties on others to guarantee them.[7] Moving forward, the chapter delves deeper into defining these fundamental interests, which will influence the definition of rights. To give content to the concept of 'fundamental interests', we explore the evaluative spaces required to assess what types of claims are of sufficient importance to be ratified as rights that an individual ought to hold. This exploration is based on Amartya Sen's conceptualisation of the basic evaluative space for assessing fundamental human interests.

The Evaluative Space of Fundamental Interests

In the context of justifying right-holding, both choice- and non-choice-related interests are significant. To identify the types of interests that can be considered fundamental enough to warrant the status of rights, I propose a groundwork

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[7] I will address the tension between grounding children's rights on choice or interests more thoroughly in the section 'Standard Liberal Approaches' in Chapter 6.

typology of fundamental interests based on Amartya Sen's work (Sen 1985; 1992). It applies Sen's distinction between well-being and agency interests and the two forms in which these interests might exist (as achievements and freedoms) as a foundation for understanding fundamental human value and interest.

Well-being and Agency Interests

Amartya Sen criticised utilitarian theories and welfarist accounts of moral value, which focus exclusively on objective assessments of well-being, or on desire and preference satisfaction, arguing that such narrow information-sets are unsatisfactory for understanding what gives value and quality to a human life (Sen 1982; 1983; 1985; 1992, chapter 4). In a similar line, many Interest theorists of rights have tended to equate interests with 'well-being'. Joseph Raz's understanding of Interest theory, for example, highlights that it is an individual's well-being that should concern and ground a discourse on rights (Raz 1984a, 195; 1984b, 1).[8]

'Well-being', however, can be a misleading and ambiguous concept. Classic conceptions of well-being tend to define it as a passive state in which an individual is healthy, secure, nourished, and happy. However, such a narrow understanding of well-being does not portray the full range of potential interests that we may have as humans (Crocker 2008, 160ff). Although these states of being (being healthy, secure, happy, etc.) are important parts of an evaluation of what is owed to an individual and what is required for an individual to have a life with value, an analysis of a person's fundamental interests cannot focus exclusively on their narrow definition as merely well-being interests (Sen 1985, 186–7).

Sen considers that, beyond this first category of human interest, which he labels well-being achievement, three more categories require our attention when evaluating a person's fundamental interests and thus their potential rights claims: well-being freedom, agency achievement, and agency freedom (see Table 5.1). There are thus two different grounds for a person's fundamental human interests (well-being and agency), and two forms in which these interests can be expressed (as achievements and as freedoms). These four categories should be distinguished and explained in order to lay bare the various information sets required for assessing the evaluative space for rights claims (Sen 1993, 35; Alkire 2002, 9).

The basic intuition behind Sen's typology is that, in his own words: 'The *freedom to have* any particular thing can be distinguished from actually *having* that thing. What a person is free to have, not just what he or she actually has, is

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[8] Various authors use the terms 'interests' and 'well-being/welfare' interchangeably (see Raz 1984a; 1984b; Goodin 1985; Feinberg 1986). Standing on Sen, I will diverge from this ambiguity, and argue that well-being is only one element in the evaluative space of human fundamental interests.

Well-being achievement	Well-being freedom
Achieved beings and doings related to one's well-being that one has reason to value.	The freedom to pursue beings and doings related to one's well-being that one has reason to value.
E.g., being nourished; being healthy.	*E.g., freedom to choose what to eat; what medicine to use.*
Agency achievement	Agency freedom
Achieved beings and doings that one has reason to value, regardless of their impact on one's well-being.	The freedom to pursue beings and doings that one has reason to value, regardless of their impact on one's well-being.
E.g., having a successful career; having a caring family life.	*E.g., freedom to choose one's career; one's conception of 'caring family'.*

Table 5.1 Amartya Sen's evaluative space for human fundamental interests

Adapted from Hart and Brando 2018.

relevant' (Sen 2004, 335, emphasis in original). This means that individuals not only have a fundamental interest in achieving certain states of well-being, such as being healthy, nourished, and sheltered (well-being achievement), but they also have a fundamental interest in the freedom to define what well-being means to them, how to achieve it, and whether they want to pursue it (well-being freedom).

For instance, a person with cancer not only has a fundamental interest in having their cancer cured (well-being achievement), but they also have a fundamental interest in the freedom to choose their preferred treatment option, such as chemotherapy, radiotherapy, or homeopathic medicine (well-being freedom). Similarly, individuals not only have an interest in being nourished (well-being achievement), but they also have an interest in the freedom to choose the food they prefer, instead of being compelled to eat what is objectively considered better for their well-being achievement.

But the value of a human life extends beyond the pursuit of well-being achievement and the freedoms to achieve it. Sen emphasises the importance of accounting for agency interests within the evaluative space for fundamental human interests. Agency interests refer to the value we place on our ability to make choices and pursue goals, even if these do not align with maximising our well-being achievements. In the examples mentioned earlier, if I chose not to undergo cancer treatment owing to my belief in the sanctity of the body, or if I decide to go on a hunger strike as a conscientious statement, my decisions are grounded on my agency interests rather than solely on considerations of well-being. These decisions reflect a larger set of interests, goals, and beliefs that should be considered fundamentally valuable to my life beyond their immediate impact on my well-being.

The recognition of agency interests is crucial for understanding what individuals are owed beyond their basic well-being requirements (Sen 1985, 221). A society that grants individuals the right to have their well-being protected (e.g., survival, nourishment, health, shelter) and the freedom to pursue these goals would fulfil its obligations only with regard to some human interests (Sen 1985, 197–8). This approach neglects the full range of valued interests that humans possess. Such a society might overlook the larger fundamental interests of individuals as agents, denying them the freedom to choose a career, determine family size, or practise a religion of their choice. Human claims extend beyond mere well-being achievements, sometimes even conflicting with well-being interests, as seen in the cases of refusing medical treatment or engaging in hunger strikes (Sen 1985, 186–7). Agency interests bestow intrinsic value to human life, irrespective of their impact on well-being. Claims to agency can be framed as those that refer 'to the freedom to bring about achievements one considers to be valuable, whether or not these achievements are connected to one's own well-being or not' (Alkire 2002, 6 fn. 18). In a certain respect, then, well-being interests are partially tied to agency interests, while not all agency interests can be framed as related to a person's well-being.

In Sen's conception, agency interests play a structural role in understanding the value of human life as they emphasise the active role of individuals in controlling and shaping their lives based on their own sources of value.[9] Instead of viewing rights merely as passive guarantees for objective protections and provisions, Sen sees individuals as active doers and judges of their own interests (Sen 1985, 208). The essence of justice claims lies in the freedom individuals should have to pursue their own values and interests, and society's institutions should be judged based on their ability to enhance and safeguard these freedoms (Sen 1999, xii–xiii, 19).

The fundamental conclusion drawn from Sen's analysis is that understanding and assessing a person's potential claims relies on plural sources of information, evaluated through the different manifestations of their fundamental interests. Well-being plays a structural role in a person's interests, not only in terms of achieving certain well-being states, but also in the freedom to choose how and whether to pursue them. In addition to well-being interests, the broader and more encompassing interests arising from human agency also hold significance. There are instances in which a person's well-being and agency may conflict, and it is not always clear why one should be prioritised over the other.

The distinction between well-being and agency highlights two core aspects of a human's life that should be protected and nurtured, while clarifying the two different forms in which these interests may be fulfilled (as achievements or as

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[9] This is in line with the core claim made in Chapter 4 on the fundamental need to recognise an individual's adaptive capacity, and their active agential role in determining their relationship with their constitutive frameworks, as a fundamental element of the human condition (see the section 'The Agentic Framework and Adaption' in Chapter 4).

freedoms). This differentiation allows us to recognise the diversity in the sources of interests that humans may have and the various ways in which standard conceptions of well-being and agency can be framed and realised. It is not the same to argue for the protection of children's well-being achievement as it is to advocate for their well-being freedom. Moreover, Sen's approach sheds light on the role of interests that go beyond well-being in a person's life.

Human interests extend beyond mere survival and physical well-being. We value various goals and pursuits that transcend our well-being, even at times contradicting it. Social recognition, dignity, identity, friendship, love, leisure time, political, religious, and aesthetic commitments are valued aspects of human life. Our ability to choose our own path, make decisions about personal matters such as clothing, food, and career, all contribute to the richness of our lives and what makes them truly human. These interests are not trivial; they are fundamental components of human flourishing.

Achievements and Freedoms

Sen's framework not only distinguishes between well-being and agency as fundamental human interests, but also recognises that these interests can manifest themselves in two different forms: as achievements and as freedoms. The distinction lies in whether a person's agency or well-being is ensured as a passive achievement, where benefits are received without their active involvement, or as having the opportunity to achieve their agency or well-being, while keeping the freedom to choose how and whether to pursue these interests (Sen 1985, 201).

In a liberal society, Sen argues that most rights should not focus solely on providing achievements but should emphasise the substantive freedom to pursue those outcomes. This aligns with the liberal principle of basic freedom, which posits that individuals are in the best position to determine how they should lead their lives and what is valuable to them. There is a presumption in favour of freedom, recognising that our core interests as humans are deeply tied to having the freedom to make choices and decisions that affect our lives.

Framing human interests only as achievements neglects the difference between, for example, a person who freely chooses to restrict their well-being achievement and another who has it restricted owing to the absence of conditions to achieve it. Sen gives the example of a conscientious faster who, for reasons of personal commitment (be it religious or political), decides not to eat. An assessment that exclusively looks at well-being achievement cannot distinguish the case of the conscientious faster from that of a person who is starving owing to lack of means to buy food (Sen 1985, 201). By not considering freedom as an interest to which an individual has a claim in itself, we are omitting a significant aspect of what is valuable in human life (Sen 1983).

Focusing solely on achievements as the basis for grounding rights can lead to the imposition of a particular conception of the good life and a prioritisation of values onto individuals. This approach denies individuals the right to choose their own path in life and to determine what matters most to them, including their well-being (Sen 1985, 218). For instance, forcing the conscientious faster to eat in order to meet a certain standard of well-being disregards their freedom to make choices about their own life. In a liberal political system, there should be no justification for valuing a person's freedom interests less than their well-being achievements. If individuals are regarded as capable of making choices, then a presumption in favour of freedom becomes essential for any theory that upholds liberal principles (Sen 1998, 19).

Indeed, Amartya Sen's understanding of freedom goes beyond the negative aspect of freedom as non-interference. For Sen, freedom is genuinely valuable only when it exists in its substantive form (Sen 1999). One is not free (in a Senian understanding of freedom) simply by being free from interference; a structural part of our interest in freedom is in having secured the appropriate conditions (internal and external to the self), and the opportunities and options that allow this freedom to be actually exercised.[10] For instance, if I have a fundamental interest in the freedom to read, it goes beyond merely having the right to be free from interference in reading. My interest includes having the internal ability to read (being literate) and the external conditions that facilitate this freedom (access to education and reading materials in my own language). Without these supports, resources, and opportunities, the right to read becomes meaningless. What use could there be to have the freedom (as non-interference) to read guaranteed as a right if I am illiterate and do not have access to education or to valuable reading material?

Sen, thus, advocates for capabilities as the basis of what is owed to individuals and as the ground for right-holding. Capabilities encompass both the negative aspect of freedom (non-interference) and the presence of the necessary internal and external conditions to effectively exercise this freedom (Sen 1992, chapter 5). Sen thus distinguishes capabilities from negative freedoms (which only address formal lack of restrictions) and from functionings (which are achieved states of being), as both fall short of fully capturing what individuals are entitled to (Sen 1999, 75). For example, the capability to read guaranteed as a right involves not being interfered with nor forced to achieve this function (neither prohibition nor duty), as well as having the necessary conditions to exercise this freedom effectively. While freedom as non-interference falls short of what is owed to a person as it only guarantees a formal lack of restrictions required to be or to do something,

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[10] For more on the internal and external conditions for the existence of freedom, see the section 'Development' in Chapter 8.

functionings (understood as achievements and factually realised states of affairs) go too far, by 'forcing' an individual to be or to do something without letting them choose how and if they value this achievement.[11] These conditions may include protecting and fostering one's cognitive capacities, providing training and education to learn how to read, and ensuring access to reading materials and other resources (Sen 1992, chapter 5). As long as individuals have the conditions to be substantially free to choose their life's path, and have the means to achieve their objectives either individually or collectively, there is no reason to prioritise achieved states of being over the freedom to choose and pursue one's own goals (Sen 1985, 201–2).

Sen's conceptualisation of the information sets required for evaluating the value of human life provides a valuable starting point for discussing children's rights. His recognition of well-being and agency as fundamental interests grounding rights, and their assessment as freedoms and achievements, offers a structured approach to understanding the basis of rights. Sen's framework allows for evaluating potential rights claims, and for understanding the diverse information sets justifying human interests as rights.

The Fundamental Interests of Children

The main objective of this chapter has been to emphasise the importance of considering plural information sets when discussing the grounds of rights. By using Amartya Sen's typology for evaluating human value, the structural role of both well-being and agency interests in rights discourse becomes clearer. Additionally, the distinction between rights as achievements and rights as freedoms has been highlighted. I have argued that these fundamental interests should be protected as capabilities, meaning that individuals should have the substantial freedom to achieve their fundamental interests, with the necessary internal and external conditions in place.

I have said little, however, on how this translates into the particular assessment of the rights that should be ensured to those individuals labelled as 'children' (this is a task for the rest of Part II). Based on my conclusions in Part I, and on what has been explored in this chapter, it suffices to say for now that first, the expanded evaluative space of fundamental human interests presented in this chapter (under the information sets of well-being and agency achievements and freedoms) ought to be taken as the framework for evaluating the appropriate allocation of rights to individuals; and second, that the use of this evaluative framework does not

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[11] Sen recognises certain functionings as fundamental for the existence of some capabilities. In some cases, prioritising the direct achievement of these functionings may be justified when individuals lack the capacity to realise them through their own freedom (Sen 2007).

mean (necessarily) that all individuals have each and every interest in the evaluative space guaranteed as rights. The specific circumstances of children and other vulnerable individuals might require us to prioritise certain interests over others to ensure that they are not unduly harmed. This means that, although certain freedoms and agency interests are considered fundamental to human life, we may restrict some of them for certain segments of the population if it is necessary to prevent irreversible harm or high risk of harm to others, or if they lack a legitimate interest in holding these rights (Hart and Brando 2018).

Standard accounts of children's rights often prioritise well-being achievements, focusing on protecting children's bodily integrity, health, nutrition, and education. While this approach aligns with intuitions about safeguarding children's immediate and future well-being, a balanced evaluation within a liberal theory of justice must also consider the role of freedom in right-holding. Restricting a child's freedom should be done cautiously to avoid infringing on the principles of equal treatment and the basic presumption of freedom. Assumptions that increasing a child's freedoms might negatively impact their achievements and well-being oversimplify the complex relationship between well-being and agency. A more comprehensive evaluation is necessary to understand their potential correlations and interactions.

The upcoming chapters critically examine different liberal approaches to children's rights (Standard Liberal, Liberationist, and the UNCRC), to assess how they conceptualise the relationship between fundamental interests in the evaluative space and their practical implementation for children. This analysis sheds light on the validity and justifiability of these approaches in the context of children's rights.

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Children's Rights: Liberationist and Standard Liberal Approaches

Rights protect fundamental interests, which may relate to well-being or agency and can be ensured as freedoms or achievements, according to Amartya Sen. Evaluating the specific rights an individual is entitled to requires considering how their constitutive frameworks may influence which interests are legitimate grounds for rights. This chapter and Chapter 7 explore the main interpretations of these foundational concepts in the context of children's rights. The potential conflict between freedoms and achievements demands careful consideration of their trade-off to ensure that guaranteed rights genuinely protect an individual's interests without causing harm.

Standard liberal rights discourses tend to prioritise freedom interests over achievement interests, as liberals generally presume in favour of freedom when assessing what individuals are owed (e.g., Mill [1859] 1961). However, throughout the history of liberalism, children have been overwhelmingly considered as an exception to this presumption. Owing to their perceived lower cognitive, rational, and emotional abilities, children are often deemed unable to properly exercise freedoms. Therefore, it has been argued that their fundamental interest lies in having their well-being and achieved states of being protected. Standard liberal accounts of children's rights often take this stance, suggesting that children's interest in freedom is outweighed by their interest in having their achievements safeguarded. In contrast to Standard Liberal views, child liberationists present an account of children's rights that rejects the idea of treating children differently from other individuals under the basic principles of liberal justice. Liberationists argue that our evaluation of the interests that form the basis of children's rights should be guided by the same presumption in favour of freedom as it is for adults. If restrictions on freedom and an asymmetric rights allocation are considered legitimate, Liberationists contend that an equal standard should be applied to assess their legitimacy in both adults' and children's cases.

This chapter delves into the role that the principle of basic liberal equality plays in evaluating children's rights by examining both the Liberationist and Standard Liberal approaches. It aims to demonstrate that neither approach fully aligns with the conditions set by the principle of basic liberal equality. Liberationists tend to over-look the significance of incompetence and harm in justifying differential treatment. The principle of basic liberal equality does not demand absolute equal treatment but allows for restrictions based on morally relevant differences in individuals' constitu-tive frameworks (their embodied, temporal, and spatial conditions). Liberationists fail to account for how incompetence in exercising freedoms justifies restriction of rights and how potential negative consequences legitimise limitations, all while adhering to the principle of basic liberal equality. I argue that although these critiques present obstacles to the Liberationist position of granting all individuals full freedoms as rights, they do not address the Liberationist core claim: the need to apply an equal evaluative standard for the legitimate restrictions of freedom to all individuals. By adopting an equal standard, we treat all individuals (including children) as agents, granting them equal consideration when determining legitimate restrictions of freedom. This approach aligns with the core principles of liberal theory and ensures that children's rights are not unreasonably limited during childhood.

This chapter begins by introducing the Liberationist approach to children's rights and emphasises their support for an equal standard in evaluating rights. It then delves into two prominent critiques found in the literature, namely the harm and incompe-tence critiques, examining their relevance and applicability. Next, the chapter turns its attention to the Standard Liberal view, analysing three distinct ways in which it has been defended: differential, gradual, and in-trust. It discusses the concerns associated with each of these approaches and their implications for the allocation of rights. Ultimately, the chapter evaluates the legitimacy of the Standard Liberal view, acknow-ledging its endorsement of harm and competence acquisition as key considerations in rights allocation. However, it also critiques its failure to account for the diverse ways in which these factors manifest, leading to potential discrepancies in evaluating the fundamental interests that should be safeguarded as rights.

The Liberationist View: Equal Standard, Equal Freedoms

Child liberationists emerged during the emancipation movements of the 1960s and 1970s, incorporating child liberation into the broader fight against social oppression. Their core assertion was the urgent need for a radical re-evaluation of children's rights. Central to their argument was the critique of the concept and institution of 'childhood', which they considered to be unjust.[1] They contended

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[1] See the section 'The Myth of Childhood' in Chapter 3.

that the current process of rights allocation arbitrarily and unjustly restricts the freedoms that children should rightfully possess and exercise. Embracing the principle of basic liberal equality, which upholds a presumption of freedom and equal treatment for all individuals, child liberationists argued that the prevailing practice of limiting children's freedom to exercise certain fundamental rights was inherently unjust. To uphold equal respect and dignity for all individuals, and to prevent undue intrusion by the state on personal matters, they proposed applying an equal standard to assess the legitimate treatment of everyone, including children. Thus, they advocated for granting children the full range of rights possessed by the adult population, demanding equal standards for rights evaluation, challenging biased assumptions about children's competence, and incorporating children within the liberal presumption of freedom.

Liberationists argue that children are often treated as unequal members of society, not necessarily because they have different rights as individuals, but because the standard used to determine which rights they are entitled to differs from that of adults. The rigid and arbitrary institutionalisation of the social group labelled as 'children' assumes that there is an inherent and justifiable difference between children and adults that warrants their differential treatment. If any legal distinction can be morally justified, it must be based on the application of an equal standard to assess who, as an individual, is entitled to specific rights. This aligns with the 'Adaptive Conception of "Childhood"' discussed earlier (see Chapter 4), which emphasises the importance of understanding and accounting for an individual's embodied, temporal, and spatial constitutive frameworks to ensure equal treatment.

Liberationists argue that this double standard becomes evident when evaluating the fundamental interests that underpin the rights of children compared with those of adults. For adults, the evaluation is based on a presumption of freedom, considering how their interests in well-being and agency achievements and freedoms relate to each other. In contrast, for children, the evaluation is grounded in a presumption of achievement. While adults are assumed to benefit from the freedom to self-determine their own affairs, it is believed that children's fundamental interests are better served by restricting their freedom to self-determination (Farson 1974, 9). Liberationists criticise this biased and harmful evaluation, questioning the underlying assumption that children's interests predominantly lie on the achievement side of the spectrum, thereby denying them a justified claim to freedom as it is considered not to be in their best interest.

The achievement-focused approach to children's rights, as critiqued by Liberationists, is a double-edged sword. On the positive side, it provides children with essential protections and securities, shielding them from exploitative work, violence, and ensuring access to basic necessities, thereby elevating their well-being achievements (Holt 1974, 10). However, this approach also comes at a

cost: it largely excludes children from having their freedoms protected as rights, creating an apparent injustice for both children and vulnerable adults alike. Some children may be deprived of the opportunity to exercise certain agency and well-being freedoms, while many vulnerable adults may not have various well-being achievements safeguarded (see Herring 2016).

While acknowledging the potential advantages of protecting well-being achievements for children, adhering to the principle of basic liberal equality requires justifying why freedoms are overridden and why an emphasis on achievements is preferred when assessing the fundamental interests of children. If the presumption of freedom deems it illegitimate to limit an adult's freedom in the name of well-being, the same standard should apply when evaluating the rights of children (Farson 1974). If we hold equality as a foundational assumption, then there is no apparent justification for applying a different standard to evaluate the legitimate interests of children compared with adults; both should be assessed using an equal standard. As Farson questions, how can we ascertain whether a child has a fundamental interest in exercising freedoms if we have never afforded them the opportunity to do so? (Farson 1974, 8).

Equality and Children's Competences

The central argument against granting equal rights to children revolves around the acquisition of competences typically associated with adult humans, such as rational capacities, reasoning abilities, and a full understanding of consequences and responsibilities, which James Griffin termed 'full personhood' (Griffin 2002). It is contended that these competences are not yet fully developed in children, thus justifying the limitation of freedoms that require their exercise. In response, child liberationists have presented various counter-arguments.

Firestone (1970) provides a compelling example to challenge the assumption that children lack the rational and competent agency associated with adults. By examining children who exist outside the confines of the institution of childhood, such as street-working children, she sheds light on children's potential as capable and independent individuals.[2] These children operate outside the usual processes of segregation, socialisation, and normalisation, allowing them to navigate urban life with proficiency both individually and collectively. Their ability to sustain self-sufficiency through resilience demonstrates, she argues, that children can possess rationality and competence even at a young age. Firestone aims to demonstrate that competences in children should not be under-estimated or assumed to be inherently limited owing to their age; she recognises and respects the true

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[2] For an in-depth analysis of the case of children in street situations see Chapter 11.

condition of children based on their individual constitutive frameworks, rather than on assumed characteristics (Firestone 1970, 100–1).

Farson (1974) and John Holt (1974) present further compelling arguments challenging the assumption that children lack competence and rationality. Farson acknowledges that while it is difficult to definitively determine the current level of children's competence, this does not imply that they would not behave differently if they were not subject to institutionalised norms (Farson 1974, 29–34). Holt, in a similar vein, critiques the exclusive focus on protecting children's well-being achievements, arguing that it hinders our capacity to evaluate them objectively. He criticises the notion of treating children as 'childish' merely because societal norms expect them to be so. Holt contends that the restriction of children's freedoms by adults, based on a presumption against freedom, hinders their development and forces them to conform to preconceived notions of childhood (Holt 1974, 5). This institutionalised constraint prevents children from realising their full potential and exercising their freedoms in diverse ways. The oppressive binds of mythification and institutionalisation limit children's agency, contributing to the perpetuation of a reified and restricted understanding of childhood (Holt 1974, 4).

Howard Cohen's position (Cohen 1980) challenges the notion that individual competence is an absolute prerequisite for exercising freedom rights. Just as adults often rely on the expertise of competent professionals (lawyers, doctors, accountants) to exercise certain freedoms, Cohen suggests that children could also be entitled to borrow the competence of better-positioned individuals to exercise their freedoms (Cohen 1980, 49–57). This perspective critiques the exclusive focus on competence as the sole determinant of right-holding, as discussed in the section 'Interest Theory' in Chapter 5. Federle (1993, 1022) argues that fundamental interests can justify the protection of certain freedoms, even if individuals need to borrow others' competences to exercise them. While Liberationists may have varying views on the specific relationship between a child's competences and their rights, they all advocate for revising the standard presuppositions that currently guide the restriction of freedoms for children. The Liberationist position highlights the importance of re-evaluating the criteria for determining which freedoms are restricted and how they are allocated, questioning the foundational role that competences should play in our understandings of right-holding.

An Equal Standard for Children

The liberationist position strongly advocates for equal treatment, asserting that there should be no initial reason to differentiate between adults and children when it comes to rights and freedoms. According to Holt, children should have the same broad rights as adults (Holt 1974, 1), including the freedom to choose

whether they want to remain in their 'walled garden' of childhood or break free from it.

The Liberationist position advocates for equal rights for children, meaning that the law should protect their decisions to exercise specific rights, just as it would for adults (Holt 1974, 57). If a child wishes to leave their parents' home, the law should support and uphold this right, without forcing them into any particular decision. However, the Liberationist position does not explicitly address whether adults should also have the freedom to choose to remain in 'childhood' or bear adult responsibilities and freedoms.

This omission presents a challenge for Liberationists. If they adhere strictly to their equal standard, they would have to allow adults the freedom to choose to escape from their adult responsibilities and seek the protections of 'childhood'. This could lead to complicated and problematic issues in practice. On the other hand, if they concede to the necessity of separate standards for adults and children in certain cases, it could weaken their principled claim for equal treatment. In navigating this dilemma, the Liberationists may need to provide further clarification on how their equal standard applies to both children and adults and whether certain exceptions or modifications are necessary for each group while maintaining their principled stance on equal treatment.

Richard Farson, in this respect, considers that the fundamental shift made by Liberationist children's rights is not necessarily tied to the granting of the various 'adult' rights to children, but rather to the protection of a fundamental right to self-determination that grounds any other freedom that a person may have:

> Children, like adults, should have the right to decide the matters which affect them most directly. The issue of self-determination is at the heart of children's liberation. It is, in fact, the only issue, a definition of the entire concept. The acceptance of the child's right to self-determination is fundamental to all the rights to which children are entitled. (Farson 1974, 27)

Children are neither forced to behave as adults nor compelled to forgo their childhood; they are simply allowed and free to determine their own affairs. Whether this means deciding to stay within the traditional spheres of childhood or taking on the rights and responsibility of economic and social independence, it is for the child to decide. If it is acceptable for adults it should be acceptable for children, and vice versa. Ensuring that any person, regardless of how young or old, can self-determine their own life should be the core concern of any liberal polity. Mere inability to exercise a right is no justification for withholding it; on the contrary, the relative weakness of those incapable of exercising certain rights implies that society should take even greater care in ensuring that it is protected and safeguarded (Farson 1974, 32).

Limits to Liberationist Rights

The Liberationist strict-egalitarian approach to children's rights offers an elegant and straightforward argument for equal rights, avoiding the moral challenge of excluding a particular group from exercising fundamental human freedoms. By upholding the presumption on the side of freedom and a strict interpretation of the principle of equal treatment, Liberationists advocate for equal rights for children in a way that aligns with basic liberal principles, making it difficult to counter at a principled level. However, when considering the practical implications of this approach, concerns arise, especially if we account for vulnerability, developmental processes, and embeddedness as structural features of an individual's condition. Critics of the Liberationist view raise two main concerns: first, the lack of clarity in how competences should be considered in granting rights to individuals; and secondly, the potential consequentialist implications of the Liberationist approach on children's actual freedom and the protection of their other fundamental interests.

Rights and Competence Acquisition

David Archard provides an important critique to certain Liberationist arguments, particularly regarding competence acquisition and its implications for equal treatment (see Archard 2004, chapter 5). He points out that Liberationists present two core arguments that appear inconsistent: (1) they claim that children's competences may be more developed than commonly assumed, thus warranting the exercise of fundamental 'adult' freedoms; and (2) they argue that (1) justifies children's entitlement to all rights that adults possess protected equally (Archard 2004, 74).

Archard contends that the leap from (1) to (2) involves a fallacious step. Acknowledging that children may possess greater competence than previously thought does not necessarily entail granting them equal rights with adults. Instead, it calls for redressing biases and assumptions about children's competences, which may demand a potentially higher level of freedom relative to their actual condition. However, it does not automatically justify providing children with the same rights as adults always, especially if they lack the required competences to exercise those freedoms (Archard 2004, 75). Accounting for an individual's constitutive frameworks demands understanding the diversity in the human condition and how this affects our treatment as subjects of justice. The core of the critique, in this respect, is that recognition of individuals as equals through the use of an equal standard is not the same as provision of strict equal rights to everyone.

Indeed, there is no inherent injustice in restricting rights to individuals who lack the necessary competences to exercise them, as long as a fair and comprehensive evaluation of their actual condition and competences is conducted

(Archard 2004, 90). The principle of equal treatment, which forms the basis of the Liberationist intuition, does not imply treating every individual in the same manner regardless of their specific circumstances. On the contrary, it demands that each individual is treated according to their particular situation (Archard 2004, 87–8).

For instance, consider a 14-year-old girl who possesses the competence required to vote and act as a full political citizen. In this case, granting her the same freedom rights tied to these competences, which are guaranteed to all others with the same competence, could be justified. However, this does not automatically mean that these freedom rights should be guaranteed to all children, including infants, without considering whether they possess the relevant competences or not.[3] If part of the Liberationist argument is founded on the unfair under-estimation of children's actual competence to exercise certain rights, then it follows that rights are indeed connected to competence. Consequently, those who lack the necessary competence could be legitimately excluded from certain rights. Evaluating the actual competences of each individual is essential to ensure that rights are allocated appropriately and justly.

The Harm of Equal Rights

Laura Purdy's critique of the Liberationist view raises important considerations regarding the potential harm that might result from its strict equal distribution of rights (Purdy 1992, 9). While the principle of equal rights for children might seem appealing at a principled level, its practical implementation and real-life consequences must also be considered to ensure that it does not inadvertently harm the very individuals it aims to protect (Purdy 1992, 9).

Purdy highlights that the impact of such a liberationist system on both society as a whole and children in particular should not be overlooked when evaluating the justification for equal rights and freedoms for children (Purdy 1992, 15, 190). The social environment in which an individual is embedded plays a significant role in shaping their experiences and opportunities. Thus, it is crucial to consider the broader implications of granting equal rights to children within the context of their social surroundings.

As discussed previously (see the section 'Interest Theory' in Chapter 5), rights serve as instruments to protect fundamental human interests. The justification for conferring a specific freedom as a right hinges on whether it effectively safeguards an individual's fundamental interest. While freedom is a fundamental principle in liberal theory, it does not mean that all freedoms should be granted as rights

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[3] This case and arguments in favour and against this claim will be further analysed in Chapter 10.

without considering their potential impact on an individual's overall interests. If conferring a certain freedom right poses a significant risk of harm to the person's well-being or other fundamental interests, it may be justifiable to not grant them that freedom as a right (Purdy 1992, 11). The protection of interests should take precedence over the mere preservation of freedoms.

Purdy argues that granting equal rights to children may not be the best approach to protect their fundamental interests. The potential harms resulting from conferring certain rights to children, especially those linked to their lack of competence to exercise them, can outweigh the benefits. Instead, she suggests that the priority should be on protecting children's non-freedom interests, particularly those related to their well-being achievements, from potential harm. For instance, consider the case of an eight-year-old child having the right to self-determine their economic life, relationships, health, or nutrition. While this blanket permission may seem to expand their freedom, Purdy contends that it could lead to significant setbacks in their overall interests (Purdy 1992, 17, 217). Allowing a child this level of autonomy might expose them to exploitation in the labour market, potentially harmful personal relationships, and the risk of making uninformed decisions about their health or nutrition.

Purdy's argument aims to highlight the complexity of balancing freedom and protection in the context of children's rights. While granting more freedoms to children might appear to be in line with a strict egalitarian approach, the potential risks to their well-being and overall interests need to be carefully considered. Protection from harm and ensuring their well-being achievements may require certain restrictions on their freedoms to prevent adverse consequences.

Purdy (1992) posits that while a few exceptional children might benefit from the possession of equal rights, standard intuitions and evidence reveal that the overall interests of the average child would be significantly harmed by such an approach. This claim considers not only the child's present well-being, but also how their current freedom could impede their development of competences and have long-term repercussions on their fundamental interests (Purdy 1992, 44, 88). For instance, granting a toddler the freedom to choose all of their meals might lead to irreversible eating disorders and compromised health, affecting both their present and future well-being. Allowing a child to decide whether or not to attend school in the present could hinder their understanding of the value of formal education for their long-term interests. Similarly, providing children with full freedom in contracts and economic independence might expose them to high risks of exploitation and result in unanticipated consequences owing to their limited understanding of potential ramifications (Purdy 1992, 214–15). Purdy argues that temporarily safeguarding children from themselves and others by restricting certain freedoms is a prerequisite for ensuring genuine freedom in the future.

Incompetence and Harm as Limits to Rights

The concerns raised by Purdy and Archard against the Liberationist view shed light on the complexities of theorising children's rights. Theories of children's rights must not only consider the principle of equal treatment, but also account for the individual variations in children's constitutive frameworks in order to assess appropriate treatment. A strict equal distribution of rights may not be practical or justifiable given the diverse condition of individuals. Moreover, Purdy's emphasis on the potential harms that equal rights might pose to a child's overall well-being and future development highlights the tension between prioritising the protection of their fundamental interests over the strict application of equal rights. Granting certain freedoms without considering vulnerabilities, developmental needs, and external conditions could lead to unintended negative consequences and compromise long-term interests. A comprehensive theory of children's rights should encompass an understanding of the particularities inherent to each individual, such as their developmental processes and the social environment in which they are embedded; recognising this diversity will enable a more nuanced approach to defining rights and better safeguard fundamental interests.

I argue in Chapter 4 ('An Adaptive Conception of Childhood') in favour of the importance of recognising the morally relevant features of individuals when striving for equality. Indeed, achieving true equality requires a comprehensive understanding of the unique and particular characteristics that define each individual's status and condition. Embodied vulnerability, dependence on others, and embeddedness in specific social environments are essential factors that influence the appropriate treatment and allocation of rights. A strict egalitarian approach, as endorsed by the Liberationist view, may overlook the diversity in constitutive frameworks and inadvertently lead to unequal outcomes. By considering variability and acknowledging the distinct structural variables that shape individuals' lives, a more just and equitable allocation of rights can be achieved. Equality should not be understood as a one-size-fits-all approach, but rather as an inclusive and flexible framework that considers the complexity of individual lives and positions.

Limited Liberationism but an Equal Standard

I contend that despite the valid critiques raised earlier, they do not address the core claim made by the Liberationist approach to children's rights: to challenge the use of a double standard in evaluating the treatment of children and adults. Acknowledging the variability in rights based on individual competences and potential harm does not contradict the Liberationist principle that an equal standard should be applied to assess everyone's treatment fairly. Currently, our

legal system employs a double standard in judging the capacities, rights, and freedoms of adults and children. The latter are assumed to be incapable and unfree until proven otherwise, while the former are presumed capable and free until proven otherwise. This dual approach lacks a clear justification and a principled reason.

The Liberationist perspective advocates for an equal standard in the assessment of legitimate treatment for all individuals, regardless of age. By doing so, it challenges the arbitrary distinctions imposed between children and adults and calls for a more consistent and just evaluation of rights and freedoms. Children should not be automatically regarded as less capable or deserving of rights; instead, they should be given the opportunity to demonstrate their competences and have their interests protected on equal terms with adults.

Defending an equal standard does not automatically lead to a strict egalitarian allocation of rights. Rather, it aims to treat individuals equally unless there are morally relevant differences that justify different treatment (Cohen 1982). Since rights are grounded in particular interests, the evaluation of those interests varies not across the adult–child line, but from person to person based on their unique constitutive frameworks. James Dwyer aptly points out that '[e]qual consideration of their respective interests might actually compel disparate treatment, if they have very different interests or different characteristics that dictate different means of satisfying similar interests' (Dwyer 2011, 12). The central goal of treating individuals equally is to protect their fundamental interests on an equal basis, not necessarily their rights. Therefore, differential allocation of rights can be justified if it is essential to ensure equal protection of interests. Basic equality does not demand strict uniformity in treatment.

In light of this, I believe a revision of the Liberationist position is necessary. While maintaining the principled need for an equal standard to evaluate the legitimate allocation of rights to individuals, we should also consider variations in entitlements based on an individual's unique condition. By considering the specific circumstances and needs of each person, we can better assess what constitutes fair and just treatment for all. This approach allows for a more nuanced understanding of equality, in which equal consideration of interests is prioritised over a rigid application of rights.

The Standard Liberal View

A general consensus exists in the contemporary literature regarding the flaws of the Liberationist position. If rights are supposed to protect an individual's fundamental interests, then the inclusion of certain basic achievements (especially well-being achievements) in the case of highly vulnerable, dependent, and incompetent

individuals is necessary.[4] By not taking into account children's particular proneness to harm and their varied inabilities to make effective use of many rights, one cannot make sense of some of our most basic intuitions regarding the particular protections that are owed to children. Their condition as especially vulnerable and dependent individuals imposes a duty on others to ensure that the basic interests that stem from their condition are protected and insured (Lansdown 2005; Schweiger and Graf 2015, chapter 2).

However, a concern with children's well-being should not be blind to the role that agency and freedom play as relevant interests in a person's life. Children are no longer considered mere property of their parents or the state. They are recognised as individuals with their own rights and agency, entitled to express their concerns and have a say in matters that affect them. Recognising children's status as moral and social actors has become a fundamental principle in the field of children's rights (Freeman 2020).

