Journal of Practical Ethics

Volume 8, Number 2. December 2020

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ISSN: 2051-655X

What Should the Voting Age Be?

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ABSTRACT

In this paper, I endorse the idea that age is a defensible criterion for eligibility to vote, where age is itself a proxy for having a broad set of cognitive and motivational capacities. Given the current (and defeasible) state of developmental research, I suggest that the age of 16 is a good proxy for such capacities. In defending this thesis, I consider alternative and narrower capacity conditions while drawing on insights from a parallel debate about capacities and age requirements in the criminal law. I also argue that the expansive capacity condition I adopt satisfies a number of powerful and complementary rationales for voting eligibility, and conclude by addressing challenging arguments that, on the one hand, capacity should not underly voting eligibility in the first place, and, on the other, that capacity should do so directly and not via any sort of proxy, including age.

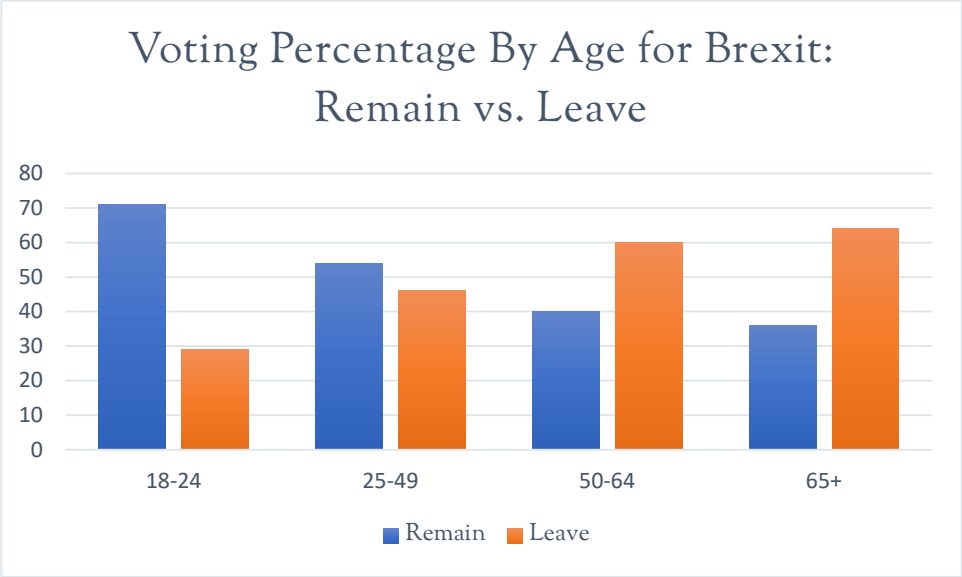
1. INTRODUCTION

We are in a moment when the once-ingrained assumption that the voting age should be 18 years old (or higher) is being questioned. In fact, the voting age has already been lowered in some places and we have a growing body of empirical data about the effects of this change.[1] For example, the voting age was lowered to 16 years of age in Austria in 2007 for most purposes, in Scotland in 2015, and in some cities in the United States for participation in local elections.[2] A bill proposing lowering

1. See Peto (2017) for a helpful summary of studies, including Wagner and Zeglovits (2014) on effects of lowering the voting age in Austria.

2. See the Voting Age Status Report from the National Youth Rights Association (accessed 30 October 2019 at http://www.youthrights.org/issues/voting-age/voting-age-status-report/).

the voting age has very recently been proposed in Australia, and there is now a lively debate in many other places.[3] Lowering the voting age has important potential implications on a number of fronts, including for the particular consequences of elections and referenda, for the rights of citizens, and for the aims of democracy itself, all to be explored in what follows. One particularly dramatic example of the effect on outcomes is illustrated by comparing the outcome of the United Kingdom referendum on leaving the European Union in 2016 with what the outcome might have been had 16- and 17-year-olds been eligible to vote. Although in Scotland the voting age had been lowered a year earlier, only those 18 and over in Scotland and elsewhere in the United Kingdom were eligible to vote on the referendum. Given the overwhelming support for remaining in the EU among those 18-24, it is reasonable to conclude that 16- and 17-year-olds would also have backed remaining by a large margin, and possibly by sufficient numbers to have changed the outcome.[4]



Source: YouGov (https://yougov.co.uk/topics/politics/articles-reports/2016/06/27/how-britain-voted)

As many have noted and as may seem to go without saying, there is a presumption that citizens in a democracy have the right to vote, unless that presumption is defeated. The question to be addressed in this paper is whether that presumption is

3. See https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6434 (accessed 19 August 2020).

4. See https://yougov.co.uk/topics/politics/articles-reports/2016/06/27/how-britain-voted (accessed 19 August 2020).

indeed defeated for the group whose members are under 18 years of age. Why should there be such a presumption? There are a number of complementary answers. First, as Jeremy Waldron (1993) puts it, on an Aristotelian model, "participation in the public realm is a necessary part of a fulfilling human life" (p. 37). Call this the "good life" rationale. Second, on an "interests-protection" rationale, participation is a form of self-protection and a way to give voice to one's interests. Third, as autonomous agents with the capacity for valuing and for self-governance, people have the right to provide input in the creation of whatever laws constrain them.[5] Christopher Bennett (2016) applies this idea to another way of expanding the franchise, namely, the inclusion of felons, but it could just as aptly be applied to expanding the franchise to those younger than 18:

> *[P]erhaps most fundamentally, having the right to vote is also a marker of an important status, shared equally with other fellow citizens: it marks a person as having the ability and right to govern her own life and to join with others in determining the government of the collective.*[6]

In a democracy, then, the legal right to vote is a marker of one's status as an equal with the capacity for autonomous choice in decision-making for the collective, and one's exercise of the right is an expression of that fundamental capacity.[7] Insofar as we have a right to be treated as equals in this way, rather than having some make decisions for others, the legal right to vote rests on this more fundamental right. Call

5. Waldron (1993) is in turn inspired by Kant, Rousseau, and Mill: "[M]odern theories of rights are usually predicated on a view of the individual as essentially a thinking agent, endowed with the ability to deliberate morally and to govern her life autonomously. Connected with that is the view that the obligations that consort most deeply with our autonomy are those that are, in some sense, self-imposed. Pushed in one direction, this Kantian allegiance to autonomy leads to anarchy. But if we take our situation in social life seriously, we may say with Rousseau that the only thing that 'self-imposed' can mean in a community is participation on equal terms with others in the framing of laws. Or we can say at least what John Stuart Mill emphasized, that those who are to be required to comply with a decision are surely entitled to *some* sort of voice in that decision: 'If he is compelled to pay, if he may be compelled to fight, if he is required implicitly to obey, he should be legally entitled to be told what for; to have his consent asked, and his opinion counted at its worth." (Footnotes removed from the passage above cite Mill (1861), chapter 8, and Rousseau (1762), Book I, chapter 6.)

6. Bennett (2016), p. 412.

7. It is worth distinguishing this notion of self-governance from another notion that is understood as "independence" where that in turn is understood as having political freedom, for example, not being dependent on one's husband, say, or on one's "masters". (Thanks to a reviewer for noting this point.) The notion at issue here in providing a rationale for a presumption of a right to vote is a notion of having certain capacities to reason and act morally and to govern one's own actions in accordance with one's own judgments. At the same time, independence in the sense of political freedom is also relevant to the setting of the voting age, and I address this point in section 7.

this the "autonomy rationale". On the basis of these rationales alone, because of the importance of the right to vote, it seems that the presumption should be that citizens should have such a legal right unless reasons can be provided that they should not. Applying this point to the question of voting age, Tommy Peto (2017) writes that "[t]herefore, there should be a presumption in favour of lowering the voting age, unless someone can identify a normatively relevant difference between adults and adolescents to rebut that presumption" (p. 3).

Before turning to the question of whether such a presumption is in fact rebutted in the case of 16- and 17-year-olds (and perhaps those even younger), it is worth noting some additional rationales for lowering the voting age. As the Brexit vote illustrates, it can happen that those of different ages have different perspectives on an issue, while all having something at stake. And arguably, the quality of public deliberation rises when more people contribute to the public debate and ultimately to decision-making. As Lisa Hill argues in the context of defending compulsory voting as a means of raising voter turnout, low turnout perpetuates "elite dominance, social inequality, and unrepresentativeness. It therefore impedes the ability of democratic governments to do what they are supposed to do: to be 'of the people, by the people, and for the people'."[8] Further, she points out that low turnout also means that the legitimacy of democracy is undermined because it is biased as a result of the fact that certain marginalized members' voices are not heard.[9] This last point is a contingent one, since it is possible to imagine a society in which interests are quite homogeneous. But just because it is contingent does not make it unsystematic or unimportant. And though the point here is made in favor of compulsory voting, it equally supports lowering the voting age insofar as those under 18 have particular interests that are otherwise unrepresented directly in elections. Thus, there are further arguments for a presumption of including as many citizens as we can in the voting population. Some of these arguments concern better overall outcomes judged on a variety of criteria including higher quality as a result of a better public debate, others concern the very aims of just democratic institutions, and some concern both, such as the idea that outcomes are better when the results yield more equality and representative-

8. Brennan and Hill (2014), p. 153. See also Waldron (1993), p. 37.

9. In support of Hill's claim that higher turnout results in the recognition of interests of otherwise marginalized groups, she points to the case of Australia, where the introduction of compulsory voting coincided with a dramatic increase in pension spending (p. 139). See Brennan and Hill (2014), chapter 6, for her larger argument for this point that includes a number of other empirical studies and observations.

ness. So, in addition to the rationales that all focus on the importance of voting for individual prospective voters, namely autonomy, good life, and interests-protection, we have what I call "outcome" and "aim of democracy" rationales.

Fortunately, there is no need to choose among these various reasons for a presumption in favour of lowering the voting age. But I will return to them later, because which reasons we recognize can, in principle, lead to different recommendations about what, if any, the minimum voting age should be, as well as different verdicts on just what the criteria for voting rights should be. I will argue that, in the end, even the ones that would seem to yield the most demanding criteria for voting rights still lead to support for lowering the voting age.

Now, attempts to dislodge the presumption in favor of lowering the voting age very often appeal to differential capacities between those under and those over 18, together with the claim that these capacities have normative significance. But recently these arguments have been turned on their heads by those arguing in favor of lowering the voting age. This will be the starting point for my assessment of the debate in what follows. The plan of the rest of the paper is as follows. I begin in sections 2 and 3 by considering arguments that appeal to particular capacities in their defense of lowering the voting age, based on the ideas that age is a proxy for such capacities, and that opponents' arguments have made a mistake about the age at which relevant capacities develop. While I believe that both of these arguments have much to recommend them, I show in section 4 that they are both missing an important part of the picture that adds a potential obstacle in the path to the conclusion that the voting age should be lowered. In section 5, I show how that obstacle might be overcome, explaining how, though the original conclusion is correct, the reasoning—including the marshalling of relevant empirical evidence—must be different. All of these arguments for expanding the voting population ultimately rest on two underlying assumptions. First, they assume that age is an appropriate proxy for the relevant capacities, and second, they assume that capacities ought to be the fundamental criterion for voting age in the first place. In sections 6 and 7, I defend both of these foundational assumptions from important challenges.

2. POLITICAL MATURITY AND COGNITIVE AND MORAL DEVELOPMENT ARGUMENTS

An influential argument for *retaining* the voting age of 18 in those jurisdictions that have it relies on an appeal to "political maturity". The idea is that voting eligibility should depend on political maturity, which is in turn understood as encompassing political knowledge, stability in preferences, and interest in political life.[10] Advocates of this argument, such as Chan and Clayton (2008), offer evidence that 16- and 17-year-olds fall well behind those 18 and older along each of the three measures.[11]

But others have turned the argument on its head, arguing that in fact there is evidence that 16- and 17-year-olds do just as well on these dimensions—or, at the least, that when the vote is made *available* to them, they catch up to their older peers. And it is not surprising, on reflection, that if one lacks an opportunity in a given domain, one will have less knowledge and interest in it than if one has an opportunity to exercise choice in it. Peto, for example, citing the example of Austria, points out that the very act of making the opportunity available is likely to increase interest as well as knowledge. Notably, it is also the case that political participation among the youngest voters in the United States has soared, as they are disproportionately affected by certain phenomena ripe for legislation and policy change, such as climate change and gun control. Voting rates among 18-29 year-olds in midterm congressional elections in the United States increased by 79% between 2014 and 2018[12], and expanded opportunities for pre-registration by 16- and 17-year-olds in the state of California, among others, have been seized by hundreds of thousands of teens.[13]

But perhaps political maturity is not the entire story of capacity or qualities relevant to voting rights. It also seems important that 16- and 17-year-olds have reached a stage of reasoning ability that is comparable to that of adults. As Peto (2017) writes, citing Steinberg, there is "no significant difference in cognitive abilities of 16-year-olds and adults," and 16-year-olds have reached the same level of moral reasoning, logical reasoning abilities, and scientific/means-ends reasoning. Peto concludes that

10. Chan and Clayton (2008).

11. Chan and Clayton (2008), pp. 542-552.

12. For voting rates by age group in midterm elections in 2014 and 2018, see https://www.census.gov/library/stories/2019/04/behind-2018-united-states-midterm-election-turnout.html (accessed 19 August 2020).

13. See Diavalo (2019).

as a result they, too, possess "moral autonomy".[14] Along related lines, there is good reason to believe that 16- and 17-year-olds also have the capacity to *value* the act of voting itself, a capacity that some have also thought is required for full voting rights.[15]

While I believe that these arguments successfully rebut particular challenges to lowering the voting age and contain much insight, it remains an open question whether they have fully captured all of the capacities relevant to voting rights. Of course, armed with the presumption in favor of voting rights for those younger than 18, it is enough to rebut challenges to the presumption, and that is the explicit aim of these authors. But it would be welcome if we could offer a comprehensive account of just what capacities are relevant to the voting age. If we can do this, then it will also be possible in theory to make the case that no further attempts of this kind to challenge the presumption simply can be successful.

Before turning to that task, it will be helpful to examine a different kind of argument focused on capacity in support of lowering the voting age.

3. THE COMPARATIVE ARGUMENT: ELIGIBILITY FOR CRIMINAL LIABILITY AND POLITICAL PARTICIPATION

Nicholas Munn (2012) begins with the kind of presumption in favor of extending voting rights with which we started, and agrees with many others on both sides of the debate that the most promising way to rebut the presumption is by pointing to some capacity that is lacking in 16- and 17-year-olds. As he writes: "[T]he right of political participation, through voting, is enshrined in human rights instruments. As such, paternalistic defenses of exclusion cannot succeed, and the justifiability of the threshold must rest on some other ground. The most promising ground for exclusion, and the one critiqued here, is incapacity."[16] He argues, however, that if the opponents' claim is that 16- and 17-year-olds are generally lacking in a relevant capacity, they face a challenge of inconsistency. For when it comes to criminal liability, the minimum age is considerably lower than 18 in many jurisdictions, including the United States, the United Kingdom, and Australia. Taking Australia as a case study, Munn points out that one can be criminally liable at age 14, and that if the prosecution makes a positive case that one has the relevant capacities at an even earlier age,

14. Peto (2017), p. 3.
15. See López-Guerra (2012), pp. 127-28.
16. Munn (2012), pp. 140-41.

then one as young as 10 could be criminally liable. So, much hinges on just what the relevant capacities are for both criminal liability and voting.