The dual objective of safeguarding children from vulnerabilities and promoting their participation can create tensions and conflicting conclusions (Archard 2004, 60). While focusing on children's well-being and ensuring their achievements portrays them as passive beneficiaries, emphasising their participation and freedoms treats them as active agents in their lives. This tension extends to the content and exercise of these rights, often leading to conflicts in fulfilling their interests. Protecting a child's well-being achievements as fundamental rights may clash with their agency and freedoms, and fostering their freedoms may impact their achievements negatively. Standard Liberal theories on children's rights have sought to address this tension and find a way to acknowledge children's claims to both freedoms and achievements while considering the unique aspects of childhood.

The Standard Liberal view on children's rights is examined through three prominent models: Brighouse's Differential, Brennan's Gradual, and Feinberg's Intrust approaches. While each model presents a different perspective on how to evaluate the relationship between freedoms and achievements during childhood, they all agree on the significance of harm avoidance and incompetence in determining the trade-off when deciding which well-being and agency freedoms and achievements should be protected as rights.

Brighouse's Differential Model

Harry Brighouse's approach to children's rights considers that agency is a matter of a person's life with utmost importance, but that, owing to the incapacity of children to properly exercise agency freedoms, we must consider that their agency

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[4] For a comprehensive mapping and review of the various strands of research on children's rights to well-being, see Camfield et al. (2009).

rights (understood in the sense of all liberties and rights that come with agency; i.e., freedom of expression, religion, conscience, voting rights, etc.) should be guaranteed *only* to the adult population (Brighouse 2002). Although children have present and future well-being and agency interests, the potential risk of their present agency negatively impacting their future agency and well-being calls for restricting their present agency as a fundamental interest protected by rights (Brighouse 2002, 45; Brighouse and Swift 2014, 61–2).

According to Brighouse, children should only be granted agency rights and freedoms once they have acquired the capacity to understand the consequences of exercising these freedoms in relation to their well-being and agency interests (Brighouse and Swift 2014, 62). Therefore, certain conditions must be in place to ensure that children reach a threshold of agency capacity required to exercise these rights, 'she must be taught to be able to empathize and sympathize, reason about principles, think about moral rules, discipline her own behaviour' (Brighouse 2002, 42), before the actual rights and freedoms that come with agency can be granted to the child. The Differential model acknowledges that the development of these capacities is gradual, but, for political purposes, imposing a strict threshold below which certain claims are not considered seems reasonable and just.

The Differential model emphasises the fundamental interests of children in their present, future, and overall development, recognising that their vulnerable and dependent condition requires certain interests to take priority to ensure their well-being throughout their life-course. It centres on the idea of protecting children as potential agents, ensuring their capacity to develop into capable agents rather than granting them full rights to exercise these freedoms in the present (Brighouse and Swift 2014, 67). The focus is thus 'to safeguard their immediate welfare rights and their prospective autonomy' (Brighouse 2002, 51).

Childhood is seen as a stage of incompetence for the exercise of certain freedoms, leading to a predominant focus on children's future interests, ensuring their current well-being and their future development of agency. For example, while a child may have a present agency interest in not attending school, the long-term consequences for their future well-being and agency justify not granting them this present agency interest as a claim of justice. The differential model prioritises the 'future person', restricting agency claims owing to potential negative effects on the person-to-be; and when agency claims are protected, it is primarily to prepare children for their future duties and freedoms rather than solely for their intrinsic value during childhood (Liebel 2014, 77–8).

David Archard offers a similar view when arguing against children's fundamental interests in having their choices protected (Archard 2004, chapter 6). According to Archard, an interest must be of sufficient importance to justify its protection as a right (Archard 2004, 91–7). If children are unable to make choices and exercise agency and well-being freedoms, then their interests in these

freedoms are not significant enough to warrant their protection as rights. On the other hand, children do have fundamental interests in having their present well-being achievements and future agency protected, which justifies these being guaranteed as rights (Archard 2004, 92).

The underlying intuition of this model is that adult human beings can exercise and have their freedom protected as a right precisely because they were denied this freedom during childhood (Archard 2004, 93). If children, as Liberationists argue, were entitled to the same level of agency and well-being freedoms as adults, they would lack the opportunity to develop the necessary competences for effectively exercising these freedoms later on. In essence, the differential model considers both well-being and agency as essential interests in the assessment of legitimate rights allocation, but it prioritises present well-being interests to ensure the development of well-being and agency in the future.

The Problem with Strict Differential Rights

The strict differential model raises several problematic issues, similar to those raised for Life-Stage conceptions of 'childhood' in the section 'Beyond Life Stages' in Chapter 2. First, it assumes and categorises individuals based on their age, ascribing predetermined weaknesses and inabilities to children, which is inconsistent with basic liberal principles that advocate assessing individuals as ends in themselves, rather than as members of specific age-defined collectives. To avoid unjustly and arbitrarily restricting fundamental freedoms to competent children, a more sensitive and gradual approach that values children's potential capacity as agents in certain aspects of their present life is necessary.

Both Archard and Brighouse recognise to some extent the critique of a 'gradualist' approach, but they still argue against granting certain freedoms as rights to children based on the acquisition of particular competences. Brighouse, for example, considers that bearing the full responsibilities and liabilities that come with right holding would both harm children and also threaten family structures and values (Brighouse 2002, 46–51).

However, these claims are problematic. First, using the preservation of family values and structures as a justification for restricting children's freedom is incompatible with liberal principles that prioritise the individual and their freedom over the collective. Such arguments have historically been used to support oppressive and unjust social systems, such as slave ownership and opposition to women's liberation. Justifying restrictions on individual freedom for the sake of preserving an oppressive and unjust social regime is unjustifiable from a liberal standpoint.

Moreover, the claim that such restrictions are done for the good of the children themselves is also questionable. If individuals are competent enough to

exercise a given freedom, paternalistic interference with their pursuit of their own good through their own means is unjust. The presumption in favour of freedom implies that individuals, including children, should be allowed to make their own decisions and pursue their own interests as long as they are competent to do so.

While it is true that there may be pragmatic arguments for using age as a proxy to regulate social relationships and rights allocation, it is essential to consider the potential drawbacks and injustices that may arise from such an approach (Anderson and Claassen 2012; Franklin-Hall 2013) (see the section 'Pragmatic Age Model' in Chapter 2). Age-based rights allocation can lead to the differential treatment of individuals based on arbitrary factors rather than their actual competence and capabilities. Treating all children the same, without considering their individual competences, can lead to both over-protection and under-protection of their interests.

Archard's argument that a strict age threshold is justified because alternative methods would be expensive and cumbersome does not hold up to scrutiny (Archard 2004, 90). While implementing a competence test for each freedom may require more effort, it ensures that individuals are treated based on their actual abilities and needs, rather than making assumptions based on their age.

The use of licensure could be a more nuanced and flexible approach to rights allocation, because it considers individual competences and capacities. Instead of blanket prohibitions or permissions based on age, licensure could allow for a more tailored and context-specific evaluation of an individual's readiness to exercise certain rights. This way, certain freedoms could be granted to children who demonstrate the necessary competence, while others would be withheld until they reached the appropriate competence thresholds. Indeed, current legal practice already shows that an all-or-nothing approach is not always in place, with certain rights and privileges being granted to individuals based on specific qualifications or assessments (Herring 2018). Adopting a licence-based approach could provide a more just and pragmatic way to protect children's interests without imposing unnecessary restrictions on their freedom.

Present legal systems utilise an age of majority to distinguish between adults and children, but they also adopt a more gradual approach to allocate specific rights through a multi-threshold system of licences. While political rights and duties typically are granted at 18 years, other fundamental freedoms vary widely in their age thresholds across different countries. For instance, the legal drinking age ranges from 13 years (with parental supervision) in Germany, 16 in various European countries, to 21 in the United States, and banned for everyone in several Muslim countries. The age of sexual consent also differs significantly, from 12 years in some Mexican states to 19 in Indonesia, or until marriage in certain Muslim countries. Surprisingly, there are cases where voting rights, traditionally associated with adulthood, are granted before the age of majority, such as at

16 years in Scotland, Austria, and Brazil, among others. These varying licensing age thresholds demonstrate the divergent approaches taken by different states.[5]

If we are to concede to the pragmatic need to use age thresholds for granting and restricting certain rights and duties, we might rather follow the Brazilian example, which takes a much more nuanced understanding of what reaching 'adulthood' means by taking seriously the role that an individual's specific condition and constitutive frameworks play in the evaluation of their status. Although the official age of majority is 18, Brazil treats this as a guiding proxy rather than an absolute threshold. 'Adulthood' is tied to an individual's constitutive frameworks rather than solely to their age. For instance, a person under 18 may no longer be considered a 'child' if they get married, becomes a public official (e.g., begins military service), completes an undergraduate degree, or achieves economic self-sufficiency (Brazil 2002, Art. 5). Additionally, individuals from 16 years onwards are allowed to vote and participate in civic life (Art. 3), with certain restrictions applied to individuals of any age who exhibit specific behaviours or conditions (Art. 4).

The Brazilian example demonstrates that 'adulthood' need not be strictly tied to age but can depend on individuals' willingness to attain this status and their ability to exercise certain competences, granting them full citizenship recognition within their socio-political community. This approach acknowledges that constitutive frameworks legitimise the restriction of an individual's freedom, and those proven capable should be entitled to rights and freedoms that align with their condition. By using age as a guiding proxy, Brazil accounts for the complexity of human development and the importance of the constitutive frameworks in determining a person's status and rights.

Brennan's Gradualist Model

Samantha Brennan's Gradualist model (2002) acknowledges that a child's ability to exercise agency is not a binary distinction but rather a matter of degree. This approach embraces a graded understanding of agency development and competence acquisition as the core framework for determining the fundamental interests that a person is entitled to have protected as rights. Brennan recognises both achievements and freedoms (referred to by her as interests and choices) as fundamental grounds for a person's rights. However, she proposes that these interests and choices should be viewed as part of an evolving continuum. In the Gradualist model, the unit of moral and political concern initially focuses exclusively on a person's interests and achievements. As an individual acquires competences over

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[5] This variability in age thresholds for the gradual granting of 'adult' rights has led legal theorists such as Jonathan Herring to argue that the opposition between adults and children (at least in terms of how they are conceived in legal practice) does not exist at all (see Herring 2018).

time, the concern gradually shifts to protect their choices and freedoms. The model emphasises the importance of a person's developmental journey (their temporal framework), recognising that the acquisition of competences is a significant factor in determining the scope of rights and freedoms that should be protected (Brennan 2002, 63).

The continuum, according to Brennan, implies a degreed transformation of a child's rights to have their interests and achievements protected to the adult's rights to choose and freedoms: 'We can view the transition from childhood to adulthood as the gradual transition from being the sort of being who has interests but not the ability to protect them oneself to becoming a full-fledged autonomous chooser' (Brennan 2002, 65). In contrast to the Differential model, which strictly shifts rights from well-being to agency at a specific threshold, the Gradualist model embraces a more flexible approach, acknowledging that childhood can be understood as a variable condition that exists to different degrees, influenced by the child's developmental processes and their temporal framework. It recognises that children's agency and freedom abilities gradually develop over time. Therefore, the focus initially lies on the child's achieved well-being interests during the early stages of life, and, as the child acquires the competences required for exercising agency and freedoms, the emphasis gradually shifts towards protecting their choices and freedoms. Unlike the Differential model, which may not consider agency claims below the threshold as matters of justice, the Gradualist model acknowledges the legitimacy of agency claims gradually for individuals who have acquired the necessary competences to exercise them.

Brennan's model responds to the Liberationist claim of equal rights by considering rights as instruments for protecting fundamental interests. According to Brennan, rights can be overridden if one's or another person's interests are better protected through restriction (Brennan 1995). This interpersonal trade-off, however, raises significant problems from a liberal perspective. First, this approach assumes that individuals can be legitimately used as means for achieving benefits for others. Brennan provides examples of situations where one person's rights may be overridden to protect the more important interests of another (Brennan 1994, 424–6). While there may be a moral duty to waive certain rights to protect others, this should not imply that an individual permanently loses the right itself. Waiving my right to not have an arm chopped off to save a life may be morally justifiable in certain situations, but it does not mean that my right to bodily integrity is lost altogether. The ability to consent and to waive rights is a crucial consideration in such evaluations. For instance, forcibly chopping off an unconscious infant's arm to save another person's life, without the infant's consent, would raise serious ethical concerns. Simply appealing to the benefit of a second person cannot, by itself, justify overriding the rights of the first person without their informed consent.

The intrapersonal case poses similar challenges, particularly during an individual's transition from having their interests (achievements) protected to having their choices (freedoms) protected. Brennan assumes that there is an objective list of fundamental interests that can justify overriding an individual's own choices (Brennan 1995). However, the question arises of who should be the judge, and how we should evaluate the trade-off between an individual's achievements and freedoms (Hart and Brando 2018; Brando 2020). To make sense of Brennan's gradual transition from interest claims to choice claims, an arbitrator and an objective standard are required to assess whether an individual's achievements should override their freedoms, or vice versa. Brennan argues that a person's achievements should *always* be a priority consideration (Brennan 2002). For instance, if a child's freedom to choose what to wear during winter does not lead to the expected achievement of not catching a cold, then their interest in not catching a cold should override their interest in choosing what to wear during winter. According to Brennan, rights always protect achievements, sometimes indirectly through freedom rights (if these ensure the achievement) and sometimes directly if the freedom rights cannot ensure the achievement:

> Whether a right protects one's interests [achievements] or one's choices [freedoms] will depend on which form of protection best advances one's interests [achievements]. Rights protect choices when having one's choices protected is just what is in one's interest and rights protect interests directly when it is having those interests protected, rather than one's choices, that best promotes one's interests. (Brennan 2002, 63)

In essence, according to Brennan's Gradualist model, a person's achievements are always to be protected, but the protection of these achievements may sometimes be more effectively ensured through the person's own judgement, rather than through an external metric that defines what is in their best interest.[6] The model relies on using achievements as a standard for judging whether to respect a child's freedom or not, considering freedom as a tool that can potentially promote well-being and overall achievements if one is competent enough to gain achievements through freedom.[7] The objective of the Gradualist approach is thus to strike a balance: ensuring that individuals capable of fostering their own interests and achievements through freedom can do so, while also safeguarding

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[6] This is in clear agreement with the present legal standard for framing children's rights: the best interests principle. The 1989 United Nations Convention on the Rights of the Child acknowledges the tension between the protectionist (achievement-focused) and the participatory (freedom-focused) interests of children and considers that the appropriate arbitrator in cases of conflict and tension should be the child's best interests. For an assessment of the 'best interest principle' in the legal literature see Alston (1994) and Freeman (1997; 2007b), and the section 'The Best Interests Principle' in Chapter 7.

[7] Patrick Tomlin has defended a similar model for evaluating the justified claims that children may have to freedom by claiming that we must gradually track the evolution of interests from a primary focus on their well-being achievements to having their freedoms protected (Tomlin 2018b).

the fundamental achievements and interests of those who may not know how to make the most beneficial use of freedom.

Brennan's Gradualist Model, while recognising the importance of achievements and freedoms, faces challenges when assessed in light of liberal principles. By making freedom merely instrumental to protecting achievements, it risks eradicating freedoms from the evaluative space of fundamental interests, and subjects them to the political system's definition of valuable achievements.

This model raises concerns about potentially harmful restrictions on an individual's freedom rights, regardless of age. It aims to ensure one's best interests, but determining what constitutes 'best interests' becomes subjective and problematic. The evaluation of interests under Brennan's approach disregards agency and freedom as fundamental interests, as they are contingent on a person already being qualified to promote their interests through choice. This leads to one's choices having to (always) be evaluated and qualified as promoting one's interests, regardless of one's choices and freedoms, thus leaving the scope of freedom exclusively conditioned within the realm of what promotes best one's achievements. The Gillick test used in the United Kingdom to assess a child's competence to consent to medical treatment is an example of this 'best interest' approach (Gillick v. West 1985). It evaluates whether children are 'competent enough' to consent to a given medical treatment, but their choice can still be overridden if the experts consider that the 'competent' child's choice is against the expert's opinion (see Herring 2018, 29–30).

Instead of expanding the freedom rights for capable children, Brennan's Gradualist Model has the potential to restrict freedom for everyone (regardless of age) whose choices do not align with their best interests. This approach relies on an objective theory of the good to determine who is capable of achieving their interests and who requires paternalistic interference. While achievements should be considered when evaluating fundamental interests, they should not always take precedence over freedoms. Agency and well-being freedoms are essential in our assessment of what individuals are owed, and their value should not be solely dependent on the ability to protect an objective list of best interests. A liberal theory ought to recognise the intrinsic value of freedoms beyond their instrumental role in promoting achievements. This calls for alternative models of rights allocation that prioritise freedom of choice and agency, granting them a more prominent role in safeguarding individuals' rights.

Feinberg's In-Trust Model

The third model that follows the Standard Liberal view is Joel Feinberg's In-Trust approach to children's rights (Feinberg 1992). According to Feinberg, even though it may be acceptable to restrict an individual's exercise of certain rights

owing to incompetence, this does not mean that the individual does not possess those rights; instead, these rights are kept 'in trust' and protected from violation until the person becomes capable of enforcing them themselves.

Similar to the Differential model, Feinberg's account of children's rights begins by distinguishing between A-rights (rights belonging to the adult population), C-rights (rights exclusive to children), and A-C-rights (rights common to all humans). Feinberg's approach, akin to Brennan's gradualist view, sees the acquisition of freedom rights as an incremental process primarily based on a person's ability to exercise them. A-C-rights encompass fundamental interests that are present and significant throughout an individual's entire life (e.g., the right to life, bodily integrity, freedom from torture). A-rights, only held by adults, are mainly related to civil and political freedoms and agency (e.g., voting, drinking alcohol, free exercise of religion), which 'could hardly apply to small children' owing to their incapacity to exercise them (Feinberg 1992, 76).

C-rights, on the other hand, apply specifically to children owing to their unique condition.[8] Feinberg further divides C-rights into two sub-sections: the first includes achievement interests, particularly prominent during childhood, which arise from a child's vulnerable and dependent condition, ensuring basic instrumental well-being they cannot provide for themselves (e.g., nourishment, shelter). The second sub-section comprises 'rights-in-trust', collectively referred to as the 'right to an open future' (Feinberg 1992, 77). The concept behind rights-in-trust is that all A-rights a person cannot properly exercise owing to physical, mental, or emotional incompetence are preserved and protected until the individual acquires (or regains) the abilities required to exercise them. The rationale behind rights-in-trust is twofold: first, certain rights depend on the competence to exercise them; but, second, to prevent violations before the individual becomes competent, these rights must be safeguarded throughout their entire life-course. Feinberg uses the example of a person's fundamental interest in walking freely to illustrate his In-Trust model. He argues that even an infant of two months, who is currently incapable of self-locomotion, possesses the right to walk freely down the public sidewalk. Cutting off the child's legs would violate this right-in-trust, even before the child is able to exercise it (Feinberg 1992, 77).

Feinberg's main point with this example is to emphasise that we should recognise the justice claims of children to all rights, even if they lack the ability to exercise the interests associated with those rights. A two-year-old toddler has a fundamental interest in having their right to walk down the street protected, even if they cannot walk down the street at present. Inability to exercise a right does not negate a person's entitlement to that right; it simply limits their ability to

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[8] Feinberg concedes to including some adults as possessors of these rights 'only in unusual or abnormal circumstances' (Feinberg 1992, 76).

exercise it. Unlike the Differential model, which may struggle to address potential violations of some future claims of children owing to its focus on distinguishing adult and child interests, Feinberg's In-Trust approach ensures that the child's future interests will not be pre-emptively violated. This is achieved by granting rights that protect the child's potential self and interests before they have had the chance to develop them (Feinberg 1992, 78).

Feinberg's rights-in-trust approach, in contrast to the Gradualist model, places a strong emphasis on the role of choice (freedoms) as the foundation for a person's claims. The primary objective of Feinberg's approach is not solely to ensure that an individual's fundamental interests are met but rather to safeguard their choices, both current and potential, until they possess the competence to exercise them. This approach prevents the potential harm that may arise from instrumentalising freedom, as seen in the Gradualist model. According to Feinberg, children should not be perceived as individuals who lack agency entirely and whose interests solely rely on achieving certain outcomes. Instead, children always possess interests related to their capacity to make choices, and these interests should be protected regardless of whether they currently exercise them or not.

When discussing A-rights and C-rights, Feinberg does not imply the existence of a strict threshold that divides them. Adulthood and childhood, for Feinberg, are to be taken as relative categories. Some especially vulnerable and dependent adults may be appropriate holders of certain C-rights, while some children can be considered as holders of certain A-rights: 'Many or most of a child's C rights-in-trust have already become A rights by the time he [a child] is ten or twelve. Any "mere child" beyond the stage of infancy is only a child in some respects, and already an adult in others' (Feinberg 1992, 95).

Feinberg's categories in the In-Trust model highlight the relative level of a particular individual's competence to exercise specific freedoms and their particular dependence on others for achieving their well-being. Contrary to a fixed and rigid categorisation of individuals as either children or adults, Feinberg's approach recognises that individuals can hold both child rights and adult rights depending on their unique conditions, constitutive frameworks, and circumstances.

In Feinberg's conception of rights, the possession of a right is not contingent on the individual's current ability to exercise it. Regardless of whether a person has the immediate capability to exercise a particular right, they still hold that right. Moreover, the rights-in-trust model emphasises the importance of acknowledging a child's agency capacity at all times. Just because a child may be incapable of exercising a certain right today does not mean they won't have the competence to do so tomorrow. From the moment of birth, children actively contribute to the shaping of their own lives, identity, and interests. Their current inability to fully exercise agency should not lead to the assumption that they are not entitled to have it protected.

Feinberg's In-Trust model, however, faces challenges in providing a clear conceptualisation of the process through which C-rights transform into A-rights. While he acknowledges that children possess many agency rights and freedoms during childhood, it remains unclear how far he deems it legitimate for a child to exercise such rights. Feinberg's perspective seems to suggest that rights-in-trust only become A-rights once they are effectively exercised. When an individual acts upon their intention, such as walking down the street or voting, the protection of their future exercise of that right becomes a present interest through its actual exercise. However, Feinberg does not elaborate on the precise mechanisms that facilitate this transformation.

He identifies the protection from violation of a right prior to its exercise as a fundamental interest for an individual incapable of exercising it. While this protection is necessary, it is not sufficient to fully safeguard the person's right. Additional requirements must also be fulfilled to enable an 'incapable' individual to develop the capacity to exercise a particular right or freedom. The In-Trust model's reliance on mere negative protection (understood as freedom from interference) for children's rights-in-trust falls short in capturing the full range of conditions needed to foster the development of a capability (or substantive freedom) for exercising specific rights (Sen 1985). Further clarity and elaboration are necessary to fully address the intricacies of this process.

A child's development of competences and abilities to exercise certain freedoms cannot solely rely on negative protection from rights violation or leaving their future open. There must be certain fundamental preconditions in place to facilitate the transformation of internal capacities into substantial freedoms. Feinberg does acknowledge the importance of certain preconditions that 'derive from the child's dependence upon others for the basic instrumental goods of life – food, shelter, protection' (Feinberg 1992, 76). But he considers that as long as options are open and rights are not violated, children will naturally develop competences over time.

However, these requirements stemming from a child's dependence are not sufficient. We must also consider the developmental and adaptive processes that play a crucial role in a child's capability development. As Mianna Lotz argues, protecting rights-in-trust goes beyond mere negative protection, and should encompass positive duties, social conditions, and developmental requirements that actively promote and enable a child's eventual ability to exercise various agency rights and freedoms (Lotz 2006, 546).

Feinberg's model presents a unique perspective by emphasising the significance of choice as a fundamental interest and a basis for children's rights. Even if our present choices might not directly ground some of our rights, it is essential to protect our potential freedoms and keep them open. Children's status as 'incapable' in certain aspects of life justifies the safeguarding of specific rights that may

not be guaranteed to the rest of the human population. Owing to their inability to directly exercise choice over certain well-being interests, others must ensure the provision of these interests by exercising their own choice rights on their behalf. As children acquire the necessary competences and exercise them effectively, their rights-in-trust evolve into adult rights. This transformation does not mean that they lacked these agency rights before, but rather that the mode of protection differs. One aspect, however, remains unclear in Feinberg's model: what should be the evaluative assessment of the process through which a child gains the ability to effectively exercise competence-dependent freedoms and rights? A more thorough examination of the competence-development process and the correlation (or lack thereof) between freedoms and competences is still required.

Problems with the Standard Liberal View

The three models presented in the previous section share a common agreement in challenging the Liberationist view by acknowledging that granting all rights and freedoms to children could pose significant risks owing to their vulnerable and dependent nature. They also recognise that the acquisition of competences and certain states of being are necessary prerequisites for an individual to exercise specific freedoms and rights. However, further examination is required to fully understand the implications of these claims and to ensure that the Standard Liberal models align with the principle of basic liberal equality. To achieve this alignment, it is essential to subject the particular restrictions and privileges that legitimise asymmetric rights allocation to an equal standard of evaluation, as advocated by Liberationists. Additionally, a comprehensive exploration of the relationship between the constitutive frameworks, processes, and factors that facilitate the acquisition of the required competences for exercising certain rights is necessary. This investigation will help clarify the specific restrictions that can be justified based on their connection to this competence development process.

The rights granted based on an individual's lack of ability to counter harms, tied to vulnerabilities, dependencies, and incapacities, are referred to as achievement rights. These rights are essential to protect highly vulnerable and dependent individuals from the high risks of harm they face. Achievement rights encompass not only well-being interests such as being nourished, nurtured, and healthy, but also larger non-well-being related interests that are relevant to the individual's developmental stage.

The Differential model of children's rights expands the scope of achievement rights to include interests in developing agency, rationality, emotional capabilities, and social capacities. According to Brennan's Gradualist model, the 'interests' rights of children include, as well, all fundamental aspects of a person's life that

are crucial to their well-being and development, and which they cannot protect through their own choices. Similarly, Feinberg's In-Trust model emphasises achievements as a central aspect of children's rights. Children not only require ensured resources and goods for their basic subsistence and survival, but also a broader set of protective rights, such as the right to an open future. These rights aim to ensure that all children have their fundamental potentialities safeguarded and nurtured, enabling them to eventually exercise the full range of adult rights.

The three models, however, differ significantly in their understanding of freedom rights and how they should be treated in relation to children. Brighouse's view considers freedom rights, particularly those related to agency, as relevant mainly for a child's future, justifying their restriction during childhood. In contrast, the Gradualist model advocates for the conferral of freedom rights tied to a person's choices as they acquire the necessary competences to exercise them. Feinberg's In-Trust model, while also limiting full freedom rights only to those capable of exercising them, emphasises the protection of freedom rights (in the negative sense of non-interference) throughout a person's life to prevent violations before they can be exercised.

The normative framework of the three models is built upon the recognition of children's particular inabilities, which serve as the basis for granting them exclusive achievement rights and restricting certain freedom rights. Children's vulnerability and dependence justify the conferral of protection rights to shield them from potential harm. Additionally, the assumption that children may not fully comprehend the implications of exercising certain freedoms and the potential risks involved justifies the restriction of most freedom rights.

But, in order to understand the legitimising force of inability and harm in the differential treatment of some individuals, providing a clear account of what constitutes 'harm' and 'inability' is crucial in understanding the legitimising force of differential treatment based on these factors. To do so, two conditions must be met.

First, there should be the use of an equal standard to evaluate morally relevant interests, harms, and inabilities that may justify differential treatment. Differential treatment based on risk of harm and specific incompetence should be grounded in the existence of actual harm and incapacity, rather than relying on stereotyped assumptions about a certain group, such as age-based categories. The concept of 'childhood' should not be reified, and instead, individual differences and capabilities should be acknowledged. Arbitrary distinctions based on stereotypes can lead to unjust treatment of individuals. To uphold the principle of equal treatment, the same standards of harm and incompetence should apply to everyone equally.[9]

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[9] In a similar line, and standing on the same presumption of equality that grounds the Liberationist logic, Herring (2016; 2018) has defended a view in which, instead of treating children as adults, adults should be treated as children, owing to the universality of vulnerability.

The second condition requires avoiding blanket categorisations of vulnerability, dependence, or inability, as individuals vary radically depending on their condition and dynamic relationship with their constitutive frameworks. Justifying specific restrictions or privileges based on an individual's condition should consider the correlation between particular fundamental interests, rights, and the individual's unique condition and constitutive frameworks.

Conclusion

Rights protect fundamental interests. As human beings we have strong interests in having both our well-being and our agency protected, as achieved states (functionings) and as substantive freedoms (capabilities). Because our interests may clash (my agency freedom can affect my well-being achievements, for example) we must be able to evaluate the tension and necessary trade-off among them in order to judge which interests have priority in their protection as rights.

Liberationists advocate for an equal standard in assessing fundamental interests, with a focus on ensuring freedom interests as fundamental rights for all individuals. While I agree with their call for an equal standard, I align up to a point with some of the criticisms raised by Liberationists' opponents. An equal standard does not automatically lead to equal rights entitlements. Variability in an individual's embodied, temporal, and spatial frameworks, susceptibility to harm, and specific inabilities to exercise certain freedoms justify the contextual restriction of freedom rights. Consequently, in certain situations, more weight might be given to achievement interests, particularly those related to well-being.

I have examined three Standard Liberal models that justify differential treatment based on harm and inability. These models, however, require a revision to accommodate a more nuanced understanding of individual interests, particularly within an Adaptive conception of 'childhood'. While harm and incompetence are rightly recognised as valid grounds for asymmetric rights allocation, the lack of a clear definition of the relationship between specific harms, inabilities, and various interests, rights, vulnerabilities, developmental processes, and social contexts necessitates further investigation.

7

Children's Rights: The Convention

No study of the theory of children's rights can be complete without looking at the UN Convention on the Rights of the Child (UNCRC; the Convention), the most influential piece of law relating specifically to the childhood social group. This chapter provides a bird's-eye view of this international document, of its core principles, and a critical analysis of its theoretical framing and of its normative commitments. While the Convention may not be an academic treatise on the theory of children's rights, it remains crucial to engage with it. This is because a significant portion of current research on children's rights, both theoretical and applied, is built upon its principles, provisions, and associated guidance (Quennerstedt 2013, 284).

The majority of research on the Convention tends to focus on its interpretation, applicability to various scenarios, and examination of its implementation and monitoring, rather than delving into a deeper theoretical level (Reynaert et al. 2009). However, utilising a legal framework as a normative guide without thoroughly assessing its normative credentials, potential theoretical weaknesses, and broader value beyond legal and political practice can be risky (Cordero Arce 2012).

This chapter takes on the task of exploring the potential normative credentials of the Convention to critically evaluate its validity and relevance as a model for children's rights, particularly concerning the Adaptive conception of 'childhood' advocated in this book. Such an assessment goes beyond a mere doctrinal analysis of the legal document and involves a critical examination of how scholars interpret and view the Convention as a theoretical and normative framework for understanding children's rights (Reynaert et al. 2009, 519). In employing the term 'critical', I adopt Reynaert et al.'s (2012) method of analysis, which seeks to go beyond the explicit provisions of the Convention to identify potential issues and inconsistencies in its use of concepts, form, and structure. It is important to note that this chapter does not claim to conduct an exhaustive critical study of the Convention; rather, it aims to highlight some of the potential problems and risks

associated with relying on this legal document as a guiding theoretical framework without first examining its general commitments and normative implications. As law and courts have the power to reify notions and conceptions of childhood and children's rights, understanding their commitments is a necessary task (Tobin 2012; Trotter 2018).

Given that the core objective of this book is to present a theory of children's rights that aligns with basic liberal equality, this chapter utilises this goal as a standard by which to evaluate the Convention. As in Chapter 6 with the Liberationist and Standard Liberal theories of children's rights, this chapter similarly assesses the UNCRC in light of this principle. The chapter begins by introducing the general framework of the UNCRC and, drawing on Hanson and Lundy (2017), conducts an analysis of four of its 'cross-cutting' standards: non-discrimination, best interests, evolving capacities, and the right to be heard. These standards are examined in light of existing scholarly work on them.

Furthermore, the chapter explores four conceptual tensions that pose challenges to a normative interpretation of the Convention: orthodoxy and ambiguity; universalism and context-sensitivity; equality and difference; and paternalism and agency. By foregrounding these four tensions, the goal is to illustrate the issues that arise when a theory of children's rights heavily relies on the binary opposition between adults and children. Instead, the chapter advocates for an account of children's rights that is more receptive to the complexities and nuances in the experiences of vulnerability, development, and the interplay of agency within their embedded contexts.

The UNCRC Framework

Adopted in 1989 after 10 years of discussions and deliberations, the UNCRC (UNGA 1989) is the most widely ratified Convention to date, with all United Nations members, except the United States, having ratified it by 2020. It marks an important milestone in the history of children's rights as it managed to achieve an overlapping consensus at international level in terms of the recognition of children as moral beings entitled to be treated as equal rights-holding members of society (Kaime 2011; Quennerstedt et al. 2018). The Convention is a holistic document that aims to provide a general structure for the just treatment of children, not as passive recipients of benefits, but as active subjects with rights and claims. It sets out the guidelines for the provision, protection, and participation of children in society, establishing the principles of non-discrimination (Art. 2), the best interests of the child (Art. 3), the right to life, survival, and development (Art. 6), and the right to be heard (Art. 12) as the conceptual structure that should guide all treatment of children.

From the perspective of the Convention, justice for children entails several key principles. First, it requires eliminating any form of discrimination in the protection of their rights (Art. 2). Second, the best interests of the child must be given primary consideration in any decision that affects them (Art. 3). Third, children should be provided with the necessary support and resources for a decent life and to ensure their future development, including the protection and nurturing of their evolving capacities (Arts 5 and 6). Lastly, children's voices and claims should be heard in all matters concerning them (Art. 12). These principles are not isolated but interconnected and mutually dependent. This implies that all the rights outlined in the Convention hold equal value and should be comprehensively assessed and protected in light of these principles (Peleg 2019b, 151). In cases where tensions or conflicts arise in fulfilling their rights, determining their best interests becomes the guiding procedure and principle for making decisions related to their just treatment.

In this chapter, my analysis primarily focuses on the four 'cross-cutting' principles (Hanson and Lundy 2017) of the Convention, as a comprehensive examination of each article would require a separate book (see Vandenhole et al. 2018; Tobin 2019). By evaluating the text and the literature surrounding these four standards, we can gain insights into the values and limitations of the Convention concerning the proposed Adaptive conception of 'childhood' and the fundamental moral principles that should underpin a theory of children's rights. I explore how the Convention implicitly (and explicitly) perceives childhood and the underlying moral foundations that shape its understanding of children's rights, specifically examining non-discrimination, best interests, evolving capacities, and the right to be heard.

Defining Childhood and Non-Discrimination

The definition of 'childhood' provided by the Convention reveals much about its commitments and the underlying principles regarding children's rights. Article 1 adopts an age-based conception of 'childhood', stating that 'a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier' (UNGA 1989, Art 1). This means that all individuals below the age of 18 are recognised as rights holders under the Convention.

However, it is essential to recognise that using age as the metric for childhood does not imply that age itself is the morally significant characteristic defining this category (see the section 'Pragmatic Age Model' in Chapter 2). Rather, the need to establish a specific rights regime for children stems from the association of age with 'physical and mental immaturity' (UNGA 1989, Preamble; Archard and Tobin 2019, 32). The designation of those under the age of 18 as vulnerable, dependent, and in the process of development towards adulthood justifies the provision of

a differentiated set of rights tailored to their specific conditions and needs. This differentiation is essential to address their particular vulnerabilities, and to ensure their well-being and development during this crucial stage of life.

It is essential to recognise that the Convention does not consider children to be 'the same' as other human beings. Instead, the rationale for providing them a particular set of rights is because 'it acknowledges and affirms the difference of children' in relation to (fully matured) adult humans (Archard 2004, 60). This recognition of 'childhood' as a morally relevant social category justifies the need for a specific set of rights under the Convention.

Now, considering the commitment to non-discrimination of children, we must address the apparent paradox of providing differential treatment to a group that has been explicitly singled out. Non-discrimination, in this context, refers to the commitment to treat similar situations in a similar manner unless a legitimate justification for differential treatment exists (Besson 2005, 435). It entails treating equal cases alike while ensuring that any differential treatment is restricted to legitimate ends. The objective is to ensure that an individual's membership in specific social categories (such as gender, race, ethnicity, birth status) does not in itself affect how they are treated. Any instance of differential treatment must be justified, necessary, and proportional to the circumstances (Bayefsky 1990, 11–24; see Besson and Kleber 2019).

The non-discrimination principle, as stated in Article 2, ensures that all rights within the Convention are protected for every individual below the age of 18, regardless of any suspect characteristics, such as race, colour, sex, language, religion, either pertaining to children themselves or their legal guardians (UNGA 1989, Art. 2). The aim is to guarantee that every right in the Convention is equally secured for each child, regardless of their gender, race, socio-economic status, and so on. Any deviation from this principle of equality must be justified with legitimate aims and reasons. It is important to note that Article 2 is limited to ensuring non-discrimination of the rights *within* the Convention, and *among* the right holders encompassed by it; not with non-right holders (Besson and Kleber 2019, 53).

The non-discrimination principle in the Convention is limited in scope compared with similar principles in other international documents (Besson and Kleber 2019, 57). It focuses on ensuring that children are not discriminated against in relation to the rights outlined in the Convention and in comparison with other children, rather than guaranteeing equality before the law or equal protection of the law for all children beyond the Convention's provisions (Vandenhole et al. 2018, 54).

Archard, in fact, argues that Article 2's main purpose is to address discriminatory treatment among children, and not in comparison to the adult population (Archard 2019, 45). This suggests that age-based discrimination may not be fully encompassed by the Convention, with its focus being mainly on traditionally

disadvantaged categories such as gender, race, and disability, rather than age (Daly et al. 2022, 450). However, this interpretation might be too strict. Age could be (and has been) considered a suspicious category within the 'other statuses' mentioned in Article 2. Nonetheless, even when age is considered a salient trait, the Convention is concerned primarily with age discrimination among children themselves, such as different marriage ages for girls and boys or when providing worse protections in terms of health or education to adolescents than for younger children (Peleg 2019b, 140). The question that remains open is thus whether the non-discrimination principle in the Convention is sufficient to ensure that the assessment of differential treatment of children is always justified and legitimate, or whether additional anti-discrimination mechanisms are needed to safeguard their just treatment beyond the Convention's provisions.

The Best Interests Principle

Article 3(1) of the UNCRC states that 'In all actions concerning children … the best interests of the child shall be a primary consideration' (UNGA 1989, Art. 3.1). Among various elements at stake, appealing to the primary consideration of children's best interests implies a concern with ensuring that any decision made in relation to a child should account for the plurality of (sometimes conflicting) factors that can affect how a child is treated, and to ensure that all their rights are accounted for holistically when potential conflicts may arise. It is meant to be, in this sense, following the Committee's understanding of it, 'a dynamic concept that requires an assessment appropriate to the specific context' (CRC 2013, I.A). Even in cognisance of all the rights of the child in the Convention, assessing best interests requires putting these into conversation with the individuality, specific context, and needs of an individual child:

> the concept of the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child. (CRC 2013, IV.A.3)

Eekelaar highlights the importance of distinguishing between two approaches to assessing best interests: objectivisation and 'dynamic self-determinism' (Eekelaar 1994, 46–7). Objectivisation relies on the idea that a person's best interests can be determined through generalisable and absolute scientific standards. In contrast, dynamic self-determinism emphasises the need to consider not only general needs of children, but also the specific interests, perceptions, claims, and interpretations of the individual child (Eekelaar 1994, 46–7). Archard further emphasises

that evaluating best interests is fundamentally a moral issue (Archard 2004, 62). It involves considering and weighing various factors that may be at stake, which can give rise to deep moral and ideological disagreements. As such, it cannot be approached in a simplistic or formulaic manner.

Importantly, the Convention recognises the significance of a child's voice and perspective in evaluating their best interests. As a child matures and develops, and as they come to understand their own needs and interests better, their voice should carry more weight in the assessment of what is in their best interests (CRC 2013, IV.B.3). This aligns with the gradualist approach discussed in the section 'Brennan's Gradualist Model' in Chapter 6, which suggests that as children develop and become more capable of making autonomous decisions, paternalistic assessments of their interests should give way to respecting their autonomous decision-making. This is in line with the Convention's holistic approach to evaluating best interests, considering not only the child's evolving capacities, but also other rights and principles outlined in the Convention, such as their right to be heard (Eekelaar and Tobin 2019, 87).

As a rule of procedure, the 'best interests' principle aims at ensuring that any account of a child's fundamental interests follows the commitments and principled guidelines of the whole Convention (Archard and Skivenes 2009). However, instead of solving it, it might actually complicate a fundamental tension between paternalism over children and the recognition of their autonomy and voice. A child, for example, might be against having a medical procedure that could save their life. Not having the procedure might affect their well-being and development, but their opinion and claims should be recognised (in relation to their maturity).

How should the best interests be evaluated in cases where there is a stark tension between what is 'objectively' best for a child, and what is 'subjectively' best for them? The Committee argues that the maturity and capacities of the child in making a decision should determine where the scale goes (CRC 2013, V.A.2). However, the fact that judging whether a child can be authoritative over their decisions is not made by children themselves, but by others (even when they listen and account for their opinions), might mean that it is inevitably a protectionist and paternalistic principle (Daly 2018). Instead of ensuring that the 'dynamic' reality and interests of the child are taken into consideration, it might end up taking away the agency of children regarding the decision-making over their interests (Archard 2004, 67).

Development and Evolving Capacities

The UNCRC emphasises the recognition of children as vulnerable and dependent individuals with evolving capacities. Articles 5 and 6 are central to this recognition, as they underscore the importance of protecting children's well-being

achievement interests during childhood. Children are entitled to life, survival, and development within the Convention (Art. 6), and their evolving capacities should be taken into account when assessing their interests and claims (Art. 5). It is a recognition 'that children are different' (Freeman 2020, 368); more vulnerable, more dependent, and less able to protect many of their interests for themselves. But recognising children as developing beings means more than just preserving and protecting their current well-being; it implies an acknowledgement of their future, long-term interests in developing properly and having the options and opportunities that will keep their freedom and choices open in the future (Peleg 2019a, chapter 3; 2019b, 147).

The particularity of children, following the Convention is not only based on the fact that they are immature, vulnerable and dependent, but also, very importantly, on the fact that they gradually phase out their inabilities, their dependencies, and their need for external protection with support from the adults around them, and become more autonomous and capable of choosing their own path in life (Tobin and Varadan 2019, 173). This perspective is reflected in Article 5 of the Convention, which endorses two crucial concepts: first, the role of legal guardians in providing direction and guidance to children as they exercise their rights, and second, the recognition of children's evolving capacities; it seeks to strike a balance between safeguarding children's vulnerability, and acknowledging their growing autonomy (Lansdown 2005; Hanson and Lundy 2017, 300).

The principle of evolving capacities aligns with a gradualist understanding of childhood, emphasising that capacities are not fixed but continually evolve and fluctuate over time. Therefore, any assessment of children's interests must consider and recognise this ongoing development to ensure they receive appropriate treatment and support for their changing needs (Tobin and Varadan 2019, 175).

The dynamic perspective of childhood presented in the Convention aligns well with the Adaptive conception of 'childhood' advocated in this book (Eekelaar 1994; Lansdown 2005; Daly 2020). By incorporating the notion of 'evolving capacities' along with other principles, the Convention signals a departure from overly paternalistic approaches to children's rights (Archard 2004, 65; Daly 2020, 482). While the terms 'development' and 'evolving capacities' may still be interpreted in a manner reminiscent of teleological approaches to development, the concept remains open enough to adapt to different ontological perspectives (see the section 'The Temporal Framework and Development' in Chapter 4). The acknowledgement of children's evolving capacities in the Convention reflects a recognition that children are not static beings, but individuals with the potential for growth and change over time. This perspective resonates with the Adaptive conception of 'childhood', which emphasises the importance of accounting for the dynamic nature of children's abilities and needs.

The Right to Be Heard

Article 12 of the Convention is often regarded as one of the most ground-breaking and discussed rights, but also one of the most misunderstood (Lundy 2007, 930). It affirms: 'to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child' (UNGA 1989, Art 12.1).

This principle recognises that every individual, regardless of their stage of development, possesses a voice and the right to be heard. It is not a discretionary right; the Committee has made it clear that all children should be presumed capable of forming their own views, and no age limit should restrict their right to express them (CRC 2009, para. 20, 21). The right to be heard is not merely symbolic; it goes beyond granting children a voice and requires putting in place conditions and support systems to ensure that children understand their rights, have appropriate means to express their views, and that their views are genuinely listened to and taken into consideration (Byrne and Lundy 2019). Simply providing a platform for children to speak without actively valuing their perspectives and incorporating them into decision-making processes falls short of respecting the essence of their right to be heard (Lundy 2007).

There are, however, concerns with the actual role that Article 12 plays in the larger picture of conceiving a system of justice that treats children as equals. As Aoife Daly argues, the right to be heard is full of qualifications: a child must be 'capable of forming her own views', their views are weighted and assessed according to adults' impressions of them, their age and maturity determine how seriously they should be taken into account, and little is done to clarify what is the particular relationship between being competent to form views, and having the right to have one's own view taken into serious consideration (Daly 2018, 45). The right is usually thought of as a way of compensating for children's lack of actual political power, but it has been claimed that it might actually work as a way of distracting from the very fact (Milne 2013, 35).

Similar to the limitations of the best interests principle, it has been argued that the power dynamics between adults and children, instead of being reduced thanks to children's right to be heard, might actually become entrenched (Archard 2004, 66); adults still have control and decision-making power over who can be heard, what competences are required to be taken into consideration, what weight should be given to them, and when are they allowed to speak (Cordero Arce 2012, 292). While giving every individual a voice and a right to express their views should be seen as a fundamental interest, it is up for debate whether a right so strongly conditioned on its interpretation by adults (who are not the right holders) can actually be a source of power, or is rather a tokenistic symbol that fails to recognise children's equality at all.

Tensions and Conceptual Reflections on the Convention

Having briefly outlined the framework of the UNCRC and introduced the core normative and conceptual elements that structure it, it is time to look at it from a critical perspective. What are the main conceptual and ideological problems pervading the Convention? How do they speak to the Adaptive conception of 'childhood'? And how do they reflect on the normative commitment to basic liberal equality endorsed in this book? I will provide an analysis based on the conceptual tensions that I consider fundamental for explaining the need to move beyond the UNCRC, and look for alternative ways of theorising rights for children and ensuring their recognition as equals.

Four major tensions emerge, and understanding them is crucial for moving beyond the Convention and rethinking children's rights. First is the conflict between the dangers of orthodoxy in relying on the Convention for normative guidance and the issue of ambiguity in how to read and interpret many of its rights and principles. The second refers to the relationship and conflict between the universalist aspirations of the UNCRC and its need to ensure context sensitivity. The third issue centres on the delicate balance between equality and difference in the Convention. It raises the question of whether the Convention effectively addresses the anticipated conflict between treating children as equals while acknowledging their unique characteristics. Furthermore, it connects to the final tension concerning the challenge of determining the appropriate weighting between paternalistic and agency-promoting principles in safeguarding children's rights.

Orthodoxy and Ambiguity

The Convention is often lauded for its achievement in consensus-building at the international level (Kaime 2011; Quennerstedt 2013). However, this consensus has revealed a structural flaw in the form of a tendency to compromise politically without establishing a common normative or conceptual foundation. This practical consensus means that parties have agreed on the outcome text of the Convention, but their underlying understandings and perspectives on norms and motives leading to the outcome can differ significantly (Quennerstedt et al. 2018, 42). Consequently, the Convention accommodates a plurality of moral and ideological agendas, leading to various interpretations of its principles and articles (Quennerstedt 2013, 240–1). For instance, while there is agreement on protecting the best interests of the child as a primary consideration, the Convention lacks sufficient substantive guidance on its implementation, resulting in ambiguity in its interpretation and application. As a result,

the framework may encourage orthodox adherence to the Convention's rights without providing clear directions to avoid ambiguity.

Reynaert et al. (2009, 528) have argued that research on children's rights based on the Convention tends to focus on standard-setting, implementation, and monitoring of the rights, particularly on how it is applied in various regional and domestic settings (Gilmore 2017; Stalford et al. 2017). This approach often lacks critical questioning of the moral or conceptual foundations that underpin the text, leading to an orthodoxy in studies and reflections on children's rights (Freeman 2020, 310). The emphasis is placed on closing the gap between the text and practical implementation, without reflecting on its moral foundations or exploring alternative approaches (Reynaert et al. 2012, 164).

This orthodox approach has been criticised for potentially confining children's rights within the boundaries set by the Convention, leading to a 'ghettoization' of the field (Freeman 2020, 249). By treating the Convention as absolute commandments rather than a historical and political document, the risk is that childhood can be forced to conform to the provisions of the Convention, rather than adapting the document to accommodate to evolving realities (Raes 1997; Hägglund and Thelander 2011). As a political document, the Convention is ageing (Veerman 2010), and excessive reliance on it as a canonical text can limit our ability to reflect on what has been excluded and what new realities require consideration (Cordero Arce 2012, 305). A critical and reflective approach is essential to ensure that children's rights continue to evolve and respond to the changing needs and challenges of children in contemporary society.

The lack of advancement within the Convention in engaging with potential new rights for children, such as the right to vote, illustrates the orthodoxy present in its approach (see further Chapter 10). Relying heavily on the participatory tools provided by Article 12 may limit our capacity to think critically about children's citizenship and their broader human rights beyond the scope of what the right to be heard entails (Wall 2012; Milne 2013). This reliance on the Convention as the sole source for determining what is owed to children as a matter of justice can lead to complacency. Instead of critically assessing what children truly need and deserve in terms of rights and protections, the answer may simply be to 'read the Convention'. However, it is essential to recognise that the Convention is a socio-political construction with its roots in a specific historical context. It was drafted by adults who may have had unconscious biases and assumptions about childhood, making it crucial to critically assess its normative value beyond its political utility (Reynaert et al. 2012; Quennerstedt 2013). By acknowledging the Convention's limitations and historical context, we can better identify its strengths and weaknesses as a normative framework. This awareness allows for a more robust evaluation of children's rights, and opens the door to exploring alternative approaches that may better serve the evolving needs and realities of children in society.

The other side of the problem of practical consensus-building in the Convention is that the lack of normative agreement and clear definitions regarding the interpretation of the Convention's articles, such as the 'best interests' principle, creates conceptual obscurity in its implementation. Despite lengthy discussions during the drafting of the Convention, the meaning of 'best interests' was never thoroughly explored, leaving it open to subjective interpretations and influence by political, moral, or religious ideologies (Alston 1994). As a result, the determination of what constitutes a child's best interests can vary greatly depending on the subjective standpoint of the parent, judge, or public authority responsible for making decisions (see Reece 1996; Peleg 2019b, 141).

Moreover, the fact that the principle of 'best interests' is described as a 'primary consideration' without further clarity on how it should be applied allows it to be easily overshadowed and trumped by other political considerations and priorities. In practice, this lack of concrete guidance can result in situations where children's best interests are not adequately conceptualised, protected, or where they are sacrificed in favour of other perceived priorities (Fenton-Glynn 2021, chapter 1). This ambiguity can lead to inconsistent and unpredictable outcomes in decision-making processes concerning children's welfare and rights.

While the openness of certain principles may have benefits, enabling them to adapt to diverse circumstances and consider various tensions among interests, a lack of agreement regarding their substantive content can lead to manipulation, abuse, and oppressive practices. This ambiguity and subjectivity provide room for dominant ideologies to impose their conception of justice, allowing arbitrariness to influence decision-making processes. Consequently, this can limit rather than empower children's agency and their ability to make decisions regarding matters that affect them (Archard and Skivenes 2009, 2; Freeman 2020, 101).

The Committee has asserted that if all other rights in the Convention are taken seriously, the problem of ambiguity in the 'best interests' principle can be avoided. It argues that a child's interests in development, education, health, and participation will all be accounted for if the principle is correctly implemented (CRC 2013, IV.B.3). However, this hinges on how the other rights in the Convention are interpreted and how the concept of 'child' is conceived and understood (Tobin 2012; Fenton-Glynn 2021). If children's abilities and agency are undervalued, or if specific moral ideologies dominate the interpretation, the principle may merely echo passive and overly paternalistic views of children's interests, failing to consider the unique circumstances of each child.

The procedural role of the 'best interests' principle as an interpretive tool in situations of conflict among interests is of great importance. However, there must be clarity in defining these interests, understanding how they relate to each other and determining the best way to interpret them within an Adaptive conception of 'childhood'. This clarity is essential to ensure that the principle serves as an instrument that advances justice for children rather than hindering it.

Universalism and Context-Sensitivity

The tension between universalism and context-sensitivity in the Convention is a significant concern. While universalism in itself is not necessarily problematic (Brando 2019), an important issue that arises from an appeal to an orthodox reading and implementation of the Convention is the potential detachment from the concrete realities and diverse contexts in which children live. This abstraction can lead to overlooking the social, economic, and historical conditions that shape the lives of children and their varying abilities and vulnerabilities if considered in an intersectional manner (Reynaert et al. 2009, 528).

A second tension thus arises between the Convention as a system that aims to ensure justice for children equally all around the globe and the dangers of establishing a rigid universal account of what 'childhood' is and how children's rights should look in practice (Ncube 1998a, 5). Neglecting socio-cultural differences and overlooking variability within the group of children regarding what their rights should mean in practice risks failing to acknowledge the interests and claims of individuals within their Adaptive (embodied, temporal, and spatial) constitutive frameworks. This approach lacks proper respect for individuals and may impose foreign and detached conceptions of the good and justice without adequate justification (Krutzinna 2022, 123).

Context-sensitivity seems, therefore, an important aspect of any rights-based approach that aims to achieve equality. As argued before, childhood must be assessed and treated as a radically heterogeneous phenomenon, being affected and conditioned by a plurality of factors, social context being core among them (Twum-Danso Imoh 2016). Any attempt at securing justice for children demands that we reflect on how we can accommodate normative frameworks within the plural realities of 'childhood' (Baraldi and Cockburn 2018, 265). Embedding justice and equality within the constitutive frameworks of the individual can help us better understand how social conditions, cultural environment, and the individual's characteristics enable or hinder the conversion of rights in law into actual capabilities and freedoms in practice. The ample intersectional diversity of different children's situated experience asks us to consider how (and up to what point) universal norms are capable of working in different contexts, and how (and up to what point) we should aim to adapt our understanding of universal norms so to secure the benefits they aim to create (Peleg 2018, 328; Rabello de Castro 2021).

Now, context-sensitivity should not mean that social and cultural practices, ideologies, and hegemonies ought to override core normative commitments (Hanson and Nieuwenhuys 2012, 10). Social context can be a hotbed for domination, oppression, and discrimination, and just as context-sensitivity aims to limit abstracted ideologies from creating harms in particular contexts, the aim of universal norms is to ensure that all individuals are recognised and protected equally,

regardless of context (Brando 2019, 276–9). Striking a balance can be a difficult task, especially if norm-setting is determined in a top-down fashion at the United Nations offices in Geneva. Stronger engagement and deeper dialogue among the different levels at which the standards are determined and laws are put into practice might be needed to ensure that neither abstract universals nor hegemonic local social ideologies hijack the core normative commitments.

A prime example, which strongly aligns with the adaptive model of childhood presented in this volume, can be seen in the African Charter on the Rights and Welfare of the Child (ACRWC) (OAU 1990). This instrument aimed to embed the rights of the child (following the UNCRC) within the African context, based on a concern with the fact that the abstracted and universalist nature of the UNCRC made it close to impossible for it to be able to address certain core issues and concerns that affect children particularly in the African context, and to accommodate to understandings of justice and morality within this context (Olowu 2008, 23). The ACRWC aimed to tackle specific challenges such as children engaged in armed conflict, internal displacement, justice under the apartheid regime, disadvantages suffered by African girls, and justice in relation to the HIV/AIDS epidemic, which the UNCRC was not fully equipped to handle.

Furthermore, the ACRWC recognised the importance of particular social commitments and dynamics unique to the African context. It acknowledged the role of communities in securing grassroots justice and equality, the significance of extended families in child-rearing and upbringing, and the value of African cultural and communitarian practices (Kaime 2011, 131). Balancing universality and particularity was a central objective, aiming to prevent the imposition of Western discourses, conceptions of 'childhood', and 'justice' through the UNCRC. Instead, it sought to create a charter, based on the Convention, that embraced an 'African cultural fingerprint' to ensure African-specific understandings of the 'child' and 'justice' were respected and not overridden by Western norms (Ncube 1998a).

Finding the right balance between universality and context-sensitivity is undoubtedly a complex task. Determining how much adaption of universal commitments is necessary to reflect the reality of diverse social contexts, and when it is essential to override local ideologies for the sake of ensuring equal protection of rights, can be challenging and subject to varying perspectives, especially when considering specific rights (Twum-Danso Imoh 2019). Chapter 8 aims to provide a rough roadmap to address this challenge by exploring the necessity of context-sensitivity and an embedded conception of rights in achieving universal normative commitments, such as the protection of basic liberal equality. By delving into this issue, the chapter sheds light on how universal principles can be applied in different contexts while respecting the diversity of children's experiences and ensuring equitable protection of their rights.

Equality and Difference

The Convention faces a seemingly paradoxical dual commitment: on one hand, it aims to ensure equality for children, while on the other hand, it recognises them as inherently different from adult humans. This, referred to as 'the difference dilemma' by Martha Minow (Minow 1990), raises the question of how to acknowledge children as equal to all other humans while establishing a legal rights regime that treats them as different. The crux of the problem lies in the fact that if children are indeed different, treating them strictly as equal to adults could potentially lead to harm (see the section 'The Harm of Equal Rights' in Chapter 6). For instance, granting children the same freedom of contract and consent as adults, or eliminating prioritised rights to high standards of health, nourishment, or education, might not be in their best interests. However, creating a differential rights regime solely based on the assumption of children being inherently different from adults can reinforce the prejudice of viewing them as inferior and perpetuate their unequal status (Vandenhole 2022).

Non-discrimination principles seek to prevent unjust treatment of individuals or groups labelled as 'different' by ensuring equal treatment under equal circumstances and differential treatment under legitimately different circumstances. In essence, they aim to strike a balance between treating like cases equally and treating legitimately different cases differently. If there are aspects of life where children and adults should be considered equal, then they should receive the same treatment. Conversely, in situations where substantial differences exist between children and adults, it is justified to provide differential treatment to ensure the protection of their distinct needs and circumstances. The question remains, does the non-discrimination principle in the Convention effectively achieve this balance?

The normative standpoint of the Convention regarding discrimination is somewhat complex, as it aims to achieve both non-discrimination and equality among children, yet its limited scope can potentially overlook discriminatory treatment of children in relation to adults. The Convention's Article 2, while addressing non-discrimination, may not fully capture the complexities of potential discrimination faced by children (Cordero Arce 2012, 312; Archard 2019, 46). Consequently, this can perpetuate and reinforce the categorical distinction between childhood and adulthood, an issue known as adultism (Freeman 2020, 94).

Although some argue that 'age' can be considered within the 'other statuses' mentioned in Article 2, the age-based definition of 'child' in Article 1, coupled with the limited scope of the non-discrimination principle, can further solidify the distinction between children and adults. Cordero Arce suggests that any system of non-discrimination that categorises groups as 'different' inherently reproduces discrimination (Cordero Arce 2012, 306). While this claim may not be universally

applicable, it does raise important questions about who determines the norms, characteristics, and prescriptions for different groups. The process of categorisation and its basis should be critically evaluated to assess the moral implications of a differential rights regime, as proposed by the Convention. This evaluation should consider whether such a regime may be morally questionable in terms of its commitment to basic equality, even if there are legitimate reasons for adopting it in certain contexts.

Paternalism and Agency

A final tension present in the Convention relates to the conflictual relationship between paternalistic and agential understandings of children's rights. The UNCRC seeks to protect children both from external harm and from making harmful choices for themselves, while also recognising their individual agency and capacity to participate in decisions affecting them. However, in attempting to strike a balance, the Convention sometimes falls into making generalised assumptions about children's abilities, vulnerabilities, and dependencies, leading to binary categorisations that classify children as either needing paternalistic protection or as fully agential beings (Clark and Ziegler 2014, 228). While some level of categorisation based on general traits might be unavoidable, there is a growing concern about an over-reliance on paternalistic interpretations of children's rights (Milne 2015, 8). This concern is evident in how the four general principles of the Convention are interpreted and applied together.

While the child always has a right to be heard, the weight and value given to their voice is always dependent on an adult's evaluation and decision-making. Children's views are never necessarily determinative of the outcome, as it is always someone else who has authority over the extent to which those views should influence the outcome (Archard 2019, 46; Eekelaar and Tobin 2019, 76). In theory, an assessment of a child's best interests must always take into account the child's own perspective and their evolving capacities, but evaluations tend to be biased in favour of paternalistic protection rather than autonomous decision-making by the child (i.e., Reece 1996).

For instance, even if a child is deemed competent to make medical decisions, medical professionals can easily override the child's decision if they believe it would be detrimental to their health and well-being (Daly 2020, 492). The problem lies in the disparity between how decisions are handled for children as opposed to adults; a different standard is used to judge the competence/incompetence of a child and an adult. While the state might have a legitimate interest in preventing decisions that would harm individuals, the methods used to address this issue differ drastically between children and adults. With adults, efforts are made to provide information, offer therapy, or provide incentives to align the individual's

decisions with their best interests. However, when dealing with children, these 'soft' methods of alignment are often set aside and paternalistic approaches are applied instead. This discrepancy in how decision-making is approached for different social groups leads to unequal standards and processes for assessing the right to decision-making.

The principles of 'evolving capacities' and the 'right to be heard' present a complex scenario for children's agency. While they are intended to recognise and respect children's perspectives and capabilities, the assessment of how much weight to give their views ultimately rests with (adult) decision-makers. This places children's agency in a vulnerable position, as those in authority can override their opinions based on potentially subjective and questionable assessments. As long as others have the final say in determining which abilities are considered sufficient for decision-making or whose voices are given priority in 'best interests' assessments, children's agency remains at risk, and their ability to make meaningful decisions may be curtailed and limited (Liebel 2014, 69).

Exploring the tension between paternalism and agency in the Convention requires a comprehensive analysis beyond the scope of this discussion. It is important to acknowledge that the Convention is subject to diverse interpretations, and many instances exist where children's agency is respected. However, to ensure a theory of rights that recognises children as equal moral beings (Abebe 2019), there is a need to re-evaluate the prevalent reliance on paternalism and consider the varied roles and forms of agency that children exercise in their daily lives.

Moral dilemmas concerning paternalism are common in political and legal theory, and eradicating them completely may not be feasible. Nevertheless, a consistent application of principles across the population, considering an individual's unique constitutive frameworks rather than relying on general assumptions about who they are, is essential in ensuring a fair and just approach to children's rights and agency.

Conclusion

The UNCRC has undoubtedly been a crucial legal document in advancing the rights of children and acknowledging them as rights bearers. Its commitment to ensuring equal protection of children's rights across different contexts is commendable. Moreover, the Convention recognises the diversity among children, encompassing their varying abilities, vulnerabilities, and dependencies, and seeks to accommodate these aspects in the implementation of their rights.

However, the UNCRC also faces some significant challenges. As a political instrument, it had to navigate the complexities of achieving consensus among diverse moral perspectives, which led to certain normative commitments being

inadequately justified. The intentional vagueness in interpreting core concepts and principles can create ambiguity and leave room for differing interpretations, potentially hindering the realisation of children's rights.

To address these challenges, a critical reflection is essential. Moving beyond the Convention requires a deeper examination of its normative and conceptual foundations. Alternative ways of theorising rights for children should be explored, with a focus on ensuring their recognition as equal moral beings, while also acknowledging their unique characteristics and circumstances.

This is especially problematic in relation to its 'best interests' principle and how it affects the procedural interpretation and application of the rest of the Convention. The sensitivity of the 'best interests' principle to context and the individual condition of the child (in line with the adaptive model of childhood presented before, see Chapter 4), is commendable, but the interpretative vagueness of what these 'best interests' are, and the problematic over-reliance on paternalistic interpretations of them (similar to some of the Standard Liberal accounts in the section 'The Standard Liberal View' in Chapter 6), makes it a double-edged sword. Similar issues arise with the right to be heard, and the principle of the 'evolving capacities'; they exist, in theory, as tools that ensure children are heard and respected according to their diverse embodied and agential conditions. But within the larger picture of a theory of children's rights, they might be read as mechanisms that ensure that, while always acknowledging some form of agency during childhood, this will always be a different (less developed and self-determining) form of agency than that ensured to the adult population.

This leads to the final problem: the limited role that the principle of non-discrimination within the Convention can play in protecting from forms of discrimination that affect children as a group in relation to adults. The focus of Article 2 on forms of discrimination among children on the rights within the Convention means that it cannot play a normative role in tackling the core form of inequality addressed in this book: the inequality that stems from an assumption of categorical difference between childhood and adulthood. Any theory of rights committed to ensuring basic liberal equality must be capable of addressing this structural injustice that affects the child population: their differential treatment based on their strict binary categorisation as a social group separate from adults.

After engaging in a comprehensive critical reflection on various theoretical frameworks for children's rights, including Liberationists, Standard Liberals, and the Convention, the next step is to construct a new normative perspective. This reconstruction aims to develop a theory of children's rights that meets the standard set by the principle of basic liberal equality while aligning with the Adaptive conception of 'childhood'. Chapter 8 delves into this constructive normative endeavour.

8

An Adaptive Model for Children's Rights*

Our journey so far has led us to explore various models that attempt to give structure and meaning to children's rights from a liberal perspective. They show how a commitment to the same liberal principles of justice can lead to widely differing interpretations on how to put these commitments into practice. While acknowledging the immense value and advances that the 1989 United Nations Convention on the Rights of the Child (UNCRC), the Liberationist, and the Standard Liberal models have made to furthering children's rights, I have shown that none of them in themselves fully reflect the commitments to basic liberal equality, nor to a conception of childhood that is sensitive to children's constitutive frameworks (see Chapter 6 and Chapter 7).

Drawing on the insights from these previous models, this chapter provides an account of children's rights that better reflects the reality of childhood accounted for in the first part of this book and which better aligns with the structural commitment to basic liberal equality. In line with the Adaptive conception of 'childhood' presented in the first part of this book (Chapter 4, 'An Adaptive Conception of "Childhood"'), this chapter proposes an adaptive model for children's rights. It takes basic liberal equality as its primary commitment, and the embodied, temporal, and spatial frameworks of the individual as the foundational elements that should determine how we understand what is owed to individuals as a matter of justice. Locating children's rights within the constitutive frameworks of childhood (vulnerability, developmental needs, and embeddedness) entails a commitment to variability and adaption of rigid rights frameworks to the particular realities that differently positioned individuals live through. After establishing the core principles that should guide any assessment of right-holding, we will be able to embark on an in-depth analysis of the applicability of the model to certain rights of children in Part III.

This chapter revisits the three models of children's rights examined in Part II. The focus is on extracting the core insights and identifying the essential elements that align with the principle of basic liberal equality. By doing so, I aim to construct a theory of children's rights that integrates the strengths of these models. Subsequently, the chapter introduces the three core principles that underpin the adaptive model of children's rights. These principles include recognising fundamental interests as the source of rights, upholding a commitment to basic liberal equality and non-discrimination, and acknowledging the importance of sensitivity and adaptability to each individual's constitutive frameworks. We delve into the role played by each constitutive framework in assessing an individual's claims, emphasising the dynamic relationship and interdependence among them. Understanding this interaction provides a solid foundation for applying the adaptive model to particular cases.

Liberal Perspectives on Children's Rights

Before we go into details of the proposed adaptive model of children's rights, it seems necessary to look back at the models studied earlier, what have we learned from them, what should we keep from them, and what requires change (see Table 8.1).

	Pros	Cons
Standard liberal	• Can legitimise variation based on harm and incompetence. • Especially for achievement rights tied to the temporal and embodied frameworks.	• Excessively binary and rigid. • Insensitive to spatial variation. • Insensitive to oppressive power dynamics.
Liberationist	• Justifies the need for basic equality and non-discrimination. • Non-binary standard. • Sensitive to oppressive power dynamics.	• Insensitive to variations in temporal and embodied frameworks. • Lacks strength in justifying many achievement interests.
The Convention	• Best interests principle sensitive to all constitutive frameworks. • Encourages dynamic assessment. • Evolving capacities promotes a temporally sensitive account of rights.	• Lacks responsiveness to spatial variability. • Age boundaries affect is capacity to deal with discrimination. • Potentially regressive, as is positivist law.

Table 8.1 Liberal perspectives of children's rights

Standard Liberal Approaches

From the standard liberal approaches studied in Chapter 6 (see the section 'The Standard Liberal View') (Differential, Gradual, and In-Trust), we encountered three important flaws that should be amended, while seeing two valuable elements that ought to be kept. Standard Liberals fail to produce a model that is sufficiently flexible and adaptive to the dynamic interests of children, based on their constitutive frameworks. While their emphasis on protecting the needs of children tied to their development stage and their vulnerability shows a certain sensitivity to ensuring that variability in embodiment and temporality are accounted for in the appropriate treatment of individuals (Feinberg 1992; Brennan 2002; Brighouse 2002), excessive reliance on the binary opposition between the interests of adults and children fails to acknowledge the diversity in terms of development and vulnerability within childhood, within adulthood, and among children and adults.

The standard liberal attempt to ensure that harm and inability are accounted for in a theory of rights is in the right place (Purdy 1992; Archard 2004); however, a rigid account of what 'inability' means and the varied sources from which harm can arise make their prescriptions insufficient to fully account for the adaptive reality of children's lives. This is especially the case in relation to a lack of sensitivity to the spatial framework in which individuals are embedded and, particularly, on how socio-cultural spaces can be sources of oppressive power dynamics that affect how vulnerable an individual is and where harm derives from.

Differential treatment owing to developmental condition and embodiment is not only justified within a framework of basic liberal equality, but also necessary. Acceptance of the condition of humans as vulnerable and developing beings requires an account of justice and a theory of rights that ensure developmental processes or embodied needs are protected through differential treatment. However, the principle of non-discrimination entrenched in basic liberal equality demands that any such differential treatment based on development and vulnerability be thoroughly legitimised based on the individual's particular condition and not on generalised binary distinctions (Besson 2005). Moreover, for differential treatment to be legitimised it ought to show sensitivity to the spatial framework, to how socio-environmental factors can affect how individuals can exercise rights, and the specific resources and conversion factors required to ensure fundamental interests through rights.

In short, standard liberal approaches provide useful guidelines and arguments to justify the need for differential treatment based on vulnerability and development (tied to potential harm and inability of an individual); however, they require amendment as they rely on a framework that is too rigid to ensure sensitivity to variable constitutive frameworks.

The Liberationist Approach

The Liberationist model of children's rights, while providing an important groundwork for determining a rights framework in compliance with basic liberal equality, fails in its lack of sensitivity towards the varied constitutive frameworks of individuals (see the section 'The Liberationist View' in Chapter 6), especially as they relate to achievement rights and protections that might be required to secure various interests of children that might be threatened by vulnerability or developmental needs.

The main argument that ought to be kept from Liberationists is their endorsement of an equal standard to judge the interests and claims of all individuals, regardless of age or other morally irrelevant characteristics (Farson 1974; Cohen 1982). This is a core requirement of any theory of justice that aims to align with basic equality. Their critique of mechanisms that establish rigid binary distinctions to prescribe treatment is appropriate, and necessary in order to think of alternative ways of assessing an individual's claims. The Liberationist appeal for an equal standard ticks two important boxes from our concern with other accounts of childhood and children's rights: first, it avoids the problematic binary opposition between childhood and adulthood that we saw in Part I; second, it provides a basic rule of thumb to assess whether basic equality is being secured or whether potentially discriminatory mechanisms are in place.

Liberationist approaches, while appealing to an equal standard for judging differential treatment, do not, however, make much use of it in their own theories of rights. A core claim made by Liberationists is that every right an adult has a child should also have (Holt 1974). This is problematic as it fails to account for the variable needs and claims that derive from an individual's particular embodied or temporal condition. Ensuring equality of treatment (as I argued before in the section 'The Harm of Equal Rights' in Chapter 6) does not require strict equality but ensuring that only morally relevant differences justify differential treatment. The Liberationists' lack of awareness of the need for differential treatment based on vulnerability or developmental condition fails to ensure a just treatment for those who, owing to high risk of harm or inability, may not benefit from being treated in strict equality.

With the Adaptive conception of 'childhood', I provided a guiding framework for assessing the status of an individual in the childhood spectrum, based on the acuteness of impact of their constitutive frameworks. Following the liberationist argument that one and the same standard ought to be used to assess all individuals' claims, the adaptive model of children's rights aims to make use of this same structure based on the constitutive frameworks in order to assess everyone's particular claims and how they translate into rights. Accounting for how protecting interests varies depending on an individual's constitutive condition is a necessary element of justice.

The Convention

As seen in Chapter 7, the UNCRC is a complex and nuanced piece of international law. Even if not directly feeding from some of the accounts of childhood and children's rights studied in this book, it does reflect clearly the political urgency to provide a nuanced account of what is owed to children, being both sensitive to their needs as particularly vulnerable individuals and recognising children as equal citizens. While acknowledging the huge advances made by the Convention, it suffers owing to certain inherent tensions, especially in relation to children's potential discrimination on grounds of age and to its conflicting aspirations towards universality and accommodation to diverse life-worlds.

The question of discrimination on the basis of age in the Convention is a tricky one, as seen earlier (see the section 'Equality and Difference' in Chapter 7). The fact that the principle of non-discrimination in the Convention only applies to the rights within it means that, in a sense, it does not protect individuals under the age of 18 from being discriminated against in relation to rights and right-holders beyond the Convention (Cordero Arce 2012; Archard 2019). This is a huge problem as age is seldom highlighted as a protected category in international legal documents, and as this opens the door for questionably justified differential treatment of children based on age to be allowed (Freeman 2020). This is compounded by the fact that, owing to the existence of the Convention, appeals to the rights of children barely ever make use of other human rights documents but rely exclusively on the Convention (Raes 1997; Hägglund and Thelander 2011). This, in a way, occludes the fact that children are equal right holders in other human rights documents, enabling certain forms of age discrimination to be maintained, regardless of there being laws against them.

The Convention (and most international law), in its attempt for universality, fails to account for the need to be sensitive of spatial and socio-cultural variability (Reynaert et al. 2009). While universality of standards is a must, universality in prescriptions and interpretations of vulnerability or development should not be. Lack of sensitivity to socio-cultural variants that affect an individual's positioning in their space, and in relation to their body and development means that all, regardless of their condition and specific socioenvironmental needs, are treated with the same rule. This is problematic as it fails to account for the plural ways in which an individual's interests may be achieved in different socioenvironmental spaces (Ncube 1998a). A more nuanced account that both protects from socio-cultural forms of harm and oppression while respecting socio-cultural forms of empowerment and protection of interests is necessary.

Studying the 'best interests' principle, we have seen the vast potential it has in securing the fairest result for an individual's claims (see the section 'The Best Interests Principle' in Chapter 7). It follows some of the concerns that have been

raised throughout this book, and provides an (unfortunately not very clear) principle to put them into practice (Alston 1994). My account of childhood and children's rights advocates for always focusing on an individual's fundamental interests when assessing what is owed to them. The 'best interests' principle theoretically aims to achieve this. Owing to the awareness of potential conflicts among rights, potential conflicts in determining an individual's achievement and freedom interests, and the radical variability in children's constitutive conditions, a holistic approach that engages with all variables is the best way to go. My own account is intended to flesh out more clearly what these variables inside an 'interests' assessment should be, and aims to analyse certain cases, and study them through this framework. The principle has suffered critiques owing to its extreme ambiguity in how it is applied in practice, with an over-reliance on protectionist definitions of best interests, thus omitting children's agency and voice (Archard and Skivenes 2009). This is not a problem with the principle per se, but giving it more flesh and a clearer structure can aid in understanding when an 'interests' assessment is flawed, and when it responds correctly to an individual's claims and fundamental interests.