Munn presents the capacities for criminal responsibility, as embodied in the Australian doctrine of *doli incapax*: "[C]riminal responsibility may be attributed to members of this group [10-14 year-olds] when it can be shown that they were aware in undertaking the actions concerned that what they did was ...wrong, subject to criminal sanction."[17] This is a significant requirement on understanding, and it is assumed to be met by those older than 14. While the default presumption is that it is not met by those younger than 14, this is treated as a rebuttable presumption.

This test for criminal responsibility presupposes a capacity to understand that one's actions are wrong and subject to criminal sanction, and it contrasts with tests for voting capacity. Now, there are few such tests in existence in the countries Munn focuses on, and they are rarely administered. But one such test is the Doe test, put forward in a federal district court decision in Maine, to determine whether those with dementia or other severe mental impairments should be eligible to vote. According to that test, "[i]t is only if people lack the capacity to understand the nature and effect of voting such that they cannot make an individual choice" that they are disqualified.[18] As Munn argues, the capacity required for voting—at least as embodied in one of the few tests to be found—is no harder to achieve than is passing the test for criminal liability. So, the respective age thresholds for criminal liability and voting cannot be justified.

Of course, one might respond to this challenge in a variety of ways, including by raising the age for criminal liability *and* the voting age. But Munn encourages us in the view that the voting age should be lowered as well, on the grounds that those as young as 14 typically have the capacity in question. This is an important argument, and the idea that we ought to achieve consistency, and to do so while ensuring that each age threshold is set correctly for the right reasons, is hard to dispute. At the same time, I believe that the argument points the way to our being able to do even more,

17. Munn (2012), p. 152.

18. See Munn (2012), p. 148, and Doe v. Rowe 156 F Supp 2d 35 (D Me 2001). It is worth comparing this test to the CAT-V, the Comparative Assessment Tool for voting, created by Appelbaum et al (2005), but to my knowledge not employed in any actual jurisdiction. As they explain, "[i]t assesses a person's performance on all four standard decision-making abilities: understanding, appreciation, reasoning, and choice" (p. 2095). Although only understanding and choice were required by the *Doe* court, we added appreciation and reasoning questions for comparative purposes." I believe that even on this more demanding test, the comparative argument is successful.

namely, offer a fuller account of the capacities that matter for both criminal liability and voting age, and I take this up in the next section.

4. A CHALLENGE: RAISING THE BAR TO A MORE EXPANSIVE CAPACITY CONDITION

The arguments set out above focus largely on cognitive capacities. If cognitive capacities are the only capacities that are relevant to a right to vote, then they will have provided strong support for the conclusion that we should lower the voting age. Now the question arises: are these the only capacities that are relevant to eligibility to vote? In this section, I make the case that they are not, and argue in favor of expanding the set to include volitional and motivational capacities, as well. If this is correct and additional capacities are required, then, at the least, more work will need to be done in order to defend the idea that those under 18 are on a par with those over 18 when it comes to the relevant capacities.

Just as the case of criminal justice was illuminating in providing the comparative argument discussed above, it is instructive here, as well. As we will see, in both domains, we find two options: a "narrow" view that takes only cognitive capacities to be relevant and an "expansive" view that includes volitional ones. As we will see, the criminal justice domain serves not only as a good analogy, but also as a guide to identifying relevant capacities when it comes to voting.

Here it is most helpful to begin by focusing on the capacity captured in the so-called "insanity defense". Although this defense is technically limited to a small subset of criminal excuses, I will show how it can be thought of as a template for a completely general incapacity excuse. On one model of the insanity defense, we have a defense that implicates only a narrow set of capacities, namely knowledge of one's actions, and of their wrongness. The M'Naghten Rule captures this idea:

> *M'Naghten Rule*: A defendant is excused by reason of insanity if the defense proves "at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know what he was doing was wrong."[19]

19. This rule was first presented in 1848 in the *M'Naghten* case in England. For further discussion, see Dressler (2018).

This test offers a parallel to the Australian test discussed in the previous section for rebutting the assumption that those younger than 14 lack criminal liability. It identifies a capacity of understanding, or in other words, a cognitive capacity of a particular kind as required for liability.

A second model is more expansive and includes not only cognitive but also volitional capacities. An example of this model is captured by the Model Penal Code, an ideal set of statutes commissioned by the American Bar Association and intended to guide states as they modify and enact new legislation.

> *Model Penal Code*: "A person is not responsible for criminal conduct if at the time of such conduct as the result of a mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct *or to conform his conduct to the requirements of law*." (1981/2002, italics added)[20]

Now the two models differ along multiple dimensions, but, for our purposes, one is especially important.[21] The Model Penal Code (MPC) introduces an *additional* way of being excused from criminal responsibility; or, to put it another way, it requires an additional capacity in order to be criminally liable. In particular, one must have not only a cognitive capacity of some sort to recognize the wrongfulness of one's actions, but one must also have a volitional capacity to act on the reasons one recognizes for avoiding wrongdoing. On the MPC test, one might then fail to be criminally liable in two different ways. On the one hand, one might lack a cognitive capacity, whether ultimately dependent on lacking an ability to reason well or to understand moral concepts or their application or on something else. On the other, one might lack a volitional capacity, or have one sufficiently impaired that it is not "substantial", for example, by being subject to compulsive desires or impulses.[22] As is apparent, this difference between the two tests by itself yields quite different verdicts, with the M'Naghten Rule excluding people with only a volitional incapacity such as Obsessive-Compulsive Disorder from the defense, and the MPC including such people (given that the volitional capacity is sufficiently impaired).

20. See American Law Institute (1981/2002).

21. See Brink and Nelkin (2013) for a more detailed discussion of the differences between these two tests.

22. Given the requirement of a disease or defect, this might be combined with a DSM-V diagnosis of Obsessive-Compulsive Disorder (300-3).

If we think that ultimately what is required for liability is the ability to *respond to*, and not just *recognize*, reasons for avoiding wrongdoing, then we should accept this additional capacity as a requirement for liability. As I have argued elsewhere, along with many others, this additional capacity seems essential for assigning both moral and legal responsibility.[23] Further, there is reason to think that this sort of test ought to be generalized beyond the context of legal insanity. If we were to drop the requirement of defect or disease, we would simply have a test for capacity that can help us answer many questions about who should be criminally liable, including about the status of youth. Ultimately, it seems that capacity itself is what ultimately matters for liability and its flip side, excuse. One might then use this sort of test to unify our approach to a number of different excuses in the law.[24]

Now return to the question of age thresholds for criminal liability. Accepting this further requirement on liability serves to raise the bar, and, with it, the age threshold for criminal liability. For volitional capacities develop gradually, and arguably continue to develop even after cognitive reasoning capacities are in place. For example, those who are younger gradually develop capacities for impulse control, and have less capacity to resist peer pressure than those who are older. As Steinberg et al (2009) point out, *in contrast* to the literature supporting parity in cognitive and moral reasoning capacity between 16-year-olds and adults, "the literature on age differences in psychosocial characteristics such as impulsivity, sensation seeking, future orientation, and susceptibility to peer pressure shows continued development well beyond middle adolescence and even into young adulthood."[25]

The question I want to pose here is whether we should accept a similar expansion of the kinds of capacities relevant for voting rights. In at least many discussions of capacity relevant to voting, the focus is entirely on cognitive capacity, and so we find in them a parallel to the first model of narrow capacity in the criminal domain. In fact, there is more than a parallel here, as I will argue. Of course, there is a difference in that in the criminal domain the focus is on understanding what one is doing and understanding right and wrong, whereas in the voting domain the focus is on understanding the process and point of voting and of the issues at stake in elections.

23. For a view of this sort as it relates to moral responsibility, see Fischer and Ravizza (1998), Nelkin (2011), Vargas (2013), Wolf (1990). For a treatment of the legal as parallel in this respect to the moral, see Brink and Nelkin (2013). For dissent in the legal sphere, see, for example, Morse (2002).

24. See Brink and Nelkin (2013) for more detail on this proposal.

25. See (2009), p. 587, for supporting studies. See also Brink (2004) for a helpful overview of the psychological literature and application to the question of criminal liability for youth.

Nevertheless, in both cases, the capacities in question are broadly ones of reasons-responsiveness. In other words, in both cases, the capacities in question include the capacity to understand the world accurately and to understand what values are at stake in decision-making. But now unless we consider the possibility that volitional capacity is also required, it is open to opponents of lowering the voting age to rebut the presumption in favor of a broader electorate by appeal to clear, albeit gradual, differences that typically occur between young people in different age groups. An opponent of lowering the voting age might object that while many of those younger than 18 are on par with those older than 18 when it comes to *cognitive* capacity, as a group they are notably *less* developed on a whole host of measures of volitional and motivational capacity, such as impulse control, susceptibility to peer pressure, and more. Thus, more generally, their volitional capacity to turn their cognitive judgments about what it is best to do into actions that truly reflect those "best judgments" is underdeveloped in a way relevant to setting the voting age. Opponents of lowering the voting age might reasonably ask: what good is it to be able to make good judgments if one lacks the reliable ability to vote accordingly?

This challenge rests on two key premises:

(1) The voting age (if any) should be determined by whether individuals in various age groups have both cognitive and volitional capacities relevant to voting to a sufficient degree of development.

(2) Those under 18 typically do not have the relevant volitional capacities to a sufficiently well-developed degree.

I believe that the best response to this challenge is to question premise (2), since premise (1) is true and important. To see why (1) is true, consider that at least some of the foundational reasons that provide support for the presumption in favor of lowering the voting age also support thinking of relevant capacity more expansively.

Consider first the autonomy rationale, the idea that the right to vote is simply a manifestation of one's status as an equal with the capacity for autonomous choice in decision-making for the collective, and that one's exercise of the right is an expression of that fundamental capacity. Of course, there are different conceptions of autonomy, but I believe that the ones most relevant to our question are united in taking volitional capacity to be essential to autonomous agency. I favor a substantive

conception of autonomy, according to which autonomous agents are ones who are capable of responding to the reasons that there are.[26] On this conception of autonomy, sufficiently well-developed capacities of both kinds are relevant, since responsiveness to reasons is a function of both recognizing and being able to act on such reasons. But not everyone accepts this conception of autonomy, for this or any other purpose. On a different conception of autonomy, agents are autonomous when they have the capacity to govern their actions according to the reasons they themselves endorse, whether right or wrong.[27] On this conception of autonomy, one must also have both sufficiently well-developed cognitive and volitional capacities, insofar as one must be able to bring one's actions into harmony with the motivations that one endorses. Though it is an important question which of these (or some other) conceptions fits best with the reasons in favor of a presumption of voting rights, I believe that it is possible to set it aside for current purposes. For we can note that a wide variety of conceptions of autonomy require volitional capacities, including any that include a capacity to be motivated on the basis of what we *take* to be reasons or to be desirable. If any one of these conceptions captures the appealing idea that the right to vote is an important marker of this status, then we will have reason to include these capacities as part of what it is to be an autonomous agent. And in that case, insofar as we take voting to be a right for autonomous agents, our criteria for eligibility should include volitional as well as cognitive capacities.

I believe a similar line of reasoning also works for other rationales for the importance of voting, such as outcome-focussed rationales. For these, too, also point to a substantial volitional capacity requirement. For example, when we focus on the *quality of outcomes*, say, ones that provide greater representativeness of the electorate, it is crucial that voters have the capacity to put their best judgments into action. It would not be enough to recognize reasons one has; one would need to be able to translate those into action when one votes in order to have the relevant sort of impact on the outcome of an election. Now it is possible that this sort of reasoning might not apply to all possible reasons for thinking voting important, and that there should be a presumption in favor of voting. For example, if the goal is to improve the quality of

26. See Buss and Westlund (2018) for the classification of this view as "externalist". Others in the same category include Fischer and Ravizza (1998) and Wolf (1990). See Knutzen (in preparation) for an in-depth defense of this conception of autonomy as fitting for a number of different purposes.

27. This conception of autonomy is sometimes known as a "coherentist" one (see Buss and Westlund 2018). For examples that differ importantly on the details, see Bratman (2007), Frankfurt (1971), Watson (1975), and Jaworska (1999).

public debate, one might think that what is essential are simply more contributions to the marketplace of ideas prior to voting. But even here, volitional capacities are required to enter the public debate, and it seems that ideas will be taken more seriously if they come with the prospect of being supported in concrete ways such as votes. Many 16- and 17-year-olds campaigned to remain in the EU, for example, and while their voices might have been heard, one might argue that if they had actually brought their prospective votes to bear on the discussion, their voices might have had even more impact.

Thus, at least several central rationales for the importance of voting that support the presumption in favor of lowering the voting age point to a requirement of both cognitive and volitional capacity. And yet, as we have seen, this very point also makes the presumption vulnerable to a challenge from the body of research that shows significant typical development of such capacities over the time period between 16 and 18.

We cannot answer challenges to lowering the voting age by simply pointing to rough parity of 16-year-olds with adults on political maturity (understood as a combination of knowledge, stability of preference, and interest) or cognitive powers or moral reasoning capacity. For as we saw when it comes to criminal liability, unlike these other qualities and capacities, there is a large body of research casting doubt on parity when it comes to volitional capacity in particular. (In other words, we face the challenge of rebutting premise (2), as well.)

Before addressing this objection head-on, it is important to note that how good or how well-developed one's capacities are is a matter of degree. What is needed is that they pass a relevant threshold, or at least that they pass a relevant threshold for the quality of capacity that is needed *in the relevant circumstances*. I will return to this point in section 6. For now, it is simply important to note that if autonomous agency is to be understood in terms of capacities and their exercise, and capacities come in degrees, then autonomous agency itself comes in degrees. I know of no algorithm to determine relevant thresholds, and will rely in what follows on an intuitive understanding of when capacities are well-developed *enough*, as well as on comparative assessments of capacities of those under 18 and those over 18.

With this in mind, we can turn to the question at hand. Are those under 18 lacking in volitional capacities that are relevant to voting in comparison to those over 18, and to an extent that justifies withholding the right to vote for 16- and 17-year-olds?

5. CLEARING THE BAR: SHOWING THAT 16- AND 17-YEAR-OLDS TYPICALLY SATISFY EVEN THE EXPANSIVE CAPACITY CONDITION FOR VOTING

Whether those younger than 18 have parity with those over 18 on a more expansive set of capacities is in large part an empirical question. While a complete survey of the relevant psychological literature would require more than I can provide here, I offer what I take to be strong reasons for thinking that, though there are differences, the differences do not undermine parity in the quality of capacities where it matters for voting. My strategy is to consider some main ways in which volitional capacities appear to be less developed in younger teens, and to show that none of them constitutes impairment in ways that matter for exercising the right to vote.