Principles for an Adaptive Model of Children's Rights

Previous models of children's rights bring important insights to the table. They show the need to commit to equality and freedom, while aiming to stay flexible enough to accommodate to varied circumstances. Here I want to flesh out how we should operationalise the lessons learned in terms of principles for a model of children's rights. Prior to looking at the ways of determining what specific rights children should have, we must establish the core principles that ought to guide any normative assessment of children's rights. Chapter 5 explores the grounds for rights, and argues that they must aim to track an individual's fundamental interests (well-being and agency freedoms and achievements), and that they should be understood as dynamic and adaptable to the particular conversion factors that allow them to actually secure fundamental interests (see the section 'The Evaluative Space of Fundamental Interests' in Chapter 5). With this in mind, a model of children's rights that aims to abide by the principle of basic liberal equality must be able to prove its allegiance to three basic principles, from which the rest develop. First, it must aim to track the fundamental interests of individuals, conceiving rights as tools that enable their fulfilment; second, it must be non-discriminatory in its assessment, categorisation, and prescription of rights and treatments to individuals; and third, it must be sensitive to the variable constitutive frameworks that affect the owed treatment of individuals, and how these affect the way we understand the dynamic relationship between an individual and their rights. Let us look at what each of these principles entails.

Rights Protect Fundamental Interests

I argue in Chapter 5 that the appropriate way of understanding rights is as legal resources that aim to secure an individual's fundamental interests. It thus makes sense to consider this the first principle for a theory of rights. When we think about rights, we are thinking about a society's commitment to safeguarding certain core interests that we have as humans and as citizens. Rights should be able to track what these fundamental interests are and provide a legal framework to protect them. This principle, however, requires more than rights simply tracking interests; it requires sensitivity to the mechanisms needed to convert resources and entitlements into the actual fulfilment of interests.

I have argued that a valuable way of framing what fundamental interests are is through Amartya Sen's capability theory, which considers that human fundamental interests can be categorised as agency and well-being freedoms and achievements (Sen 1985; 1999). We have a fundamental interest in having certain goods and forms of being and doing protected as achievements (in the sense of realised states of being), and as freedoms (the substantial opportunity to achieve beings and doings). The core contribution made by this typology is that it makes explicit that rights can (and do) protect interests of different forms, and that different interests may require different supports from rights.

Rights go beyond a mere legal commitment to secure an interest and beyond non-interference with an individual's freedom; they prescribe particular positive obligations to states and other parties to ensure that the conversion factors required to protect an interest are in place, and they prescribe negative obligations of non-interference to states and other parties to ensure that individuals realise their interests through their own substantive freedom (Sen 1999). Moreover, awareness of the plural ways in which human fundamental interests may exist demands that a theory of rights be capable of accommodating and solving potential tensions and conflicts among fundamental interests. An individual's interest in having their nourishment and food security protected (an interest in well-being achievement) can clash with their interest in manifesting themselves against a political decision through a hunger strike (an interest in agency freedom). Interests can come into conflict, and a theory of rights must be capable of engaging with these tensions in order to allow individuals to exercise their rights in alignment with the beings and doings that they have reason to value.

Another facet of rights protecting fundamental interests, is that, while we all may have the same fundamental interest in something, the particular mechanisms, resources, supports, and freedoms required for different individuals to actually have a fundamental interest protected can vary. Thus, while we all might have the same right, a focus on fundamental interests requires dynamism and adaptability

to varied circumstances in order to secure the interest in question (Raz 1984b; Eekelaar 1994). There is a myriad of different roads to reach the same goal, and the conversion factors internal and external to the individual, which are required to fulfil fundamental interests, vary greatly. Securing fundamental interests thus demands adaptability to the ways in which a right is converted into actuality through resources, supports, and freedoms.

Imagine two children, Patricia and Natalia, living in the same community. Both have a fundamental interest in getting an education that will enable them to secure further interests they have reason to value. But their condition, needs, and circumstances are different because of variations in their constitutive frameworks. Patricia has a physical disability that affects her mobility, while Natalia comes from a low-income family that struggles to afford educational resources. They vary in their embodied and spatial conditions.

For Patricia, her fundamental interest in education as an achievement requires access to inclusive schools with proper facilities that accommodate her physical needs. She also needs supportive technologies and assistive devices to enhance her learning experience. In this case, protecting Patricia's interest in having an education requires providing reasonable accommodations that ensure she can fully participate in learning and achieve her educational goals. In short, she requires rights that ensure her embodied vulnerabilities do not affect her fundamental interest in an education.

On the other hand, Natalia's fundamental interest in education as a freedom involves having the substantial opportunity to access quality education without financial barriers. For her, rights that protect her interests entail assurances in terms of equality of opportunity, providing financial support, scholarships, or subsidised educational programs that ensure she has the substantial freedom to pursue her educational aspirations without being hindered by her family's economic circumstances (Brando 2016; 2017). She requires rights that ensure her spatial embeddedness does not affect her fundamental interest in an education.

We must conceive of rights, following Hanson and Nieuwenhuys, as an 'open-ended endeavour' capable of accommodating to the lived reality and the particular embodied, temporal, and spatial conditions of the individual (Hanson and Nieuwenhuys 2012, 3). Rights require adaption to the particular way in which the constitutive frameworks of an individual affects how we understand their fundamental interest. We require 'living rights' (Hanson and Nieuwenhuys 2012, 11); a system that encourages active interpretation and adaption of what a right means, based on the particular context and condition of a particular child.

A theory of rights ought to ensure fundamental interests; it must do so by providing the conditions and resources (the conversion factors) required for an individual to have freedoms and achievements secured; it must be capable of evaluating and overcoming tensions and conflicts among fundamental interests;

and it must be able to adapt to the plural ways in which one and the same fundamental interest should be protected for different individuals.

Basic Liberal Equality and Non-Discrimination

As the core objective of this book is to provide a theory of childhood consistent with a liberal political system, any model that aims at this objective ought to abide by and justify its commitment to basic liberal equality. This, first and foremost, entails a commitment to non-discrimination. It requires equal treatment for alike cases and differential treatment if, and only if, there is a legitimate aim for differentiation, if the treatment is necessary, and if it is proportionate (Besson 2005). In short, formal equality is a core commitment of any theory of rights.

In Part I, I show what might make a collective of individuals morally relevant for a theory of justice, and why in certain cases it might be necessary to categorise them as different (see Chapter 1). Basic liberal equality requires that, when assessing the appropriate rights, freedoms, and protections owed to an individual, we should evaluate whether and up to what point an individual's bundle of rights differ in any way from that of others. Biases, stereotypes, and assumptions about collectives should not be taken for granted, as most forms of discrimination usually derive from them. One crucial aspect of basic liberal equality and non-discrimination is the need to critically examine assumptions about collectives, especially concerning children. Standard liberal approaches have historically justified the restriction of children's freedoms as rights (e.g., to consent, to work, to vote) based on assumptions about their constitutive frameworks, often under-estimating their agency and capacity for decision-making. Non-discrimination requires that any divergence from the norm can prove that the differentiated category is morally relevant for the differentiation at hand, and that the restrictions or privileges provided to the differentiated category are necessary for protecting fundamental interests, and are proportionate, in terms of the benefits won versus the restrictions incurred (Besson 2005, 436; Fredman 2011, 13).

For instance, consider the assumption that children (as a group) are not capable of making informed medical decisions. While it is essential to protect children from harm, an uncritical application of this assumption can lead to discriminatory practices that do not recognise their entitlement to be judged with an equal standard to adults. While adults are assumed as competent in making informed medical decisions for themselves (until proven otherwise), children tend to have to prove their competence in this area. This is a failure to apply an equal standard to both children and adults, and to judge them based on a principle of basic equality. If a given child and adult have the same abilities to make

informed medical decisions, the same standard should be used to judge whether they should be allowed this freedom or not.

This is of particular importance in the case of children, whose assumed constitutive frameworks tend to lead to a generalised restriction of their freedoms as a right. The presumption of freedom for individuals, including children, requires us to carefully weigh the necessity and proportionality of restrictions imposed on them (Besson 2005). Basic liberal equality, besides requiring equal treatment, stands on a commitment to a presumption on the side of freedom. This means that merely treating all individuals as equals is not enough; one must treat all as presumptively free, unless proven otherwise. The same standards used to justify differential treatment ought to be used to justify restriction of freedom. An individual ought to be presumed as free, unless there is a legitimate aim to limit freedom, and if, and only if, the restriction of freedom is necessary to achieve the legitimate aim, and if, and only if, the restriction is the least intrusive mechanism to achieve the aim (Besson 2005).

Consider, for example, curfew laws or other forms of policy that limit children's and teenagers' rightful use of public spaces (Kraft 2013). While there might be legitimate concerns about the threats to children in public spaces and threats to public spaces caused by minors, applying a principle of basic liberal equality prompts us to evaluate whether such restrictions are genuinely necessary and proportionate to achieve the intended aims. Moreover, it demands from us to assess whether an equal standard is used to judge the legitimate restriction of freedom of adults in public spaces (see more on this in Chapter 11). If alternative measures, such as increased police presence or community engagement, can achieve the same objectives without unnecessarily restricting freedom, they should be preferred.

Basic liberal equality commits a theory of rights to non-discriminatory treatment, and to presume individuals as free. It only allows differentiated treatment or restrictions of freedoms as rights if there is a morally relevant aim for differentiation or restriction and if the differentiation or restriction is necessary and proportionate to achieve the aim. An equal standard, moreover, is required in order to judge the appropriate treatment for all individuals.

Adaptive to Constitutive Frameworks

The third principle for a theory of rights is that it must be adaptive to the constitutive frameworks of the individual. The previous two principles allowed for variation from the standard, and even require it if necessary for securing fundamental interests. Sensitivity to constitutive frameworks provides guidance for how these two principles can be put into practice. On the one hand, different individuals might require different supports, resources, and freedoms to have a fundamental

interest secured; on the other hand, it might be legitimate to provide differential treatment to certain individuals if it is legitimate and necessary for securing their fundamental interests. Sensitivity and a capacity to adapt to an individual's constitutive frameworks is what provides a theory of rights with the content that allows it to assess the need for variation from equal treatment, and to determine the specific supports and resources required to secure rights.

An assessment of rights ought to be sensitive to the embodied, temporal, and spatial condition of the individual. Fundamental interests, and the rights required to achieve these interests, vary depending on an individual's vulnerability, developmental state, and embedded condition. Understanding the specific dynamics and relationship between a particular interest and the three frameworks is of utmost importance to do justice to the needs and interests of differently positioned individuals. The 'best interests' principle in the Convention already provides a basic normative groundwork for understanding what is at stake here (Alston 1994) (see the section 'The Best Interests Principle' in Chapter 7). Each individual's condition is different, not only objectively, but depending on their particular adaptive interaction with their constitutive frameworks. Assessing what is owed to an individual demands understanding their particular status in relation to these frameworks. In this respect, we must be able to account for the interests of the social group of individuals (generally), of the child as it relates to their particular intersections, and of the individual child and their condition in relation to their agency and frameworks (see Krutzinna 2022). Only in this way can we do justice to the diverse ways in which fundamental interest can be achieved, and the diverse needs for differently positioned individuals in order to achieve these needs.

This implies, in practice, an assessment of an individual's condition in relation to the intersections between the three constitutive frameworks of body, time, and space: their developing vulnerability, their embedded vulnerability, and their embedded development. I will provide a brief reflection on how each of the frameworks affects our rights assessment, and flesh out how looking at vulnerability, development, and embeddedness through an intersectional analysis best reflects what needs to be done.

Vulnerability

It is assumed that an individual's vulnerability is inherent to their embodied condition. This is why vulnerability during childhood tends to be used as the core argument used to justify strongly protectionist and paternalistic policies and practices towards children. If children's risk of being harmed by a certain action or by exercising a certain right is always linked to their 'weak' embodiment, then it is easy to see why it might be justified to forbid the given action or restrict the given right.

However, viewing vulnerability as a binary concept, with individuals either vulnerable or invulnerable, is an oversimplification. As discussed in the section 'Forms of Vulnerability' in Chapter 3, vulnerability is a multifaceted phenomenon with diverse origins. To better understand whether vulnerability justifies restricting an individual's freedoms and rights, we need to consider various factors. Mackenzie et al. (2014) propose an account of vulnerability that encompasses not only an individual's embodiment, but also social structures, practices, legal systems, and political decisions as potential sources of vulnerability.

Mackenzie et al. (2014) distinguish between three forms of vulnerability: inherent, situational, and pathogenic. Inherent vulnerability is that which comes with human embodiment and our dependent nature—we are inherently vulnerable to others, to hunger, physical harm, death, and so on. While all humans are inherently vulnerable in a generic sense, an individual's particular embodiment could make them more or less inherently vulnerable; physical or cognitive conditions tied to age, disability, or other factors may increase an individual's inherent vulnerability (Rogers et al. 2012, 24).

Situational vulnerability is a context-specific condition 'caused or exacerbated by the personal, social, political, economic, or environmental situations of individuals' (Mackenzie et al. 2014, 7). It highlights the factors external to a person that may create or increase susceptibility to harm: losing one's job, a natural disaster, or a pandemic, for example, can all be sources of situational vulnerability. One's spatial framework, and particular embedded condition, can thus strongly affect one's vulnerabilities in a situational sense.

Finally, there is pathogenic vulnerability (Rogers et al. 2012, 25). This is like situational vulnerability in that it derives from an external source. The difference is that pathogenic vulnerability has a systemic or all-encompassing effect that tends to intensify existing threats or create new ones. Pathogenic forms of vulnerability are conditioned by the social norms, cultural practices, and political decisions that frame an individual's life.

For instance, a pandemic can initially be seen as a situational vulnerability owing to the temporary, exceptional (and non-culpable) threat it poses to life options and freedoms. However, depending on how a political system responds to it—to whom it gives priority, how it provides economic or social relief, what policies it puts in place to address it, and so on—can determine whether the situational vulnerability escalates into a pathogenic one, with long-term and corrosive consequences that could have been avoided through alternative measures (Mackenzie et al. 2014, 9).

Vulnerability can thus be both linked to our temporality and to our spatiality. Different moments in life put us through different forms of vulnerabilities. Our embodiment changes through time, and this temporal dynamism of our bodies entails a regular transformation and evolution of our vulnerabilities.

At the youngest and oldest extremes of the life spectrum, individuals experience moments of acute developmental vulnerability. During childhood and old age, our temporality plays a significant role in shaping and intensifying inherent vulnerabilities. For example, the physical and cognitive vulnerabilities of a newborn or an elderly person may require particular attention and protective measures. The vulnerability of a newborn to infections, the need for care and support, and the vulnerability of an elderly person to age-related health issues are all examples of how temporality strongly influences and magnifies inherent vulnerabilities.

However, vulnerability does not simply disappear during the middle stages of life. It is not a matter of vulnerability sharply diminishing after childhood or increasing solely in old age. Instead, vulnerabilities continuously evolve throughout our entire life span. As we age, different risks and threats emerge that were not present during earlier stages of life. Our developmental journey and experiences shape and modify our vulnerabilities over time.

As is made clear by both the situational and pathogenic forms of vulnerability, vulnerabilities are also strongly tied to our spatial framework and to our particular embedded condition. Humans are not only vulnerable owing to the relation between their embodiment and time, but they are also more or less vulnerable depending on their particular socioenvironmental embedding. States with strong welfare supports reduce many vulnerabilities that come with temporality and many that come with living in particular social spaces. Poverty alleviation programmes, unemployment benefits, universal education, and strong laws against gender violence, racial violence, and so on are all mechanisms that aim at tackling forms of vulnerability stemming from one's embedded and spatial conditions. Thus, understanding a particular social environment is necessary for evaluating the particular vulnerabilities that individuals might have in one society but not in others.

For instance, in many societies there is a persistent educational inequality that disproportionately affects children from disadvantaged backgrounds, such as those living in poverty or in marginalised communities. These children often face multiple forms of vulnerability that stem from their embodied condition, situational circumstances, developmental needs, and pathogenic factors in their social environment. Coming from a socio-economically disadvantaged background tends to come with various well-being harms that can affect children's fundamental interest in having an education: these may include inadequate nutrition, lack of access to proper healthcare, and exposure to environmental toxins, which can negatively impact their physical and cognitive development and their ability to learn. Their inherent vulnerability as young individuals, combined with situational vulnerability arising from living in impoverished neighbourhoods with limited access to quality education, exacerbates the challenges they face in accessing educational opportunities. Pathogenic vulnerability can also play a

significant role in these children's educational inequality. Systemic factors such as gender or racial discrimination, unequal resource distribution in schools, and biased educational policies can perpetuate and intensify the disadvantages they face, hindering their educational progress and perpetuating the cycle of vulnerability.

Understanding the root causes of an individual's vulnerability is crucial in devising appropriate measures to mitigate the potential harm they may face. The principles of necessity and proportionality, as well as the non-discrimination principle, inherent to liberal theory, guide us in evaluating the source of vulnerability before implementing any actions. Whenever possible, less intrusive mechanisms should be prioritised to address vulnerability, without unnecessarily restricting freedom and rights. Furthermore, when the vulnerability is pathogenic it seems highly unjust to put the burden on the vulnerable victim who is threatened by unrestrained external harm, rather than tackling the unrestrained external harm itself. If, and only if, there are no less intrusive mechanisms available to limit the impact of vulnerability on harm can restriction of freedom and rights be justified.

Sensitivity to vulnerability (both embedded and developmental) is essential for a theory of rights to effectively protect and promote the rights of individuals, particularly children, within a liberal political system. By recognising the diverse forms of vulnerability that individuals may experience, and by prioritising less freedom-restricting mechanisms to address vulnerability, an adaptive model of children's rights can uphold the principles of basic liberal equality, non-discrimination, and freedom while ensuring that the needs and interests of differently positioned individuals are met.

Development

Understanding temporality is necessary for any evaluation of right-holding. Without a doubt, an individual's developmental condition greatly affects the rights they can exercise properly and how they can exercise them. The emphasis on the development of abilities in the standard liberal literature, and the appeal to take 'evolving capacities' into account in order to assess how to better protect a child's rights, are both correct in pointing out that many rights require an ability to exercise them, and that any account of rights ought to be sensitive to an individual's development of abilities to assess what is rightfully owed to them. There are, however, two limitations that these accounts suffer from: first, a potentially rigid binary distinction between 'developed' and 'developing' individuals, which omits nuances in how the process of developing abilities work (Peleg 2019a, 189; Rabello de Castro 2021); and, second, a too strong reliance on a unidirectional and teleological understanding of the development of abilities, not accounting for spatial

variation and the individual's adaptive agency (Cordero Arce 2012, 320). These issues ought to be amended.

Developing abilities and dispositions is essential for exercising certain freedoms. Some actions can be harmful if undertaken without the required capacities. Evaluating a person's developing vulnerability, their changing capacity to make choices, is crucial in determining what they are owed. When we talk about 'ability', however, we tend to take it as an existent or inexistent feature. That is, either a child is 'able' to ride a bike/make a political decision/choose what food to eat, or they are unable to exercise these freedoms. The common perception of 'ability' as either existent or inexistent leads to blanket guidelines in rights-based frameworks. I want to deconstruct this notion of 'ability' to comprehend the process of its development.

I have proposed the process of capability-formation as a better way of understanding the different claims that individuals may have owing to different forms of ability (Brando 2020). Abilities can exist in three forms: as capacity, competence, or capability. A capacity encompasses all the basic endowments, the innate material and latent potentials that allow us to exercise a function. What distinguishes, for example, between a toddler and turtle's ability to speak Catalan is that the toddler has the capacity to speak Catalan while the turtle does not (Cowden 2016, 41–2). The toddler's capacity to speak, opposed to the turtle's incapacity, is the first form in which a being may have a fundamental interest in having certain interests protected (e.g., to learn a language). A competence implies the existence of achieved skills, be they physical, mental, or emotional, required to exercise a function. Being competent implies that, if allowed to exercise a function, one would succeed (Cowden 2016, 43).[1] The capacitated toddler and a Catalan native speaker, in this sense, are distinguished by the latter's competence to speak Catalan opposed to the former's mere capacity (potential) to do so. Acquired competence, in this sense, may transform the ways in which an individual's interests should be protected as rights. However, an individual can be a competent Catalan speaker but may have their freedom to exercise this ability restricted owing to external constraints (think of Catalan speakers under the Franco regime who were forbidden to publicly use their language). This is what the term 'capability' intends to portray; it encompasses both the acquired competences and the external conditions that enable one to be substantially free to exercise one's competences.

The capability-formation process is shaped by two key elements: conversion factors and scaffolding freedoms. Conversion factors pertain to the spatial framework's influence on an individual's pursuit of freedom. They sustain and

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[1] For a thorough analysis of the distinction between capacity and competence, see Cowden (2012; 2016, chapter 4). 'Competence' is defined, following the psychological literature, as 'the demonstrated acquisition and further development of knowledge and skills—whether intellectual, physical, socioemotional, or a combination of them' (Bronfenbrenner and Morris 2006, 803).

enable the development process, impacting how freedom is realised. On the other hand, scaffolding freedoms refer to the active role of the individual in adapting to their circumstances to advance in the capability-formation process. These freedoms facilitate the transition between different levels of abilities, empowering individuals to develop and exercise their capabilities.

Conversion factors play a crucial role in an individual's development, shaping the relationship between their internal constitution and the external environment (their embedded development). The interaction between the individual and the socioenvironmental space is vital in determining the evolution of this process (Wolff and de-Shalit 2007, 173). These factors encompass a wide range, from the basic necessities for survival (such as water, food, and oxygen) to various social conditions, provisions, and support (such as infrastructure, education, social norms, power relations, customs, institutional arrangements, and rights) (see Gasper 2002; Robeyns 2006; 2017, 45–7; Lessmann et al. 2011). How we engage with these external resources and opportunities, and the extent to which they facilitate or hinder our capability-formation, depends on our specific embodied, temporal, and spatial frameworks.

Consider the role of conversion factors in an individual's ability to read: conversion factors are essential to transform a person's capacity to read into a competence through education, socialisation, and the protection of cognitive capacities. Additionally, these conversion factors are crucial in converting competences into capabilities or freedoms through the promotion of reading, accessibility of reading materials, and the freedom of thought, expression, and of access to information. Without these conversion factors, the capability-formation process becomes unachievable. It is not just about the individual's transformation of latent reading capacity into actual competence, but also the structural role of conversion factors in transforming competences into fully exercisable capabilities and freedoms. For instance, consider the fictional society of Margaret Atwood's Gilead in *The Handmaid's Tale* ([1986] 1996). In this society, women possess the competence to read, having acquired the necessary skills and knowledge, yet they are deprived of conversion factors in the form of laws and freedoms that would enable them to turn their competences into capabilities and actual freedoms. As a result, despite having the capacity to read, they are forbidden from doing so, effectively restricting their capability to exercise this skill.

The concept of conversion factors underscores the importance of considering the social environment and its impact on an individual's development of abilities. Social spaces can either support or hinder a child's ability development. While 'incompetence' is often attributed to an individual's embodiment, the social environment significantly influences the pace and scope of their developmental process, shaping which abilities they can cultivate and which ones may be hindered (Lansdown 2005, 15; Alderson 2008, 82). Merely observing

that an individual is 'unable' to perform a certain action is inadequate to justify restricting that action (Liebel 2014, 69–70). A more aligned approach with basic liberal equality involves assessing the conditions under which the action could be exercised and ensuring that the individual has the necessary supports and resources to achieve it.

The development of abilities is intricately linked to freedom. To learn how to ride a bike, for instance, one must be free to experience the possibility of falling and getting scraped knees. This idea, emphasised by psychologists and educators for many decades, is referred to as 'scaffolding'. Scaffolding involves placing individuals in situations where they may not yet possess full abilities to exercise and action (i.e., riding a bike), but are given the freedom to do so with the support of others (Wood et al. 1976; Ninio and Bruner 1978; Vygotsky 1978, 85–6, see chapter 6).

Confronting individuals with their own inabilities and allowing them to actively engage with the limits of what they can do fosters higher achievements and the growth of more mature competences, as advocated by our old friend John Dewey (1920, chapter 4; [1938] 1997, chapter 3). This applies to all types of competences and capabilities. Dewey posits that only through the actual experience of exercising freedom, whether it is learning how to ride a bike or engaging in complex agency freedoms such as making moral decisions or choosing a career path, can the ability to exercise these freedoms develop (Dewey [1897] 1993, 108). Therefore, development and learning are best enhanced by providing individuals with a choice space to experience freedoms they are not yet fully able to exercise and enabling their active participation in their capability-formation process. In this sense, freedom becomes one of the fundamental pillars that enable and foster an individual's development.

Take sexual exploration prior to sexual maturity as an example. From a very early age, children start to express curiosity about their sexuality and their bodies. Beyond irrational taboos and religious beliefs, allowing a child the freedom to explore their sexuality, even without fully understanding it, seems harmless.[2] Even if we consider that certain competences are needed for becoming full sexual agents, a sexually explorative child, while still in the process of developing competences, does not cause harm to themselves or others. On the contrary, this exploration can have instrumental value in fostering a better understanding of the human body and human sexuality, thus improving their development as an agent. It is important to acknowledge that during the transition from sexual capacities to competences, children may require guidance, support, and information from

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[2] I am assuming of course that there is not another person forcing the child to do so, nor is anyone else exploiting or abusing the child's exploration. For a philosophical analysis of sexual agency during childhood see Brennan and Epp (2015).

their social environment to develop this capability effectively. Providing appropriate support and guidance should be part of the conversion factors required for the capability-formation process. However, it is crucial to avoid imposing unnecessary restrictions, as they may hinder and harm the child's developmental process instead of protecting it (Cashmore 2011, 520).

Abilities thus exist on a spectrum, shaped by internal dispositions, acquired skills, and, importantly, an enabling external environment (Bronfenbrenner and Morris 2006, 795–6). Evaluating an individual's position in the temporal framework, in relation to their embodiment and spatial framework, is crucial in understanding what they are entitled to (Lessmann 2009, 454). As temporal beings, our interests and claims can vary widely depending on our developmental condition, and the evolution of our developmental process is influenced by how it is embedded in specific socio-cultural settings and how it affects an individual's vulnerabilities.

The concept of development, as understood through the process of capability-formation, enriches our understanding of children's rights by highlighting the dynamic and context-dependent nature of one's ability to exercise rights. By considering an individual's evolving capacities, their vulnerabilities, scaffolding needs, and the impact of the spatial framework on capability-formation, an adaptive model of children's rights can better address the diverse needs and interests of children in a liberal political system.

Embeddedness

As mentioned in relation to vulnerability and development, assessing what is owed to an individual requires understanding their embedded status. Individuals live in particular spaces, with specific socio-cultural needs, and in particular life-worlds, which may require diverse ways of securing their interests, and variation in how an individual's vulnerability and development are interpreted (Young 1990, 5). This not only applies to variation based on the country or culture one lives in, but also to the specific spatial positionality of the individual within social structures. The needs of indigenous communities living in their ancestral lands are different from those who have been forced to move to urban spaces. The protections and supports required for children living in alternative care differ from those who live with their parents or guardians. Being of a specific gender, race, or having specific disabilities, can have differing impact on an individual's interests depending on the society in which one lives (Hanson and Nieuwenhuys 2012; Peleg 2019a, 204). Understanding the embedded aspect of a child's development or embodiment is necessary for assessing how best to protect their fundamental interests.

The core lesson that stems from including an individual's embedded condition into an assessment of right-holding is that strictly universalist approaches

and mechanisms aimed at securing fundamental interests do not always work, even with the best intentions (Brando 2019). The socio-cultural conditions in which fundamental interests are realised in practice demand an understanding of the way in which the diversity of life-worlds condition how we understand how fundamental interests ought to be protected. Strict universalist approaches to rights suffer from insensitivity to diversity of lived experience and needs (Breen 2019, 62). Biased assumptions of who individuals are and what they require can lead to well-intentioned policies going wrong (as will be seen in relation to children's right to work, or to the condition of street children, which will be explored in Part III, see Chapter 9 and Chapter 11). Even if the fundamental interests of diverse populations are the same in principle, the means through which they are achieved, and the boundaries and tensions between them, may vary depending on an individual's particular embedded condition. Different socio-cultural environments may require variable resources or conversion factors to secure fundamental interests. Moreover, awareness of how particular intersections of morally relevant social categories condition and impact on the lives of differently positioned children is a necessary feature in any assessment of right-holding.

This, however, does not mean that deference to localist and culturally specific views of justice and childhood should be the norm (Benhabib 2002, 51). Situating children within their spatial framework is meant as a plea for both awareness of the benefits and potentials of different socio-cultural life-worlds potentialising and realising fundamental interests, and also of the potential sources of oppression or harm that derive from particular socio-cultural environments. Understanding embeddedness as a descriptive fact, rather than as a normative ideal (see the section 'Embeddedness: Normative and Descriptive' in Chapter 4) is necessary in order to properly evaluate the realisability of children's fundamental interests and the best way to ensure this goal. Varied spatial frameworks can be sources of different power dynamics (gendered, cultural, ageist, economic, political), which must be accounted for to ensure that individuals reap the most out of their spatial framework while being harmed the least by it (Lloyd 2008).

Embedding an individual's development (her abilities and dispositions), and their vulnerabilities is structural to any account of right-holding that attempts to do justice to the variable positionality of individuals and their life-worlds. Our dynamic relationship with our temporal and embodied frameworks depends strongly on our spatial framework. Understanding that our developing bodies are situated in specific social and environmental spaces is necessary to ensure that all are treated as equals, and to ensure variability of treatment depending on a person's particular positionality in their spatial framework.

An Adaptive Model for Children's Rights

We have taken a long and winding road to get to this point in the book. Starting with a conceptual analysis of social categories, their moral relevance, and how they speak to discussions about 'childhood', we then studied the different models in place that attempt to give an answer to the question 'what is "childhood"?', and, after showing the weaknesses of existing conceptions, an adaptive model of 'childhood', which locates the particular constitutive condition of the individual as the core element of categorisation, was proposed as an appropriate framework that enables conceptualising what 'childhood' is, especially as it affects our understanding of the status of children in relation to justice.

With this Adaptive conception of 'childhood' in mind, we moved to explore the grounds of right-holding, the different ways in which these have been interpreted, and how an understanding of rights as protecting fundamental interests is the best way to go. We looked at some of the most prominent contemporary models of children's rights that claim commitment to liberal political principles and showed their value and their limitations. With all this baggage, this chapter proposes a model that aims both at being in line with basic liberal equality, and with the conception of 'childhood' explored before. I have presented the three core commitments that should ground a theory of rights and any assessment of differential treatment. I have claimed that rights ought to be seen as protecting fundamental interests; that a principle of non-discrimination and an equal standard to assess differential treatment ought to be in place; and, finally, that this assessment must be carried out through the evaluation of an individual's dynamic interrelationship between their constitutive frameworks (embodied, temporal and spatial), and their status as an agent.

How to operationalise the principles and commitments established (see Figure 8.1)? We must begin by identifying and understanding an individual's fundamental interests, as they form the basis for determining what is rightfully owed to them. However, conceptualising these interests in terms of treatment requires a comprehensive assessment of the individual's embodied, temporal, and spatial conditions. We need to delve into the specific types of vulnerabilities they faces, their developmental needs, and how their embedded environment influences their interests. This assessment must consider the dynamic interplay between these frameworks, and the individual's agency and adaptive condition, rather than relying on generalised notions of vulnerability, developmental needs, and embeddedness. By focusing on the specific relationship between an individual and their frameworks, we gain a deeper understanding of the dynamics at play, and can identify the necessary conversion factors, rights, freedoms, and restrictions required to safeguard an individual's fundamental interests effectively.
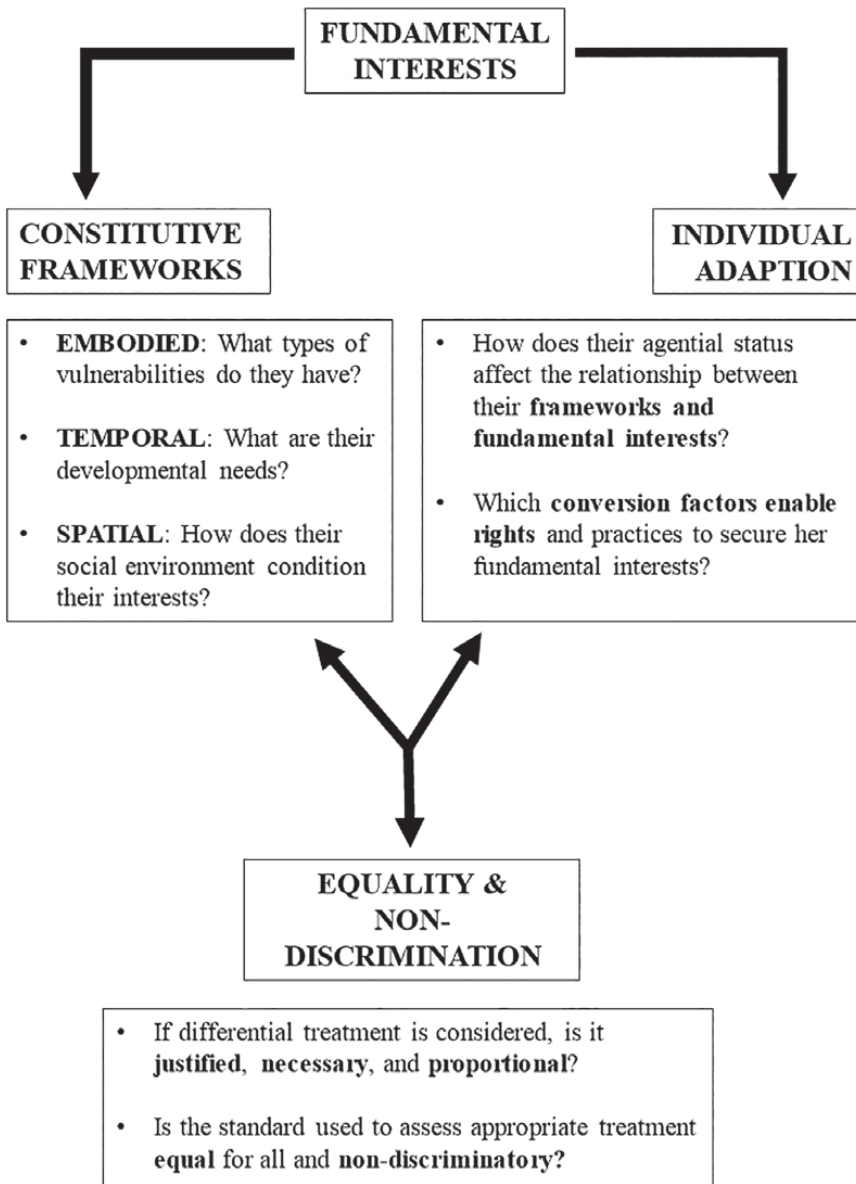
Figure 8.1 Elements of an Adaptive model for children's rights

Furthermore, we must evaluate whether any differential treatment that may be prescribed aligns with the principles of equality and non-discrimination. This involves questioning whether such treatment is justified, necessary for achieving the individual's fundamental interests, and proportional in relation to the restrictions and limitations imposed. If differential treatment is deemed justifiable, necessary, and proportionate, we must ensure that the standards used to assess treatment are applied equally and without discrimination. This model enables us to better grasp the concept of justice in relation to individuals, considering the unique features, characteristics, and conditions that may influence their treatment. By adhering to the principles of basic liberal equality, we can ensure that individuals receive the treatment they deserve, adapted to their specific condition, and in accordance with their rights and freedoms.

Conclusion

Now, we can move on to explore what all this would mean in practice. How does the adaptive model speak to real-world debates on children's rights? How does it reflect the particular interests and claims of different populations of living children? Part III looks at three particularly thorny issues in children's rights debates, aiming to assess up to what point and in what ways the adaptive model can provide a different view and a novel perspective on the rights that children should have. First, we explore the issues that affect children who work in relation to discourses on 'child labour', the main approaches to assessing the moral justifiability of children's right to work, and how the adaptive model would evaluate the rights of children in relation to their economic activities. Second, we look at the question of whether children should be allowed to vote, and whether any form of disenfranchisement for the child population can be justified if one takes an adaptive approach to children's rights. Finally, the book closes by looking at the interests of children in the city, their interests as social beings in public areas. It looks, generally, at the justifiability of restricting children's uses of public spaces and, particularly, at the thorny issue of children in street situations and how standard understandings of justice fail to account for the interests and rights of this particularly marginalised and discriminated population. I hope that evaluation of these three cases will show the value and potential of the proposal offered in this book, aiming to force us to question many assumptions we have about childhood, about children's rights, and about the status and position of many individuals in our social and political world.

Part III

Applying the Adaptive Model

What (if Anything) Is Wrong
with Child Labour?

'Yes, to dignified work – No, to exploitation!'

Slogan for the Latin American and
Caribbean Movement of Working Children and Youth

It is time to look at how the adaptive model works in practice. And where else to begin but with the thorny issue of 'child labour'. If I were to ask passers-by here in the streets of Liverpool if they consider that child labour is wrong, the standard response would be 'Definitely yes'. In our current world, and especially in the minority world,[1] imagining a child who spends most of their waking day working in the fields, a factory, or in the city streets seems deplorable. Children should not work; work is bad for children.

The aim of this chapter is to look at the morality of children's work through the Adaptive prism presented in Part I and Part II. What is it that sparks our moral concern when thinking about the lives of children who work? How can an adaptive model of rights aid in understanding the problems with child labour? And, following such a theory, what would be an appropriate normative response to address the problems that affect child workers?

The prevailing belief surrounding child labour, both in legal and policy spheres, as well as in everyday life, is that children should not work. This belief stems from the perception of children as highly vulnerable to harm, dependent on others for protection and supervision, and in a state of mental and physical development. Conventional wisdom suggests that child labour poses risks to children's short- and long-term interests, leaving them more susceptible to abuse, exploitation, and hindering their overall development. Accordingly, the prevailing view

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[1] The terms 'majority' and 'minority' worlds are used to refer respectively to the Global South/Third/Developing World and Global North/First/Developed World. This terminology acknowledges that the majority of the world's children reside in the Global South/Developing World, while the Global North/Developed World represents a minority (Punch 2003, 278).

advocates for children to be in school, free from economic responsibilities, and protected from the potential negative impacts of working life.

Although there is a spark of truth in this discourse, I seek to explore whether this automatically renders child labour inherently wrong, leading to its blanket abolition under all circumstances, or if its wrongness might be contingent upon other factors. By applying an adaptive model of childhood and children's rights to this issue, I propose that the wrongness of child labour is not necessarily inherent to labour itself, but rather largely conditioned by specific working practices that could be rectified by a more just legal system and labour market. Assessing the case through a study of the concept of vulnerability (following Mackenzie et al. 2014) brings into question the notion that a complete ban on child labour is the appropriate normative solution. Instead, the harms and benefits of children's work are heavily influenced by the socio-cultural, political, and economic context in which they are embedded (James et al. 1998, 104). Understanding the intricate relationship between children's vulnerability, development, and their spatial framework calls for an alternative solution that better accounts for the realities of working children's lives (Abebe 2009, 12).

This chapter first defines the working terms used and re-examines the legal and philosophical literature on child labour to explore the moral justifiability of the 'abolitionist' discourse. Focusing on vulnerability and its relation to a child's temporal and spatial frameworks, I address three issues affecting abolitionist discourses: lack of awareness of the sources of vulnerability, false equivalence between child labour and harm, and problematic normative responses to child exploitation. Incorporating perspectives from child workers and unions, I present a more responsive regulative approach, aligned with liberal equality and non-discrimination. This approach offers a nuanced solution to the complex issue of child labour.

Working Definitions

What are we talking about when we talk about 'child labour'? The term is often defined based on the International Labour Organization's (ILO) legal definitions (ILO 2021). The first category is 'child work/employment', which includes all activities performed by children that generate economic benefits, whether in the market or non-market production of goods and services. These activities can be formal or informal, paid or unpaid, and can take place within or outside the household. Child employment covers a broad spectrum, ranging from simple household chores to hazardous bonded labour in mines.

Within 'child employment', the ILO highlights a variety of activities it classifies as 'child labour'. This is an ample category of paid or unpaid economic activities that 'deprives children of their childhood, their potential and their dignity, and

that is harmful to physical and mental development' (ILO 2021). Thus, it refers to all kinds of work that can be mentally, physically, or emotionally harmful to the child, and those that interfere with the child's schooling. Within the category of child labour, there are two subcategories. The first is hazardous work, which is particularly harmful to children owing to its nature and intrinsic characteristics. Examples of hazardous work include sexual work, underground work, work at high altitudes, or jobs involving dangerous machinery, chemicals, or substances (ILO 1999a, Art. 3). The second subcategory highlighted by the ILO is 'the worst forms of child labour'. These are especially morally urgent practices as they involve illicit activities that subject children to serious threats. They include activities such as enslavement, separation from families, exposure to serious hazards, violence, drug trafficking, and prostitution (ILO 1999b, Art. 3).

As opposed to 'children's work/employment', which is a purely descriptive category, 'child labour' and its subcategories are defined and categorised through a moral assessment of their 'objective wrongness'. Following the ILO, whatever activity falls under the heading of 'child labour' ought to be considered a moral wrong. The ILO's classification of children's economic activities establishes their degrees of 'wrongness' and determines firm boundaries for all activities considered as wrong (child labour, hazardous labour, and worst forms).

In this chapter, the term 'child labour' refers to the categories and discourses guided by the ILO's notion of it. When not directly referring to the ILO classifications, the term 'children's work' is used following current sociological standards (Liebel 2004, 15). This approach is adopted to avoid prefiguring the debate with morally charged concepts and to not use 'child' as an adjective, rather recognising children as agents engaging in specific activities (work). This chapter aims to delve into the activities encompassed in the concept of 'child labour' and explore how flaws in the dominant discourses about childhood, work, harm, and exploitation can impact the moral assessment of these economic activities and the treatment of children's rights and freedoms. While some explicitly non-harmful work and hazardous labour is touched upon, the primary focus is on examining the moral justifiability of work classified by the ILO as 'labour' for children. The assessment aims to understand the underlying sources of wrongness in children's work, particularly those activities deemed harmful to their mental or physical development, interfering with their education, or depriving them of their childhood.

The Abolition of Child Labour in Law

The dominant response to child labour is abolitionism, which asserts there is a distinct aspect to being a 'child' that renders certain economic activities morally wrong for them. According to this approach, children should not be engaged in

work; they should instead attend school, be free from economic responsibilities, and be protected from the short- and long-term harms associated with being part of the labour force.

Abolitionism gained momentum as a moral stance during the peak of the Industrial Revolution in the 19th century, particularly in France, Germany, the United Kingdom, and the United States (Fyfe 2015). The rise of urban centres and the harsh conditions in factories and mines where children toiled prompted significant societal pressures to establish specific labour-related laws for children. Consequently, regulations regarding children's work can be regarded as the earliest instances of legislation specifically addressing children.

The international standards for addressing child labour were established by the ILO Conventions of 1976 (C138 – Minimum Age) and 1999 (C182 – Worst Forms). C138 consolidated and standardised all previous industry-specific Conventions on child labour, setting a minimum age for any form of employment (minimum age 14–15, after completion of compulsory schooling) (ILO 1976, Art. 2.3) and a minimum age for engaging in hazardous work (minimum age 18) (ILO 1976, Art. 3.1). The Convention's objective was with 'a view to achieving the total abolition of child labour' (ILO 1976, Preamble).

The rationale behind the 'Minimum Age' Convention is twofold: first, it emphasises the utmost priority of ensuring that all children complete compulsory schooling before entering the workforce, as work can hinder a child's education; second, even after completing schooling, certain jobs pose such significant risks to children's well-being that they should be protected from them. While the ILO allows for states to transition gradually towards meeting the minimum age standards, it remains committed to achieving 'the overall goal of the progressive elimination of child labour' (IPEC 2021).

By the late 1990s, owing to pressures from civil society groups, social leaders, researchers, and activists in the majority world, the ILO recognised that the sudden imposition of minimum age laws for child labour had unintended negative consequences. Children who were working had their rights taken away, pushing them onto the margins of the legal system (Liebel and Martínez 2009, 287–93). In response, the ILO introduced Convention 182 (ILO 1999b) on the worst forms of child labour, adopting a more gradualist approach while still aiming to progressively eliminate all forms of child labour (Hanson and Vandaele 2003, 117). This policy proposal prioritised addressing the most urgent and harmful forms of child labour, such as slavery, sexual exploitation, and illicit activities, before gradually eliminating less harmful manifestations of child work.

While the ILO Conventions have taken centre stage in the legal and policy discourse on child labour, the UNCRC's treatment of the issue in Article 32 has received less attention (Alston 2019). Article 32 focuses on protecting children from negative work experiences, exploitation, and hazards that may harm their

well-being or interfere with their schooling.[2] While it recommends establishing minimum ages for employment (UNGA 1989, Art. 32.2), it does not provide specific guidelines and defers to the ILO Conventions 138 and 182, encouraging states to ratify them (Alston 2019, 1271).

The Morality of Abolitionism

Political philosophers working on the subject of child labour, such as Pierik and Houwerzijl (2006) and Debra Satz (2010), have adopted a gradualist understanding of its abolition. They offer a dual moral assessment, considering both ideal and non-ideal considerations. In an ideal world, children's work should be seen as morally wrong and should not exist. However, given the current far-from-ideal state of the world, certain forms of children's work may need to be tolerated to avoid creating adverse externalities. The focus should be on addressing the worst forms of child labour first and then gradually moving towards the eradication of all child labour. The basic normative claim is that, despite the moral wrongness of some forms of child labour, certain manifestations of it should be tolerated in the present to avoid harming the current working children (Satz 2010, 156).

Abolitionists argue that children's work is a moral wrong owing to children's vulnerability to working conditions. As developing beings, children are physically, mentally, and emotionally vulnerable, making them susceptible to various forms of harm to their well-being and agency, both in the present and in the future (Brighouse 2002; Satz 2010). Three types of wrongs are highlighted by abolitionists concerning child labour (see Cook 2018). First, the physical and mental development of children can be adversely affected by long hours, harsh conditions, exposure to hazardous materials, and the use of complex machinery in their work. This threatens their well-being and health prospects in both the short and long term, leading abolitionists to argue that all work that negatively affects children's well-being should be gradually abolished (Woodhead 2004).

Second, children's status as developing beings not only makes them vulnerable to negative effects on their well-being, but also to the denial of essential benefits required for proper development (Jonas 2016; Cook 2018). Working conditions can harm children by negatively affecting their well-being compared with a counterfactual scenario in which they do not work. Moreover, they can hinder the positive provision of benefits necessary for their mental, physical, and emotional growth, such as access to education (Jonas 2016). The time children spend working

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[2] Article 32 provides 'the right […] to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development' (UNGA 1989, Art. 32.1).

often clashes with their interest in attending school regularly and receiving an education. This conflict places them at risk of having their development stunted if they are not given the proper opportunities and guidance that education offers.[3] When children lack access to education, their social mobility becomes limited and they may struggle to develop the essential capabilities needed for a flourishing life. Consequently, abolitionists argue that any work that interferes with children's schooling should be considered wrong and should be prohibited.

Finally, child labour is considered morally wrong because children are considered as highly susceptible to exploitation in work settings. There is a prevailing assumption that children's work is inherently connected to exploitation (Bhukuth 2008, 388). Children's limited understanding of the consequences of their choices, their inability to foresee the implications of their working decisions, and their limited social and economic skills create an asymmetrical power dynamic with their employers (Satz 2010). Owing to their lack of reasoning and bargaining abilities, children are at risk of being exploited by employers or guardians. Consequently, it is argued that any contracts or relations that subject children to exploitation because of their inability to defend themselves against abusive employers are morally wrong and should be prohibited.

The moral arguments in favour of the abolition of child labour are based on a core ontological assumption that draws from both the Sapling and Intrinsic Value notions of 'childhood' (see Chapter 2). This assumption frames and influences the moral validity of these arguments. According to this view, 'childhood' is characterised by its inherent dependency and vulnerability, necessitating protection from the potential harms of employment. Childhood should be safeguarded as a time for play and education (Ennew et al. 2005). This perspective establishes an objective understanding of what 'childhood' entails, dismissing any differing interpretations as 'harmful' or 'out of place' (Punch 2003; Abebe 2009, 14). Drawing from the Sapling conception of 'childhood', abolitionism holds that children, owing to their developmental stage, are inherently vulnerable and reliant on others to safeguard their well-being and agency interests. As Satz articulates, 'Child labor may be particularly objectionable because of the vulnerabilities that underlie it. These vulnerabilities may be present in exchanges between children and their employers or in the situation of the family itself' (Satz 2010, 159).

Abolitionism views children as beings whose fundamental interests are at risk owing to their dependence on others for protection (Brighouse 2002). First, it emphasises that children's physical and mental developmental stage renders them highly susceptible to mental and physical injuries when engaged in work. The circumstances of work can lead to severe harm to their well-being. Secondly,

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[3] For the debate on the relationship between work and education, see Orrnerdt (2018) and Brando (2022).

abolitionism argues that children not only face risks to their well-being, but also to their future agency interests. In the labour market, children rely on the goodwill of their guardians and employers to shield them from exploitation because they lack the capacity to protect themselves. Children's 'weak agency', their underdeveloped cognitive, emotional, and rational capacities, along with their lack of power, decision-making abilities, and control over their choices, make them incapable of autonomous action in the labour market (Satz 2010, 157). Being a 'weak agent' means an individual cannot effectively safeguard and promote their own fundamental interests, leaving them vulnerable to exploitation and harm to both their well-being and agency interests (Satz 2010, 156–7).

In short, child labour is seen as morally wrong by abolitionists owing to the inherent vulnerability of children in the labour market. Their developmental condition makes them susceptible to physical and mental harm, they are at risk of missing out on the benefits of education, and their weak agency exposes them to potential exploitation by both guardians and employers.

Vulnerability, Development, Embeddedness, and Children's Work

From an Adaptive conception of 'childhood', there are certain problems with the abolitionist response to child labour, particularly concerning the ascription of vulnerability to working conditions as inherent to childhood. While it is true that some children may be inherently vulnerable to certain working environments, a more in-depth analysis of the sources of vulnerability, considering an individual's temporal and spatial frameworks, reveals that the abolitionist argument may not universally apply (see the section 'Vulnerability and the Embodied Framework' in Chapter 8).

Based on this understanding of vulnerability, the abolitionist arguments suffer from a false equivalence between child labour and the harm or failure-to-benefit claims. The assumption that all child labour inherently harms children's well-being fails to consider the complexity of individual circumstances and how different working conditions may affect children differently. Additionally, the argument that child workers are inevitably exploited owing to their 'weak agency' overlooks the role of children in making their life choices, and fails to address the actual source of exploitation, which is often rooted in their socio-economic condition. In this section, I address the first of these problems, and then delve into the other two in subsequent sections to provide a more comprehensive analysis of the moral complexities surrounding children's work and its potential solutions.

The primary flaw in current philosophical and legal defences of abolitionism is their assumption that children's extreme vulnerability to harm and exploitation in working environments is an inherent characteristic of childhood. Abolitionism

considers vulnerability to be an intrinsic part of being a child. This assumption leads to the argument that all child labour is inherently morally wrong, as children's risk of harm and exploitation is seen as an inevitable consequence of their developmental condition and their social environment. Consequently, the logical response seems to be the absolute abolition of any activities that may cause harm or exploitation to children. However, this assumption is unfounded.

As argued previously (see the sections 'Forms of Vulnerability' in Chapter 3 and 'Vulnerability' in Chapter 8), vulnerability is contingent on an individual's various constitutive frameworks, including their embodied, temporal, and spatial conditions, which influence how vulnerable they are, and how they respond to their vulnerability. Importantly, vulnerability arises from multiple sources, and our normative responses to addressing vulnerabilities are strongly influenced by the nature of these sources. For instance, consider potential policy solutions for combating sexual assault of women in public spaces. Although statistics may show that women are more vulnerable to sexual assault when walking alone at night than men, it does not automatically justify restricting women's freedom to move about at night as a normative solution. Limiting women's freedom of movement to protect them from sexual assault would not align with the principles of basic liberal equality, as it puts the restriction of freedom on the victim rather than on the perpetrator of harm. Showing that a social group is vulnerable to a certain activity neither implies, nor necessarily justifies the incapacitation and restriction of the group's freedom to exercise said activity. Instead, it is essential to devise just mechanisms that protect women from sexual assault while preserving their freedom of movement and autonomy.

Vulnerability comes in different forms: inherent, situational, and pathogenic (Rogers et al. 2012; Mackenzie et al. 2014). Each type of vulnerability affects the relationship between individuals and their activities, leading to diverse moral responses and normative solutions. Inherent vulnerability is linked to our particular embodied nature and dependency (Rogers et al. 2012, 24). Situational vulnerability is context-dependent and is 'caused or exacerbated by the personal, social, political, economic, or environmental situations of individuals' (Mackenzie et al. 2014, 7). Pathogenic vulnerability, similar to situational but more systemic, stems from social norms and political decisions that reinforce and worsen an individual's risk of harm. (Rogers et al. 2012, 25).

While it is true that certain risks of harm and exploitation are linked to a child's inherent vulnerability and developmental stage, assuming that all child labour-related vulnerability is inherent to childhood overlooks the influence of external factors, agents, and institutional support that enable it and reinforce it. Neglecting the situational or pathogenic vulnerabilities imposed by socio-environmental factors disregards the broader context in which harm and exploitation may affect child workers. A comprehensive approach should consider the interplay of both inherent vulnerabilities and external conditions to address the issue effectively.

Constitutive Frameworks and 'Harmful' Work

The ILO's classification of the 'worst forms of child labour' aligns with activities in which children are highly vulnerable and require protection. These forms include slavery, trafficking, bonded labour, forced labour, sexual exploitation, and involvement in criminal activities (ILO 1999b, Art. 3). Abolitionists advocate for eradicating such labour, which appears uncontroversial. Additionally, certain working conditions may significantly jeopardise children's well-being and agency, depending on their developmental condition and embodiment. This is well reflected, I believe, by the ILO's aforementioned categorisation of 'hazardous labour', which is defined as 'work which, by its nature […] is likely to harm the health, safety or morals of children' (ILO 1999b, Art. 3.d; ILO 1999a). For instance, working with dangerous substances or heavy machinery can be especially harmful to less physically developed children, hindering their physical and mental development. Moreover, work in the sex industry can severely damage a child's life, considering their limited understanding of its implications. The concept of 'weak agency' and inherent vulnerability, as defended by Satz, helps explain the wrongness of these cases (Sen 1999, 115; Hanson and Vandaele 2003; Woodhead 2004; Maconachie et al. 2022).

Now, as many scholars have argued, the category of 'worst forms of child labour' is not entirely unproblematic: putting slavery, criminal activities, and sexual exploitation in the same box as 'hazardous' work can blur an important distinction between these two categories (Hanson and Vandaele 2003; Woodhead 2004; Maconachie et al. 2022). The former are all clear violations of human rights, of an individual's fundamental interests, and their basic human dignity regardless of age, gender or constitutive frameworks; the fact that they are done outside the law, without consent (or through extortion), and against an individual's freedom of work, makes them clear violations of fundamental interests.[4]

On the other hand, hazardous work encompasses activities that may not be universally considered morally problematic or harmful. For instance, while mining is objectively hazardous, other tasks, such as working with heavy machinery, heavy loads, or during the night, require a more nuanced assessment as they are more strongly conditioned by an individual's constitutive frameworks. Woodhead's analysis (2004) highlights that the harm caused by hazardous activities on children depends strongly on their specific context and relationship to the activity. Assuming universal harm based on inherent hazards is problematic, as different children in diverse contexts can be affected differently by these activities (Woodhead 2004, 328–32).

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[4] In relation to sexual exploitation, I assume it as a clear violation of human rights as I am referring to forms of sexual labour that are done without the consent of the individual exploited.

Take a case analysed by the anthropologist Olga Nieuwenhuys (2000). There was public outcry in India in the late 1980s when journalists exposed that many girls in their early teens were being exploited by working under hazardous conditions (under water, for long hours, late at night) at prawn-curing factories far away from their homes in the state of Kerala. While ILO standards would classify this as one of the 'worst forms' of child labour, Nieuwenhuys's interviews with the girls revealed a radically different narrative. These girls willingly engaged in this work during school breaks, enticed by the high earnings and having persuaded their parents to allow them to do so. Surprisingly, despite the challenging hours and harsh conditions, the girls expressed no regrets and believed the experience was worthwhile (Nieuwenhuys 2000; Bourdillon 2011, 20).

Classifying any work performed by minors in shrimp farms as universally 'bad' and 'hazardous' fails to consider the specific context and circumstances of the children involved. A context-sensitive assessment is essential to understand the relationship between the child worker, the nature of the work, the vulnerabilities present, and its potential benefits (Bourdillon et al. 2010, 5). Taking into consideration a child's constitutive frameworks, including their vulnerabilities, developmental needs, and embedded status, is crucial in making informed judgements about the morality, harms, and benefits of a particular work practice for a specific child. Indeed, different social and cultural contexts significantly influence the rate and timing of a child's development of abilities and competences, challenging the notion of universal definitions of legitimate work for specific ages (Abebe 2009, 16). Anthropologist David Lancy's extensive research on the subject (2015) demonstrates the considerable variation in competence development owing to cultural and spatial differences, individual motivation, family dynamics, parental disabilities or deaths, and the presence of younger siblings (Lancy 2015, 280).[5]

In summary, a child's vulnerability to a specific economic activity should be contextually situated, considering their developmental condition and the sources of vulnerability (Maconachie et al. 2022, 261, 265). Returning to the insights on the social construction of social categories, and the particular impact on the 'childhood' social group (see Chapter 1 and Chapter 3), it is important to be aware that the social construction and normativisation of concepts, particularly concerning childhood and child labour, heavily influence discourses on what constitutes 'good' or 'bad' work for children (James et al. 1998, 110). Dominant discourses on child labour have grown within the minority world, and derive from culture-specific conceptions of what 'childhood' is, and what it should be (Nieuwenhuys 1996). This leads to the imposition of moral and cultural values in diverse socio-cultural environments (Punch 2003, 277; Aufseeser et al. 2018).

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[5] For a variety of global examples of developmental variation in relation to work, see Lancy (2015, 274–80).

Children's Work, Harm, and Failure-to-Benefit

In the 1990s, journalists uncovered that girls as young as 12 had been found working in a garment factory in Méknès, Morocco, which produced clothes for the UK store Marks & Spencer. The media outrage led to governmental pressure on the garment industry to dismiss all under-aged workers. A group of researchers tracked some of the girls to follow up on their situation: none of those tracked had returned to school after being dismissed; many because they were ineligible, others because they needed to work. Several of them got married, taking on roles as housewives, others sought employment in other garment factories, some were working in their own homes or as domestic servants, and one of the girls had entered into prostitution (Badry 2009). They all claimed that they needed decent work to support their family's income; that lack of school accessibility and of job prospects after secondary school meant that there was little sense in studying instead of working. Moreover, boys in the family tended to be prioritised in terms of education, so independence and self-sufficiency would be better found through work. They all complained that they were better off before having been dismissed from their job (Badry et al. 1998).

The abolitionist discourse claims that children are harmed by work and that banning child labour would better protect their fundamental interests. However, in situations where children are in poverty and need to work for subsistence, prohibiting them from working can worsen their vulnerabilities. These children will still seek income without the protections against exploitation, decent wages, or job security which rights to work ensure. The assumption that banning child labour universally benefits their lives overlooks the harsh realities of poverty, exclusion, and limited alternatives faced by many working children (Martínez Muñoz 2009, 395–6). For children dismissed from employment owing to child labour laws, new vulnerabilities arise, not stemming from their inherent attributes or development but from systemic (pathogenic) factors. In such cases, legal provisions and abolitionist policies restricting access to work can lead to risks of poverty, malnourishment, exploitation, and other harms.

Banning children from employment does not address the root causes of their need to work. Many working children rely on employment for their subsistence, and even if it is prohibited, they may still continue to work under worse conditions without adequate protections. Research by Boyden and Myers (1995) highlights that abolitionist policies can lead to worse outcomes for the most situationally vulnerable children, as they lack viable alternatives, access to education, or financial support. For a child who needs to work, taking away this right can make them more vulnerable to the very harms the policy aims to prevent, such as physical, mental, emotional, developmental, and exploitative issues (Maconachie et al. 2022, 260).

Abolitionist laws and policies alone cannot guarantee the benefits they claim to create. They may not effectively reduce a child's vulnerability to harm in hazardous work, nor do they necessarily provide the necessary institutional, social, and economic support to compensate for the lost benefits of working. The assumption that banning child labour will automatically increase school attendance is not always supported by research: empirical evidence shows that school attendance rates may not significantly increase with the ban on child labour (Putnick and Bornstein 2015). In reality, for most children, 'the choice is not between school and work but rather how much time and effort should be given to each activity' (Boyden et al. 2016, 11). Simply banning child labour does not fully address the complexities of their situations.

Research conducted by the It's Time to Talk! project, which interviewed nearly 2000 working children aged 5 to 17 from various continents, found that 76 per cent of them were still studying, while 22 per cent did not have any form of education, and 2 per cent attended school sporadically (O'Kane et al. 2018, 10). The data indicate that the complete absence of schooling among working children is uncommon, and factors such as school inaccessibility, cost, or lack of incentives play a more significant role in hindering their education than their work itself (Myers 2015). In some cases, children work to support their education, covering expenses such as fees, books, and uniforms, or participating in earn-and-learn programmes that fund their schooling (Bourdillon 2011, 16–19). While long working hours can be a barrier to education (O'Kane et al. 2018, 12), it is evident that outright banning child labour does not fully address the complexities of the education problem.

If we are concerned with the harms (and the failure to benefit) caused by lack of schooling, the focus should be on looking at ways to improve access, incentives, and quality and success in schools, and on reducing the economic dependence of families on their school-aged children. Banning children from working is not the solution to improve their educational deficits. As long as children's income is required for the subsistence of their family, these children will most likely keep on fulfilling economic roles instead of going to school.

The abolitionist claims that banning child labour reduces harm and improves access to the benefits provided by schooling are not short of problems. First, they show a lack of sensitivity to working children's embedded condition. Children work in specific socio-economic contexts, in specific family dynamics, and owing to specific situational circumstances (poverty, need, culture). Accounting for children's particular situatedness in their embedded environment shows that one-size-fits-all laws and policies for the abolition of child labour can cause more harm than good. Moreover, not only does abolitionism not protect all children from their inherent vulnerabilities to hazardous work, nor does it secure the developmental benefits it aims to ensure, but it also actually creates secondary harms and

pathogenic vulnerabilities by stripping away children's opportunity to work within the legal system, with protections and rights as workers. While there are some forms of work (under the label of 'worst forms of child labour') that are clearly an issue that should be addressed, many other forms of work (hazardous or not) require a more fine-grained and situated analysis, which allows understanding the case from the child worker's standpoint, enabling a better engagement with their embedded condition, developmental needs, and vulnerabilities.

Exploitation

Exploitation plays a central role in both philosophical and legal arguments for abolitionism, as the lack of a clear definition of 'child labour' makes 'exploitation' a key justification for it (Hanson and Vandaele 2003, 118). Viewing children as 'weak agents' (Satz 2010) leads to questioning any economic relationship as exploitative. However, a closer examination of the link between abolitionism, exploitation and the sources of vulnerability reveals moral problems in banning children from work solely based on potential exploitation.

Without getting into unnecessary conceptual debates,[6] we can consider that to 'exploit' someone is to take unfair advantage of them. It is to use another person's vulnerability for one's own benefit' (Zwolinski and Wertheimer 2017, 1). It implies, in a sense, one person taking advantage of an asymmetric power relation in order to benefit from a second person's vulnerability to it. This definition is useful to us, as it refers explicitly to the concept of 'vulnerability' explored in this chapter. The vulnerability referred to here can take many forms, such as a vulnerability to manipulation linked to 'weak agency' (e.g., taking advantage of a person's lack of understanding of a legal contract to make them work in worse conditions); situational vulnerabilities tied to precariousness (e.g., exploiting someone's need for work in times of high unemployment by offering bad conditions and low pay); or pathogenic vulnerabilities tied to macroeconomic practices (e.g., benefiting as an owner of the means of production from workers' lack of ownership by appropriating the value created by their work).

Understanding 'exploitation' as the unjust utilisation of someone's vulnerability emphasises the different ways in which we can conceptualise this exploitative relationship, contingent on the origin and manifestation of vulnerability and the corresponding policies and laws addressing this harm. Recognising situational and structural sources of vulnerability (e.g., poverty, high unemployment, capitalism, free market) urges us to move beyond a sole focus on the presumed inherent vulnerability of children to exploitation. Instead, we should

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[6] For a thorough analysis of the philosophical literature, see Zwolinski et al. (2022).

situate the exploitative relationship within the child's embedded environment and the broader political context.

One significant problem with justifying abolitionism based on the 'inevitable' exploitation of children is the moral questionability of legally incapacitating victims of harm instead of addressing the perpetrators. Restricting a vulnerable group's rights, such as children's right to work, does not address the root cause of exploitation; rather, it places the burden on the victims. This approach is analogous to the example mentioned before of the justifiability of restricting women's freedom to walk alone at night to prevent sexual assault. Similarly, banning children from certain jobs, even those that could be done harmlessly by them, owing to potential exploitation by others, leaves them in a weaker position without legal protections when dealing with exploitative employers in the black market (Hanson and Vandaele 2012, 254). Exploitative labour relations are not intrinsic to the activity itself; they result from power dynamics and should be addressed through better protections and enforcement, rather than through a restriction of the freedom of the victim of exploitation (Bourdillon 2011, 22).

This leads to a second problem with the abolitionist appeal to exploitation: if the inevitability of exploitation justifies restricting the right to work to all those vulnerable to exploitation, abolitionists must explain how the plight of working children differs from that of a larger collective of the population vulnerable to exploitation: the economically deprived. Being in poverty or at great risk of falling into poverty (situational vulnerabilities) can limit an individual's options and choices to a point at which (even if not 'weak agents' in the sense children are assumed to be) it can be almost impossible to avoid or exit exploitative relationships (Sticker 2023, 193). If an individual is in dire need of income to support themselves and their family, it does not matter if they are 8 or 50 years old, they will be in a vulnerable bargaining position that will enable exploitative power relationships to develop.

Focusing solely on a person's developmental stage as a basis for restricting the right to work overlooks the importance of economic deprivation and situational vulnerabilities in determining exploitation. A middle-class white 14-year-old in the United States working on their parents' farm is much less vulnerable to exploitation than a 40-year-old economically deprived immigrant working as a housecleaner or in the agricultural sector in the same country. The fact that deprivation and need are a more suitable target for exploitation than the developmental stage (at least in the labour market) means that we need to think beyond restricting the right to work, and think of more context-sensitive mechanisms that protect vulnerable and disadvantaged workers (regardless of age) from exploitative working conditions (Snyder 2008).

Poverty can exacerbate situational vulnerabilities and increase the risk of exploitation, especially for children who are economically deprived and need to

work to support themselves and their families. Moreover, the global economic context, in which a small elite group controls the means of production, while many are dependent on this group for employment and basic needs, creates asymmetric power relations that contribute to exploitation. In such a system, legal and economic structures can perpetuate and enable unequal dynamics, leading to pathogenic vulnerabilities. These vulnerabilities are not inherent to the individual or their developmental stage but are created and intensified by the social, economic, and political systems in place (Liebel 2004, 202; Zwolinski and Wertheimer 2017, 8–9).

If, in addition to this, we include vulnerable working children within a legal system that prohibits them from working (thus denying them any rights or legal status as workers), their situational vulnerability, stemming from economic deprivation, is further exacerbated. This compounded vulnerability, coupled with the absence of legal protections and support as workers, leaves them three times as susceptible to exploitation. Forcing these children to work outside the bounds of legality adds insult to injury, as it worsens their already precarious situation (Bhukuth 2008, 392). Their economic need and deprivation cause situational harm, while the lack of legal protections and rights pathogenically harms them, impeding their ability to escape poverty (Liebel 2004, 197). In essence, it is not their labour but their deprivation and lack of worker rights that truly inflict harm and exploitation upon them.

An Alternative to Abolitionism

The analysis presented here clearly demonstrates that the goal of eradicating child labour, as advocated by abolitionist discourses, is not feasible in practice. The approach falls short owing to its lack of consideration for the real-life experiences, the embodied conditions, and the embedded circumstances of working children (Hanson and Vandaele 2003, 120). Our examination of the sources of vulnerability and the interconnectedness of a child's embedded and developmental conditions with potential harm and exploitation at work reveals that dismissing the complex relationships children have with their work, and oversimplifying their experiences while depriving them of their means of subsistence, goes against the principles that form the foundation of a theory of rights for children. Abolitionism does not adhere to the fundamental tenet of basic liberal equality, fails to recognise the adaptability of children's lives based on their unique constitutive frameworks, and ultimately neglects to safeguard their agency and well-being freedoms. In doing so, it only exacerbates the hardships and dangers faced by vulnerable working children.

This analysis gives rise to two core claims. First, there is a need to rectify flawed, homogenising notions of 'childhood' concerning children's work. Secondly, it

contends that work itself is not inherently harmful for children, except for activities falling under the category of the 'worst forms of child labour'. The harm and exploitation experienced by children at work are contextual and, in some cases, generated by institutional, legal, and social structures. By re-evaluating our understanding of working children and reassessing the sources of harm in work environments, we can explore alternative approaches to address the challenges faced by these children.

Our Adaptive conception of 'childhood' already provides a template for how to interpret and approach child workers. Abstracting 'childhood' without considering the variable relationship between a child and their constitutive frameworks (embodied, temporal, and spatial) fails to capture the reality of working children. This does not imply equating all children with all adults in terms of work; rather, it acknowledges that children are diverse, socio-cultural environments differ, and relationships between children and their work vary (Hanson and Vandaele 2012, 254). To truly understand children's work, we must contextualise it within their lived experiences, bodies, and voices (Abebe 2009, 25).

The Association of Working Children and Youth, in its Declaration for the First World Congress on Children's Rights, stated that 'work has its roots in the history of humanity, in our cultures, and in the diverse realities and socioeconomic processes in which we live, and in which our peoples live' (NATs 2003, 165).[7] Approaching children's work from an adaptive standpoint requires us to evaluate their relationship to work through a more fine-grained analysis. It requires us to understand the nature of the work carried out by a child, its inherent and external risks and threats, and to assess it (its harms and benefits) in relation to the capabilities accessible to working children, to their embodiment and development, and do so within the social, cultural and economic context in which work takes place (Maconachie et al. 2022, 266).

This leads to the second point: questioning the moral judgement of 'child labour' as an objective wrong and injustice. While certain forms of work, such as slave labour, bonded labour, sexually exploitative work, and criminal activities, are undeniably harmful and exploitative, all other types of labour, even if carried out by children, require evaluation within the framework described here. In many instances, it is the conditions of work and the absence of institutional and regulatory arrangements that lead to exploitation and harm, not the work itself (Liebel 2004, 3; Abebe 2009, 24). The moral wrongness of children's work is not inherently tied to the act of working; rather, it predominantly stems from situational and pathogenic vulnerabilities that force children to engage in harmful and exploitative practices (Nieuwenhuys 2009, 289). Therefore, the primary

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[7] 'El trabajo tiene sus raíces en la historia de la humanidad, en nuestra cultura, y en las distintas realidades y procesos socioeconómicos en la que nosotros vivimos y en las que viven nuestros pueblos.' All translations from Spanish are my own.

focus of moral assessment should be on addressing these situational and patho-genic sources of harm and exploitation experienced by working children.

Numerous working children find value in their work; they take pride in supporting themselves and their families. Despite facing hardships and their desire for more time to play and attend school, they willingly sacrifice their freedom to contribute to the well-being of those they care about. They use their earnings to pay for schoolbooks, gain independence, avoid forced marriages, ease the burdens of single mothers, or secure a better future for their younger siblings.[8] Contrary to common assumptions, work can offer significant benefits to many children. Apart from providing essential material support for themselves and their families, it can facilitate the development of fundamental skills and competences that will be valuable in the future labour market (Hanson and Vandaele 2003, 78; Kigali Declaration 2023). Working can also nurture self-esteem, self-confidence, and a sense of responsibility. It exposes children to realities beyond their homes and schools, and it fosters their engagement with the social injustices that affect them (Dowling et al. 2006, 145).

Considering the voices of children provides a different perspective on their relationship with work. Assuming that all children engaged in activities traditionally labelled as 'child labour' are uniformly exploited, harmed, and unhappy disregards their unique epistemic standpoint. It fails to recognise children as agents with their own perspectives, opinions, and aspirations. Listening to their voices can reveal life-worlds that were previously inaccessible and, at the same time, acknowledge and respect them as active agents, citizens, and individuals with their own rights. Ignoring child workers' own voices is a recurring issue raised by representatives of working children. A 13-year-old Senegalese girl, representative of her local union, said in an international conference:

> Do you understand how you insult me, when you talk of combatting and abolishing the work that I do? I have worked as a domestic servant since I was eight. Because of doing this work, I have been able to go to school (which my parents in the village could not afford); I help my parents with the money I earn. I am very proud of the work I do. I joined the movement of working children, and I know what the Convention says about children's rights – the Convention also says that you should listen to me! (Quoted and translated in Bourdillon 2011, 25)

Abolitionism not only lacks benefits for many of the world's working children, but also demonstrates a lack of respect and recognition for children as active agents, neglecting their problems, needs, and ability to make choices in addressing their challenges. However, it is essential to clarify that listening to the claims of working children does not imply treating them as identical to adults in every circumstance. Many working children still have fundamental developmental interests that

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[8] Accounts of the benefits and values perceived by working children can be found in Letuka (1998); Woodhead (2004); Abebe (2009); Milne (2015); O'Kane et al. (2018).

warrant protection, and they may be physically and mentally vulnerable to certain activities. Accounting for the life worlds of working children requires acknowledging their multiple facets, including their vulnerability, developmental needs, embedded environment, and their identities as humans, children, and workers (Hanson and Vandaele 2012, 253).

In practice, accounting for approaches other than abolitionism when evaluating the needs of justice for working children involves recognising the unique circumstances of working children and adopting guidelines that respect their adaptive condition. While it is not possible to make general and universal claims that apply to all working children, some general principles can provide a path forward. One crucial aspect is acknowledging working children as individuals with fundamental interests and claims both as children and as workers. Their needs and aspirations in both roles must be recognised. As emphasised by a representative of a Latin American child workers' union, 'we belong to the working class; as social activists of children's rights, we want our struggles, our dreams, and our feelings to be heard' (Union representative quoted in MOLACNATS 2018).

Their claims and interests as workers encompass two types of rights: rights and freedoms to work and rights and freedoms in work (Hanson and Vandaele 2012). Rights and freedoms to work pertain to children's interests in engaging in employment activities and the necessary support systems to ensure their freedom to choose to work (Hanson and Vandaele 2012, 262). This entails legal recognition of children as active participants in the labour market and the freedom to select suitable employment activities within the bounds appropriate to their particular circumstances. It also involves having the necessary support and safeguards to ensure that their economic role does not impede their rights as children, particularly regarding access to education (O'Kane et al. 2018).

Notably, child workers themselves highlight an essential distinction that abolitionist discourses, such as that of the ILO, overlook. Working children advocate for work, not for exploitative or criminal activities, explicitly stating, 'We are against prostitution, slavery, and drug trafficking by children. These are CRIMES and not WORK. The decision-makers should distinguish between work and crime' (Dakar Declaration 1998). They do not wish to be enslaved, bonded, or exploited. Instead, they seek the right to work, precisely to avoid falling victim to the black market, exploitation, and criminal activities. While the ILO's shift in focus towards the 'worst forms of child labour' represents progress, the fact that this concept still includes many employment activities that are not inherently harmful and exploitative to children perpetuates the perception that much of their work is 'wrong'.