First, consider vulnerability to peer pressure. There is good evidence that peer pressure has the greatest influence between the ages of 14 and 18.[28] And this might be precisely the kind of vulnerability that reduces capacity to do what one takes to be supported by the reasons, or to be motivated by what one values or desires to be moved by. But there are reasons to think that this is not ultimately a problem for lowering the voting age. The first is that there is also good evidence that the influence of peer pressure varies significantly by domain.[29] While peer pressure may be strong in the domain of, say, drug use, especially under circumstances in which the alternatives would be costly, it may not be strong in other areas such as family involvement. It is notable that voting is typically done in private, and failure to bend to peer pressure does not have the same obvious costs as other failures.

Next, consider impulse control and sensation-seeking. There is good reason to think that contextual factors matter greatly here as well. Addressing the differences between (many) criminal contexts and contexts of medical decision-making (such as whether to have an abortion), Steinberg et al (2009) write:

> *When it comes to decisions that permit more deliberative, reasoned decision making, where emotional and social influences on judgment are minimized or can be mitigated, and where there are consultants who can provide objective information about*

28. See Steinberg and Monahan (2007).
29. See Sim and Koh (2003).

> *the costs and benefits of alternative courses of action, adolescents are likely to be just as capable of mature decision making as adults, at least by the time they are 16.*[30]

There is good reason to think that voting is done in this more deliberative sort of context, rather than in ones more typical of at least many criminal contexts.

To recap: I have argued that in order to forestall further challenges to the presumption that the voting age should be lowered, a more complete account is needed of the capacities that seem to be presupposed by the reasons supporting the presumption. I have suggested that on a more complete account, more empirical considerations must be brought to bear to show that there is indeed parity between 16- and 18-year-olds when it comes to the *relevant* capacities in the relevant contexts. While I have not been able to do an extensive assessment of the empirical work, I have tried to show that along the dimensions that matter for voting in particular, we have reason to believe that there is parity, even though there are significant differences in capacity between 16- and 18-year-olds that are relevant in other contexts, such as criminal liability.[31]

Given the empirical evidence set out here and in previous sections, if age is a good proxy for capacity, then it seems that 16 is an appropriate one. Before the age of 16, it is less typical that both cognitive and volitional capacities are developed in relevant ways. If, however, we were to learn more that suggests that such capacities typically develop earlier, then the same reasoning would yield a different verdict and recommend that the age requirement be lowered further. In this way, the argument is sensitive to potential new developments in developmental psychology. But I believe this to be a virtue of the account. The account ought to be flexible enough to accommodate possible correction about the empirical facts of human development. For now, the empirical evidence that we have seems to converge on the age of 16 as a defeasible age to serve as a proxy for the relevant capacities.

Even so, more work remains. For there are two assumptions underlying the argument thus far that might be challenged. The first is that age is a legitimate proxy for the capacities relevant to voting. And the second is that capacity is all that matters in either rebutting or defending the presumption that the age should be lowered. I take up these two challenges in the remainder of the paper.

30. Steinberg et al (2009), p. 592.

31. Note that this marks an important difference with the capacities relevant to criminal liability. There is good reason to think that the volitional capacities required for criminal liability for 16-year-olds are *not* typically on a par with those in older age groups.

6. IS AGE A LEGITIMATE PROXY FOR CAPACITY?

One might accept much of the argument thus far, and yet ask why we should not simply appeal directly to the capacities in question in assigning eligibility to vote, rather than to age, which is at best an imperfect proxy. For there are individual differences, so that some people under 16 clearly have the relevant capacities, and some over 18 do not. If capacity is what matters, is there an injustice in using age instead? Should we instead administer a direct test for capacity?

Here is an argument in favor of using age, such as the age of 16, as a proxy. Given that it is imperfect, there will be some false positives: that is, there will be those whom the proxy treats as having the capacity when they do not. And there will also be some false negatives: that is, there will be those whom the proxy treats as lacking the capacity when they have it. For the false positives—those under 18 who gain the legal right when the proxy is changed to 16 but do not possess the capacity—it seems that no injustice has been done; and as for other negative consequences, it is worth noting that it is likely that many who are over 18 also do not possess the relevant capacities (given typical parity), so the situation would not seem to be worse than it currently is in this respect. And there is additional reason for endorsing the *status quo* of accepting some false positives when it comes to those over 18, capturing why we do not currently have a universal capacity test. The costs of a test, from lack of agreement of how to construct it to the serious risk that it might exclude those it should not exclude, speak against having a test, even at the risk of allowing for an over-inclusive voting population. It is worth the price of some false positives in order to avoid the risk of false negatives. When it comes to a test, some of its false negatives could disproportionately include populations who are already victims of injustice, such as those who have not benefited from the test-taking skills that those who have great access to quality education acquire as a matter of course. And this cost of false negatives would increase still further if we were to administer a universal capacity test. Thus, the costs of a test are potentially quite high, even if it could allow *some* who are younger than 18 and who have the relevant capacity to vote if they are able to pass it. Thus, when it comes to allowing some false positives by having the age proxy, this seems a price worth paying, as it is for those in older age groups.

The more troubling group affected by the use of the age proxy is that of the false negatives allowed by the age proxy itself—that is, those who *have* all of the relevant capacities and are excluded on seemingly arbitrary grounds of age, simply because

they are younger than 16, say. There does appear to be injustice to them. One response here would be to allow for the age restriction to be "rebuttable", in a way analogous to the age threshold for criminal liability in some jurisdictions.[32] In this way, age would remain as a proxy, but there could be a means of overriding the default minimum age. Of course, this would introduce some of the same concerns about a general test for capacity. What would the criteria be for successful rebuttal? And if we had a good test, why not offer it as a general test to all prospective voters? I think that there could be grounds for restricting the test in question precisely on the grounds that restricting it would reduce the risk of under-inclusion by means of a universal test. But converging on a non-controversial test would still be a tall order.

Is there a defense of the proxy even if it is used in a strict and non-rebuttable way? One approach is to recognize that rights are being infringed, but nevertheless justify the infringement on the grounds that the alternatives are simply too costly and that, in the case of voting in particular, the positive rights that are infringed are infringed only temporarily. Insofar as the infringement is temporary, the case is disanalogous to other candidate criteria, including results on standardized tests, which may continue to yield under-inclusion of the same individuals over time. So, in this way, we might accept the proxy as the least bad option among others, each of which allows for some infringement of some rights. I believe that this line of reasoning is promising, but if it ultimately fails, the idea that age is legitimate as a proxy for capacity that might be rebutted in particular cases is worth developing.[33]

Before continuing, it is important to assess a recent argument that appears to raise a quite general obstacle to using age as a proxy for capacity in the realm of criminal justice. Gideon Yaffe (2018) argues that when it comes to criminal liability age should not be used a proxy, and if his argument succeeds then it appears to transpose to capacities relevant to voting, as well. If it succeeds, then the preceding argument must be rejected after all.

Yaffe's argument is that using age as a proxy for the capacities relevant to criminal liability has an unacceptable empirical dependence. If we were to receive em-

32. See Munn (2012), p. 157 for a similar suggestion, but combined with an argument to lower the default age to 14.

33. One might ask at this point why we should not just let anyone vote, even 4-year-olds, say, and have no restrictions. But I think the answer is that in such cases, it would be the parents or guardians voting, and arguably, this would violate the very appealing one-person one-vote principle. Further, implementing this policy simply is not supported by the reasons behind the presumption in favor of voting. See Steinberg et al (2009) for evidence that it is at age 16 that adolescents typically gain parity on a number of capacity dimensions.

pirical evidence that altered the age, or that made other or additional markers better proxies, then, by parity of reasoning, we ought to change the age or use other or additional proxies. But our attachment to not altering the age for criminal liability and treating those older than 18 as adults as a matter of course is strong, and we have the strong intuition that those under 18 ought to be treated differently than adults (at least presumptively). Thus, he argues, we must find a different way entirely to justify the age threshold.[34]

In a bit more detail, there are two strands of reasoning here. One is that age is "intuitively sticky" in this case in the sense that if we were suddenly to receive highly credible empirical evidence that something other than age—say, height—or a much younger age—say 12—is a better proxy for the relevant capacity, then we would still "recoil" from switching proxies. But if we recoil, this undermines the idea of using age as a proxy, and suggests that there is some other rationale at work in the first place.[35]

In reply, I believe that this overestimates the stickiness of our commitment to the age of criminal liability being 18. At other times in history, people were perfectly comfortable holding children as young as 7 criminally liable.[36] Presumably, this is because they thought of children differently. As we have learned more, our views about liability have shifted. And our views of when "childhood" ends have evolved quite rapidly in recent decades, as neuroscientific research together with observational studies show that development is not complete at 18 and is in fact far from completion.[37] Much has been printed about parents' changing relationships with their college-aged children, including a growing trend toward intervening in more ways in their children's lives, a practice which seems to presuppose parents seeing their children as not yet full adults into their twenties. For these reasons, it is far from clear just how "sticky" our commitment is to the age of 18 for capturing a status associated with criminal liability.

There is, however, a second and more powerful way of developing the argument of empirical dependence. Yaffe has us consider the proposal that it might be more

34. Of particular further interest given the topic at hand, Yaffe goes on to argue that the reason we should keep the age of 18 as important for criminal liability is that it matches the age at which "kids have a say", that is, the age at which they vote. I see the argument of this paper as defending an alternative picture that includes mutually supporting accounts of both eligibility to vote and criminal liability.

35. Yaffe (2018), pp. 32-33.

36. See, for example, Platt and Diamond (1966), especially pp. 1233-34.

37. See Steinberg et al (2009).

accurate (fewer false positives and false negatives) to have differential ages depending on sex or gender. The age of liability under this more accurate assessment might recognize liability for women at the age of 16 and for men at the age of 18. Even if this were more accurate as a proxy for relevant capacity, we recoil here, too. Or imagine a case in which something else, such as race, were a more accurate predictor. Again, if we recoil at these suggestions, then it seems we must recoil at the idea of using age as a proxy in the first place.[38] Presumably, this is because the point of using the proxy is to track what really matters; if we find a better "tracker", the same reasoning ought to support using the better tracker.

Now, the defender of using age as a proxy for liability has a reply here. Not all proxies are created equal, not even all equally accurate ones. Accuracy is not the only value. As Yaffe notes, we much prefer false negatives to false positives in the criminal context. Blackstone famously offered us a ratio: better for ten guilty people to go free than for one innocent person to be convicted. We can consistently prefer a system with one proxy that sacrifices something in the way of accuracy in order to minimize false positives relative to a system with a different proxy that preserves it.

Consider again Yaffe's thought experiment in which race and age together are a more accurate proxy than age alone. Yaffe writes—and I agree—that using such a proxy would be abhorrent. As he speculates, one reason for this reaction might be that because of the history of racial oppression we take the disvalue of false positives using such a race-based system to far outweigh any value in increased true positives, and so the possibility of our actually preferring such a system overall is highly unlikely. As Yaffe writes: "False positives in a race-sensitive system are so damaging that the improvements in true positives would have to be enormous to outweigh them—so enormous that we can be almost certain that any race-sensitive system would be far worse than a race-blind system".[39] Perhaps this is why we simply cannot imagine preferring such a system over one that is less accurate and does not invoke race. Thus, we do recoil, and we have a compelling explanation, consistently with taking age alone as a proxy for capacity.

So far, so good. But Yaffe responds: the fact that such a system would be *unlikely* to be preferred, taking disvalue of false positives into account, is not relevant to the argument; the point is that we can *imagine* a situation in which we would prefer a race-sensitive system and, in that case, the defender of using age as a proxy will have

38. Yaffe (2018), p. 32.

39. Yaffe (2018), p. 37.

to give the wrong verdict. But I think that this reasoning can be resisted. First, I am simply not sure that we *are* imagining such a situation even when described to us, or that in the event that we succeed, we still retain the same intuition. We may not be good at eliminating the racism of our current world as we undertake the imaginary task Yaffe asks of us.[40] The world would have to be vastly different than it is, and if we were truly imagining such a different world, it is possible that our intuitions would change. But I think that the defender of the age proxy need not rely on this point. There could be reasons to reject the use of certain proxies that are independent of the disvalue of false positives as compared to false negatives. The use of certain proxies might simply be off-limits. We can accept the use of proxies even when they track but do not by themselves capture that *in virtue of* which the purpose in question is being served; but when the very use of the proxy would have a harmful and misleading tendency *to appear* to be that in virtue of which the purpose in question is being served, or when it might run the risk of appearing to be essentially connected with what matters, we should not use it. In other words, if we used race to track capacity when there was only a contingent correlation, it might wrongly appear that race is itself the deciding factor, or that race is necessarily connected with capacity. This appearance would not reflect reality, but appearances by themselves can be extremely damaging. In this case, they could be so damaging as to make the use of such proxies off-limits.

For these reasons, I do not believe the case for rejecting age as a proxy even for criminal liability has been made.

And if this reasoning concerning empirical dependence does not dislodge the reasons in favor of using age as a proxy for criminal liability, it seems to have even less force against using age as a proxy for voting. Intuitions about voting age appear to be even less "sticky" than those for criminal liability. It was not long ago that the voting age in the United States was 21. And it does not seem shocking that jurisdictions like Scotland and Austria would consider lowering it. As for the worry that using age as a proxy for capacity presupposes some principle that would commit us to using an "abhorrent" proxy, as before there is no reason that the advocate of age as a proxy must accept such a commitment.

40. See Ryazanov et al. (2018) for evidence that in studies that present thought experiments or intuition pumps, participants do not necessarily accept the stipulations of the thought experiments.

7. SHOULD CAPACITY UNDERLY AN AGE CRITERION IN THE FIRST PLACE?

There is a final assumption to examine, and that is the idea that it is capacity—and capacity alone—for which age is meant to be a proxy in this picture. Perhaps something other than, or in addition to, capacity justifies the use of a particular minimum voting age. I have offered reasons for thinking that it is capacity that is relevant: given the importance of the right to vote, including that it marks equal status as autonomous beings and that there is much at stake for potential voters at any age, the presumption is in favor of expanding the voting population to include those who are younger and indeed have the equal status in question which is determined by capacity. But it is possible that some other reason for denying the right to vote to members of a certain age group overrides these reasons, and I examine three here.

One reason that perhaps comes first to mind is that the age of emancipation is typically 18, or, more informally, parents have special legal duties toward their children younger than 18 and also legal control over their children younger than 18 that also ends at 18.[41] Closely associated with this special relationship is that, with exceptions, children tend to live with their parents until at least the age of 18, giving parents a unique opportunity for influence.[42]

This fact raises the question of whether, even if children have the capacity in the sense of having a general *competence* that underlies autonomous agency, they lack the specific ability to exercise it. Perhaps what really matters is not only that one is an autonomous agent, but that one has the opportunity to exercise one's autonomy. In fact, returning to the comparison of the conditions for criminal liability, we see that in any given *instance* of criminal wrongdoing, we require both competence and that the situation allow for its exercise. The criminal law recognizes incompetence excuses (and the insanity defense is most often read in this way), but also situational excuses, such as duress. A person might be a highly competent and reasons-responsive adult, and yet find herself in circumstances that make it unreasonable to expect her to act well, such as when the life of a close family member or friend is threatened unless

41. See https://www.law.cornell.edu/wex/emancipation_of_minors (accessed 19 August 2020).

42. In fact, the age of emancipation and the age at which children leave their parents' homes has been diverging in some jurisdictions, notably the United States. In others, the age at which children leave home has been on average even higher. See, e.g., Rico and Jennings (2016), who note that in 2001, 44% of the 25-29 year-olds and 27% of the 30-34 year-olds in Catalonia still lived with their family (citing Lopez, Valls, Verd, & Vidal, 2006).

she commits a crime. Thus, what seems essential in the criminal context is that one have an opportunity of sufficiently high quality to avoid wrong-doing, where that is a function of *both* one's competence and one's situation.[43] If we think of voting as also requiring a high quality *opportunity* to exercise one's autonomy well, and parental influence as a situational factor appears to significantly compromise the quality of opportunity, then a voting age of 18 would seem warranted after all.

Although this is an important argument, I believe that both premises in this reasoning can be questioned. On the one hand, we can question whether the cases of criminal liability and eligibility for voting rights have asymmetrical requirements. Perhaps criminal liability requires opportunity to act in certain ways, which is only partly a function of competence, while voting rights only requires competence. Depending on the rationales one accepts for the importance of voting, one might give different answers. If voting were *merely* a symbolic marker of a status, as important as this is, it might be that only competence is needed. Whether one is in a position to exercise it well is less important in this case. But other rationales suggest that not only competence, but also opportunity, is essential. If one's vote is to have a chance at succeeding in expressing one's view of what the reasons support, for example, one must possess not only the relevant skills and talents, but also the opportunity to exercise them in given instances of voting. But rather than see these reasons as competing, I would rather accept both. This means that we either accept a factor in addition to capacity, namely situational congeniality, that allows for the opportunity to exercise the capacity in question, or we adopt a more expansive understanding of "capacity" on yet another dimension to encompass opportunity itself. Either way, we can accept the first premise in this reasoning.

We should instead focus our efforts on rejecting the second premise in the reasoning, namely, the claim that the parental influence *compromises* quality of opportunity to a sufficient degree. While this will largely be an empirical question to be settled by the empirical evidence, it is also important to note that the burden is lighter than it might initially seem. First, the burden is not to show that parental influence

43. One might be tempted to assimilate parental pressure to peer pressure and see both as compromising capacity understood as competence. It might be that children do have less developed competence to resist parental pressure. But parental pressure can be understood not only as exploiting lack of competence; it also provides serious situational limitations to what children can do by altering whether children can satisfy fundamental needs such as shelter, food, and parental permission for a wide variety of things. It might be that peer pressure ultimately works through these two different ways of affecting children's capacity in the sense of opportunity to act, as well. The key point for our purposes here is that situational factors can also compromise the quality of opportunity for the exercise of autonomous agency.

never compromises such opportunity to a sufficient degree. As we saw before, we can accept that we will pay a price of false positives in order to offset the risk of false negatives. Second, the burden is also comparative: if parental influence for 16- and 17-year-olds in the sphere of voting in particular is not *more* compromising than parental or other influence is for older age groups, this is also reason not to take parental influence as a reason to restrict the voting age to 18. Third, it turns out that evidence *in favor* of parental influence being sufficiently compromising is harder to come by than might be thought, as well. Showing mere similarity in political affiliation between children and parents will not suffice for showing that influence impairs opportunity, nor will showing causation of similarity in affiliation. What matters is whether opportunity has been compromised and this is not shown in either of these ways. For one might be influenced by one's teachers not to bully fellow students, but this need not compromise one's opportunity to exercise one's autonomous choice not to bully. Responding to the teacher's good reasons by adopting them as one's own might be an ideal exercise of autonomous agency. Or one might accept the bad advice of one's role model without lacking the opportunity to have avoided taking it. Thus, research purporting to show that children often adopt the political affiliation of their parents is not by itself sufficient to show lack of relevant opportunities to exercise autonomous agency.

While a complete weighing of burdens is not possible here, it is notable that some influential recent research raises serious questions even about the extent of direct transmission of political affiliation from parents to children, and some suggests that significant transmission of political engagement might go in the opposite direction.[44] Further, studies like the ones with which we began which support the idea that younger voters vote in significantly different proportions on certain issues than older voters offer indirect evidence that high enough quality opportunities remain when it comes to at least some issues. Thus, while I do not here provide anything like a full reply to the objection from parental influence, I believe that there is at least good reason to resist it. If the empirical facts prove different from what they seem, then this argument would need to be revisited.

A second reason for doubting whether it is capacity that should underly an age requirement takes this same observation about the age of emancipation as a starting point, but develops it in a different way. Yaffe (2018) offers an argument from parental influence that begins with the observation that before the age of emancipation parents

44. See Ojeda and Hatemi (2015), and Dahlgard (2018) respectively.

have rights to inculcate values in their children and to exercise a certain amount of control. But if that is the case, he argues, and children younger than 18 were to have the right to vote, then there is a way in which parents would have unequal input into the democratic process by in effect having more than one vote each. This seems problematic on grounds of equality. At the same time, he argues, it is legitimate to allow parents this influence over their children at least partly for the very reason that we think it is legitimate for them to have influence over not only the laws of today, but also the laws of tomorrow. The goal of balancing equality with allowing parents the ability to influence the future by influencing their children's values is a compelling enough interest to deny the vote to those under the age of 18. As Yaffe writes:

> *Eighteen is an appealing threshold, I suggest, precisely because people of that age tend to be free enough from their parents to make their own decisions, albeit guided by values their parents might have inculcated, and, further, if they have not come to be guided by values their parents inculcated, they are not likely to do so ever.*[45]

Thus, according to Yaffe's reasoning, the best way to achieve the dual goals of providing people a way of shaping future laws and respecting equality is to deny the vote to those under 18. But this is not because 18 is a proxy for an elusive capacity; it is rather because it is the age at which we are best able to balance and promote these two important goals.

As interesting as this suggestion is, we can resist it. First, as just discussed, it is an empirical question just how "free" from their parents—or anyone else—16- and 17-year-olds are to make their own decisions, and there is at least a fair amount of evidence that opposes Yaffe's position on this point.[46] Relatedly, once we recognize different *domains* of decision-making, as we do when it comes to peer pressure, the burden is even greater to show that parental control overwhelms opportunities of sufficient quality to vote freely. It is one thing for parents to control when a child returns home in the evening, and another to control how a child votes. Perhaps the control is just as great in many cases, but there is nothing obvious about that. And second, the assumption that there would be a certain violation of equality if children were to vote while being influenced by their parents is questionable. If in fact many 16- and 17-year-olds are autonomous agents with the capacity and opportunity to vote well, it

45. Yaffe (2018), p. 182.

46. See note 44.

is hard to see how their situation is relevantly different in any significant degree from 18-year-olds with similar capacities. The value of giving autonomous agents with a stake in their own future the right to vote is a significant one, and it is not dislodged by the fact that parents have influenced their children.

A third reason for thinking that there should be an age minimum that is not tied to capacity is that age marks instead a particular "stage of life", as Franklin-Hall (2013) calls it. In defending the idea that paternalism of certain sorts (particularly in requiring certain sorts of education) can be justified for those under 18, Franklin-Hall notes that such state interference cannot be justified on the grounds that those under 18 are lacking in capacities thought to underly autonomy. Rather, he argues that infringements in their "local" or time-specific autonomy can be justified on grounds that by interfering at this early life stage their global autonomy, or ability to be authors of their own extended lives, will be enhanced. The idea here is that age marks a special life-stage, rather than a set of capacities, and that it is the life-stage that has special features that justify a kind of paternalism by the state. This is an intriguing argument. But a parallel justification of the same sort does not seem readily available in the case of voting. In the case of requiring those under 18 to receive an education, the justification is, at least in part, that it is enhancing of their own autonomy over the long run. But there is no obvious counterpart in the case of prohibiting younger teens from voting. Thus, while this alternative to capacities might very well suggest that *other* age requirements ought not to exclusively track capacities, it does not give us good reason to reject capacities as what matters most in voting.

8. CONCLUSION

In this paper, I have argued that the voting age should be lowered to 16 on the grounds that this age is a good proxy for what really matters, namely, an expansive capacity along two dimensions. The capacity is expansive in including both cognitive and volitional components, and in encompassing both competence and situational factors that provide an opportunity to exercise that competence. Despite the expansiveness along both of these dimensions, there is good reason to think that the empirical facts support the inclusion of 16- and 17-year-olds on the basis that they have the doubly expansive capacity in question. At the same time, I have noted that if empirical work develops in unanticipated ways the argument would need to be reworked. But this empirical dependence seems to me a strength, rather than a weak-

ness, of the argument. At a number of points throughout the paper, I have turned to the debate about the age of criminal liability for comparison and support. Even where the parallels break down, each debate can inform the other in ways that have been well-documented, but also in ways that I hope to have shown have thus far been under-explored.

Acknowledgements: Many thanks to Tom Douglas, Guy Kahane, Sam Rickless and two anonymous referees for their very helpful comments on previous written versions, to Alice Rickless and Sophie Rickless for inspiring discussion, and to Gail Heyman for guidance in the psychological literature on peer pressure. An earlier version of this paper was presented at the Kyoto University-UC San Diego Philosophy Workshop in January 2018, and I am grateful to the participants for their input. Finally, my ideas for this paper developed while teaching an undergraduate class, Law and Society, at UC San Diego, and I thank the students for stimulating discussions of this issue.

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Parents' Rights, Children's Religion: A Familial Relationship Goods Approach

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ABSTRACT

The article presents a theory of the basis and nature of parents' rights that appeals to the goods distinctively produced by intimate-but-authoritative relationships between adults and the children they parent. It explores the implications of that theory for questions about parents' rights to raise their children as members of a religion, with particular attention to the issue of religious schooling. Even if not obstructing the development of their children's capacity for autonomy, parents exceed the bounds of their legitimate authority in so far as they aim deliberately to influence their children's religious views. Healthy familial relationships involve some identification of child with parent and require a sphere of spontaneous interaction between parent and child that are in any case likely to influence those views and constitute a standing threat to autonomy. Correcting over-deferential understandings of parents' rights enables schools better to promote not only children's autonomy but also other legitimate civic goals.

When they are born, children have no religious views and they cannot identify as members of a religion. They become adherents of a religion—they come to engage in certain practices or endorse certain beliefs—just as they become atheists or agnostics: through a process of socialization and upbringing and education. Religious freedom is hugely important; people must be at liberty to act on their religious beliefs (or lack of them). But that leaves a question about parents' rights to raise other people—their children—in ways that reflect their own beliefs.

Liberal political philosophy struggles with that question. Its core thought is

that individuals should exercise their own judgment about how they are to live. One of the things that many choose to do with their lives, and one that many regard as among their most important life projects, is to raise children—and to exercise their own judgment about how to raise them. But parental rights are rights over others, others who have no realistic exit option and whose interest in making their own judgments about how they are to live their lives is no less important than that of the adults raising them.

It is difficult to know how to strike the right balance between the interests of parents and children, but that task is all the more challenging because children's healthy development itself depends on their experiencing a very special kind of relationship with their parents. I will argue that, to become autonomous individuals, children need to grow up identifying with, and developing strong attachments towards, those who exercise authority over them. If that is right, then the kind of parent-child relationship that serves children's interest in developing autonomy can itself pose a threat to that interest. Any plausible theory of parents' rights must attend to the complex ways in which the agency of parents and children, and their wellbeing, are bound together.

Most political discussion of parents' rights with respect to their children's religious upbringing tends to focus on questions about schooling. It is taken for granted that parents must be free to raise their children as members of a religion at home. Indeed, that freedom is usually held to extend to homeschooling and to parents' use of private schools. Only when public resources are involved—only in state or public schools—do questions about the regulation of religious schooling, and about the extent to which the state should cater to parents' religious views, typically arise. Different countries take very different positions on that, all the way from the American insistence that public schools be religion-free zones to the Dutch view that any sufficiently large group of co-religionists is entitled to public funds to set up a school consonant with their religious beliefs.

My argument will indeed deliver conclusions about religious schooling—both where the state is involved and where it is not—but it will do so by digging deeper, querying background assumptions that unduly constrain our thinking and themselves require critical attention. Properly to address issues about the regulation of religious schools we must consider the general question of when the state may step in to limit parents' authority over their children's religious upbringing.

I start from a basic commitment to liberal equality. The "liberal" element means

that it is important that people are free to form, critically reflect on, and act in accordance with their own judgments about how to live. (Cf. Rawls' (1971) identification of a highest-order interest in our capacity to "frame, revise and pursue a conception of the good".) They should be authors of their own lives, allowed and encouraged to develop the capacity for autonomy, without coercion or undue interference by others; it is part of the state's function to protect and nurture that capacity. The "equality" element means that each person counts equally—nobody's freedom is more important than anybody else's and, from the state's point of view, each person's living the life of her choice matters equally.

This vision, originally developed to liberate citizens from an overbearing state founded on hierarchy, has been extended to the sphere formerly regarded as "private" with transformative implications for relations between men and women, but it has not yet had the same impact on relations between parents and children. Many children today are a bit like women were in the not-so-distant past, victims of an ideology that failed to recognize their claims to liberty and equality. We continue to grant parents extensive rights to control their children—including the right deliberately to inculcate the parents' own views in ways that inhibit the development of children's capacity to exercise or act on their own judgment about how they are to live their lives when they reach adulthood. And we fail to treat children as equal in importance with their parents: although we intervene to prevent abuse or neglect, we routinely allow children to be subordinated to their parents' projects, to be treated as vehicles through which parents may seek to realize their own ideas about how to live. Advocates of school choice, for example, typically invoke the importance of parents' getting to choose their children's schools as if what mattered was the satisfaction of parents' preferences rather than the interests of those subject to their choices.

Tackling questions about religious schooling forces us back to philosophical basics. To decide whether parents have the right to send their children to a religious school, or to one that teaches that all religion is a delusion, we need to know what rights they have with respect to their children's upbringing in general. We need to think about why parents should get to exercise *any* authority in that—and indeed in any other—domain. Nobody thinks that it would be permissible for me to raise your child in my religion. Why should I get to do that to mine? *Should* I get to do that to mine? (Clayton 2006 and forthcoming).

My answer will appeal to the goods—"familial relationship goods"—that can be realized in parent-child relationships (Brighouse and Swift 2014). These are not goods

like cars or washing machines; they are goods simply in being good for people—aspects of people's lives that make those lives go well rather than badly. Only by understanding why it's valuable that children should have parents at all can we think seriously about what rights parents should have to do things to, with and for their children. Only then can we assess claims about the extent of their right to influence their children's emerging values, and only with that assessment in place can we work through the implications for religious schooling.