Beyond the question of whether rights and freedoms to work should exist and be viable and beneficial for the child population, a fundamental claim put forth by working children's unions and researchers working with them is that current child workers should have rights in work, even if they may not have the right to

work (Hanson and Vandaele 2012). The fact that they are already working places an obligation upon us to ensure they do so under the best possible conditions. To safeguard working children from exploitation, harm, violence, undignified work, and discrimination, children engaged in work should have a legal status that ensures their employers are obliged to respect their rights. This legal status should allow them to demand decent wages, reasonable working hours, freedom of association with formal worker unions, tasks suited to their specific condition, and provisions for their education, training, and health (O'Kane et al. 2018, 14).

At a more structural level, it is crucial to consider the circumstances, socio-economic context, and reasons why many children work. They are aware of the challenges they face as workers and, as Biggeri et al.'s research shows (2011, 287), many would prefer to study and play than work. However, precarious living conditions, poverty, and situational and pathogenic vulnerabilities have forced them into a position where they have no choice but to work. Despite their circumstances, these children do not demand a ban on working activities; instead, they seek assurance of the securities and provisions that would enable them not to work. The Kundapur Declaration, for instance, makes this explicit: the children call for educational and schooling systems adapted to their situation, they demand free education so they do not have to work to pay for schooling, and they seek higher wages and better employment opportunities for their parents so that they are not compelled to work (Europa NATs 2017, 90). While some children may work out of choice, others work because they lack viable alternatives.

Sensitivity to the variations in the needs, claims, and choices of different groups of children demands that we are open to and aware of the diverse reasons why children work and the range of policy and legal measures required to address the needs and claims of differently situated children. Protecting the rights of children who consider themselves workers should not conflict with ensuring the needs and claims of those who prefer not to be part of the working population and desire a childhood of play and education. In the words of Lourdes Cruz Sánchez, speaker for the Potosí (Bolivia) Working Children's and Adolescents' Council, 'Work gives people dignity. But when working conditions are bad, we must fight for better conditions … We are not calling for children of 10 or 12 to work. We are calling for protection for children, who do work, and for their contribution to be recognised' (Lourdes Cruz Sánchez quoted in Liebel 2015).

Conclusion

When viewed through an adaptive conception of 'childhood', our moral intuitions about the 'wrongness' of child labour and the appropriate solutions to address the harms and exploitation experienced by working children are challenged. The

relationship between children and work is highly influenced and dependent on their specific embodied, temporal, and spatial circumstances. Policies and laws that fail to consider the diverse dynamics between children and their work may inadvertently exacerbate the challenges they face. Through an adaptive lens, it becomes evident that much of the problem with child labour lies not in the fact that they are children but in the situational and pathogenic vulnerabilities that arise owing to legal, political, and social frameworks. Recognising children as equals, with a fundamental interest in having their freedoms and claims respected, requires an evaluation of their situations from an adaptive perspective. This perspective considers their unique epistemic standpoints, allowing their voices and experiences to inform policy and normative frameworks. Instead of imposing solutions based on abstraction and generalisation, an adaptive approach provides a conceptual and theoretical toolbox that humbly encourages the voices and claims of working children to be heard.

10

Is Child Disenfranchisement Justified?*

Children are among the few social groups that are systematically and universally denied voting rights. While certain countries have, in recent years, lowered their voting age to 16,[1] this remains an exception, as the prevailing norm is that being a child entails the lack of voting rights. This chapter explores the main arguments used to support the systematic disenfranchisement of children. Through an analysis of what 'democracy' is, and what justifications there are to exclude children from voting, it aims to show that most principles used to justify disenfranchisement are invalid. Moreover, it argues that neither age thresholds nor competence tests are entirely satisfactory as methods for exclusion. The chapter advocates for an equal standard for disenfranchisement, asserting that for any restrictions on voting rights to be valid they must apply equally to all, regardless of age.

This chapter examines two aspects required for justifying disenfranchisement: the principle guiding it and the method employed for selecting those to be disenfranchised. It analyses the philosophical literature's attempts to justify child disenfranchisement in terms of principle and method. It addresses the justifiability of child disenfranchisement by dividing it into two distinct concerns:

1   Principle for disenfranchisement: what grounds warrant restricting a citizen's voting rights?
2   Method of disenfranchisement: what valid mechanisms exist to categorise citizens for disenfranchisement?

While it might seem that deciding whether child disenfranchisement is justified or not is straightforward, the issue is actually quite intricate. Existing literature subtly draws upon three distinct principles to explain why children's disenfranchisement might make sense: the unawareness principle, the best interests principle, and the harm to democracy principle. This chapter contends that only

[1] Argentina, Austria, Bosnia-Herzegovina, Brazil, Cuba, Ecuador, Nicaragua, Serbia, and Slovenia (as well as Germany, Scotland, and others for local elections) (CIA 2020).

harm-based arguments can validly support disenfranchisement. However, it also suggests that the acceptability of the harm to democracy principle hinges on one's interpretation of democratic legitimacy. If democratic legitimacy seeks to ensure political equality among citizens, disenfranchisement is not justifiable. If it aims to guarantee quality procedures and outcomes, then disenfranchisement might be defensible.

Based on the harm to democracy as the sole principle that might warrant child disenfranchisement, the chapter examines three main methods to limit voting rights: age thresholds, substantive competence tests, and procedural competence tests. It contends that relying solely on age as a marker of political incapacity lacks justification. Regarding competence tests, both substantive and procedural methods are more reasonable ways to determine who can vote, avoiding age-based discrimination. However, their legitimacy depends on whether one prioritises democracy's quality or equality aspects. If democracy is valued for its epistemic ability to yield quality outcomes, competence tests can be valid. Yet, if democracy's strength lies in its commitment to equality, competence testing is not a suitable method for restricting voting rights.

The chapter contributes by providing a strong example of the impact that using an equal standard to justify differential treatment can have in particular issues that affect children's rights. Guided by the principle of basic liberal equality, any restriction of fundamental rights ought to have a valid justification, it must be necessary, and it must have non-discriminatory methods for determining legitimate differential treatment. It claims that disenfranchisement is only justified if democratic legitimacy is threatened by political incompetence. However, age cannot be used as an indicator for tracking political incompetence; if political incompetence is of concern, it ought to be tracked for everyone regardless of age. Restricting the right to vote based on age is patently discriminatory and should be abolished.

The stage is set by establishing some groundwork notions of what enfranchisement is and what democratic legitimacy may entail. The chapter moves on to explore the principles that have been used to defend the disenfranchisement of children, and the methods suggested to do so.

Enfranchisement and Democracy

If democratic systems stand on the idea of 'universal suffrage', it seems reasonable as a matter of principle to assume full inclusion of all citizens within the franchise and explore potentially valid justifications for exclusion. The concept of universal enfranchisement in essence implies what it conveys; that every citizen should ideally be included (Olsson 2008, 57). As Wall emphasises, '[t]he burden

of proof should belong to those arguing for exclusions, not those arguing for inclusions' (Wall 2022a, 47). This presumption is based on the intuitive egalitarian and non-discriminatory nature of democratic theory, with equality among individuals being the default stance, except when circumstances warrant differential treatment.

This inclusive view of democratic theory contrasts with an exclusive interpretation, wherein admission to the political community necessitates justification, a stance historically evident in the advocacy for including marginalised groups such as women or racial minorities in suffrage (Lau 2012, 861). Starting from universal enfranchisement as fully inclusive has an important implication: that the burden of justification is placed on positions that defend the exclusion of certain groups (Hamilton 2012, 1451). This is radically different from the present state of affairs, in which advocates for children's right to vote have to bear the burden of justifying why they consider that children should be included. Although true universal suffrage is not yet a reality in any state, adopting this inclusive starting point allows for an analysis less tainted by status quo biases, unwarranted comparisons, or speculative counterfactuals. Starting with universal enfranchisement as the default, one can explore the justified reasons to make exceptions to it, and provide an equal and unbiased benchmark through which to judge whether children as a group can be considered as a justified exception to the rule of universality.

A Standard to Justify Exclusion

While embracing the idea of equal and universal enfranchisement, there may arise situations warranting disenfranchisement. Upholding basic equality does not require identical treatment for all in every context; it entails equal treatment under alike circumstances, while allowing divergence when valid reasons exist (Bayefsky 1990, 11–24; Besson and Kleber 2019). Hence, we must ask what qualifies as a valid cause for revoking someone's vote. And how can group disenfranchisement be impartial and just? To address these queries, we need a benchmark that reflects this commitment, enabling us to evaluate the validity of disenfranchisement arguments based on adherence to equality and non-discrimination. Presently, no autonomous measure exists to assess exclusion's justifiability. To establish reasoned rationales for exclusion, an unbiased, independent standard for evaluating disenfranchisement's legitimacy is indispensable (Farson 1974, 182).

Following our assessment of justified differential treatment (see the section 'Basic Liberal Equality and Non-Discrimination' in Chapter 8), any appeal to legitimate differential treatment ought to prove its allegiance to basic equality and

non-discrimination. It must do so by proving a just cause, the necessity of restriction, and providing morally relevant traits and indicators for differentiation. Table 10.1 outlines the justifications, traits, and indicators used in the literature on disenfranchisement.[2]

A proposal for disenfranchisement should encompass several key aspects: first, it must establish a justifiable reason for excluding specific individuals or groups from suffrage. This rationale can be likened to the just cause principle found in discussions about the ethics of war (Lazar 2017) or the concept of 'legitimate aim' within non-discrimination legislation (ECHR 2002/2022, III. A., B.chapter 3). Given that enfranchisement holds significant importance for an individual's political standing and citizenship, the grounds for limitation must be sufficiently pertinent to warrant the necessity for exclusion. In the discourse on child disenfranchisement, three reasons are commonly put forth: non-affectedness, best interests, and harm to democracy.

Secondly, we must pinpoint which qualities hold significance in identifying who should be earmarked for exclusion. Essentially, we are on the hunt for characteristics that render them fitting candidates for exclusion from voting. Thirdly, we need to devise a precise method for gauging whether someone possesses those defining traits that make them suitable for exclusion. Think of this as pairing the right key with the correct lock. Even if consensus exists on the essential traits, there can be instances when the indicators used lean towards bias or inconsistency. What truly matters is establishing a framework that applies to individuals who genuinely embody the criteria in question (Beckman 2018). Lastly, a valid justification must underscore the necessity of its normative consequences and foundational cause. We are delving into whether this measure

Just Cause	Non-Affectedness		Harm to Self	Harm to Others		
Morally Valid Trait	By outcome *(foreigners)*	By process *(animals, infants, SMD)*[3]	Best interests *(children)*	Moral corruptness *(prisoners)*	Political incompetence *(children, mentally disabled)*	
Indicators	i.e. Residence, nationality	Language deprivation, unawareness	Goods of childhood	Conviction	Age as proxy	Competence test

Table 10.1 Example justifications for disenfranchisement

[2] This is not an exhaustive table. It presents the main arguments in the literature on child disenfranchisement and provides some examples of justifications for other regularly excluded groups. Others could be devised, and the example groups are open to debate.
[3] Individuals with significant mental disabilities (comatose, no-communication possible, lack of environmental awareness).

is truly imperative and whether there might be less freedom-intrusive strategies to achieve the same objective. This notion is encapsulated by what is known as necessity and proportionality.

Dimensions of Democracy

Understanding disenfranchisement requires looking into the heart of democratic principles. To truly grasp the significance of enfranchisement and its potential limits, we must understand the core tenets of democracy and its underlying value. Democratic theories diverge on the basis of this value: some argue for democracy's intrinsic worth, highlighting its equitable decision-making process, while others emphasise its instrumental value in yielding effective political results (Munn 2018, 605). Striking a balance between these perspectives, most democratic theories appreciate both its procedural fairness and its capacity for favourable outcomes.

Egalitarian Dimension

Democracy is valuable because it is a political procedure that can foster equality. This is the position defended by Thomas Christiano. The diversity of perspectives on what constitutes the good life requires political mechanisms capable of accommodating such multiplicity while ensuring the consideration of everyone's interests. Herein lies the value of democracy—it grants each individual an equitable share of political influence to shape public policies (Christiano 2002, 31). Equal political power is crucial: it signifies the acknowledgement of every individual as an equal; it ensures equitable regard for each person's claims; it integrates diverse conceptions of the good within public discourse; and it fosters collective decisions emerging from individual interests (Christiano 2002, 46–7). The egalitarian facet of democracy holds weight as it acknowledges the inherent moral worth of all individuals by encompassing their diverse interests in the process of forging collective decisions (Christiano 2002, 32).

Among egalitarian proponents of democracy, the 'all-affected interests' principle is favoured to address the 'who' and 'what' of democracy (Goodin 2007, 50). A just distribution of political power requires that 'everyone affected by government decisions should participate in that government' (Dahl 1990, 64). Extending participation rights to those affected ensures equal status and fair consideration of all interests in decision-making. Enfranchisement serves as a tool for safeguarding democratic equality. Since democracy aims to represent all affected interests, broadening the range of individuals eligible for political participation enhances the system's responsiveness to a wider array of concerns (Campos 2022, 372).

The right to vote is an instrument that allows all affected interests to be considered, through everyone's equal political power to cast one vote (Christiano 2002, 38). Claudio López-Guerra (2012, 125) considers that democracy's equal concern with all-affected interests requires equal voting rights as it ensures both the distributive and the relational aims of democratic equality: equitable allocation of political resources and recognition of each individual as a moral equal. Regarding the relational aspect, the right to vote 'is a symbolic affirmation of one's political status even when it seems to have little instrumental value for an individual' (Archard 2004, 98). From the distributive side, because votes are positional goods, equal distribution is a necessary condition, as any divergence from it makes their distribution unfair (Feinberg 1980; Waldron 1998).

Epistemic Dimension

Democracy extends beyond equality and fairness; it also emphasises quality outcomes. David Estlund (2008) posits that the value and legitimacy of democracy as a form of government are not solely substantiated by equality. Rather, democracy's worth lies in its capacity to yield quality outcomes. If individual voters' decision-making is better than random, the democratic process tends to generate proficient governments and policies (Estlund 2008, 8). He contends that democracy's concern is not only recognising citizens' equal status, but also ensuring that its decisions are 'good' (Estlund 2008, 6). This constitutes the epistemic dimension of democracy: democratic decisions gain legitimacy by being acceptable to all qualified viewpoints (Estlund 2008, 33) and by generating better results than random selection (Estlund 2008, 98).

From this perspective, the scope of inclusion becomes more limited than when solely contemplating the egalitarian dimension. While equality calls for involving all affected interests in democracy, a desire for quality democratic results prompts us to constrain inclusion to viewpoints that meet a 'qualified acceptability requirement' (Estlund 2008, 44–5). Democracy's focus extends beyond mere pluralism—it strives to achieve 'quality' political outcomes through pluralism.

Enfranchisement, in this context, holds value in its role of ensuring high-quality collective decisions. For legitimacy, the democratic process must achieve epistemic reliability, allowing the restriction of voting rights to those who can affect it (Hinze 2019, 289). Balancing epistemic reliability with equality raises the dual challenge of justifying disenfranchisement: while acknowledging all affected interests pushes for expanded enfranchisement, the concern with avoiding 'wrong', irrational, or morally unreasonable democratic outcomes leans towards restricting voting only to individuals deemed capable of making politically sound choices (Brennan 2011, 712).

Just Causes for Disenfranchisement

To evaluate the rationale behind child disenfranchisement, we must scrutinise the reasons provided for limiting voting rights to children. If democratic systems aim to uphold equal standing for citizens, how can excluding some citizens from enfranchisement be justified? In line with this book's approach, the legitimacy of any restriction must be measured against an equal standard for all. If differential treatment in political rights is considered valid based on the unique needs of a specific population, ensuring the necessity and proportionality of the mechanism is essential.

Unawareness and Self-Respect

An initial argument for child disenfranchisement asserts that children lack democratic equality owing to their limited awareness of being excluded from the political realm. Thomas Christiano's (2001) stance is partly rooted in this rationale, and posits that children's exclusion from the democratic process is justifiable since 'their status is not undermined by exclusion from collective decision making about matters pertaining to justice' (Christiano 2001, 207). Children remain unaffected by exclusion owing to their lack of awareness of the 'facts of judgment' (Christiano 2001, 207).

López-Guerra (2012) takes a similar stance, focusing on an individual's self-respect. He argues that enfranchisement holds both distributive and relational value. Inequalities in voting rights impact individuals by limiting their ability to influence decisions and by undermining the self-respect of those with unequal political rights (López-Guerra 2012, 126). While distributive disparities in disenfranchisement lead to unjust treatment for all citizens, relational injustices vary. López-Guerra contends that children under 10, despite distributive harm, are not subject to misrecognition owing to disenfranchisement as their self-respect remains unaffected (López-Guerra 2012, 127).

Christiano and López-Guerra assert that individuals unaffected by disenfranchisement in terms of self-respect (or awareness of judgement facts) can be justifiably excluded. However, this perspective overlooks a crucial aspect of the respect issue: being unaware of disrespect does not eliminate the disrespect itself. Both authors presume that the impact of exclusion depends on the subject's recognition of their mistreatment and its consequent harm. This is far from true. Relying on personal awareness for defining disrespect and injustice carries problematic implications, especially for protecting vulnerable individuals. Consider laws that protect children from sexualisation through prohibitions of child pornography or sexual exploitation, where victims may be unaware of the harm owing to their age or cognitive limitations. These protections are especially stringent precisely because most children who are sexually exploited are unaware of the

objectification and harm caused by being treated as sexual objects. It is their lack of awareness of being treated sexually that makes their sexualisation so problematic. The inherent vulnerability of some children to actions by others can become corrosive if assurances and protections are not in place in order to compensate for their dependence on others for support and protection. If unawareness were the basis for justifying disrespect, such protections could erode, potentially harming those who are most vulnerable. This underscores the insufficiency of using unawareness as erasing the possibility of disrespect.

Philip Cook's proposal for a procedural competence test (2013) incorporates elements of the unawareness argument, while not relying (entirely) on the argument just presented. Cook proposes a minimal procedure that individuals must pass to vote, centred around literacy and independence (Cook 2013, 450–5). This procedure limits voting to those who are aware of it, excluding those unaffected by disenfranchisement, '[a]s those incapable of completing these tests would be ignorant of the test, they would not suffer harm to self-esteem' (Cook 2013, 454). Cook's approach significantly alters the inclusion threshold, while still justifying disenfranchisement for those whose illiteracy or dependence makes them unaware of their exclusion.

While Cook's proposal stands out as a fair and coherent one, a concern arises regarding his rationale for disenfranchising those who fail a procedural test: its lack of relevance. If the aim of the procedural test is to exclude only individuals completely unaware of their exclusion, then the test seems superfluous, as it screens out those who likely would not participate in the process anyway. The question emerges: what would change if these individuals were enfranchised but simply did not vote? Within Cook's own criteria for enfranchisement, granting voting rights to those unaffected and unaware of disenfranchisement (a small portion of the population) would have negligible impact on the democratic outcome (Hinze 2019, 297). However, it could hold symbolic significance in acknowledging all citizens as equal members of society.

The question of principle, therefore, remains unresolved when relying on children's unawareness and unaffectedness of exclusion from voting. First, using unawareness of harm as a basis for justifying disrespect poses significant challenges. Second, even if the unawareness claim were accurate, it would only pertain to a minority of the child population, rendering disenfranchisement largely inconsequential.

The Best Interests Principle

An alternative argument asserts that granting franchise to children undermines their fundamental interests (Beckman 2009; 2018). The underlying rationale is that allowing children to vote could potentially harm their best interests

(Beckman 2009, 92). Referencing the United Nations Convention on the Rights of the Child (UNCRC) (UNGA 1989, Art. 3.1), Beckman emphasises that decisions affecting children must prioritise their best interests. Given the vulnerabilities and developmental needs of children, special attention should be given to examining the positive and negative effects of voting on their fundamental interests (Beckman 2009, 114; see also Clayton 2006, 183; Gheaus 2023).

Drawing on the 'best interests' principle, Beckman aligns with the literature on the 'special goods of childhood' (Macleod 2010; Gheaus 2015a; 2023) to contend that granting children political freedoms, along with the responsibilities they entail, jeopardises the safeguarding and nurturing of a fundamental interest that children hold in being children (see the section 'The Intrinsic Value View' in Chapter 2). Beckman draws an analogy with child labour: 'The reason why children have no moral right to take employment is not that children are particularly bad workers but that to work is bad for them' (Beckman 2018, 291). The argument does not suggest that children are inherently incapable of voting; it posits that certain aspects integral to 'childhood' (such as the freedom to play, exemption from political responsibilities, and protection from adult concerns) could be compromised by their enfranchisement. Enfranchising children would bring responsibilities that might encroach on the goods of childhood, limiting their ability to fully enjoy its inherent benefits. They would bear the task of engaging in society-wide decisions, using leisure time to gather information, understand political options, and deliberate (Schrag 2004, 373; Beckman 2009, 115). Anca Gheaus agrees, suggesting that voting might burden children's freedom and curtail the time spent enjoying the goods of childhood (Gheaus 2023, 121). This perspective contends that involving children in politics and assigning responsibilities might not align with their best interests, justifying their disenfranchisement.

Three issues arise with this argument: an interpretation problem, an empirical concern, and a substantial criticism. First, Beckman's understanding of the 'best interests' principle within the UNCRC misinterprets its stance. Part of the reason why the 'best interests' principle exists is for it to partially compensate for children's lack of political rights (Eekelaar and Tobin 2019). It asks considering children's own opinions and needs to determine what their best interests are. This implies that children's interests cannot be conceptualised paternalistically by external actors, as Beckman assumes; within the UNCRC, children must be included in the deliberation on what their interests are and how to achieve them (UNGA 1989, Art. 12; Eekelaar 1994).

The 'best interests' principle does not permit pre-emptive imposition of universal judgements (Eekelaar 1994). Instead, it is a dynamic concept, demanding adaption to individual cases by balancing experts' opinions with children's own views (Skivenes 2010). It is not intended for general prescriptions across 'childhood', but requires alignment with general principles of justice and the

constitutive frameworks and adaptive condition of the individual (Archard and Skivenes 2009). Beckman's assertion that enfranchisement universally harms children's interests disregards their own opinions and the varying impacts of voting across developmental stages.

One solution could be to avoid relying on the UNCRC and to acknowledge that the argument hinges on a perfectionist interpretation of children's best interests (Beckman 2009, 114). Yet this would still confront both empirical and substantive criticisms. On the empirical front, the 'best interests' argument seems to exaggerate the weight of voting responsibilities to make its case. It suggests that enfranchisement would irreparably harm children's interests in leisure, carefreeness, and play (Beckman 2009, 115; Gheaus 2023, 122). However, this might not necessarily hold true.

If we assumed that every voting citizen has the duty to acquire all necessary information and to deliberate in a fully reasonable and rational way, then not only would children not have any free time left, but also possibly everyone else would have to spend all their free time deliberating politically. No one expects the adult citizen to bear the burden of democracy to this extent (López-Guerra 2012, 130); imposing such a requirement solely on children while exempting adults would be unjust, and would entail implementing an unequal standard for evaluating democratic participation. Furthermore, children's educational obligations could alleviate this concern, given that many are mandated to attend school for a significant portion of the day (Umbers 2020, 738). Incorporating civic education into school curricula could help address this issue by dedicating school hours to political learning and fostering debates on various candidates and positions (Franklin 2020; Mahéo and Bélager 2020). Arguing that children would be unduly burdened by learning about the political process appears overly patronising.

Even if children's interests in free time and play are not affected, a 'best interests' argument could claim that innocence and children's fundamental interest in being shielded from the 'adult world' could be threatened by enfranchisement. As Rehfeld rhetorically asks: 'Do we want, for example, a 12-year-old to deliberate about how best to deal with female circumcision in Africa or debate whether waterboarding is a good or bad policy of interrogation?' (Rehfeld 2011, 153). The claim is that children have a fundamental interest in being innocent; in being shielded from certain realities that political rights uncover (Macleod 2015).

This approach faces more substantial challenges than the previous one. Justifying the curtailment of fundamental rights by invoking 'innocence' raises critical questions: Can 'innocence' be universally upheld as an objective value warranting such restriction? Should children themselves be involved in defining their interest in innocence? Employing 'innocence' as political discourse to limit a group's rights has problematic historical precedents. Jane Rutherford (1997, 1479–89), for instance, exposed how 'protecting innocence' was employed against the

suffragette movement in the early 20th century (see also Runciman 2022, 104–7). While a distinction could be drawn between children and women in terms of innocence, issues arise in applying this rationale to children (Jenks 2005, chapter 6).

As Joanne Lau contends, labelling someone as 'innocent' often functions as a veiled form of oppression, dismissing them as a political actor worthy of serious consideration (Lau 2012, 861). It reifies the condition and reality of a diverse group of individuals and ascribes a 'weakness' to them as if it were inherent to their embodiment. The concept of innocence avoids the need to justify to those labelled as such why they are kept in that state, while simultaneously lacking clear definition and rationale for the perceived benefits of innocence. One could argue that it does more harm than good, in the sense that the discourse defends that already vulnerable individuals and groups have restricted their access to political resources and power. This concept presents a moralised view of 'childhood', assumes its inherent truth and goodness, and enforces it in a paternalistic manner.

Each of these stages necessitates thorough justification for the argument to stand. First, the imposition of a WEIRD (Western, Educated, Industrialised, Rich, and Democratic) conception of 'childhood' must be substantiated, acknowledging the diverse identities within the child population (Lancy 2015, 397–9). Children exhibit considerable heterogeneity based on their embodied, temporal, and spatial frameworks, and how they adapt to them. Asserting the inherent benefits of shielding all children from the adult political sphere neglects this multiplicity of experiences, and how engagement with reality can impact them positively or negatively (Jarkovská and Lamb 2018, 78). Secondly, demonstrating the inherent goodness of political innocence for the entire child population is questionable. Numerous children lack the privilege of being 'shielded from the adult world'. They shoulder responsibilities as caregivers, workers, or household heads, experiencing discrimination and harassment based on gender, race, or religion. They harbour concerns about climate change, social justice, and conflict. Many children are already integrated into the adult world owing to necessity or personal inclinations. Disenfranchising them would neither alter their circumstances nor restore their innocence. Thus, the justification for disenfranchisement based on children's best interests seems questionable when children live in adult contexts or actively appreciate their political involvement. Not only does it not protect them from the harsh world they live in, but it also actually endorses taking away from them one of the only tools they have to protect themselves: political power.

An argument advocating for disenfranchisement grounded in the 'goods of childhood' and a perfectionist interpretation of children's best interests lacks robustness. It fails to incorporate children's perspectives in determining their own interests, it exaggerates potential harm to children, and it disregards individual variations among them. Moreover, it assumes a justifiable interference irrespective of the unique circumstances of different individuals.

Harm to Democracy and Political Incompetence

If voting's impact on democratic legitimacy is compromised, disenfranchising individuals who could undermine the system may be justifiable. Most democratic theorists generally agree that disenfranchisement can be warranted if it ensures the democratic process's integrity. Since voting grants individuals political power, it confers authoritative influence, enabling them to affect others coercively (Brennan 2011). The collective decisions of an enfranchised population aim to foster common goods (Christiano 2002) and avert significant public bads (such as war, famine, economic collapse, and genocide) (Estlund 2008, 163). Democracy designates those responsible for creating laws, social and economic policies, and military choices potentially dangerous if legitimacy falters (Caplan 2006, chapter 1). A collective majority voting 'wrongly' could jeopardise democratic legitimacy.

The 'wrongness' of voting can be interpreted in two ways: as generating 'bad' outcomes or as being construed in the 'wrong' way (Estlund 2008, 160–7). While some democratic theorists directly mention bad outcomes as a potential problem with the democratic system (i.e., Caplan 2006; Estlund 2008; Goodin and Lau 2012), most agree that the threat to the legitimacy of the system lies in citizens voting through corrupt cognitive processes (i.e., ignorance, bias, irrationality, unreasonableness). The assumption is that, if the individual's cognitive process of deliberation is flawed, the system is corrupt and the results are illegitimate (Brennan 2016). In short, voting wrongly can either lead to bad political outcomes that harm others or it makes the system lack legitimate authority to rule.

A certain type of harm could potentially warrant limiting individuals' political power. If a democratic system fails to shield its citizens from severe public adversities or consistently selects suboptimal candidates and policies, what is the purpose of such a system (besides its symbolic significance)? (Brennan 2016, chapter 1). Consequently, harm to democracy emerges as a potentially valid basis for disenfranchisement, possibly encompassing children as well. If it can be demonstrated that children's voting choices harm democracy, their disenfranchisement might find justification.

A valid reason, however, is not sufficient for disenfranchisement; justification requires demonstrating that morally relevant traits align with the undesirable outcome. In this context, political incompetence is regarded as the pertinent characteristic that correlates with an individual's susceptibility to jeopardise democracy by means of voting.[4] Decisions within the democratic process significantly impact society, thus it can be argued that voters should possess sufficient competence to protect the process.

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[4] Moral corruptness is another trait that tracks harm through franchise; it is the underlying principle behind the disenfranchisement of prisoners. This argument has not been used in the case of children. See the debate in Beckman (2009, chapter 5).

Less competent individuals in a certain domain are more likely to harm others while engaging in that domain (Christiano 2001, 197). The argument suggests that less competent voters are likelier to cause harm through their votes, justifying a distribution of political power that aligns with competence (Brennan 2011, 709). Political powers are constrained by the potential harm they could cause. If someone lacks the competence to prevent their actions from causing harm, restricting those actions is legitimate. In the case of children, political competence is typically conditioned by an individual's temporal framework and developmental needs, potentially justifying disenfranchisement of the youngest who may be more prone to harm owing to less developed competences.

Political Incompetence

What does it mean to be 'politically competent'? Political competence is defined by the process of making political choices, not the content of those choices. As Christiano explains, political competence 'is a disposition of a person. It does not entail always having the right answer. One may be morally competent but make mistakes or have the wrong moral views … or act irresponsibly' (Christiano 2001, 200). It is not necessarily about choosing the 'correct' option on a ballot; it is about choosing through the 'correct' cognitive process. It is about rationality, reasonableness, and the ability to form and adjust one's sense of justice and the good, along with adhering to fair terms of cooperation (Fowler 2014, 99–100). It includes understanding the democratic process and one's role in it (Archard 2004, 101; Chan and Clayton 2006, 538–42).

Accepting political incompetence as a reason for disenfranchisement assumes the reliability of democracy to produce accurate outcomes. This relies on Condorcet's 'jury theorem', suggesting that if voters have a probability of at least 51 per cent of choosing correctly, the system can reliably produce accurate outcomes (Goodin and Lau 2011). To achieve this, it is essential that the average voter's probability of making correct choices is better than fifty-fifty (Estlund 2008, 156–8). Ensuring that most of the electorate is not politically incompetent, with fifty-fifty or worse chances, is crucial. Some argue that children, owing to their underdeveloped political competence, could lower the quality of democratic decisions below fifty-fifty, thus justifying their exclusion for the sake of the system's reliability (Chan and Clayton 2006).

Two potential responses emerge to this assertion: first, demonstrating that the inclusion of the politically incompetent would not detrimentally affect the democratic process's quality; alternatively, by invoking democracy's egalitarian essence, asserting that the outcome, while possibly conflicting, is secondary to the foundational principle of basic equality inherent in liberal democratic frameworks.

Limits of the Incompetence Argument

Numerous proponents of enfranchising the 'incompetent' contend that Condorcet's 'jury theorem' supports their stance, suggesting that including groups such as children would not detrimentally impact democratic process quality, as the likelihood of an average voter making incorrect choices is minimal (Goodin and Lau 2011; Munn 2018). If process quality is paramount, individual political competence becomes negligible; only the collective competence of the entire electorate (averaged) can gauge outcome reliability (Hinze 2019). Children's votes would not substantially diminish average individual competence to influence outcomes; at most, their votes would be random, merely bolstering numbers without altering outcomes (Goodin and Lau 2011, 160), or their choices, influenced by competent voters (e.g., parents, teachers), might align, enhancing overall outcome quality (Olsson 2008).

The Condorcetian rebuttal holds merit by highlighting that if the majority of voters can effectively make correct choices, the competence of the minority becomes inconsequential. Yet this defence has shortcomings: first, it needs the collective's average competence to be strong enough to counterbalance any incompetent voters; secondly, it does not address the issue of legitimate authority, as it primarily centres on outcome quality.

Accepting the validity of the Condorcetian argument hinges on the premise that the average competence of the electorate is sufficient to counterbalance any potential incompetence (Brennan 2016, chapter 2). If, however, the average voter exhibits systematic poor judgement owing to incompetence or moral corruptness, the argument's foundation weakens. In such a scenario, the inclusion of a larger, potentially incompetent electorate could jeopardise the democratic system's reliability. To maintain the argument's viability, one might need to raise the threshold of required competence or moral righteousness, potentially disenfranchising a greater number of individuals to ensure a dependable average competence level.

Brennan (2011) goes a step further, asserting that the legitimacy of the democratic procedure relies on competence, irrespective of the outcomes it produces. Competence is vital not only for improving outcomes, but also for maintaining the legitimate authority of the democratic process. He draws a parallel with the legitimacy of jury decisions, using it to underscore the moral significance of competence. Brennan (2011, 702–5) raises the question of whether a jury lacking any factual knowledge or comprehension of a case can be considered a legitimate authority over the case, regardless of its decisions' correctness. He argues that the jury's legitimacy is compromised by incompetence, regardless of their verdict (Brennan 2011, 708). Drawing a parallel to voting, Brennan asserts that only individuals capable of rational, informed, and conscious voting should partake in the

process. Just as a justice system shouldn't rely on incapable individuals to make crucial choices, the legitimacy of the democratic system hinges on voters' competence.

Brennan's legitimacy-based argument is strong. However, the validity of this claim presupposes that democracy merely has an instrumental value in ensuring quality and legitimate political outcomes (Brennan 2016, 10–14). Democracy, for more proceduralist theorists, is valuable because it is a political system that recognises and reflects the equality of its members beyond its instrumentality (i.e., Christiano 2002; Kolodny 2014). From this perspective, the right to vote becomes a symbolic affirmation of one's political standing, even when its instrumental value may seem limited (Archard 2004, 98). Embracing this viewpoint shifts the focus from outcome quality to the egalitarian foundation on which democracy stands. For proceduralists, legitimate democratic authority does not derive from procedure and outcomes, but from the process's acknowledgement of the basic equality of all citizens, irrespective of their competence (Goodin 2007).

While recognising the fundamental value of procedural equality, it is crucial to address instrumental concerns. Would a proceduralist accept an incompetent or morally corrupt democratic process that undermines its own principles? Acknowledging democracy's egalitarian worth needs limits on the procedure to be recognised. Excessive political incompetence or moral corruption threatens a system's legitimacy. Minimal conditions are necessary to safeguard democracy's legitimacy against widespread incompetence or corruption, ensuring its stability and maintaining equality.

The weight given to different democratic values shapes the justifiable scope of disenfranchisement based on political incompetence. Is democracy about reflecting equality only for competent citizens (instrumentalists), or about recognising and symbolising equal political status for all regardless of competence (proceduralists)? For our purpose, recognising democracy's instrumental role can justify stricter franchise requirements. Prioritising egalitarian procedures narrows the scope for disenfranchisement based on incompetence but still mandates protecting the system from systemic corruption or incompetence. Regardless of perspective, widespread political incompetence threatens any democratic system's integrity, justifying disenfranchisement to avert this scenario.

Methods of Disenfranchisement

After establishing that only the threat of political incompetence can warrant limiting children's franchise, we must now assess the legitimacy of mechanisms for categorising individuals' eligibility based on incompetence. What indicators and processes can fairly identify political incompetence and potential harm to democracy?

Age as a Threshold

Age is the standard metric used to track political incompetence and enforce child disenfranchisement. If you are below a certain age (usually 18 years old), you are deemed legally incompetent to exercise the right to vote. However, age itself lacks inherent moral significance; it is valuable merely as a stand-in proxy for tracking political (in)competence. The nuanced difference in competence between a 17- and an 18-year-old is often negligible, making it arbitrary to label all 18-year-olds as competent and all 17-year-olds as incompetent. Cognitive and emotional development varies greatly among individuals, rendering any specific age as an accurate threshold questionable (Cook 2013, 444–5; Fowler 2014, 100).

Treating individuals differently based on age is justified by two arguments. First, statistical discrimination is employed: despite age not perfectly distinguishing competence, the statistical likelihood that individuals on either side of the threshold will behave as expected (under-aged as politically incompetent, adults as competent) offers a reliable proxy, even if imprecise (Schauer 2018). Second, one can turn to complete-life egalitarianism to address concerns about age-based discrimination: a commitment to equality does not demand treating individuals equally at every life stage; equality necessitates consistent treatment over an entire lifespan (Fowler 2014). Restricting voting rights below a certain age guarantees complete-life equality.

Statistical Discrimination

Age serves as a disenfranchisement threshold based on the assumption that there is a relevant correlation between age and the development of necessary voting competences (Archard 2004, 89). While it might not precisely gauge political competence, its ease of implementation, transparency, and reasonable accuracy regarding the significant difference in competence between very young individuals and middle-aged adults make it acceptable (Hinze 2019, 292). Advocates of age-based disenfranchisement, such as Archard (2004, chapter 6), argue that despite debates over the precision of age boundaries (such as the difference between 17- and 18-year-olds), the fact that a progression exists in the acquisition of competences, and that the cases at the extremes are clearly distinguishable, proves the justifiability of the threshold.

The analogy, mentioned earlier in the book, of speed limits while driving illustrates this point: speed limits are necessary owing to the risk of accidents when exceeding them. Despite the risk not drastically changing between 69 and 70 mph, the difference between driving at 70 and 20 mph underscores the validity of having a threshold, even if not entirely precise (Archard 2004, 86–9). Similarly, in voting, the apparent incompetence of a one-year-old justifies a threshold, even

if it is not exact at its boundaries. As Archard (2004, 89) puts it, 'What matters is the overall balance of probabilities. We need only to be confident that the competence is most probably not possessed by those in one age group and most probably possessed by those in the other.'