To develop the very capacities that liberals value, children need an intimate-but-authoritative relationship with particular adults. So those committed to liberal equality do not deny that parents should have the right to exercise considerable control over their children's lives. Some discretionary authority—unmonitored by others, and to some extent unmonitored even by themselves—is essential if parents are to play their role in their children's healthy development. As standardly framed, the philosophical challenge is to identify the proper limits on parents' authority over their children; to strike the right balance between respecting parents' freedom to live their lives according to their own beliefs, which for many include beliefs about how their children should be raised, and children's interest in developing the capacity for autonomy. Focusing on familial relationship goods, and on the quality of the parent-child relationship, offers a distinctive way of approaching that challenge. In order to develop autonomy, and for many other reasons, children themselves need a close emotional bond which permits, and indeed requires, parents to be spontaneous and open in their relationships with their children. Making that kind of relationship central opens the door to more specific and difficult questions. How much, or what kinds of, authority must parents have for the relationship to work its magic? To what extent does the valuable intimacy between parent and child depend on parents' being free to share themselves—including their religious views—with their children? How, if at all, might the kind of parent-child relationship that is in children's interests depend on parents being free to influence the content of their children's schooling?

The view to be presented invokes claims with which many religious parents will disagree, as will some atheists. Those who regard their children's following the true path as more important than those children's capacity to judge for themselves whether the path in question is indeed true will reject the autonomy condition. So will those who care more that their children see the falsity of all religious doctrines than that they come to see it for themselves. Both will deny my more specific claim that one of the duties that parents owe their children is overseeing the development

of their capacity to decide for themselves how they want to live their lives. Building the facilitation of children's autonomy into the parental role is, I believe, the right approach, and another way in which the familial relationship goods approach reconceives the more conventional opposition between parents' and children's interests. But it ups the stakes in the disagreement with the parent who simply denies that autonomy matters: on the view to be presented here, that parent has not only failed to recognize what she in fact owes her children, she has not understood what it is that grounds her claim to be a parent in the first place.

Of course, a parent's freedom to raise her child as a member of a religion, and a child's interest in developing the capacity for autonomy, are just two of many considerations relevant to the assessment of policy on religious schooling. In other, collaborative and interdisciplinary, work (Brighouse et al 2018), my colleagues and I have attempted to provide a framework for thinking about educational decisions quite generally. That framework emphasizes both the variety of different "educational goods" that schools should seek to produce and the range of other "independent values" that must be taken into account when forming judgments about policy all things considered. With regard to the former, the capacity for autonomy sits alongside the capacities for economic productivity, for democratic competence, for healthy personal relationships, for treating others as equals, and for personal fulfilment; these are all desirable educational outputs the production of which can pull decisions in different directions. It matters both what mix of those we should be aiming to achieve for any given individual and how they should be distributed among the population. As for the latter, parents' interests rank with childhood goods, respect for democratic processes, and freedom of residence and occupation, as considerations that must be weighed in the balance when deciding how schools, and indeed other institutions with educational significance (such as the mass media), should be regulated. Given this multiplicity of relevant factors, one might wonder whether parents' rights warrant the extensive attention they will receive here.

To see why they do, we need to distinguish between parents' interests and parents' rights. While this more general framework presents parents' interests as just one consideration to be weighed in the consequentialist balance alongside others, claims about parents' *rights* typically assert something stronger. The thought is precisely that, properly identified, parents' rights—including their right to raise their children as members of a religion—have a normative status such that they should be respected even where doing so may be inimical to the optimal production and/or dis-

tribution of educational and other goods. They are non-consequentialist considerations that morally constrain the pursuit of good outcomes. If parents really do have the moral right to send their children to a religious school, then that is something that states must respect. Not to do so would be to treat those parents unjustly.

Correcting mistaken views about parents' rights is a crucial part of the overall picture because excessive deference to parents drastically constrains efforts to achieve a better balance of educational goods, and to distribute those goods more fairly. Misjudging the proper extent of parents' rights to control their children's schooling affects *all* children, not only those having the control exercised over them. And it has the potential to deprive children of more than the capacity of autonomy. That is partly because many of the outcomes we rely on schools to achieve depend—in part—on the kinds of children who go to them (Clayton et al 2019). If parents are allowed to opt for segregated schools, then all children, not just their own, miss out on the educational benefits of mixed school composition. This applies most obviously to the other-regarding or "civic" goals of education, such as the capacity to treat others as moral equals. If parents have the right to protect their children from knowledge of other religions, or to deny them the kind of school environment that is most likely to foster tolerant attitudes, then we may all be condemned to share a society, and a democracy, with intolerant others who know little about their fellow citizens. (For the role that schools can play in promoting intergroup contact, see Wölfer et al 2018.) And since spending time with others from different home cultures promotes critical reflection on one's own, and provides a sense of the different ways of living one's life, mixed schools are also conducive to autonomy. If members of a religious faith school their children in particular ways that exclude, or are simply not attractive to, others, all children are deprived of the educational benefits they would get from being schooled alongside such children.

Correctly identifying the scope and content of parents' rights with respect to children's religious schooling is important, then, not only for the sake of their children's autonomy—though that would be reason enough—but because it affects the education of other people's children, and indeed the whole character of the society. By offering an alternative understanding of the nature and basis of parents' rights, my aim is primarily to discredit the prevalent view, thereby removing—at least at the level of theory—an obstacle to education policies that can achieve better, and fairer, outcomes for all our children.

Our society currently gets parents' rights not just marginally but massively

wrong. We have, of course, moved well beyond the classical Roman view that a child was the father's property and could be killed at his behest, but much of our thinking remains "proprietarian". We accord parents rights over their children as if children are quasi-property—as if they *belong* to their parents in some sense. In many countries, parents who wish to raise their children in ways inimical to their developing the capacity for autonomy are free to "school" them at home, thereby avoiding almost all regulation, or to send them to private schools which, though regulated to some extent, can in practice reinforce the home culture so thoroughly that it becomes very hard for children to gain critical distance. But that is only the far end of the spectrum. Many readers who share the liberal commitment to autonomy and object to that kind of upbringing nonetheless see no problem with parents' subjecting their children to the parents' own views—religious or otherwise—in ways that exceed the proper limits of the parental role, as I understand it. Parents' rights need more than incremental revision; they have to be fundamentally reconceived.

The article proceeds in three sections. Section one presents the familial relationship goods account of parents' rights. Section two explores the implications of that account for questions about the right to raise one's child as a member of one's religion. Section three focuses on the issue of religious schooling.

FAMILIAL RELATIONSHIP GOODS AND PARENTS' RIGHTS

To understand what rights parents should have over the children they parent, we have to start with what may seem like an odd question: why should children be raised by parents at all? The biological sense of "parent"—parent as procreator—is so common that it is natural to hear that question as asking why biological parents should get to raise the children they have produced. That question is indeed unsettling, but I mean to address a more fundamental issue. Properly to address the question of parents' rights we need to take a step further back and consider the reasons for wanting children to be raised in families, by parents—whether biological *or* adoptive—in the first place. Children's upbringing could be handed over to state-run quasi-orphanages. Doubtless readers will baulk at that suggestion, but other forms of collective or communal child-raising, such as the kibbutz, are less dystopian. What, if anything, would be lost if we were to get rid of the family and go with these alternatives? Only with a clear view of what is so valuable about the family, and the parent-

child relationship in particular, can we think systematically about what rights parents need to have for that value to be realized.

Parent-child relationships make possible distinctive and weighty goods in people's lives. I will argue that a very particular kind of relationship with one or more (but not too many) adults is valuable for children: it is essential both for their emotional, cognitive and moral development and it contributes to their wellbeing during childhood itself. Since children are—at least initially—dependent, vulnerable and involuntary participants in the process of being raised, and since childhood experiences have formative influence on our lives as a whole, children's interests matter most. So the case for the family depends primarily on parent-child relationships being good for children and the adults they become. But the wellbeing of adults is also affected in a different way by how children are raised, and many have an interest in getting to play the role of parent. In the world of state-run quasi-orphanages, children would lack the kind of relationships with particular adults that they need both to flourish as children and to develop into flourishing adults, while adults would be deprived of the special—distinctive and weighty—goods that many achieve through parenting a child.

Let me start with children. Children's interests—the things that make their lives go well—can be categorized in various ways. They have current interests, which contribute to their wellbeing during their childhoods, but they also have developmental interests—interests in developing the physical, cognitive, emotional and moral capacities that will enable their lives to go well as adults. Raising children well is a matter of getting something like the right balance between these various considerations. Some of the things that children need could indeed be provided by impersonal state functionaries: healthy nutrition, adequate clothing and protection from physical danger presumably fall into that category. But one does not have to be an expert in psychology or child development to know that healthy emotional development depends on children forming deep attachments to particular adults who are emotionally attuned to them, whom they experience as loving them, as having a special duty of care towards them, and with whom they can enjoy long-term intimate relationships. More interestingly, perhaps, children also need to experience their attentive carers as their central disciplinary models. To learn and internalize self-control, empathy, deferred gratification, and other modes of self-regulation, the child needs to see these traits modeled in people with whom she identifies; for children, identification comes through love and admiration, which are themselves responses

to loving warmth in the carer (Gerhardt 2004). Healthy emotional development, in other words, depends on children experiencing intimate-yet-authoritative relationships with particular adults. That is the core of the child-centred case for parents and the family as the best way of raising children.

It is important, further, that those adults with authority over the child are experienced by her as acting at least somewhat spontaneously, as expressing their own individuality and sharing themselves with their children, and as having the discretion to act on their own judgments. Someone who, when deciding what to cook for supper, or what stories to read at bedtime, robotically executes the detailed instructions contained in an official state-approved child-raising manual will hardly be providing the kind of emotional responsiveness that tends to induce loving identification with the authority figure, nor herself experiencing the parent-child relationship as a source of joy and satisfaction in the way most helpful to the child's emotional development. Some degree of external direction will doubtless not spoil the relationship. Parents' administering medicines to their children according to doctors' instructions are likely to be experienced as acting on an entirely healthy loving motivation. And, for some parents, following a more extensive "instruction manual"—such as a religious text—may be precisely how they manifest and share their own sense of what matters with their children. In such cases, however, it is significant that the parent is acting on her own judgment rather than experiencing the manual as an external imposition.

But the importance of that kind of relationship goes far beyond the child's interest in emotional wellbeing. Emotional, cognitive and moral development are so intertwined that parent-child relationships play a crucial role in these other dimensions too. According to developmental psychologists, even basic mental processes like representational thinking, which is the precursor for symbolization and conceptual thought, and the capacity to imagine, which allows one to take the other's point of view, depend on internalization of the caregiving relationship. As Anne C. Dailey (2006, p.130) puts it: "the capacity for reasoned thinking represents a developmental line, or maturational sequence, beginning in the earliest physical interactions with an emotionally responsive caregiver and ending in a mature complex capacity to lead an independent, autonomous, self-directed life". The capacity for autonomy is complex partly in that it combines cognitive, emotional and moral aspects: the autonomous person can not only reflect on the options available to her, process information, and identify means to her ends; she can also trust and cooperate with others, defer gratification, and contain disruptive and destructive feelings. That complex capacity is best

fostered when children are raised in intimate-yet-authoritative relationships with particular adults; i.e. when they are raised in families, by parents.

What about adults? What ways of raising children would be best for them? That might seem like a trick question. After all, all adults started out as children, and the last two paragraphs were mainly about the kind of upbringing that would be good for children not in the sense of being good for them during their childhoods but in the developmental sense of being good for them as the adults they will become. One response to the question, then, not falling for the trick, would be: "Adults are just developed children; they are the same people! So the way of raising children that is best for adults must be the same as the way that best serves children's developmental interests." Which is what we have just been talking about.

That way of formulating the question is salutary. In highlighting the fundamental continuity between children and adults it reminds us that the issue of how children should be raised just is the question of how *people* should be raised and makes it less likely that we will misjudge the balance of interests between children and the adults who raise them. But that doesn't make it a trick question; there is indeed a residual issue about how different ways of organizing children's upbringing might be good or bad for people-as-adults. The kind of developmental interests appealed to in the previous paragraphs were quite general—and their very generality helps to explain their importance. But there remain questions about the specific ways in which childrearing arrangements might contribute to the well-being of adults, and whether that contribution might affect the overall judgment about how childrearing should be arranged. Suppose my story about why children need parents turns out to be false: robots can do the job just as well—maybe even a bit better—and it is proposed that we hand the task over to them. Parenting would be banned. Even though robot-raised people would suffer no other loss—and even if they enjoyed a gain in other ways—many would resist the proposal. Some might do so selfishly—just because it suited them to get to be a parent and the cost would be borne by others—but that need not be part of the argument. Looking at the issue impartially, one could reasonably think that parenting a child makes enough of a contribution to enough people's lives that our collectively retaining that option would be worth missing out on whatever other benefits were produced by the robot scenario.

Nearly everybody agrees that the adult interest in parenting is weighty enough to ground a right to be a parent, that we would be failing in our duties to one another if we denied people the opportunity to engage in that activity. And certainly many

people make great efforts to become parents, regard raising a child as one of their most important life projects, and sacrifice lots of other valued opportunities in the process. But adults become parents for many different reasons and there is considerable dispute about how best to understand the value of parenting and the basis of the right to be a parent (Overall 2012). Some point to the significance of raising children as a way of extending or continuing oneself into the future, passing on some aspects of oneself to a child; those who take this kind of view can disagree about the specific nature of the extension or continuity that is valuable — perhaps it is one's genes, perhaps one's property, perhaps one's religious identity (Reshef 2013). Others see raising a child primarily as a creative activity, or an opportunity for self-expression, a bit like an artist shaping a piece of marble into a sculpture (Page 1984, Macleod 2002). These different grounds for holding that there is a right *to* parent (i.e. the right to become a parent) will suggest different views about the rights *of* parents (i.e. the rights that parents have over their children)—including views about parents' rights to influence their children's values and beliefs.

The common problem with such accounts is that they make children means to their parents' ends; the child is regarded, and treated, as a vehicle through which parents can achieve their own purposes. True, the child may not only be a means. If the interest in developing autonomy is satisfied, then a parent may plausibly claim that she has treated her child also as an end. Nonetheless, there is something inappropriately self-serving about this kind of attempt to justify the claim to parent a child. Of course, what we are looking for is precisely a way in which parenting contributes to the well-being of the adults doing it, so some element of adult self-interest is unavoidable. But the interest in question must be distinctive and weighty enough to provide a plausible answer to the question of why adults should get to parent children even if robots would do a better job. There are many ways in which people can extend or continue themselves into the future, or express themselves creatively, without claiming the right to control another human being. And there are different ways in which they can enjoy fulfilling and intimate relationships with others, so blanket appeals to the value of intimate affective relationships (such as that offered by Schoemann 1980) cannot succeed either. In my view, what is special about parenting, and important enough to count for something in the balance when weighed against our other interests, is the parents' role as their children's fiduciary. The parent has a special duty to protect and promote the child's interests including the interest most children have in developing the capacity for autonomy and becoming someone who has no need of a

parent's special duty of care. The idea that parents have fiduciary duties toward their children is familiar from Locke (Locke 1689/1988). The additional claim here is that adults have a non-fiduciary interest in being able to play a fiduciary role; it is valuable for their children that they play it well, but it is also a distinctive source of their own flourishing that they play it.