Age thresholds do not qualify as wrongful discrimination since they rely on statistical correlation to justify differential treatment of age groups (Clayton 2006, 186). Unlike discrimination based on gender or race driven by biases, age-based discrimination utilises statistical correlation between age and political competence to establish its threshold (Chan and Clayton 2006, 539). This method is deemed justifiable as it claims to accurately assess the collective probability of incompetence, even if not tailored to individual cases. A study by Chan and Clayton (2006) examining political competence across age groups in England indicated a correlation between age and factors such as willingness to engage in political activities and knowledge of politics and democracy. Thus, they argue, current age limitations on voting are justified.[5]

The argument for statistical discrimination in the context of age-based disenfranchisement faces challenges. First, statistical data, even if accurate, can be self-fulfilling and unreliable. Secondly, while not inherently discriminatory, its application solely to the under-18 age group might still lead to discriminatory outcomes.

Statistical discrimination is problematic owing to potential circularity and self-fulfilment. It can rely on data taken from a system that itself discriminates, making the assessment of discrimination's justification unreliable (Lister 2007; Lau 2012, 863). Minors' apparent lower political competence and interest might not stem from inherent incapacity but from the lack of incentives to develop these capacities (see Peto 2018). This perspective suggests that their perceived incompetence is more a result of restricted opportunities and freedoms than an inherent inability. Consider a scenario where a survey such as Chan and Clayton's (2006) was conducted to assess political interest and knowledge among women in the mid-19th century. It is likely that the results would have indicated significantly lower political engagement and understanding among women than among men. However, this outcome would not objectively demonstrate women's inherent political incompetence. Instead, it could be seen as a self-fulfilling prophecy resulting from the oppressive conditions that limited women's opportunities to acquire political competence (see the section 'Normalisation' in Chapter 3).

Proving the present political incompetence of children under restrictive conditions could be insufficient to justify their disenfranchisement; rather,

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[5] Not all proponents of age thresholds endorse the existing threshold as optimal. Some, such as López-Guerra (2012) and Umbers (2020), question the current age threshold's validity, proposing that the appropriate age should be as young as 10 to 12 years old. This suggestion constitutes a significant departure from the status quo, while still leaning on the principle of statistical discrimination to (dis)enfranchise.

these types of surveys show that we need to improve the conditions that would allow children to become politically competent (Peto 2018, 282; Wall 2022a, 52). If individuals have the potential to become competent, they should have ensured the conversion factors needed to develop this ability (see the section 'Development' in Chapter 8). Empirical studies investigating political competence reveal a significant contrast between enfranchised and disenfranchised minors. A comparison between adolescents in Austria (where 16-year-olds can vote) and the United Kingdom (where they cannot) indicates that enfranchisement positively impacts the political competence of minors (Wagner et al. 2012; Mahéo and Bélanger 2020). This implies that without a counterfactual scenario enabling the assessment of political competence absent restrictive conditions, the claim of statistical reliability loses credibility and becomes questionable as a justification for disenfranchisement (Peto 2018, 290–2; Mahéo and Bélager 2020, 5, 18).

Another problem with the current application of statistical discrimination lies in its inconsistent treatment of different age groups or other relevant indicators of political competence. Even if statistical discrimination were justifiable, its exclusive use to restrict the rights of a single group can be perceived as unjust (Hinze 2019, 295). Assuming the validity of age-based statistical discrimination, Joanne Lau (2012) argues that it can only be ethically employed if it is symmetrically applied to older populations as well. This perspective contends that if age is a pertinent factor, it should serve as an indicator of incompetence across all life stages, not exclusively during childhood (Lau 2012, 864–5). A more justifiable and equitable approach would involve employing age as a proxy for incompetence consistently throughout the lifespan, thus disenfranchising age groups based on their statistical competence (Fowler 2014 suggests a similar model). While not entirely resolving the concern about using age as an indicator, this revised statistical discrimination argument at least addresses the issue of its exclusive application to the youngest age-groups.

Complete-Lives Egalitarianism

Following complete-lives egalitarian theory (Daniels 1988), some defenders of age thresholds for disenfranchisement (Weale 1999; Clayton 2006; Fowler 2014) argue that differential treatment based on age is justified because age discrimination affects every individual equally, rather than targeting only one section of the population: '[D]iscrimination on the grounds of age is fundamentally different from discrimination because of gender or race. Since everybody ages, policies that appear to be unfair to elder or younger groups might in fact be justifiable when looked at over the whole lives of the individuals concerned' (Fowler 2014, 104ff).

We all pass through the same stages of life in which our voting rights are restricted, and this restriction lasts the same for everyone, thus it does not violate equality and may be considered as justifiable allocative criteria for differential treatment. If what matters is whether individuals are treated equally across their complete lives, rather than equally at every specific time, the restriction of certain rights (such as voting) based on age does not violate the ideal of equality, and is, therefore, justified (Clayton 2006, 188–9).

While complete-life egalitarianism can establish that an age-based allocation of rights is consistent with equality, it falls short in offering a compelling rationale for the specific method of disenfranchisement employed, such as exclusively targeting children (Umbers 2020, 746–7). This argument does not effectively endorse the current age-based system that disenfranchises only children as the appropriate means to achieve equality. The focus on maintaining equal treatment throughout an individual's life could apply to various other allocation mechanisms as well, which challenges the uniqueness and justifiability of the present system in which only children are disenfranchised. Different scenarios, such as alternating periods of enfranchisement and disenfranchisement, restricting voting rights only for the elderly, or choosing random ages to disenfranchise could also comply with complete-life egalitarianism (Lau 2012, 868; López-Guerra 2012, 125). Thus, the argument's primary emphasis on life-span equality does not offer sufficient justification for choosing one method over another or for exclusively targeting children.

Even if age works as a simple, easily enforceable, and clear allocative mechanism for disenfranchisement, its lack of accuracy and its reliance on dubious statistical information makes it a morally problematic method for tracking political incompetence.

Testing Competence

Critics of age-based disenfranchisement, who acknowledge the importance of political competence but question the validity of age as a proxy, have considered competence testing as an alternative exclusion criterion. The arguments against age proxies have focused on the discriminatory effects and harms experienced by disenfranchised children. However, the issue with age-based proxies extends beyond their impact on children; they also grant an unjust advantage to politically incompetent individuals who are not subject to age restrictions (Munn 2012; 2022). What troubles critics isn't merely the differential treatment of children, but the specific targeting of children for disenfranchisement (Schrag 2004, 367–9; Lau 2012).

If political incompetence is the crucial factor justifying disenfranchisement, then the measure used to assess it should consistently apply to all instances of incompetence, not just some. Even if we assume that all individuals under 18 are

indeed politically incompetent and therefore rightfully disenfranchised, for the sake of consistency, we should also assess and potentially disenfranchise those above 18 who are politically incompetent (Munn 2018; Lau 2012). If the argument contends that political incompetence poses a threat to democracy, then every politically incompetent individual should face disenfranchisement on the same basis.

Just as it is plausible to argue that some (or even most) children are indeed politically incompetent, it wouldn't be far-fetched to assert that a segment of the enfranchised population poses a threat to democracy owing to their incompetence. If political incompetence includes failing to adhere to public reason and the 'facts of judgment' (Christiano 2002), lacking basic political knowledge, being susceptible to manipulation, bias, and an inability to make independent political choices, then not only should many children be disenfranchised, but also a substantial proportion of adults should face disenfranchisement (Brennan 2016; see also Caplan 2006). If the principle justifying disenfranchisement is the harm to democracy caused by incompetence, then it becomes imperative to ensure that all incompetent citizens are prevented from voting.

What these competences are, what their threshold should be, and how they should be assessed, however, are contentious issues. One can divide, for simplicity, between defenders of substantive and procedural competence tests (Christiano 2001; Cook 2013). Those favouring a substantive test believe that political competence should be gauged through evaluating individuals' knowledge of essential political and electoral facts, as well as their ability to grasp issues, discern biases in reasoning, and comprehend the implications of their political choices (Brennan 2011; Munn 2012). Substantive tests set a stringent standard for enfranchisement, ensuring that only individuals who are highly reasonable and rational are eligible to vote.

Conversely, procedural tests strive to sift out incompetence from suffrage while maintaining a low threshold that preserves democracy's commitment to equality. Rather than demanding an 'ideal' level of political competence, procedural tests employ uncontroversial methods to determine if a citizen possesses minimal competence to vote. Cook, for instance, advocates in favour of a purely procedural test in which the act of registering to vote and casting an independent vote are the criteria for assessing an individual's political competence (Cook 2013, 450–4). Cook's procedural test evaluates literacy by an individual's registration to vote and measures independence by the act of privately voting in a booth. These requirements, according to Cook, are sufficient and minimal for voting, obviating the need for further criteria to justify enfranchisement (see also Wall 2022a, chapter 7).

Challenges have emerged concerning competence tests. One question revolves around whether these tests should align with the ideal competence for democratic politics or with the minimal criteria expected from citizens (Archard 2004, 101–2;

Fowler 2014, 96–7). Advocates for the latter suggest that demanding the ideal level of political knowledge and reasoning from the populace might be excessive. If democracy is valued both for its instrumental reliability and for its equitable distribution of political power, adopting a substantive test with a high threshold could jeopardise its egalitarian nature, potentially leading to an epistocratic system that goes against the principles of true democracy (Umbers 2020, 742). If political equality holds a crucial position in democratic ideals, imposing stringent franchise requirements might contradict its fundamental commitments.

The critique here suggests that procedural tests might be more suitable than substantive ones as a mechanism for allocating the franchise. However, both types of tests face a common challenge: potential biases against certain populations, which can foster abuse and discrimination (Archard 2004, 90–1). Biased tests demanding literacy were used in the past to exclude black Americans from US elections (Rutherford 1997; Cook 2013, 442; Wall 2022b, 68–73). Even today, voter ID laws and registration procedures can disadvantage particular social groups, thereby hindering effective enfranchisement (Braconnier et al. 2017; Hajnal et al. 2017). While these policies may not be intentionally discriminatory, they can inadvertently exclude those with limited access to education or resources, potentially perpetuating socio-economic disparities (Estlund 2008, 217–18; Umbers 2020, 749). Brennan (2011, 720) responds to these concerns by asserting that these injustices are not a direct result of the tests themselves, but rather reflect pre-existing injustices, such as unequal access to education and political resources. In theory, rectifying disparities in educational and political resources could serve as a countermeasure to this potential injustice.

From the discussions surrounding competence testing, an important tension emerges that highlights a potential inconsistency within mainstream democratic theory. Democracy aims to balance its egalitarian and epistemic values while maintaining consistency and fairness. This complexity often goes unaddressed in the context of child enfranchisement (Hinze 2019). On one side, if democracy's instrumental value takes precedence over equality, then tracking and testing political competence becomes crucial to ensure a reliable and legitimate democratic system. On the other side, if democracy's foundation lies in its egalitarian procedures, it must be willing to sacrifice some instrumental reliability and lower the threshold of expected competence to include a wider range of citizens.

Alternatives to Disenfranchisement

Justifications for the systematic disenfranchisement of the whole child population cannot stand. And even those that are justified based on a 'competence' condition for voting depend for their validity on the value we give to the egalitarian

dimension of democracy over its epistemic quality. Even if practical concerns or potential drawbacks for allowing very young children to vote are considered, these factors might not be strong enough reasons to maintain the status quo. The criterion of necessity for differential treatment implies that we should explore less restrictive alternatives first. When dealing with essential civil and political liberties, our goal should be to identify the options that impose the least restriction on freedoms. Assuming that children are equal citizens and that they possess a fundamental interest in being politically represented, it follows that their right to vote should be preserved in some capacity (Wall and Dar 2011).

Leaving aside the idea of disenfranchisement, we can explore alternative mechanisms that can guarantee political representation for those who are incapable of voting themselves. I would like to briefly introduce a few of these approaches, not with the intention of endorsing any particular stance, but to highlight the options available for maintaining universal suffrage while accommodating individuals who are unable to vote. Existing practices of indirect representation can be expanded upon, and concepts such as proxy voting or proportional representation have been proposed to ensure political inclusion regardless of an individual's voting capacity. The intention here is to emphasise that there are alternatives to disenfranchisement that can better safeguard the political rights of children without compromising their fundamental interests.

Indirect Representation

While individuals are represented directly by being enfranchised (by their actively choosing the individuals who will defend their interests in government), representation can also take a passive (or indirect) form; in the latter, an individual's interests are protected and pursued by a representative, without the citizen being actively involved in their choice (Rehfeld 2011, 154). Theories by scholars such as Mansbridge (2003) and Rehfeld (2006) provide a foundation for exploring representation models suited for those unfit for franchise or unable to consent to representation.

Some scholars have shifted the focus of the debate from whether children should be enfranchised to redefining the essence of political representation to suit the reality of children (Cohen 2005; Wall 2012; Campos 2022). Campos (2022) introduces a novel perspective by proposing an inclusive account of political representation applicable to the infant population. According to Campos, political representation is owed to those whose interests are influenced by governmental decisions. Rather than debating children's voting rights, he suggests adapting democratic theories to encompass all individuals (Campos 2022, 377; see also Wall 2012, 97). If a substantial portion of the population lacks the necessary epistemic competence for voting, the emphasis should shift towards designing an

inclusive system of political representation (rather than attempting to fit them into an ill-fitting system). Campos suggests a paradigm shift from the rational adult to the infant as the foundational standard for designing a political system that is amenable to the needs and interests of all individuals (Campos 2022).

Campos introduces an innovative approach by redefining the foundation of political representation and democratic theory. Nevertheless, his proposed strategies for ensuring representation for those unable to actively partake are insufficient. He suggests adopting Edmund Burke's concept of virtual representation—in which an enfranchised group with similar interests represents the disenfranchised—and the establishment of children's ombudspersons as suitable alternatives (Campos 2022, 381–2). However, virtual representation faces impractical enforcement. Entrusting parents, educators, and young adults to vote in the interests of both themselves and the disenfranchised places an unjust moral burden on them and fails to adequately address the needs of the disenfranchised. This approach also implies an imbalance, favouring childless individuals who solely vote for themselves (Rutherford 1997, 1525). Equal representation for all citizens should not necessitate diluting votes; each individual's interests deserve equal consideration.

The concept of executive representatives, exemplified by the ombudsperson role in many countries, garners substantial support from various scholars (van Parijs 1999; Schrag 2004; Cohen 2005; Leib and Ponet 2012; Campos 2022). An ombudsperson operates as an independent entity within the government, tasked with advocating for children's concerns across the three branches of government. This model has gained traction, particularly in Europe, where it has been well received. However, the question arises whether such a position adequately fulfils children's aspiration for equal political representation. An office endowed with limited or no coercive authority, which can only suggest and lobby without possessing veto power, falls short of functioning as an effective source of representation. While it might symbolise a commitment to safeguarding children's interests, it lacks the capacity to ensure equitable consideration of their interests in governmental decisions.

Indirect representation mechanisms endeavour to demonstrate that children can still be represented despite their disenfranchisement, aiming to mitigate the absence of their participation in democratic politics. While these efforts are well intentioned, they might not fully address the gap created by disenfranchisement.

Proxy and Proportional Voting

An alternative suggestion involves the use of proxy voters, often parents, to represent children during elections. Rather than relying on parents to virtually advocate for their children's interests through their personal votes, some propose that parents (or other representatives) cast votes on behalf of children

(Rutherford 1997; van Parijs 1999; Olsson 2008). Rutherford supports granting parents a proxy vote for their disenfranchised children, highlighting that the entire representative democracy system already functions as a form of proxy voting (Rutherford 1997, 1463). Similarly, John Wall endorses a 'proxy-claim' vote, wherein individuals are provided with a proxy vote at birth, exercisable by a parent or guardian, and children possess the right to claim the vote for themselves when they wish (Wall 2014, 109).

While proxy voting addresses the concern raised by Campos (2022) regarding the representation of individuals who cannot represent themselves, it also maintains the democratic principle of one person, one vote. However, a key challenge remains concerning the accuracy of representation provided by proxies. There is no guarantee that parents will consistently prioritise their children's interests when casting votes on their behalf. Parents might vote based on their interpretation of their children's interests, potentially overlooking the children's unique perspectives. Moreover, proxy voting does not fulfil the essential symbolic recognition associated with personal enfranchisement (Munn 2018, 608).

Another alternative gaining theoretical attention is the implementation of a proportional voting system (Brighouse and Fleurbaey 2010; Rehfeld 2011). This system assigns the value of a vote based on an individual's stake in the decision or their level of 'political competence'. In the case of varying degrees of political competence, instead of outright disenfranchisement, individuals could be granted voting rights proportionate to their acquired competence. Brighouse and Fleurbaey suggest assigning political power based on individuals' stakes in decisions, using age as a proxy for children's proportion (Brighouse and Fleurbaey 2010, 148–51). Similarly, Rehfeld proposes fractional voting rights for children aged 12 to 18, culminating in full voting rights at the age of 18 (2011, 158). Proportional voting offers a promising approach by valuing political competence while striving for a just distribution of political power based on capacity. However, the challenge remains about using age as a proxy for fractional voting, considering the earlier concerns raised questioning its validity for disenfranchisement.

A Plea for an Equal Standard

This chapter has deliberately focused on the challenges and limitations of denying children the right to vote. The intention has not been to advocate for their disenfranchisement, but rather to highlight the difficulty (nearing impossibility) of morally justifying the systematic exclusion of children as a social group from voting, even when considering the strongest arguments put forth in the literature. I have emphasised that only arguments rooted in the harm to democracy caused by political incompetence or moral corruption could potentially justify

disenfranchisement. And, even if justified in principle, their validity hinges on the necessity and proportionality of the methods used to put it into practice. I have demonstrated that all the available methods for disenfranchisement are problematic: age-based exclusion is inherently unjust and discriminatory, while competence tests, which avoid direct age-based discrimination, can inadvertently lead to indirect forms of discrimination based on socio-economic factors; they, moreover, depend on granting more value to the epistemic dimension of democracy over its commitment to equal recognition of all citizens.

What is left, then? Based on the analysis carried out here, it seems that the most justifiable road to take is that of true universal suffrage. Standing on a commitment to basic equality and non-discrimination, every child ought to have their fundamental freedoms and rights (including political ones) protected to an equal extent as everyone else. Unless there are compelling justifications for differential treatment and fair procedures to ensure its compliance with basic liberal equality, why diverge from universal suffrage?

Standing on the commitment to an equal standard for judging the appropriate treatment for each individual, it seems patently unjust to restrict the right to vote to all children. There are, in my view, only two alternatives available: first, we give prominence to epistemic quality as necessary to ensure democratic legitimacy, thus imposing a limit to franchise to those deemed competent enough to exercise this freedom; or second, we bow to the priority of the egalitarian dimension of democracy, which aims to ensure the recognition of all individuals as equal and as entitled to political power, regardless of their status, abilities, or competences, and we establish truly universal suffrage. Neither of the two can justify the systematic exclusion of children as a group. One acknowledges the role that competences and developmental needs play in determining our political involvement, thus justifying the need to limit the right to vote only to those who can threaten democratic legitimacy through their vote regardless of their age. The other shoves aside concerns about competence, and claims that, beyond anything else, democracy is about ensuring equal political power to each individual, farmer or CEO, PhD or high-school drop-out, toddler or octogenarian.

My intention here is not to stand stubbornly behind either of these positions. I have my own conceptions of what is right in this scenario, but from a standpoint of liberal justice either works, depending on how we understand what gives legitimacy to democracy, and whether we give more value to the quality or the equality of the democratic process. The point is, simply, that whatever choice we make, neither can restrict the right to vote to children as a group. Either all individuals, regardless of age are enfranchised, or only politically competent individuals, regardless of age, are enfranchised. Either way, many more children, who currently do not have a voice in the political arena, should have the right to vote.

11

Can Children Be Excluded
from Public Spaces?

The sight of weeds sprouting amid the concrete floors of a city street evokes a peculiar image. On the one hand, there is a sense they do not belong there. Wild and uncontrolled plants should not grow in concrete surroundings. On the other hand, where else can they grow? No one tends to them or nurtures them. The city streets become their habitat if they can find sunlight and rain to thrive. They seem out of place, yet they have no other place to be.

Similarly, children living in the city, navigating the urban streets, have been likened to weeds (James et al. 1998, 37). Just like the plants, they too find themselves in a space that does not suit them, making passers-by uneasy, yet they have no means to leave. Through no fault of their own, they are embedded in this environment, an integral part of it whether society approves or not. Children who roam the city streets without adult supervision are considered 'out of place' (Connolly and Ennew 1996, 133). But why is this the case? How should we perceive the status of children in the city? And, more importantly, how does this status affect the lives and interests of children in street situations (CISS)?

In this chapter, my aim is to delve into how specific conceptions of 'childhood', along with the particular ways children are embedded into their social environment, influence their treatment concerning the use of public spaces. Although public spaces are intended to be accessible to all, the reality is quite different. The availability and accessibility of public space for children is often restricted. The design of social environments is shaped by specific ideologies and adult-driven priorities, resulting in limitations on children's engagement with the city and the establishment of adult dominance over public spaces. Consequently, the child population is effectively segregated and denied the freedom to use these spaces openly.

The restriction of children in their use and access to public spaces is paradoxical. It is justified by portraying children as both threatened by and a threat

to city life. Their vulnerabilities and perceived inability to navigate public spaces are emphasised, while little consideration is given to their integral place within the social environment. They are excluded and segregated based on the notion that the street environment poses risks to their well-being. Simultaneously, they are seen as potential disruptors of public order. These conflicting discourses serve as a means to rationalise limiting the use and access of public spaces by children. This restriction applies to those who are still too vulnerable to navigate the streets independently and to those perceived as too unrestrained to not disturb the city's order.

CISS bear the brunt of this dual discourse, as both arguments are employed simultaneously to curtail their use of the streets, which, for many of them, serve as their home, bed, and workplace. They are restricted because society believes they should be shielded from the hardships of street life, while simultaneously being seen as a threat to the city's social fabric. In this chapter, I delve into the adverse consequences arising from this conflicting discourse of simultaneously protecting and criminalising CISS. Through the voices of CISS themselves, I introduce an alternative understanding of their claims and interests, which may lead to fresh perspectives on the subject from a normative standpoint. I use the adaptive model of children's rights as a framework to assess what justice demands for CISS.

The City and Its Ideologies

When I refer to the 'city' and the 'streets', I am encompassing what are commonly known as 'public spaces'—areas that are open and accessible for free use by the entire population. Public spaces are typically perceived as inclusive and democratic. Parks, streets, squares, and libraries are open, freely accessible, and intended for the common use of all, regardless of social status, gender, or belief.

The necessity for regulations in public spaces to maintain order and prevent conflicts among users is not inherently problematic. Ensuring public order is a vital objective that requires the regulation of behaviours to deter conflicts in shared areas (Feinberg 1984, chapter 1). For instance, rules dictating which side of the road to drive on, designated spaces for sports in parks, or laws against leaving dog waste on pavements are all examples of codes of conduct that align with John Stuart Mill's classic 'harm principle': 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others' (Mill [1859] 1961, 197). These regulations aim to safeguard that one individual's freedom does not infringe upon the same freedom of another.

The concept of the 'public' and 'public order' is not inherently value-free, however. It raises questions about who is considered part of the 'public', whose values

and needs are prioritised in public spaces, and how this symbolic construction influences the city (Clark and Gallacher 2013, 12–13). The idea of the 'public' and 'public space' has historically excluded certain segments of the human (and non-human animal) population, leading to exclusion and segregation based on gender, class, age, or ethnicity, often justified through a discourse of entitlement and public order (James et al. 1998, 49; Kraftl 2013, 117).

Exclusion from public spaces can take various forms, ranging from explicit policies to more subtle, indirect means. For example, Jim Crow laws in the United States, and the apartheid system in South Africa enforced racial ideologies, leading to the exclusion of certain racial groups from access and use of some public spaces. In some countries, women still face legal restrictions that limit their access and use of public spaces compared with men. Other forms of exclusion can be imposed through physical barriers or infrastructure design, such as the lack of low pavement crossings, audio signals, or ramps, which prevent people with physical disabilities from fully participating in public spaces. Additionally, when public spaces prioritise car traffic over pedestrians and cyclists, it limits accessibility and safety for those who do not use cars, including young children who face higher risks in such spaces.

The determination of priorities in a city and the meaning of public order are shaped by the ideologies and 'geographies of power' that influence the structuring of public spaces (Jenks 2005, 83–4). These power dynamics decide who is included and considered when designing and regulating public spaces, often leading to the separation and exclusion of certain social groups. As discussed in the section 'Segregation' in Chapter 3, these mechanisms can perpetuate the division of social groups and enforce order based on preconceived notions of hierarchy and control. While public spaces require some level of order and codes of conduct to ensure fair use by all, these regulations can also reinforce existing hierarchical arrangements. As Foucault points out, such hierarchical arrangements are inevitable in complex urban spaces (Foucault 1977, 148). Among these social hierarchies, adults often dominate in controlling how public spaces are used and by whom. What does this entail for children's status in the city?

Adult Dominance and Segregation of Childhood

Public spaces are not equally accessible to everyone, and being an adult plays a significant role in determining access and use of these spaces. Urban design and planning are carried out by adults, with varying degrees of consideration for inclusivity. However, the underlying assumption that public spaces are primarily meant for adults is deeply ingrained (Valentine 1996, 209). Consequently, adults set the norms for how public spaces are used, the hierarchy of practices associated

with specific areas, and the permissible and restricted behaviours. While urban design may incorporate children's interests and uses to some extent, such as including playgrounds in parks or implementing lower speed limits in school zones or residential areas, these measures are still part of a regulatory framework that confines children to certain spaces, prescribes appropriate behaviour for children in those spaces, and establishes mechanisms of control and order for various groups (Valentine 1996, 214, 216).

The design practices and priorities aimed at including children in public spaces often involve a deliberate effort to separate the world of adults from the world of children, primarily for the purpose of controlling the latter (Archard 2004, 37). While the intention might be to make public spaces accessible to children, these efforts tend to create physical, conceptual, and moral boundaries that restrict where children are allowed to be, what they can hear and see, and how they should behave (James et al. 1998, 38). This spatial segregation of childhood in public spaces is justified by the perception of children as vulnerable beings in need of protection and control (Jenks 2005, 75) (see the section 'Brighouse's Differential Model' in Chapter 6). The rationale behind this approach is twofold: first, the adult world is seen as full of potential threats to children; and second, the unrestrained and spontaneous behaviours of children can disrupt the ordered practices and expectations of adult spaces (Jenks 2005, 81).

As mentioned earlier, the goal of maintaining 'public order' and the perceived inability of children to adhere to it without physical control justify the imposition of limitations and restrictions on their use of public space. These standards also dictate the acceptable behaviours that children are allowed to display in such spaces. The specific guidelines and the balance between protection and control vary not only based on the spatial context, but also on the child's temporal condition and developmental needs. For instance, restrictions on the use of public space for babies and toddlers are often justified owing to their vulnerability and developmental inabilities. On the other hand, limitations placed on teenagers aim to control their behaviour and prevent disruptions to public order (Hart 2002).

Historically, the segregation of the adult world from the world of children was not always prevalent, especially in urban contexts and in the majority world. Before the 20th century, unsupervised children freely roamed public spaces all around Europe. With minimal compulsory schooling, many children engaged in economic activities, and poverty and homelessness were common, leading to their strong presence in public areas (Jenks 2005, 84–5). However, the landscape changed by the end of the 19th century. Growing concerns about the risks faced by children in public spaces and the potential threats they posed to others led to a transformation in the use of public areas. A process of purging public spaces occurred, and childhood was 'privatised', confining children's activities to the home, schools, playgrounds, and organised entertainment (Cockburn 1995, 14;

Jenks 2005, 86) (see the section 'The Institutionalisation of the Myth' in Chapter 3). The prevailing discourse shifted the conception of 'childhood' towards one of vulnerability, innocence, and the need for protection, while public spaces were increasingly seen as the domain of adults. This transformation was reinforced by the expansion of compulsory universal schooling, which systematically removed children from the public sphere (James et al. 1998, 41–53).

Even though children were relegated primarily to the private sphere, they did not entirely disappear from the city. However, their use and access to public spaces became subject to control, regulation, and restriction (Morrow 2002, 168). Judith Ennew highlights a significant aspect of this reified notion of childhood, describing it as 'domesticity'—wherein the proper spaces of childhood were limited to domestic settings (Ennew 2002, 389). The creation of fenced playgrounds, constant supervision of children's behaviour in public spaces, and the harassment faced by older teenagers are examples of the controlled and restricted relationship children have with the city (Clark 2013, 41). Such controlled spaces, and the permitted behaviours within them, reflect an imposition of adult hegemony in determining how the city is used. This control displaces children to spaces where their presence will not interfere with the lives and behaviours of adults, and shields them from potential actions and threats posed by adults (Kozlovsky 2008, 171; Clark and Gallacher 2013, 21).

There seems to be a discourse reminiscent of the 'separate but equal' argument used in historical segregations based on race. It asserts that children are inherently different and require particular protections that justify their segregation. This protectionist discourse justifies the control and restriction of children's access and use of public space. Critics of this approach argue that it is analogous to the condition of prisoners (Hillman 2002). While children are sheltered, fed, and entertained, they also live under constant surveillance and control of their time and location. The difference is that children have not committed any crime to justify the restriction of their basic freedoms and entitlement to free use of public space and their own time (Kraftl 2013, 118). This situation appears to depart from the principle of basic liberal equality, which grounds my analysis; in the relationship between children and public spaces, the presumption of freedom seems to have disappeared, creating what can be likened to a gilded cage for children.

The Paradox of Childhood in the City: Threatened and Threats

The restriction of children's free access to and use of public spaces is driven by a paradoxical double discourse. On one hand, children and youths are portrayed as threatened by public spaces, and on the other hand, they are seen as a threat to the order and morality of these spaces. These opposing conceptions of 'childhood'

coexist and normatively determine children's position in society. Chris Jenks has criticised these standards as 'unprincipled and certainly erratic' (Jenks 2005, 74): erratic, because conflicting arguments are used to attempt to justify children's exclusion from free use of public spaces, and unprincipled because this restriction of freedom cannot withstand critiques from a perspective of discrimination, as it is not necessary nor proportional. Even in cases in which restriction in the use of public space is justified by the need to protect children's vulnerability from the threats that it imposes, it can be claimed as discriminatory and a potential case of victim blaming.

Consider the case of fenced playgrounds in parks as an example (Hart 2002). These spaces are often justified under the 'separate but equal' understanding of children's use of public space. While children are seen as entitled to use public spaces, they are deemed unfit for open access to them. The usual argument is that fencing playgrounds is necessary to ensure children's safety, protecting them from potential dangers such as kidnappings or traffic accidents (Hart 2002, 138). However, upon closer examination, it appears that fencing is more about easing the job of guardians than genuinely protecting children. Fenced playgrounds allow guardians to be less attentive, leave children under the care of others, and use the rest of the public space for different purposes, while drivers can be less concerned about their speed. While it may be practical and convenient, the question arises whether the ease of guardians and drivers justifies restricting children's use of public spaces. This justification is rooted in a cultural and political ideology of protectionism towards children, and it applies only to certain regions and social groups worldwide. Anthropologist David Lancy argues that this is a particularly WEIRD (Western, Educated, Industrialised, Rich, and Democratic) ideological construction, not necessarily reflective of young children's uses of public spaces in many parts of the majority world and in inner-city neighbourhoods in the minority world (Lancy 2015, 378). It demonstrates a lack of sensitivity to the diverse spatial realities experienced by differently positioned children.

Discourses on children as 'threatened by' or 'threats to' public spaces exhibit a clear age-based distinction, considering the developmental needs and inabilities of individuals, while overlooking their varied relationships with their social environment. Younger children's restriction in public spaces is often justified on the grounds that they might be threatened by potential dangers (Cahill 1990, 399). On the other hand, biased assumptions about adolescent behaviour, coupled with adult-centric views of 'appropriate use of public spaces', lead to teenagers being perceived as 'threats'. They are considered dangerous and disruptive, often seen 'hanging out' in parks and shopping centres or on street corners, being loud, clumsy, and daring, which can conflict with others' use of the same spaces (Nayak 2003, 311). Moreover, this discourse also reveals a gendered dimension, with girls and young women more frequently labelled as 'threatened by' rather than 'a threat to' public spaces (Valentine 1991).

The mechanisms employed to restrict teenagers' access to public spaces are even more problematic than those affecting younger children. Curfews, loitering, vagrancy, or antisocial behaviour laws are commonly used in many regions of the world to limit young people's use of public spaces, regardless of whether they are actually disrupting 'public order' or engaging in any criminal activities. They are often perceived and treated as 'a separate category', denied the right to inhabit certain public spaces (Kraftl 2013, 112). There are several issues with how adolescents are treated in public spaces. First, it involves clear age-based discrimination. Whether acting suspiciously, causing harm, or merely 'hanging out', they are labelled as potential troublemakers, and age-based restrictions are applied to their use of space. Secondly, there is a questionable adult-centric definition of 'public order' and the 'appropriate' use of public space. Activities such as being too loud, lingering in shopping areas without making purchases, gathering in larger groups, or engaging in recreational activities (skating, playing with a ball) that might obstruct passers-by are deemed 'wrong' (Morrow 2002, 177).

There is nothing inherently problematic about these behaviours. The issue arises from an adult-centric conception of the appropriate use of public space that may clash with these activities. The problem lies in the fact that young people are expected to always adapt to these adult-centred norms, rather than the other way around. The criteria used to assess the appropriate use of public spaces are biased against young people's activities. Despite being excluded from certain spaces, adolescents continue to occupy public areas precisely because they lack access to private spaces where they can freely exercise their autonomy without supervision. Unlike the private sphere, which often restricts their freedom, they find autonomy and freedom in public spaces, making it necessary for them to carve out a space for themselves in these areas (Kraftl 2013, 113). To quote a teenager herself, 'Why pick on us? It's not fair; we're not doing any harm … not troublemakers. Why can't we meet here? Look at them there … they're standing and talking [pointing to two adult couples] … why don't they get picked on? We have a right to be here like anyone else' (Girl aged 14, quoted in Matthews et al. 2000, 291).

Children in Street Situations

CISS is an umbrella term that refers to '(a) children who depend on the streets to live and/or work, whether alone, with peers or with family; and (b) a wider population of children who have formed strong connections with public spaces and for whom the street plays a vital role in their everyday lives and identities' (CRC 2017, para. 4). The focus in this chapter on these children is important for several reasons. First, they heavily rely on public spaces, making the limitations in their access and use even more concerning than the restrictions faced by children in

more typical minority world situations. For them, the street is not just a place for leisure, but also serves as their shelter and means of survival, making their exclusion a significant issue of justice (van Beers 1996, 195–6). They face harassment and violence even in what should be considered their own living space. Secondly, the laws and policies that deal with CISS are often characterised by conflicting dual discourses of perceiving them as both 'threats' and 'threatened' simultaneously.

Efforts to address the challenges faced by CISS typically adopt two main approaches: a 'welfarist' approach, seeking to rescue perceived victims of the street; and a 'repressive' approach, treating them as delinquents to be removed from public spaces (CRC 2017, para. 5). CISS are particularly vulnerable to the threats present in public spaces, such as lack of shelter, stability, nourishment, and gender-based violence and discrimination. Additionally, owing to their unconventional and visible lifestyles, they are often perceived as disrupting 'normal' social, cultural, and family patterns, making them viewed as both threats and threatened in public spaces (Glauser 2005, 148). Unfortunately, this dual perception leads to detrimental outcomes for CISS. They are often condescended to as vulnerable children incapable of navigating and making a life in the street, and simultaneously face harassment, displacement, and even violence, simply for existing in public spaces (Mandel Butler 2009, 13; Earls and Carlson 2020, 86–7). This contradictory treatment perpetuates their marginalisation and exposes them to further harm and injustice.

The situation of CISS presents a challenging problem for authorities seeking to address their needs. These children do not neatly fit into categories of either delinquents or vulnerable children, leading to inconsistent and unprincipled policies and laws (Jenks 2005, 74; Lee 2001, 69). As a result, CISS often feel that 'We are not a priority to society; we are invisible' (14-year-old from Central America) (CSC 2017, 34). In response to this invisibility, CISS may display a defiant and reactionary attitude known as *revolta*, as Mandel Butler's research in Brazil portrays it (2009). Violence and defiance can be a response to their 'acute experience of exclusion, discrimination and violence' (Mandel Butler 2009, 24). To fully understand the injustices they face and address their needs, it is essential to move beyond the current discourses and consider the situation from the subjective standpoint of these children. Doing so can shed new light on the challenges they encounter and the measures required to provide them with the necessary support and recognition they deserve.

Ontic injustice entails being 'wronged by the very fact of being socially constructed as a member of a certain social kind' (Jenkins 2020, 188; see also the section 'Childhood as a Social Group' in Chapter 1). It goes beyond the specific distributive or relational injustices or harms they may face in various aspects of social and political life. The mere act of conceptualising someone as a member of a particular social group can itself constitute a wrong or injustice to that person. In the

case of CISS, a lack of genuine engagement with their realities can lead to a failure to fully understand who they are and how they should be treated and recognised in relation to their particular embedded condition. This lack of understanding constitutes an injustice to these children, as it disregards their unique experiences and needs, and perpetuates their marginalisation.

According to Nick Lee, the inconsistent treatment of CISS by authorities creates a conceptual vacuum, leaving these children in a precarious position (Lee 2001, 61). Despite being protected by laws, their ambivalent condition places them in a legal limbo (Lancy 2015, 394 fn. 8). As vulnerable children, they may be seen as lacking liability for their actions and choices, leading public authorities to consider them as in need of rescue. On the other hand, if recognised as agents with choices, authorities might excuse themselves from treating them as children, and may ignore their rights and needs (Hecht 1998, 143). In the context of Latin America, it is common for the public and authorities to turn a blind eye to extra-judicial 'solutions' for dealing with CISS in public spaces. These children often face harassment by police forces (Strehl 2011, 50), denial of access to education and social services (Burr 2006, 67), and even violence, including being targeted by paid militias or off-duty police officers (Schleper-Hughes and Hoffman 1998, 353).[1] This lack of consistent and effective support from authorities further exacerbates the vulnerability and injustices faced by CISS.

An Adaptive Assessment of CISS

The standard binary approach to addressing the issues of CISS is problematic as it oversimplifies the complex reality of these children. It reduces them to one-dimensional categories that fail to capture the diversity of their lived experiences and unique situations. Instead, adopting an adaptive model that considers a child's condition by examining their embodied, temporal, and spatial frameworks in relation to their individuality offers a more nuanced understanding of CISS. This approach acknowledges them not just as vulnerable or feral beings, but as individuals who are bravely surviving, making choices, and navigating their way through a challenging and hostile environment.

Living on the streets is undeniably difficult, regardless of age. Lack of proper shelter, sanitation, regular meals, and stable income exposes individuals to vulnerabilities threatening their well-being. However, adverse circumstances can activate survival and resilience mechanisms in children, challenging conventional notions of 'childhood' and 'vulnerability' when conceptualising CISS. As

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[1] See Earls and Carlson (2020, 83–4) for the gruesome case in Brazil where off-duty policemen, military men, and civilians shot at around 50 street children, killing 9 of them.

stated by a Roma CISS in Brussels, 'The street leaves its mark: either you get out or you don't' (CRC 2017, para. 1). Those who remain on the streets do so because they possess the capabilities to survive in that environment, and because other available alternatives might be worse. Their ability to withstand the challenges of street life is a testament to their developmental capacities, shaped and honed by their circumstances. If they find street life too hostile they will leave, and if they have better options they will also leave. Consequently, those who stay are typically equipped with the skills and resilience needed to navigate their living conditions successfully.

Lancy highlights the concept of 'reserve capacities' that children acquire during their early developmental years, which can be later activated and utilised when facing challenging circumstances (Lancy 2015, 7). Studies with CISS, especially those in stages of high cognitive plasticity, reveal their remarkable ability to develop 'adult' competences necessary for survival under adverse conditions, particularly when facing need and precarity (Lancy 2015, 393). Development, as discussed in the section 'The Temporal Framework and Development' in Chapter 4, is not teleologically driven, as conventional notions of 'childhood' might assume, but rather influenced by the environment and the dynamic interactions between the individual, their constitutive frameworks, and their living circumstances (Bronfenbrenner and Morris 2006). Categorising CISS as solely vulnerable and dependent beings passively surviving on the streets overlooks the active role they play in choosing their relationship to the street and constructing their lives within it.

Despite the constraints imposed by the limited resources and options of street life, CISS are proactive agents with the capacity to make choices and develop strategies to confront, adapt, and navigate the precarious and threatening conditions they face. Research by Mandel Butler and others with CISS in Rio de Janeiro (Rizzini et al. 2002; Mandel Butler 2009) provides compelling examples of the mechanisms, resources, and values many street children possess and utilise. One crucial finding is that while various factors influenced these children's entry into street situations, in most cases they were there by choice, and often had the option to return home if they wished. Conversations with Mandel Butler's team revealed that the children in Rio had left their homes (typically in *favelas* or urban peripheries) to seek better life options, greater freedom, or as a response to precarious circumstances (Mandel Butler 2009, 13). Originating in environments of extreme poverty and sometimes violence, the promise of independence, community, and freedom offered by the streets appeared to be more attractive than remaining at home (Mandel Butler 2009, 19–20).

The agency demonstrated by CISS is intrinsically linked to their contextual circumstances and the resources available for navigating their socio-economic environment. Alcinda Honwana's concept of 'tactical agency' (based on her

research with children in armed groups in Mozambique) provides a relevant framework to understand their manifestation of agency. Tactical agency involves the ability to maximise options and opportunities within immediate and adverse conditions, in which individuals lack extensive resources and long-term planning capabilities (Honwana 2005, 49). Unlike strategic agency, which allows for complex life choices and identity formation within supportive environments, tactical agency is more reliant on the relationship between an individual and their embedded environment, upon which their survival depends. By acknowledging the tactical agency of CISS, we can assess their freedom and decision-making processes with consideration for their specific constitutive frameworks and their capacity for adaption within their given context. It allows us to recognise the challenges they face and the resources they have available to convert their abilities into life choices and freedoms.

An Adaptive conception of childhood and children's rights requires us to closely examine the interactions and dynamics between individuals and their specific contexts. This approach is especially relevant when assessing CISS. To understand and conceptualise CISS, we must recognise them as individuals situated within the streets and explore their vulnerabilities, dependencies, developmental processes, and individualities within this spatial context (James et al. 1998, 29). Considering childhood as an abstract phenomenon detached from social and situated circumstances overlooks the significant impact of a CISS's embodied, temporal, and agency interests within their specific context.

Embracing an Adaptive perspective allows us to examine the problems and potential solutions to the challenges faced by CISS beyond simplistic definitions. It rejects the romanticised, emancipated conception of 'childhood' promoted by Liberationists (see Chapter 3), which assumes that the lack of control and complete freedom experienced by street children represents the pinnacle of justice and freedom for children (Firestone 1970, 100–1). Instead, an Adaptive approach acknowledges the situated and tactical agency exercised by CISS. It demonstrates sensitivity and awareness to the structural constraints, harms, and vulnerabilities faced by CISS without reducing them to a one-dimensional category of vulnerable and dependent beings (Mandel Butler 2009, 14).

Discrimination and the Right not to Be Labelled

The rescue and punish approaches to dealing with the challenges of CISS are losing popularity in legal circles, though they still persist in social policy and law enforcement. The problem arises from the fact that CISS do not neatly fit into the binary categories of being 'threatened by' or 'threats to' the street. Such oversimplified categorisations can lead to their active harm, constituting a case of 'ontic injustice' (Jenkins 2020), in which they are wronged by being placed into a

social grouping that does not acknowledge their reality. CISS are not recognised as active and diverse individuals with their own voices and claims; instead, they are often classified as passive victims or unlawful delinquents. This categorisation directly affects the way policies and laws are applied to them in practice (van Beers 1996).

This line of critique emphasises what Ennew calls street children's 'right not to be labelled' (Ennew 2002, 399). It calls for recognising how standard categorisations of CISS lead to discriminatory practices, not only between CISS and other children, but also within the group itself. The stereotyping of their behaviours, needs, and claims assumes that all CISS are the same, which is an unfair generalisation. This critique aligns with our understanding of social groups discussed in the section 'Three Features of a Social Group' in Chapter 1. It highlights that CISS are wrongly ascribed and constrained within a particular collective, with reified assumptions about their abilities, vulnerabilities, and needs, leading to prescribed treatments based on this assumed commonality of their social grouping.

'Ontic injustice' occurs when CISS are perceived and conceptualised in a way that fails to recognise their diverse realities and needs as individuals. To address this, a fundamental shift is needed in how CISS are conceptualised to accommodate their rights and claims to their unique lives and conditions (van Beers 1996). Despite the limitations of the UNCRC (see Chapter 7), the UN Committee on the Rights of the Child (CRC 2017) has taken a positive step with its General Comment 21 on CISS. The General Comment was developed after consulting around 400 CISS from all over the world to understand how they perceived the application and implementation of the UNCRC in their case. This consultation process led to a series of recommendations that emphasised the importance of recognising the radical diversity in the lives and experiences of CISS to better protect their fundamental interests and rights (CRC 2017, para. 6).

It is crucial to recognise CISS as individuals who actively participate in the construction of their lives, with voices and claims that need to be heard. Each child's particularities should be considered when determining how they should be treated, as the Consortium on Street Children emphasises: 'No one singular, uniform approach to support the needs of each individual child in street situations can exist' (CSC 2017, 6).

Developmental Processes and Freedoms

The issue of 'labelling' is particularly concerning when it comes to the temporal framework of CISS. The dominant Sapling model of children's developmental process (see the section 'The Sapling Model' in Chapter 2), which views children as individuals in the process of 'becoming' mature adult humans, does not fully align with the lived realities of CISS. Many CISS work, live independently, engage

in activities that are typically considered inappropriate for young children (such as drugs, alcohol, and sex), and occupy public spaces without adult supervision (Lee 2001, 58–60). For public authorities and the adult world, these children are perceived as beings 'out of place', not just in a physical sense, but also in a conceptual sense. They do not conform to the expected behaviours and categorisations constructed for them (Connolly and Ennew 1996).

In critiquing teleological models of child development, Lancy emphasises the importance of considering accounting for children's 'phenotypic plasticity'. He argues that our developmental processes are not solely determined internally; rather, we are adaptive beings who respond to and are shaped by our environment (Lancy 2015, 279). Our vulnerabilities, dependencies, and developmental trajectories are not fixed attributes of our temporal and embodied conditions; rather, they are closely intertwined with our spatial context, external stimuli, and the broader environmental and socio-economic conditions in which we exist. CISS have developed abilities, traits, and behaviours that adapt to their embedded environment. Thus, understanding them necessitates recognising their actual capabilities, traits, and behaviours within this specific context, rather than imposing preconceived standards and categories upon them.

Failure to recognise CISS's fully developed competences, agency, and control over their lives undermines their status as equal individuals with their own perspectives and choices. As Jorge, a 12-year-old boy from north-east Brazil, stated, 'The best thing that ever happened to me is to become an adult and manage my own life' (quoted in Kenny 2007, 63). If many CISS are capable of navigating their environment, adapting to challenging circumstances, and preferring their current life out of choice rather than being 'rescued' into a standard childhood, the principle of basic liberal equality should ensure that their choices are respected, and importantly, that they are provided with the necessary support, resources, and opportunities to fully exercise their freedoms.

By evaluating an individual's needs and interests based on their actual competences, capabilities, and vulnerabilities rather than assuming developmental needs, we acknowledge their agency, autonomy, and right to make choices in their lives. Imposing paternalistic and freedom-restricting measures on individuals who have demonstrated competence as agents has proven to be ineffective and counterproductive, as evidenced in the case of CISS (CRC 2017, para. 12). More importantly, imposing paternalistic measures harms their fundamental interest in agency and freedom, preventing them from making choices about their own lives. Ensuring the best possible conditions and supports that allow CISS to have their rights secured while respecting their abilities and choices should be the goal. Justice demands securing the conditions and supports required for an individual to be and do what they have reason to value (Sen 1992, chapter 5); this may vary depending on the developmental condition of an individual, their capacities,

competences, abilities, and vulnerabilities. An adaptive model of children's rights that respects the principle of basic liberal equality aims to secure an individual's fundamental interests by treating them in relation to their actual developmental needs, not assumed ones.

Embedded Rights and Situated Existences

The status of CISS is not only of interest to questions of justice owing to their unorthodox developmental progressions and interests, but also because of their situated existences as beings living in the city streets. They extensively use public spaces unsupervised, which creates a tension regarding their rights and interests. According to societal norms, children should be in the private sphere, attending school, supervised by adult guardians, and separated from the risks of the street. The normative assumption of enclosing the lives of children in 'safe spaces' leads to the 'rescue-or-punish' approaches when dealing with CISS. Public spaces are expected to be free of their presence as they are seen either as threats to public order owing to their loitering and petty crimes or as too vulnerable to live on the street and therefore in need of being 'rescued' and reintegrated into a 'normal' childhood.

Both approaches fail to consider CISS's embedded interests and needs, and, as Ennew argues (2002, 390), they seem more focused on 'cleansing the streets of their presence' rather than genuinely securing what is best for their situated reality. Current policies not only attempt to sever the connection between children and the streets, but also do so in a manner that disregards their rights to equal use of public spaces. Curfews, vagrancy, loitering, or truancy laws are legal mechanisms employed by law enforcement to justify removing children from the streets. While these laws impact the freedoms of all children to use public space, CISS suffer the most because their entire existence revolves around these places. Their right to assembly and uses of public spaces is constrained by both their status as 'children' and their situation of being 'in street situations' (Brando and Lundy 2022). As 'children', moreover, they are threatened by status offences that limit their right to be and use spaces that should be open to all (Landau 1981; CRIN 2016). Additionally, as individuals 'in street situations', their presence on the streets is often deemed a public order violation or a breach of vagrancy laws, leading to punishment for their use of public spaces.

Evaluating the interests and claims of CISS from an adaptive model of children's rights demands accounting for their embedded status as beings whose lived reality is the street. This approach requires assessing their needs from their own epistemic standpoint, considering their specific relationship with their material surroundings, and considering their unique social and personal dynamics and

connections. In this respect, a necessary shift is needed in how we perceive 'home' and 'family life' in relation to CISS. Rescuing approaches, aiming to disconnect them from the streets, fail in assuming that children are necessarily better off in 'standard' homes without considering their views. Additionally, they wrongly assume CISS lack a sense of home owing to their street situations, disregarding alternative definitions of the concept. By listening to CISS perspectives, we can grasp why these assumptions are problematic and flawed.

The assumption that rescuing children by sending them to residential care or returning them to their parents is always best disregards the reasons why many CISS end up on the street and the experiences that may have led them to this situation (Earls and Carlson 2020, 86). Many CISS leave their homes owing to domestic violence, abuse, or a lack of resources, care, or support. While government institutions may provide basic needs and secure core well-being achievements, they often fail to create an environment conducive to children's expansion of choices and freedoms (CSC 2017, 36). Returning or being 'rescued' into unsafe and disempowering environments can go against their fundamental interests (Ursin 2011). A youth interviewed in Rio de Janeiro stated that 'a child without love at home will go to the street, because no one likes being treated badly. Everybody wants to live well' (Mandel Butler 2009, 23).

Assuming that a 'rescued' life is always better for CISS overlooks their past experiences, their complex relationships with institutions and their families, and their strong bond with the street, with the intimate relationships and supporting networks that are formed on it (Mandel Butler 2009, 17). This assumption fails to recognise their agency and capacity to adapt and thrive in the street environment, which might be preferable to potentially unsafe or unsupportive alternatives.

The policy-making concept of 'homelessness' often focuses on stable shelter, but a broader understanding suggests it can also mean 'an absence of caring, love, and belonging' (Mallet et al. 2010, 2). Exploring 'home' and 'family' from a wider perspective reveals meaningful bonds and dynamics among CISS, challenging the notion of a one-size-fits-all 'rescuing' discourse. In his work with CISS in Kenya, Davies demonstrates how 'street families' can fulfil the supports and qualities of a child's natal home (Davis 2008). They show affection, provide care and protection, and develop familial bonds (as siblings/couples/parental dynamics). Older children take on protective and teaching roles for younger ones, helping them learn trades and navigate the street's social dynamics (e.g., begging, juggling, pickpocketing). Street families share resources, aid in their survival, and provide the care and affection they may have lacked in their natal homes (Lancy 2015, 25).

The familial bonds developed among CISS are of structural value to them, and considering their role in creating a safe and caring environment and support systems for children requires respecting these relationships and giving them the

support they might need. Listening to how CISS refer to their peer groups in the street can shed light into the fundamental role that they play as protective and empowering relationships:

> Our friends are our lifeline, we live and eat together as a family and look after each other. (16-year-old boy from Delhi, India)

> If we are in any trouble, we have noticed that if we tell our parents, or elders, or even raise an alarm, we are not helped. It is our friends who come to our rescue. This is why we work as a team and guard one another. (13-year-old boy from Delhi, India)

> The worst thing about the streets is the rats and the dirt … The only good thing about the street is the unity. (14-year-old boy from Rio, Brazil)

> The societies, government and families don't understand how friends can replace families in our lives, but they do. These people will have to learn to empathise with this truth and help us. (Teenage girl from South Asia) (All quotes from CSC 2017, 33, 38)

The role that friendships play in enabling and securing familial bonds and protections for CISS requires us to think of new ways in which these relationships can be recognised and respected as meaningful and structural for the promotion of CISS fundamental agency and well-being interests. Ennew, in this respect, endorses the need for any legal or policy discourse related to CISS to engage seriously with the embedded and situated reality in which they live. This implies, first, understanding their relationships a source of value and benefit, and second, as a type of 'family' that ought to be recognised and supported, and provided with the resources and conditions that would enable them to make the most of them (Ennew 2002, 400). Legal mechanisms do not recognise friendships as potentially fundamental support systems for CISS despite of the relational, agential, and well-being benefits they provide (Ennew 1994). Instead of attempting to break CISS-developed bonds and familial ties in the street, these support bases should be built on and potentialised in order to bring the best out of them (Rizzini et al. 2000).

Vulnerability, Basic Needs, and Work

Acknowledging CISS's variable developmental needs, agency, and entitlements within their embedded condition does not negate their claims and interests as vulnerable beings. Their lack of stable shelter, nourishment, and security (situational vulnerabilities caused by their living on the street), combined with their developing bodies and minds, poses threats to their well-being and agency both in the present and future. A key normative task is to prevent policies and laws from turning children's inherent and situational vulnerabilities into pathogenic ones (Mackenzie et al. 2014, 9). With variations depending on the particular

context, three general guidelines are essential to ensure their treatment respects their adaptive condition while addressing their basic needs.

A core reason why CISS's situational vulnerabilities become pathogenic is the lack of proper supports and services for their basic needs. While 'rescuing' approaches aim to address this issue by removing children from the streets and placing them back with their families or in government care institutions, they often prioritise fulfilling basic needs without considering children's agency and embedded reality. A more effective approach would involve alternative supports and mechanisms that acknowledge their unique relationship with the street. Inaccessibility to social benefits and services is a significant challenge for children, given their minor status: 'If we're talking about basic needs as fundamental as the need to eat, and you can't get welfare … then you have to find a plan B, to get by on your own, even if you risk breaking the law' (CISS quoted in CSC 2017, 40).

While the intention of rescuing children from the street is commendable, ensuring proper conditions for them to develop aspirations and potentialise their abilities would better serve their present and future interests (Hart 2016). This requires implementing supports and policies to improve their access to education, as well as revising preconceptions about the relationship between children and work (see Chapter 9 on children's right to work). Prohibiting CISS from working transforms their lack of access to resources into a pathogenic vulnerability; they lack the means to purchase basic needs and are not allowed to work legally, leading them to seek subsistence through illegal means. Until proper welfare provisions are in place to meet CISS's basic needs without requiring work, their right to work should be ensured under secure, non-exploitative, and respectful conditions (Ennew 2002, 400). Criminalising their begging or unlicensed trading can force them into even worse forms of labour, including sexual commerce or illegal activities (Ballet et al. 2006, 6).

A right to work, coupled with securing that they have access to an education accommodated to their needs and interests, can provide a more holistic solution to some of their plights. While work can provide them with basic resources for present subsistence, vocational training, pathways to formal education, mobile schools, and apprenticeships can provide them with long-term perspectives and competences with which to achieve them (CRC 2017, para. 54).

Context-specific supports, welfare services, freedom to work, and access to tailored education can significantly mitigate the pathogenic effects of CISS's situational vulnerabilities. Acknowledging their variable embodiment and individual relationships with vulnerabilities is crucial, as not all face the same risks or possess the same protective abilities. Policies must consider their unique developmental framework, contextual circumstances, agency, resilience, and competence to make choices. Embracing children's diversity entails recognising their adaptive capabilities, embodiment, and specific developmental needs and interests. By adopting

an adaptive model of children's rights, we can better address the challenges faced by CISS and ensure their fundamental interests in both agency and well-being are respected and protected.

Conclusion

This chapter has explored how the adaptive model would work in a particular context (the city) and in relation to a particular population (CISS). The analysis has shown the importance of looking closely at assumed discourses and behaviours regarding different groups' access to public spaces, in order to understand the potential injustices and harms inflicted on children because they are labelled in a certain way. Moreover, it has evaluated potential normative guidelines for securing justice to one of the most marginalised groups (CISS). Putting the adaptive model into practice, this chapter has shown how fundamental it is to assess individuals in relation to their embeddedness and in relation to the variable ways in which their spatial framework interacts with their vulnerability and developmental needs.

Conclusion: Not Just for Kids

'We want a world fit for children, because a world fit for us is a world fit for everyone.'
Children's Statement from the UN Special
Session on Children 2002

Being perceived as a 'child' should not have important consequences for how others label you and treat you. If you are perceived as a 'child', people should not judge that you are necessarily weaker, less rational, or more curious than others; people should not assume that you lack certain abilities or that you are necessarily incapable of making certain decisions. Being perceived as a 'child' must not imply that you are seen as different; moreover, it must not imply that you should be treated as different. The closing statement by the Children's Forum delegates during the UN General Assembly Special Session on Children in 2002 aptly captures the essence of this book's argument. They highlighted that justice for children should not be treated as a distinct form of justice; rather, as the quote that opens this chapter emphasises, it should be aligned with the justice that applies to everyone (UN 2002). Better words cannot be found to summarise the rationale behind the work presented in this book. A theory of justice should not aim to single out a section of the human population based on questionable assumptions regarding who they are and what they are able to do and prescribe to them a treatment systematically different from that owed to the rest of the population. If we are committed to the fundamental principle of equality as a cornerstone of justice, we must refrain from deviating from that standard unless it is absolutely unavoidable.

This is what this book has strived to achieve. It has intended to reintroduce childhood into the basic normative structure upon which liberal theories of justice stand. Justice for children should not imply digressing from standard notions of justice. It is our social constructs that should accommodate to the reality of the humans judged under them, and not the other way around. Before concluding, it is worthwhile to briefly recap the objectives this book has sought to achieve, outline its accomplishments, acknowledge its limitations, and suggest avenues for future exploration. While the Adaptive theory of children's

rights proposed here presents a significant paradigm shift in our understanding of childhood and children's rights, there remains considerable work to be done in terms of translating this theory into practice and identifying appropriate implementation strategies, particularly in the contexts in which it is most crucial.

Basic Liberal Equality and an Equal Standard

If there is one concept I hope you take away from the discussions presented in this book, it is the essential notion that an equal standard must consistently underpin the evaluation of the rightful treatment owed to every individual. Whether we advocate for a complete overhaul of the system or opt to uphold established values and ethics, the same measuring tool should apply universally to assess the appropriateness of limiting freedoms or justifiably restricting rights.

Basic equality and an equal standard, however, do not entail strict equal treatment for all. I have shown that a steadfast commitment to equality and freedom can accommodate and adapt to legitimate variations from strict equality. These deviations derive from a sincere evaluation of the constitutive frameworks that condition an individual's life, their vulnerabilities, their developmental needs, their embeddedness, and their agency. We do not need separate principles and standards of justice to account for the particularities of differently positioned individuals (as Standard Liberals would claim); by understanding the particular embodied, temporal and spatial conditions that frame an individual's life, and which can legitimise differential treatment, a liberal theory can justify particular protections and restrictions to certain individuals while complying with the principle of basic liberal equality.

An Adaptive Theory of Childhood and Children's Rights

To maintain coherence and consistency between our overarching commitment to basic liberal equality and the necessity for deviations from strict egalitarian treatment, I have proposed an Adaptive conception of childhood as a model of children's rights, which better accommodates the requirements of a liberal theory of justice. This Adaptive approach contends that in order to prevent discrimination based on social grouping, it is imperative to evaluate an individual's status by considering the diverse dimensions of their embodied, temporal, spatial, and agential conditions. This perspective recognises that determining the appropriate differentiated treatment for individuals should transcend fixed, biased, and stereotypical notions of 'childhood' as a mere social group. Instead, an adaptive model

scrutinises the intrinsic attributes often attributed to 'childhood' that confer moral significance to the distinct treatment they receive. Vulnerabilities, developmental needs, and socio-environmental contexts significantly influence individuals' claims and fundamental interests, dictating how best to safeguard them. We must do justice to the variability in the human condition, and to the role that individuals play as agents in their relation to their bodies, their temporal needs, and their spatial setting.

An Adaptive theory of childhood introduces a nuanced perspective on rights, challenging the rigid binary division between conventional categories of childhood and adulthood in social and legal contexts. This idea suggests that we need to move beyond using age as the primary criterion for determining individuals' entitlements within the realm of justice. Instead of relying on oversimplified and biased ideas about who children are and how they should be treated, we should start with the idea that everyone should be treated equally and given equal freedom. We should only make exceptions to this rule when an individual's specific embodied, temporal, and spatial circumstances call for it. Just looking at whether someone is 8 or 80 years old is not enough to decide how they should be treated. We need to really look at how an individual, their interests, their rights, and their unique circumstances all come together to figure out what is the just response to their claims.

The Adaptive theory of children's rights is built upon three key ideas. First, it emphasises that rights are primarily meant to safeguard fundamental interests. This means that rights should be seen as flexible and adaptable in relation to a person's fundamental interests and to the best way to protect them. Second, the relationship between rights, freedoms, and fundamental interests is conditioned by an individual's unique characteristics and abilities, along with their role as agents in their own life. How we use rights and freedoms to protect someone's fundamental interests is influenced by their vulnerabilities, developmental needs, social and environmental context, and how they engage as agents with their own circumstances. Lastly, if we find that a person's interests require a certain kind of treatment that restricts their freedoms or deviates from equal treatment, we need to carefully consider whether this departure is justified, necessary, and proportional to the intended goal. It is crucial to apply an equal standard to evaluate just treatment for everyone, without discriminating based on age, gender, race, or other significant social traits.

A liberal theory of justice acknowledges the need to move away from strict equal treatment to properly address the claims and fundamental interests of all individuals. However, for this departure to be valid, it is essential to ensure that the rules and guidelines used to implement it are applied equally to everyone and without any form of discrimination. When we examine the diverse realities of children across the world, it becomes clear that oversimplified categories cannot adequately capture the lived experience, nor the various ways in which their fundamental interests deserve protection.

Contribution

This book has aimed to understand how, and up to what point, it can be legitimate for a liberal theory of justice to defend the differential treatment and the restriction of freedoms to a social group (children) while maintaining its commitment to basic equality and basic liberty. It did so by splitting this objective into three tasks: first, to explore what is it about 'childhood' that makes it a relevant social category that might require differential categorisation; second, to explore what a theory of rights requires in order to legitimise differential treatment while abiding by basic liberal equality; and third, to evaluate particularly thorny cases (children's right to work, right to vote, and rights in public spaces) in order to test the validity of current regimes, while proposing alternatives more in line with liberal commitments.

Childhood in Liberal Theory has conducted a comprehensive analysis of the key philosophical and jurisprudential literature on the topic, aiming to grasp the central arguments and positions in the debate while assessing their validity. Looking at the Standard Liberal and Liberationist literature on the subject, it has studied what they got right in their theories of 'childhood' and of children's rights and what they got wrong. I have claimed that a liberal theory of justice for children must use one and the same standard (following the Liberationist literature) to account for potential legitimate variations in the treatment of certain individuals as a matter of justice (close to the Standard Liberal rationale).

I have intended to contribute to the literature on liberal theory and to the contemporary debates on the meaning of 'childhood' and children's rights by offering an account of the moral legitimacy of differential treatment that could adapt to the particularities of 'childhood' while relying on and complying fully with core liberal principles of justice. I have showed that a theory of justice can maintain its commitment to equality and freedom to all, while accommodating legitimate variations from strict equality based on an evaluation of the particular constitutive condition of the individual, their inabilities, and their agency. We do not require separate principles to account for the needs and interests of children; by fleshing out the particular elements that legitimise differential treatment, a liberal theory can justify particular protections and restrictions of freedom to certain individuals while complying with the principle of basic liberal equality.

What is this research useful for? What can be done with it? How does it contribute to current theoretical and applied work on childhood and children's rights? I see five important elements to mention in this respect. First, its primary significance lies in challenging prevailing social notions. The central objective was to provide readers with a platform for introspection regarding their inherent intuitions and preconceptions about 'childhood'. By scrutinising and questioning corrosive assumptions and biases that often shape our understanding of children and their rights, the work seeks to prompt a re-evaluation of these ingrained

perspectives. The intention is to encourage readers to critically assess potential inconsistencies between their overarching principles of justice and the specific normative treatment prescribed for the child population. If the book succeeded in causing you to change, revisit, and re-evaluate some of your intuitive assumptions and impressions regarding childhood, children's vulnerability, children's agency, children's work, children's right to vote, or the plight of children in street situations, it has accomplished its primary objective. Enacting real-world change demands a transformation in thought processes, and this book strives to elicit such shifts in the minds of its readers.

Second, in terms of content, *Childhood in Liberal Theory* has advanced a compelling case for the consistent application of an equal standard when assessing the legitimate interests and treatment owed to all individuals within the framework of justice. Unlike much of the existing literature on children's rights that tends to advocate for distinct principles for children and adults, this book presents a forceful argument for a comprehensive re-evaluation of how we perceive the status of children in our societal context. It also calls for a thorough reassessment of the methodologies employed in crafting laws and policies that determine when an individual's freedoms can be appropriately curtailed.

The book emphasises the pivotal role of maintaining an equal standard in evaluating justified differential treatment. However, it is essential to clarify that this endorsement of an equal standard does not translate to an outcome of rigid equality, with all individuals receiving identical treatment, nor does it dismiss the significance of differences among individuals. A crucial contribution of the book's arguments lies in its unwavering commitment to upholding the principle of equality while simultaneously acknowledging the morally significant differences that shape the human experience. By meticulously identifying the morally relevant factors that warrant distinct treatment, it underscores the importance of comprehending the true implications of equality.

Thirdly, the book meticulously demonstrates the intricate challenges associated with justifying differential treatment grounded in proxy-valuations, such as age-based thresholds. It effectively illustrates, both in theoretical analysis and real-world scenarios, how categorising and treating individuals based solely on their age can pose substantial dilemmas within the framework of liberal egalitarian theory. While pragmatic constraints may require the use of proxies as practical tools in the development of laws and policies, the research presented in this work strongly advocates for a nuanced and context-sensitive approach. It recommends that if proxy-valuations must indeed be employed (under circumstances where they are deemed necessary), they should remain adaptable and responsive to the unique circumstances of individuals in varying positions. In other words, while proxy-valuations could serve as general guidelines, mechanisms should be in place to rectify situations where age-based differential treatment adversely impacts an individual's fundamental interests.

Fourthly, at the level of methods, this book serves as a nagging call to ensure consistency between the principles of justice to which we are committed and the way they should be applied in particular cases. The arguments presented here do not hinge on metaphysical conjectures about society or the human condition. Rather, every analysis conducted throughout the book, from the abstract exploration of social ontology in Part I to the real-world case studies in Part III, has aimed to scrutinise the consistency and coherence between existing principles of justice and their relevance to the real lives of the individuals they are meant to encompass. Even if you do not endorse the liberal principles of justice analysed in this book, I hope this exercise, based on the Reflective method of analysis, offers an example of good practice regarding how to test the legitimacy of legal and political principles, and how to put them into practice in particular cases. It does not matter if you are a Marxist, a Christian conservative, an anarchist, or a proponent of Sharia law; adherence to particular principles of social justice commit you to be consistent and coherent in how you implement them and put them into practice. The book's contribution extends beyond the normative content, offering guidance in terms of methodological rigour. It encourages a commitment to analytical coherence among the general principles we adhere to, how we put them into practice, and to consistency among the concepts we use to refer to reality, and the individuals and practices that they signify.

Finally, a word on academic echo chambers. A core problem for a large section of the literature on the philosophy of childhood and children's rights is its meagre engagement with the ample multidisciplinary research on childhood studies and children's rights beyond the philosophical bubble. With some exceptions, philosophy often adheres to methods and practices that avoid grappling with the complexities of real-world challenges and dilemmas, in favour of seeking neat solutions to intricate inquiries through abstract contemplation. This approach can lead to debates and entrenched assumptions in research on social matters that become detached from empirical reality, the broader interdisciplinary research on the subject, and the inherent diversity found in human experiences and practices. While this work falls within the domain of social and moral philosophy and philosophy of law, it expands the breadth and scope of philosophical debates on the subject by introducing some of the sociological, anthropological, and psychological literature on childhood and children's rights. It cracks some holes into the philosophical echo chamber by introducing the experiences of researchers in other fields, the knowledge of other methodologies of study, and, to a certain extent, the voices of the subjects of research themselves. This approach challenges the isolation that philosophical discourse can sometimes foster and encourages a more inclusive and well-rounded examination of the subject matter.

The selection of specific case studies in this book was a deliberate effort to inject fresh perspectives into the philosophical discourse. Philosophy of childhood and children's rights has mainly relied on the WEIRD child (Western, Educated,

Industrialised, Rich, and Democratic) as its conceptual model of what 'childhood' is (and what it should be). Through discussions with Liverpool's Young People's Advisory Group, comprising volunteers aged between 10 and 19 years old who provide a child and youth perspective to research done at the University of Liverpool, we looked for issues that they considered not only important to themselves as individuals, but also that could have an impact on the lives and opportunities of the world's most vulnerable children. By debating different possible cases that could fit the book's objective, we chose to ask moral questions regarding the issues, experiences, needs, and interests of children who fall outside this WEIRD paradigm (children living on the streets, engaged in work, assuming caregiving roles). The intention was to introduce a viewpoint that had regrettably been absent in philosophical discourse: that of the majority world child. These case studies expand the breadth of social philosophy by introducing subjects rarely explored within this academic bubble. While they are not exhaustive, I hope the studies in this book will make philosophical discussions on childhood a little bit more inclusive, and responsive to the diversity inherent to children's lives.

Limitations and Roads Ahead

It seems appropriate to mention what this book has not intended to do, what its theory cannot achieve, and to clarify certain potential misunderstandings that may arise from its reading. This work does not seek to serve as a directly applicable political theory. Although it offers guidelines and principles that could inform real-world applications, its primary purpose is to establish a foundational framework for liberal theories of childhood and children's rights. Essentially, it functions as a conceptual structure that outlines the boundaries within which a liberal theory of justice must operate to uphold its commitment to both freedom and equality, while ensuring justice for all.

In this sense, *Childhood in Liberal Theory* does not offer specific directives for the precise treatment of children or prescribe a definitive set of rights and restrictions, or their allocation within the population. The rich diversity and contextual variations that have been explored throughout this work underscore the necessity for any policy or legal considerations to be carefully tailored to specific local conditions. The case studies in Part III provide an eagle's eye view of each of the topics addressed. They serve as general frameworks for approaching issues affecting children in various realms, yet they do not provide ready-made solutions. The intricacies of economic, political, and urban contexts demand meticulous examination of the unique circumstances and environments of individuals within that society. This is especially so as different strands of liberal theory may interpret particular cases and particular restrictions differently. I stay agnostic as to the

particular way in which liberalism ought to be understood in detail, or how to put it into practice in different socio-political environments.

One compelling direction for further research and exploration is the practical application of the foundational principles laid out here within specific socio-political contexts. As the case studies presented in Part III merely provide a preliminary framework for addressing various aspects of children's lives, there exists an urgent need for more localised, comprehensive investigations of how such a model would reflect in local practices. Such inquiries would enable the development of tailored policies and laws that genuinely account for the unique needs and vulnerabilities of children within diverse societies.

Relatedly, as a work in philosophy and not public policy, its primary aim has been to establish overarching principles, conceptual frameworks, and normative standards, while refraining from delving deeply into matters of political feasibility, social viability, or economic constraints that might influence implementation. A proposal of this nature, which challenges established norms regarding the fair treatment of children, may face significant hurdles on the path to implementation. Additionally, advocating for a system that demands such a thorough customisation of justice could be dismissed as utopian and impractical, particularly when considering economic and logistical considerations. Again, the primary objective has been to delineate what justice demands within liberal theory and to prompt readers to critically examine inconsistencies and biases in their understanding of childhood and children's rights. The rigorous implementation of the proposed framework in its exact form might be a complex endeavour beyond the scope of this volume. However, while perhaps not perfect, incremental improvements that advance the cause of equality are still valuable. For instance, lowering the voting age, broadening the protection of children's work in various contexts, or addressing the vulnerabilities faced by children living on the streets owing to actions of public authorities—all these measures can help mitigate existing injustices and inequalities, even if they do not fully meet the criteria of justice as laid out in this book.

The limitations mentioned here expose the necessity for investigations that bridge the gap between normative theory and practical implementation. While the principles elucidated might be deemed aspirational in certain contexts, scholars and policymakers could collaborate to discern feasible steps towards greater justice for children. In particular, exploring incremental reforms that address specific aspects of children's rights can be instrumental in narrowing the gap between theoretical ideals and real-world application. Research endeavours that navigate the complex interplay of political realities, economic considerations, and moral imperatives will be pivotal in charting a course towards more equitable treatment of children on a global scale.

Finally, the book has remained silent regarding non-liberal theories of justice for children. The proposal in this book could be read as a theory for how 'childhood'

ought to be conceptualised and for determining the normative guidelines that should ground the legitimate differential treatment of children across political ideologies. Its scope is, however, more limited; exclusively presenting an understanding of 'childhood', and of legitimate differential treatment that is in compliance with basic liberal equality. Whether it applies (or should apply) to political theories (or political and legal practices) beyond the liberal realm is not its task. This agnosticism towards its compliance with non-liberal theories is due to the fact that some non-liberal theories' commitment to other principles of justice (which may be in conflict with basic equality and basic liberty) could imply variations in the standards through which justice is evaluated and met.

My objective has not been to engage in political or ideological activism concerning the right and appropriate conception of the good and justice. My task has been more modest: to examine a specific understanding of the good and justice rooted in liberal principles, and to evaluate whether and to what extent its notions of 'childhood' and 'children's rights' align with that conception of justice. It is worth noting that a considerable portion of international human rights and children's rights law is partially built upon the principles of basic equality and freedom explored in this book. Therefore, one could argue that even if the concepts discussed here might not readily apply in certain local political systems, they could—and perhaps should—be applicable in terms of how we interpret childhood and children's rights at the international level.

Engaging with non-liberal theories of justice in the context of childhood could yield fruitful insights. While this book concentrates on a liberal framework, comparative analyses of various philosophical paradigms could shed light on alternative ways of conceptualising children's rights and their differential treatment. Such explorations could potentially uncover common grounds between liberal and non-liberal perspectives. Additionally, the existing research provides an open invitation to re-evaluate and expand upon the concept of 'childhood' itself. The boundaries of 'childhood' can be further explored from multiple philosophical, sociological, and cultural perspectives. A fruitful avenue of inquiry would be to engage in interdisciplinary collaborations that incorporate insights from childhood studies, anthropology, and psychology. By understanding the adaptive model of 'childhood' within a broader interdisciplinary framework, we can challenge and enrich our understanding of what it means to be a child, thereby contributing to more inclusive and accurate theories of justice for children.

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Index