Some elements in what is special about being a fiduciary for a child concern the fact that what we're talking about here is a *child*: relevant here are the distinctive properties and moral standing of the person for whom one is acting as fiduciary: her possessing the capacity to develop into an autonomous adult, her degree of vulnerability to one's responses and judgments, her involuntary dependence on one, her natural tendency to develop a deep attachment to one. Failing adequately to discharge your fiduciary duties to a child would be different from failing to discharge those owed to a client or patient, or even to an ageing parent, even if what was involved in fulfilling the duties were the same. But of course they are not the same. Other elements concern *what* it is that children need from their fiduciaries. As we have seen, they need a special kind of *relationship*—a relationship in which the adult offers love and authority, a complex and emotionally challenging combination of openness and restraint, of spontaneity and self-monitoring, of sharing and withholding. It's that kind of relationship that many adults have an interest in too.

Imagine a world in which human children didn't need much more looking after than guinea pigs, or Tamagotchi toys. Imagine that they could fully develop into autonomous, emotionally adjusted adults, and enjoy the intrinsic goods of childhood, with that kind and level of input from adults. Even in that hypothetical world, there would be *some* value to being the person responsible for ensuring that children's interests were met. But what's really valuable in the case of parenting is not being the fiduciary *per se* but having the kind of relationship that is, in fact, the kind that children need to develop into healthy adults. It's that kind of relationship which presents a distinctive challenge, and distinctive sources of fulfilment, which together give adults unique opportunities for flourishing.

Parents' rights, on this account, are precisely the rights that parents need in order to have the kind of relationship that justifies children being raised by parents—rather than robots, state functionaries or interchangeable members of a commune—in the first place. We can assess on a case by case basis whether an appeal to familial relationship goods justifies parents' claims to control—to exercise authority over—children by looking at the role those rights play in realizing familial relationship goods.

Roughly, familial relationship goods give us strong reason to grant parents the rights they require to fulfil the fiduciary role, to create or sustain the kind of intimate-and-authoritative relationship that children need and that is also valuable to the parent. The relationship goods approach helps us work out what room is necessary for the "free and flourishing internal life appropriate" to the family (Rawls 2001:165). Parents have the right to engage in those activities and interactions with their children that facilitate the realization of the extremely valuable goods that justify the family in the first place.

Parental claims to the right to do things to, with and for their children that cannot be justified by appeal to those goods may perhaps be defended in other ways; parents are not *only* parents and they may have other interests or prerogatives that can properly influence their dealings with their children. But those other considerations will not ground parents' rights as that category is understood here; they will not be rights that they have in virtue of being parents. As we will see, the question of whether such non- or extra-parental considerations mean that parents have the right to act on their religious views when deciding matters for their children, and in what ways, will be important when thinking about religious schooling.

This account of the nature and basis of parents' rights is deliberately quite general. The next section will consider its implications for the issue of parents' rights to shape their children's emerging beliefs and values, and of religious beliefs and values in particular. Before moving on, however, it may be helpful to highlight a few features of the general approach proposed so far. In my view these are attractive, but readers may suspect some sleight of hand in the way the various elements of the picture fit together, so it is better to have them out in the open.

First, the thrust of the approach is to start from children's interests and identify what it is that children need from adults. That starting point does much to generate the conclusion that parents' rights are just those rights that it is in children's interests for parents to have, and some may regard it as biased or prejudicial. Certainly it has profound and transformative implications for the way we think about familial relationships. But children's vulnerability, their involuntary subject to control by another person, and the far-reaching implications of how they are raised for their lives as a whole suggest that any approach that gives greater weight to the interests of parents is indefensible. As Shelley Burtt (2002, p.17) puts it: "authority over other human beings should extend only so far as making up the deficits that legitimate

their subordination... the way we think of children and their needs determines the sort of authority we think it is appropriate to exercise over them".

Second, the claim that the special value of parenting, for adults, consists in playing the fiduciary role—providing the kind of relationship that children need—is certainly controversial. Its effect is to change the picture of the relationship between parents and children in a way that massively reduces the scope for genuine conflicts of interest—and of rights—between the two. That may seem too good to be true. Of course, adults may want to be parents for a variety of reasons, and some may regard the proposed view about the distinctive value of parenthood as misidentifying what is at stake. Those who see their mission as populating the world with followers of a particular religious faith, or who view their children as means for them to express and realise their powers of creative self-expression, will think I neglect their true interests *qua parents*, and will leave greater scope for genuine conflicts between their own and their children's interests. But such alternative specifications of the value of parenting do not provide plausible answers to the question of why people should have the right to parent children even when others—whether robots, state functionaries or simply other parents—would do a better job.

Third, the claim that parents' rights are derivative of children's interests means, in effect, that the adult interest in being a parent—the basis of the right *to* parent—plays no further role in the argument. We will need to consider how their *other* interests may properly influence parents' relationships with their children, but from here on the adult interest in parenting drops out of the picture. My defence of a particular specification of that interest is important to the position as a whole, of course, because it challenges competing views that grant parents more extensive rights to shape their children's values. But the effect of that defence was precisely to direct attention to what children need from their parents, and what rights parents must have in order to give them what they need. That is where our attention will indeed be directed from here on.

Fourth, autonomy plays a central role in the account. It is important that children develop the capacity for autonomy and parent-child relationships with a particular character are important for its development. As their fiduciaries, parents are charged with the task of facilitating the process whereby their children become capable of making independent and reflective decisions about how they are to live their lives. That process begins with a mixture of affective connection and clear and consistent regulation—the "downloading" from the parent of the capacity to contain and

regulate her own desires and emotions—but as children begin to develop their own preferences and perspectives, it also requires parents to exercise the self-restraint that allows their children to begin to trust and act on their own judgments. That is challenging even for those parents who accept the importance of autonomy—it is hard to resist the temptation to use one's authoritative position paternalistically, to attempt to shape one's children's beliefs, values and choices according to one's own judgments about what it is to live well. But many reject that element of the fiduciary picture and conceive their role precisely as deploying their parental authority to guide their children towards (their own views about) how best to live. Here, as I have said, we hit bedrock disagreement: those who deny the importance of autonomy will reject all liberal views, including standard approaches that treat the facilitation of children's autonomy as an external constraint on parents. For them, my account—on which facilitating autonomy is internal to the parental role and helps to explain why there is a right to parent, even when others would do a better job—will only make matters worse.

PARENTS' RIGHTS, CHILDREN'S RELIGION

We can now explore what this view about the basis and nature of parents' rights means for their right to raise their children as members of a particular religion. Where other theorists see those rights as part of parents' own expressive liberty (Galston 2002, p.102) or as an implication of their own religious freedom as individuals (Fried 1976, p.152), or as deriving from their own interest in a relationship with their children based on shared identity (Reshef 2013, p.132) the approach proposed here frames the issue very differently. Suppose that an intimate-but-authoritative relationship is indeed important for children's development, including the development of their autonomy, and that parents' rights should be derived entirely from the fiduciary aspect of the relationship. What are the implications for rights to control, or even to influence, the development of their children's religious beliefs and identity?

Before addressing that question, we should be clear that, on the liberal picture, there is a big difference between people's views about how they should live their own lives and their views about how others should be treated. The values that children need to acquire as part of their moral development—the liberal virtues such as tolerance, respect for others, and what Rawls (1962) calls "a sense of justice"—have a different status from the kind that individuals may choose to endorse as a matter of

private conscience, such as those attaching to full-blown religious systems or ethical doctrines. To put it crudely, it is much more important that people get to form and act on their own views about the former than about the latter: the fact that we owe duties to others—that we are morally *required* to treat them in certain ways—means that people's views about how to treat others do not demand the same kind of respect as their judgments about how to live their own lives more generally. This gives parents a very different role in the formation of their children's moral views from that which is appropriate in the case of their religious beliefs. I said earlier that the parent-child relationship itself is justified partly because of the role that parents play in children's moral development; the important point here is that some deliberate shaping of their children's emerging values is itself part of that job. There will be other influences, of course, but instilling in children the virtue of honesty, the ability to distinguish right from wrong, and the sense that others are moral equals irrespective of their skin colour, religion, or gender, is a task primarily charged to parents and part of their fiduciary duty to their children (as well as being in the interest of third parties).

Returning to the particular issue of religion, parents' role is to serve as loving authorities—to exercise the kind of discretion and induce the kind of identification that children need for their own development, including their moral development—while helping their children acquire the capacity to judge religious matters for themselves. That is a challenging job description, especially for parents with deep religious convictions (including atheism). To develop the kind of attachment that children need, they must gradually get to know their parents—who they are, what they care about—and parents must be free to be spontaneous, and to share themselves with their children. To conceal their religious views, or not to allow those views in any way to inform their exercise of parental authority, would require a kind of withholding, and a degree of self-monitoring, that is inimical to an intimate loving relationship. Parents whose religious convictions require them to say prayers before eating, for example, or prescribe and proscribe particular kinds of food, must have some discretion to act on those beliefs in the way they conduct family life. Apart from anything else, loving parents are naturally motivated to benefit their children, and religious views affect what is regarded as "benefit". A parent who believes that her child will be condemned to eternal damnation unless she comes to endorse a particular doctrine cannot entirely bracket that belief in her relationship with the child without depriving the child of at least some of those very expressions of parental love that the child needs. But precisely because, when all goes well, children love and identify with their

parents—want to please them, want to be like them—that same relationship inevitably threatens the autonomy that it is also the parent's task to develop. So not only must children be exposed to other beliefs at appropriate ages, and in such a way that other ways of life become genuine options for them, but also those very processes of attachment and identification with the parent that are needed on developmental grounds have to be carefully managed so that those alternatives are not unthinkable, or adoptable only at excessive emotional cost.

On the proposed account of parents' rights, then, parents must have the right to act in ways that will tend to influence their children's religious views. In a healthy parent-child relationship, a parent's religious views are bound to shape those of her children. Some influence will arise simply as a result of parents being themselves in their relationships with their children, and exercising in a more or less unreflective and personal way their sphere of discretion over the particular ways in which they interact with them. Some will arise from parents' acting on their natural motivation to help their children's lives go better. A loving parent who thinks that her child will benefit if she loves God is bound to find herself nudging her in that direction simply because of her automatic and natural tendency to relate to her child in ways that she thinks will be good for her. The same applies to the loving parent who decries belief in God as the opiate of the masses, or regards it as an irrational projection of human psychological needs. Parents will naturally tend to denigrate, and unthinkingly steer their children away from, what they take to be bad influences. The idea that parents should constantly monitor themselves in order to screen out anything that might influence their children's views about religion would risk distancing them, creating artifice in the relationship, and depriving their children of the possibility of the warm, spontaneous, genuine relationship that they need. Most of us cannot simultaneously shield our children from those values and commitments that are central to our identities and spontaneously share ourselves with them in the way that the healthy parent-child relationship demands.

I have emphasized the significance of unmonitored discretion and spontaneity, but what does the account imply for parents' right deliberately to act in ways likely to influence to their children's religious beliefs? To answer that we must distinguish two things that might be going on under that description. On the one hand, a parent might be deliberately directing her child towards a particular faith—or towards a rejection of any—in the sense that she intends that the child come to endorse her own view. That, of course, is a right that parents conventionally claim—and that they are

everywhere granted. On the other hand, the parent may simply be trying to give her child the right kind of relationship. Even if she does not herself consciously frame things in such terms, her aim, in this second case, is to provide her child with the "familial relationship goods" that, if I am right, explain why she has any rights at all over the child. Here the influencing of her children's religious views, though deliberate, is ultimately motivated by a concern that her relationship with the child should go well.

Parents who see themselves as justified in deliberately guiding their children towards their own religious views, in the first sense, have misunderstood their role and the moral character of the parent-child relationship. If the relationship goods approach is right, children are of course helping parents to realize familial relationship goods in their lives, and their parents may have chosen to be parents for that very reason. Still, that approach gives parents no permission to treat their children as means by which they may permissibly seek to realize their own values in other ways, or to pursue their own, controversial, conception of how one should live. Asked "Why should adults get to exercise authority over children?", we are not tempted to answer: "So that they can direct children towards their preferred religious doctrine". Typically, then, when parents deliberately direct their children on religious matters, they are deploying their power improperly. This is certainly true of those parents who try to direct their children's religious views without regard to the development of their children's autonomy—i.e. their capacity to judge such matters for themselves. But it can be true also of parents who do take their children's moral separateness seriously in that way. Recall Burtt's (2002:17) nice articulation of the principle at stake: "authority over other human beings should extend only so far as making up the deficits that legitimate their subordination". Even where their concern to guide their children towards the true path is motivated entirely by a loving concern for their children's wellbeing, it is not their proper role, as parents, to exercise parental authority in that way. This is consistent with the view that parents may be distinctively well placed to discern their children's particular developing talents and emerging interests, and on that basis may legitimately exercise their authority in ways conducive to their wellbeing (Richards 2016).

But parents may deliberately introduce their children to their religious views, or their views about religion, in ways that can be understood as part of the sharing with, or revealing to, the child that is itself conducive to the kind of relationship I have described. Here there need be no intention that the child should come to endorse the views in question. I have emphasized the extent to which parents' revealing and

sharing their religious commitments would naturally result from the spontaneous, unmonitored, quality of the relationship, but a parent may be right to think that the relationship will go better if she also acts in a considered way to show her child who she is and what she cares about. When a Christian parent takes his daughter to church, that is not usually an unthinking and automatic sharing of self between parent and child. It is more likely a deliberate decision to introduce the child to a world of belief and practice that the parent judges valuable. To be sure, that introduction is typically motivated by the desire that the child will come to share that judgment, but it need not be. The same applies to deliberate decisions to say prayers at certain times, such as before meals. The parent might require her child to engage in such practices as a way of introducing the child to the parent's religious views, believing that her relationship with the child will be closer—the child will know her parent better—if the child experiences those practices for herself.

This justification extends to deliberate and considered parental exercises of authority the same claim that underpinned the case for spontaneous, unmonitored interactions between parent and child. The thought is that, for the relationship properly to serve children, there needs to be a kind of emotional bond and mutual identification that is incompatible with the requirement that parents withhold and conceal their own views on religious matters. To confine parents to the spontaneous expression of those views—to deny them the freedom deliberately to reveal their views to their children, including by means that involve controlling their children's behavior, such as taking them to church—would be to do children a disservice.

Perhaps paradoxically, the possibility of children's rejecting their parents' religious commitments is another reason why exposure—including deliberate exposure—to those commitments can be in children's interests. Everything in the last few paragraphs has assumed that, whatever else they are doing to and with their children, parents are not obstructing the development of their children's autonomy. Autonomous individuals can make up their own minds about what to believe, and they may well end up believing different things from their parents. If we think not only about the developmental benefits of parent-child relationships but also about their value when people reach adulthood, it seems that, where the child *does* break from the parents' values, the parent-child relationship will probably be sustained in a more meaningful way, and has a better chance of being sustained, if child and parent are in a position at least to appreciate the other's point of view, to understand where the other is coming from. (For views that emphasize the value of familial relation-

ships' continuing into adulthood see Reshef (2013) and, especially, Ferracioli (2015).) In the child's case, that can only happen if the parent has indeed made sure that the child has a real appreciation of how she lives her life and how she sees the world.

This view about the permissibility of parents' deliberately introducing their children to their religious views when it is important for their relationship raises a number of complexities. One concerns how much of an "introduction" is really needed for the child to relate to her parent in the way that the account requires. One visit to a Church, temple, mosque or synagogue is hardly going to do the job, but it is implausible to regard this justification as permitting parents to require weekly visits for many years, or to demand that their children acquire a level of familiarity with the doctrine in the way that might justify requiring a high level of religious instruction. The thought is that children should have a sense of who their parents are, and what matters to them, not that they should develop an advanced understanding of the views to which their parents subscribe. The same applies to practices like praying. Even if it is permissible for parents to introduce their children to such a practice, that will not justify its becoming part of their daily routine, or at least not for long.

The example of praying raises a distinctive concern about the permissibility of requiring children themselves to engage in particular practices rather than merely observing their parents, and other adults, do so. One can imagine a parent maintaining that it is only by, say, actually praying to a divine being that one understands what it means to pray to that divine being, or to any divine being, and that without that experience a child will not really have been "introduced" to those things that matter to the parent. To lessen the oddity of that claim, consider that a parent who worships Beethoven is presumably permitted to take her child to a concert, and make her listen to the music, not just to observe others doing so. Of course, praying to a divine being seems to presuppose beliefs—such as that the divine being exists—of a kind that some regard as distinctively objectionable but the familial relationship goods account nonetheless has scope for that level and kind of deliberate introduction.

Third, a parent who exercises parental authority in a way that is likely to influence her child's religious views, albeit without any intention of doing so and motivated only by relationship considerations, may nonetheless *hope* that the exposure will result in the child's coming to endorse the parent's own views. It is demanding enough to expect a parent committed to particular religious views to respect her child's moral separateness not only by facilitating the development of her autonomy but also by abjuring any action intended to guide her towards those views. It would

be psychologically impossible for such a parent not even to wish that the child will autonomously come to share them. Indeed, a parent who did not even want her child to choose what, *ex hypothesi*, she regards as the best way to live would surely be failing to provide the kind of loving relationship the child needs.

We will soon move on from this general discussion of parents' rights to raise their children as members of a religion to the issue of schooling in particular. To lay the ground, a few more features of the proposed approach are worth bringing out. Most important is the point that parents constitute a standing threat to their children's independence, understood as their capacity to choose their own lives. Close, intimate-but-authoritative, relationships between parents and children are vital, but such relationships can easily be *too* close. Even those influences that arise spontaneously in a loving parent-child relationship can threaten autonomy; that threat is all the greater where influence arises as a result of the parent's deliberate decision to share herself with her child. In all cases, parents mindful of their duties to their children will take care not to engage in the kinds of revealing and sharing that will impede the development of the child's capacity to make her own judgments about whatever is being shared and revealed. What kinds will in fact do that partly depends, of course, on the child's age or stage of development. For young children, the emphasis can be on fostering the processes of identification and attachment. As they mature and become able to question their parents' views, the balance needs to shift toward facilitating the process of separation and individuation.

So far I have talked about "religious views" in the abstract, paying no attention to their content or the differences between them. But different religious doctrines can have very different implications for children's developing autonomy, and the extent to which parents may share their religious views with their children will vary accordingly. In a healthy parent-child relationship, children are naturally inclined to identify with their parents, and to seek their parents' approval. So it makes a difference what it is that parents do and do not approve. Other things equal, children whose parents reveal their belief that all who do not subscribe to their own religion are wicked, or condemned to eternal damnation, are likely to find it harder to break with their parents' religious views than those whose parents hold more moderate views. Given the variety in people's constitutions and characters, children who know that their parents regard homosexuality as wicked, or girls who learn that their parents see motherhood and homemaking as divinely ordained for women, may find it harder to live a life that is right for them than those whose parents take a more tolerant line. On

the other hand, where a religious doctrine itself puts great weight on the importance of people critically judging its validity for themselves and living according to their consciences, or simply regards what is at stake in such judgments as less weighty, there will be fewer obstacles to children's developing their own views on religious matters; it may even be positively encouraged.

My view about parental rights, then, is not "neutral" between different religious views. Indeed, those who reject the claim that parents are under a fiduciary duty to facilitate their children's autonomy will already have found that conception of the parental role to be biased against religious doctrines that deny the importance of autonomy. So it is no surprise that the view permits parents whose religious views themselves endorse liberal values to share their views with their children in ways that may be impermissible for those who do not. This is not an embarrassment—but it does point to a paradox. On my account, it is parents whose religious convictions do not put much, or any, weight on autonomy who must be most careful about sharing those convictions with children—for the sake of their children's autonomy. While the argument is indeed unlikely to have much motivational traction with such parents—since they will simply reject the initial account of their parental duties—that is no objection. Nor is the fact that my view yields differential implications for believers in different religions. Both simply show how much rests on the validity of that account.

But what about parents whose religious convictions are such that it is simply psychologically impossible for them to have the kind of relationship their children need without exceeding the constraints on the exercise of parental authority that I have argued for? Consider someone who is convinced that her child will suffer eternal damnation, or merely that he will live a worthless life, unless he comes to endorse her own doctrine. Her spontaneous sharing and revealing of herself is bound to exert a level of emotional pressure that is inimical to the child's enjoying a genuinely "open future". And there may be no way for her to refrain from deliberately guiding him towards a doctrine the endorsement of which will have (she believes) such a huge impact on his wellbeing: there may be no gap, for her, between acting in ways that the child needs her to act if he is to feel loved, on the one hand, and at least nudging him towards a flourishing life, on the other. Here, it seems, there is no morally costless resolution to the conflict. Such a parent is unable to provide her child with the kind of loving relationship that the child needs without simultaneously threatening her autonomy and exceeding the proper limits on her parental authority in the process.

To be sure, in such cases we might *excuse* the parent's wrongful treatment of her children. To find oneself unable to give one's child the love he needs without failing fully to acknowledge his independent moral status is very different from simply treating him as a means to a greater good or as a vehicle for the pursuit of one's own preferences. To see this, and to differentiate between different kinds of failure, imagine the children of four kinds of religious parent. First, one whose parents, entirely unconcerned for his wellbeing or agency, see him only as a means for increasing the number of true believers in the world; second, one whose parents love him and care for his wellbeing, but, confident in their belief that they know what is best for him, show no concern at all for his autonomy; third, one whose parents, though mindful of their duty not to hamper his capacity for autonomy, have strong religious convictions of such a kind that, despite their best efforts, spontaneous family life makes it hard for him to develop and exercise it; fourth, one whose parents, while careful to ensure that he does develop the capacity for autonomy, find that their love for him sometimes takes the form of deliberately guiding him towards their own religious views.

Although, if my account is right, all four exceed the proper limits of the parental role, it seems clear that they do so to different, and decreasing, degrees. All these children have a complaint against their parents, but those complaints become progressively less severe. In the first case, there is a complete absence of concern for the child; in the second, a failure to recognize the importance of the child's being able to form and act on her own religious views. The third and fourth cases have a more subtle relation to my proposed account. In both, the parents are well motivated and are providing their child with the right kind of relationship—the problem is that, given their religious views, the only way they can do that either impedes the child's autonomy (third case) or involves a regrettable compromise between different aspects of the parental role (fourth case). In these two cases we can readily imagine the child forgiving or excusing his parents—after all, they were doing their best for him, given their convictions—and their misjudgments about their proper role were less serious. (See Cormier (2018) for the related thought that, where parents' deliberate shaping of children's values can be justified as necessary for the kind of relationship that children need to develop autonomy, children might retrospectively consent to it.)

I want to end by considering two objections to the proposed view of the rights that parents have to influence their children's religious views. Both worry that I go too far in prioritizing children's interests and do not give enough weight to parents', and

both will be relevant to the question of religious schooling. First, imagine a critic who says: "I'm willing to grant not only your suggestion that parents' rights are those that are needed to fulfil the parental role but also your account of what the parental role *is*. I'll even accept your view about what that means for parents' rights with respect to their children's religious upbringing. But parents are not *only* parents. As you said at the beginning, they are individuals with their own lives to lead. Surely there must be some scope for them to lead those lives in ways that suit them, and for those ways to affect their interactions with their children, even if they are not thereby serving their children's interests". The suggestion here is that a full account of how parents may treat their children must take account of *non*-parental rights, rather than relying entirely on an account of rights defined in terms of the parental role and its fiduciary responsibilities. Alternatively, suppose someone says: "I agree with you that parents' dealings with their children must be constrained by the duty to facilitate their children's autonomy and in other ways to provide children with the kind of relationship that serves their interests. But, as long as they meet those demanding conditions, I don't see why their rights with respect to their treatment of their children shouldn't *also* reflect their own views about what matters in life. Rather than merely "hoping" that her child will come to endorse her own views, surely a parent should be permitted deliberately to guide him towards them." The issue here is whether we should adopt a "strict" or "lax" interpretation of parents' rights. On the strict view, parents are limited to those exercises of authority that are demanded by children's interest in familial relationship goods; on the lax view, they have more discretion.

Although analytically distinct—one appeals to non-parental rights, the other adopts a lax interpretation of parents' rights themselves—these two objections make a similar point. Both deny that parents should be limited in their dealings with their children to those interactions that they need to engage in to fulfil the parental role and provide the requisite relationship goods; both hold that there is some space for them to act on their own preferences where doing so is *not* justified by their children's interests—as long they do not thereby fail to deliver what their children need from the relationship. Although more sympathetic to the former way of formulating the point—which leaves my proposed analysis of parents' rights intact—I will treat them together.

In my view, the general objection gets something right: parents' interactions with their children may permissibly sometimes reflect their own preferences. Not only in the spontaneous, unmonitored way discussed above, but also as a result of deliber-

ate considered decision. Parents are people too and it is reasonable for the shared life of the family to reflect their own enthusiasms and interests to some extent. This is partly because it is in *children's* interests that their parents are experienced as people with lives of their own. The familial relationship goods account itself emphasizes the value, to children, of parents' sharing themselves—who they are and what matters to them—with their children. But, even where these distinctively familial relationships are not at stake, i.e. where a parent *cannot* claim that a particular choice about how to exercise authority is serving her children's interests, she should be able to continue, at least to some extent, her own, independent, life, by, for example, taking her children with her on holiday to places she wants to see, or to visit friends of hers. This is so even though doing that kind of thing tends to influence, as it surely will, the values and beliefs her children will come to hold. It is in children's interests that their parents take them on holiday; at that level of description the exercise of authority does indeed comply with Burtt's (2002:17) claim that "authority over other human beings should extend only so far as making up the deficits that legitimate their subordination". But that principle is too strict if it is taken also to apply to the particular choice of destination, which—precisely because parents are adults with their own lives to lead—may properly reflect the parent's own interests and enthusiasms.

None of this, however, justifies the use of parental authority *deliberately* to guide or direct children towards particular religious views. They are, obviously, free to explain the merits of their preferred doctrines to other adults; in this and other ways they can live their religious lives as they see fit when it comes to those over whom they do not exercise authority and who are not captive audiences. But their authority over their children derives from children's interests in a relationship of a certain sort, not from their own interest in pursuing and promoting their own religious convictions. If they want to visit a holy place and their children's interests are served by turning the trip into a family outing, then they make take their children with them. In doing so, they are not exercising a distinctively parental right; they are pursuing their non-parental interests in a way that permissibly affects their children. And since those children had no say in the matter of who their parents are, and have no escape from subjection to parental authority, those non-parental interests may permissibly be pursued only where doing so is compatible with discharging their fiduciary duties.

RELIGIOUS SCHOOLS

Religious schools come in many shapes and sizes. They cater to children of different ages. Some are funded by the public purse, some rely on private resources. Some accept only children raised in a particular faith, others offer them preferential access, still others take no account of the religious background of their would-be students when choosing whom to educate. They vary in their purposes: some seek to direct their students towards a particular faith; others offer a non-directive and autonomy-promoting education that is nonetheless intended for those raised in a particular religious tradition and suffused by its ethos; still others aim to educate all children, without regard to their religious origins or destinations, albeit in a way that is somehow informed by a particular religious standpoint. These cross-cutting differences generate many distinct types of religious school. Contrast, for example, a publically funded school for children aged between 5 and 11 that, while mildly religious in its ethos, is equally available to all and makes no attempt to guide its students towards any particular faith with a privately funded school for children aged 13-18 that admits only those who identify as members of a particular religion and teaches that doctrine as truth. My account of parent's rights might mean that we are morally required to respect their freedom to choose of some of these types but not others.

In general terms, the implications of that account for issues concerning religious schooling are rather straightforward. Most obviously, the duty to ensure that their children develop the capacity for autonomy precludes forms of education—whether at school or in the home—that deny children the knowledge, skills, attitudes and dispositions needed for them to make and act on their own judgments about the variety of ways in which they might choose to live their lives. Children are wronged if they do not learn about a range of different views on religious matters. And they are wronged if, though informed about that range, alternative views are presented in ways that preclude their coming to see them as real, rather than merely hypothetical, options—whether because the alternatives are presented as unworthy in themselves or because of the excessive emotional and psychological cost of choosing them. This implication—which applies to private or independent schools just as much as to those funded by citizens collectively, and to schools propounding atheism just as much as to those promoting other religious views—is already enough to impugn a great deal of the schooling that is tolerated throughout the world.

Though widely rejected in practice, the state's duty to protect children's au-

tonomy is fairly uncontroversial among liberal political philosophers. True, by focusing on the fiduciary nature of the parental role—which includes the duty to help their children to become autonomous—and on the interest in playing that role as the basis of the right to be a parent in the first place, my view offers a distinctive frame. Where most theorists would see the state as restricting parents' rights for the sake of children's interests, I suggest a more integrated, less conflictual, way of conceptualizing the issues. But the implications of the familial relationship goods approach for religious schooling go beyond providing a new frame for a familiar conclusion. If I am right, parents do not have the right to send their children to schools that will direct them towards a particular religion, or away from all religions, even where those schools also succeed in providing the kind of autonomy-facilitating education that is demanded by the more conventional liberal position. The fact that one is a child's parent does not give one the authority deliberately to guide her towards one's own religious views even in the conduct of family life at home. It certainly doesn't justify sending her to a school for that purpose.

Might the familial relationship goods account of parents' rights offer alternative justifications for parents' decisions to educate their children in religious schools? In the previous section, I noted the difference between the spontaneous and deliberate mechanisms by which parents might influence their children's religious views. Clearly sending one's child to a particular kind of school cannot be regarded as the kind of unplanned, un-self-monitored, interaction that parents need to be free to engage in for family life to go well. Just as choosing elite private schooling differs from spontaneous helping with homework (Brighouse and Swift, p.142), so the proper concern to protect valuable familial interactions from counterproductive regulation or self-monitoring yields no support for religious schooling. I also suggested that, since parents are not only parents, it is permissible for them to pursue their own independent interests, at least to some extent, in ways that could be expected to exert that kind of effect. While it's true that participation in a school's activities, and other forms of association with co-believers facilitated by a shared school, might serve parent's own interest in pursuing their religious life, directing their children to attend such a school is different from, for example, taking them on holiday to visit a site of religious significance. In the latter, the parent is deliberately pursuing her own interests through her choice of the particular activity by which she is playing the fiduciary role. The former has no equivalent justification.

But I also considered various ways in which the proposed account might regard

deliberate decisions likely to influence their children's religious views as legitimate exercises of parental authority, so there remains a question about whether any of them apply to religious schooling. Before getting on to those, let me bring out one more general point about the relation between family and school. Where many see the school as an extension of the home, with parental authority naturally extending from home to school, the account I have proposed instead regards the school as a corrective to the home, a crucial safeguard against the risks that inevitably confront those engaging in the challenging task of parenting. The former view has no problem with, and may even prize, continuity between family and school; the latter sees discontinuity as valuable in assisting parents to discharge their fiduciary duties to their children.

Raising children to become autonomous adults is challenging, especially for parents with strong religious convictions. For their healthy emotional, moral and cognitive development, young children need to feel securely attached to, and to identify with, their parents. Yet attachment and identification themselves can easily hamper the development of children's capacity to make and act on their own judgments about who they are, what matters to them, and how they want to live their lives. Although the familial relationship goods account insists that parents should be mindful of the ways in which the conduct of family life may pose dangers to that development, it leaves room for spontaneous, un-self-monitored, familial interactions that have the potential to obstruct it even though they fall within the scope of parents' discretionary authority. And quite apart from these psychological developmental factors, even well-intentioned parents may simply be badly placed to provide their children with the requisite knowledge, skills attitudes and dispositions. Schools exist partly because parents cannot be expected to educate their children properly on their own—think about science, mathematics, humanities. The same applies to autonomy. It is through schooling that the state is most easily able to supply the raw materials needed for autonomy: through the curriculum children can experience intellectual and emotional encounters with ideas, values, and traditions that are different from, and sometimes conflict with, those they are raised with in the home. Perhaps more importantly, in a socially and culturally diverse school they can become acquainted with different ideas, values and traditions through the friendships they make and through intimate interactions with their friends' families. A culturally diverse teaching force can provide children with a range of adult role models who are unlike them and whom they can come to admire. A robust and well-designed extracurriculum can lead them to discover enthusiasms and interests that would never

have been stimulated by their home culture. Discontinuity is educationally valuable (Brighouse 2005).

Somewhat simplistically, then, the more a school takes on the task of promoting children's autonomy, the less parents need to worry about the autonomy-inhibiting effects of the ways in which, on my account, they may permissibly interact with their children. We might think of this as a division of labour between family/home and school. The former meets children's affective, emotional and psychological developmental needs through intimate-but-authoritative relationships with particular adults. The latter supplements and complements that familial contribution by widening children's horizons, by introducing them to perspectives different from those they are exposed to at home, and by teaching them to reflect critically on the choices available to them concerning how they are to live their lives.

The division of labour cannot be complete. However well they play their part, schools have only limited potential to counteract the threat that parents pose to their children's autonomy, so we should not think that an appropriately constituted school system could leave parents free to conduct family life along religious lines (Weinstock 2018). Parents can adopt strategies to immunize their children from the autonomy-facilitating lessons and experiences that the school provides. Those strategies may sometimes fail, but they will succeed often enough for parents' choices about how to respond to schools' attempts to promote critical reflection on the values they themselves hold to remain important. Even where parents make no deliberate attempts at immunization, the emotional pull of their parents' enthusiasms will be enough to prevent many children from responding to the schools' messages. This is especially likely if parents take the awareness that another institution is taking care of autonomy as giving them the freedom to be completely uninhibited in their promotion of—or even the non-directive revealing and sharing of—their own values. And because it is important that schools not damage healthy familial relationships, the autonomy-promoting role of schools itself places limits on what parents may teach children at home. Consider parents who, thinking themselves freed from the responsibility for promoting their child's autonomy by the presence of an autonomy-facilitating school, teach her that homosexuality, or apostasy, are sins punishable by eternal damnation. One can easily imagine that what the school would have to do to facilitate that child's autonomy would interfere with the familial relationship. The same applies to parents who are deeply hostile to anything other than atheism. We cannot relieve parents of the duty to participate conscientiously in developing their child's autonomy.

On the question of whether deliberate choices for religious schools might be justified by appeal to familial relationship goods, there are a number of different scenarios to consider. I argued, first, that a parent might be justified in sharing himself with, or revealing himself to, his child in ways that go beyond spontaneous informal interactions. He might permissibly take his child to his place of worship, for example, and he might even require her to experience—and not merely observe—some aspects of his religious practice. As far as schooling is concerned, this suggests a right at most to a school that will teach the child *about* her parents' religion. Whether that implies a school with a distinct religious ethos is far from clear: one could imagine a secular school system teaching children enough about their parents' various religious views that no supplementation was required. In some contexts, perhaps, this rationale might extend to sending one's child to Sunday school, or its equivalent in other faiths, but only for a limited period and again, and crucially, only where the faith is presented in non-directive terms. The point is to inform and educate the child about the parents' views—*ex hypothesi* in ways that the parent cannot do at home—not to guide her towards their endorsement. Where parents do indeed need to draw on this kind of ancillary provision, they should bear the cost privately, just as non-religious parents are expected to use their own resources when sharing their sporting or cultural enthusiasms with their children.

What are the schooling implications of cases where parents' religious views are such that they can only give their children the loving relationship they need if they are deliberately directing those children towards (their view of) the truth on religious matters? These are those parents for whom sharing, revealing and hoping are not enough. I suggested that they should be regarded as wronging their children—even if excusably so, and even if their children might reasonably forgive them—with the degree of wrong varying across different specifications of the case. The state cannot police familial interactions within the home without denying parents the discretion they need to discharge their relationship duties—so it has to permit parents the space to misuse their authority in that context—but, at least in principle, it can identify schools that are complicit in those wrongs. To ban religious schooling that guides children towards a particular religious view is to protect children from the illegitimate exercise of parental authority. This is so even where that schooling also provides them with the capacity for autonomy.

Readers may wonder whether my claim about the value of discontinuity applies to children at all ages. Given my focus on the developmental significance of parent-

child relationships and the obvious point that healthy development involves children's relationships with their parents changing over time, it may seem strange that I have felt able to ignore the difference between pre-school children and those at primary school, or between primary and secondary education. Even those who agree that a concern for autonomy rules out religious schooling at the secondary stage may think that it is permissible that children attend primary schools that immerse them in a particular religious tradition and teach them to reason in accordance with the ethical framework that it provides. One reason offered for that view is precisely that it is important, for the development of autonomy itself, that a young child's school experience be consonant with the primary culture that she receives at home. If they are to develop the kind of secure and stable identity that is a precondition of autonomy, young children need their schooling to reinforce the messages they get from their parents, not to undermine them (MacMullen 2007, ch.8).

Suppose this claim is right. It leaves the issue of primary schooling hostage to the way that parents choose to conduct life within the home. Parents can indeed instill in their young children such firm religious beliefs, and beliefs about issues of such high stakes (such as a fear of eternal damnation), that those children may suffer if they are informed about, never mind encouraged to consider the merits of, alternative views. The same can apply in the case of more moderate doctrines, if family life is so suffused with religious practice and observance that children experience the world entirely in its terms. Some of the harm may be specifically to the stability of their identity, and affect the development of autonomy that way, some may be to the familial relationship more generally. What this shows is the extent of the power that parents have over their children—which is why it matters so much that they not exceed its proper exercise. The familial relationship goods account of parents' rights permits parents to share and reveal their religious views but not the deliberate, let alone systematic, direction of children towards those views. We cannot—should not—police what goes on within the home, so public policy with respect to religious schooling will doubtless have a remedial aspect, adjusting itself to parents' illegitimate choices and doing the best for children in the circumstances. But if parents observe the proposed constraints, children will not need to be protected from different perspectives, even at the primary stage of education.

This last point takes us into questions about non-ideal circumstances. My argument has been pitched at a purely philosophical level, bracketing real-world considerations and enquiring into the nature of parents' rights over their children's religious

upbringing in a rather abstract and idealised manner. The focus has been almost entirely on what freedoms the state must, in principle, grant in that domain and on how parents may permissibly exercise those freedoms if granted. This question about how policy should respond to parents' exceeding their legitimate authority in the home is just one of many issues that demand attention once we factor in the various different ways that parents, or policies, may fall short of the prescribed ideals. For example, most of my arguments apply both to private schools and to those that are publicly funded; going back to basics means denying the public/private distinction its conventional status as an organizing principle to guide policy. But it remains an interesting and important question how the state sector should respond if, as is in fact the case—and as many believe it should be—the regulation of independent religious schools, or of homeschooling, is less strict than that of schools funded at taxpayers' expense. Just as parents' acting beyond the proper limits on their power over their children may warrant remedial special measures when it comes to primary schooling, so policies for the public sector may justifiably be affected by the other options that are available. It could be appropriate to adjust the regulation of state schools so as to accommodate parental preferences and thereby reduce parental exit into even less regulated private alternatives. Another example concerns the situation, where one particular religion—such as the Church of England—is granted privileged status within the state system. It may be wrong that Anglican parents can send their children to schools that endorse their preferred religion, but it may also be unfair that they can do so while members of other faiths cannot. Is it right, all things considered, to extend equally to all parents the option of misusing their parental authority, or is that a kind of "levelling down" that unjustifiably imposes a wrong on all children, rather than just on some of them, in the name of fairness?

I don't have space here to discuss such matters. (See Clayton et al (2018) for a philosophically informed but realistic proposal for a regulatory framework for religious schooling in England.) But one general point is too important to pass by. When I claim, for example, that parents have no right to send their children to a directive religious school, I mean specifically that the state would not be wronging parents if it prevented them from doing so: a policy banning all such schools would not violate parents' rights. I do *not* mean that, where such schools are in fact permitted, a parent would never be justified in sending her child to such a school: the options she faces may be such that she not only has the right to choose such a school but even that she has the duty to do so (Swift 2003). Schools vary in many different ways, and con-

scientious parents will take into account the full range of their obligations to their children. Sometimes parents might choose a religious school not for its religion but for its other properties.

Suppose, for example, that, of the options available to her, only a religious school is "good enough"—all the available non-religious schools are inadequate, in the sense that, in one way or another, parents who chose such a school would be failing to discharge their fiduciary duties to their children. Perhaps the other schools are dangerous, or rife with religious harassment, or perhaps the educational standards are so low that, given her other circumstances, the child does not have a realistic prospect of achieving self-respect or avoiding a life of poverty. (See Merry (2018) for the claim that Islamic schools' ability to protect their students from stigmatic harms justifies parents' choosing such schools despite the risk of indoctrinatory harms.) Perhaps, indeed, the alternative schools are less likely to facilitate children's autonomy than the religious option. After all, nothing in my argument has ruled out the possibility that even a directive religious school may be more conducive to the development of children's autonomy than the available non-religious alternatives. That will depend, in part, on the content of the religious views to which the child is being directed and the continuity, if any, between those views and the parents' own.

Many parents believe that they have a right to choose the best available school for their children; some think that they have a duty to do so. If an option is legally available, they are justified in taking it. That is not my claim. Nor, in my view, is their choice justified simply because they *believe* it is the only one that is "good enough". Many parents have implausible moral views about what counts as "good enough" and many have false beliefs about what the schools available to them are actually like. My point is simply that we should distinguish the question of whether the state would wrong parents if religious schools were banned, which is what I have been discussing here, from that of whether and when parents may be justified in using such a school where it is available. That is by no means to condone all those parents—whether religious or otherwise—who choose a religious school because they think it better than the alternatives.

CONCLUSION

By getting clear on what parents are for, and why exactly it is so valuable for many people that they get to be one, we put ourselves in a position to think coherent-

ly about the proper scope of parents' rights. If the familial relationship goods account presented here is correct, then there are many ways in which our current practice is too deferential to parents. Allowing them to raise their children as adherents of their their own religion is one such way. Where that is done at the expense of children's developing the various capacities needed to make and live by their own judgments on religious matters, the wrong we thereby permit to inflict on their children is grave indeed. But even where autonomy is not impeded, parents nonetheless exceed the proper limits of their authority if they use their power over their children deliberately to guide their children in their preferred direction. Children's interest in a particular kind of relationship with their parents means that we must leave plenty of room for interactions by which parents will, in fact, tend to influence their children's views about religious matters. The relationship itself, and the discretion it affords to parents, pose a standing threat to children's developing the requisite independence. By following the misguided view that policy must respect parents' preferences for their children's schooling, and so allowing schools to reinforce the religious messages they get from home, we are depriving those children of their key protection against that threat.

But it is not only their children who suffer from excessive deference to parents. As I suggested at the beginning, that deference also obstructs the legitimate pursuit of civic goals. My argument has focused entirely on parents' rights over, and duties to, their own children, but many similar policy conclusions would follow simply from giving proper weight to the interests of their fellow citizens. We all have a legitimate interest in how other people's children are raised; that interest extends beyond the concern that they be trustworthy, capable of trusting others, and able to limit their pursuit of self-interest for the sake of mutually beneficial cooperation. It matters also that they are equipped to play their role as democratic citizens in a liberal state, which requires a range of deliberative and moral capacities that are best developed through contact with, and understanding of, others raised in different religious traditions, and none. Schools are the obvious place for that contact and understanding to be accomplished.

One might reject my restrictive view of parents' rights, and grant parents more extensive authority over their children's religious education, while recognising that parents, *qua* citizens, also have civic duties that properly inform policy with respect to religious schooling. As far as that issue is concerned, my main aim has been to propose a different way of thinking about the relation between parenthood and citi-

zenship. Just as my approach offers an unusually integrated account of parents' and children's rights, so too it reduces the conflict between people's roles as parents and citizens. Rather than balancing parents' right to send their children to a religious school against the legitimate pursuit of civic goals, we should deny that they have that right in the first place.

Acknowledgements: This article develops—and in part reproduces—work done with Harry Brighouse (Brighouse and Swift 2014). I am grateful for improving suggestions from Matthew Clayton, Tom Douglas, Andrew Mason, two anonymous referees and members of UCL's Political Theory Workshop. Work on this article was supported by a Spencer Foundation grant for the project Faith Schools: Principles and Policies.

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