

## Child Liberationism and Legitimate Interference

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*Journal of Social Philosophy* 23 (1992): 5-15.

Child liberationism holds that children are entitled to more freedom from interference than we currently acknowledge socially or legally. It holds, for example, that "the law [should] grant and guarantee to the young the freedom that it now grants to adults to make certain kinds of choices, do certain kinds of things, and accept certain kinds of responsibilities. This means in turn that the law [should] take action against anyone who interferes with young people's rights to do such things".<sup>1</sup>

Call an agent minimally rational just in case he/she is capable of basic means-ends reasoning and of basic reflection on his/her beliefs and desires. No plausible form of child liberationism advocates full freedom from interference (i.e., as much as normal adults) for children that are not yet minimally rational. Some child liberationists do, however, advocate full freedom from interference for all minimally rational children -- typically those over age 5, say. Call this position radical child liberationism. Other child liberationists only advocate full freedom from interference for older children -- typically those over age 12, say. Call this position moderate child liberationism.<sup>2</sup>

For the sake of argument we shall grant that even young minimally rational children (e.g., 5 year olds) have full rights of non-interference. We shall argue that there are nonetheless a wide range of paternalistic practices regarding such children that are legitimate. In short, even granting the radical child liberationist thesis that young children have the same formal rights to freedom as competent adults, it does not follow that young children should enjoy the same effective freedom. Indeed, there are good reasons for holding that they should enjoy less freedom. Or so we shall

argue.

Our discussion is not, we hope, merely of interest to child liberationists. For our central point is to advocate a very weak paternalistic principle, and to show how it severs any possible tight connection between formal rights to freedom and effective freedom.

## 1. A Principle of Legitimate Interference

We proceed by introducing and illustrating a weakly paternalistic principle of legitimate interference that applies to persons who have full rights of non-interference. Our aim is to formulate as weak a principle as possible, so that it is likely to be endorsed by almost the entire range of moral theorists, from libertarians to utilitarians. Applying a variant of this principle to young children, we will show that there is room for significantly restricting their behaviour, even assuming that they have full rights of non-interference.

Consider the following case. Sally, a competent adult, is in a very noisy room. She is thirsty, and reaches for a glass of clear liquid, intending to quench her thirst by drinking it. Unknown to her however, the liquid is poison. Tom, knowing this, grabs Sally's hand as she reaches for the glass, and says to her "don't drink this, it's poison". Sally clearly doesn't hear Tom, and tries to wrench her hand loose so as to take the glass. Tom doesn't let go her hand; rather, he shouts this time "don't drink this, it's poison". Sally clearly does hear this, and Tom lets go her hand.

Let us think of Tom's having restrained Sally twice; once prior to his first warning, and a second time after that warning but prior to the second one. Now, we take it that both of Tom's

actions are permissible. (This is not to say, of course, that it is permissible for Tom to continue to restrain Sally after she has clearly heard the second warning). But why is this so?

It is easy enough to get out part of the story. Assuming that Sally is not suicidal, it is plausible to say that drinking the liquid is something that she predominantly -- i.e., strongly all things considered -- prefers not to do. For, she strongly prefers surviving to quenching her thirst; and since drinking the liquid will frustrate that stronger desire, all things considered Sally strongly prefers not drinking to drinking the liquid.

Might we conclude from this that it is permissible to interfere with a person's liberty to do X if doing X is something which the person predominantly prefers not to do? Not quite. For it is far from clear that one may keep a person from doing such an X indefinitely. Certainly, there are many theorists who will defend one's right to "go wrong", to do what one in fact prefers not to do. In particular, many such theorists will defend one's right to fail to be convinced that one doesn't really want to do what one believes one wants to do.

Bearing this in mind, and bearing in mind that we are seeking a very weak principle of legitimate interference, let us note that Sally not only fails to know that she is about to do what she prefers not to do; as well, it has not so much as occurred to her that that is so. It is, we submit, that fact that justifies Tom, under these circumstances, in keeping her from drinking the liquid until he has informed her that it is poison. Further, since he failed in his first attempt, it was permissible for him to further restrain Sally until (he had seen that) she had heard and understood what he had said.

Accordingly, we propose the following principle of legitimate paternalistic interference:

LEG: For any agent S who has a full right of non-interference concerning her doing X: it is permissible to interfere with her liberty to do X, if (1) doing X is something that S predominantly prefers not to do, and (2) there has not yet been enough time to inform S of the main reasons that doing X is something that she predominantly prefers not to do.<sup>3</sup>

Two points should be made before we proceed. The second condition concerns whether the agent has been informed of the relevant information -- not merely whether certain words have been uttered. Suppose, for example, that Sally did not understand English. We take it that Tom may permissibly have kept her from drinking the liquid until he was able to make her understand what he says. Thus, in (2) above, we have stipulated that there must be time enough for the person to be informed (though not necessarily convinced) of the main reasons that what he or she intends to do is something that he or she predominantly prefers not to do.

Second, it would be absurd to think that all that LEG legitimizes is restraining a person for the time it takes to say "you predominantly prefer not to do that". Rather, what it legitimizes is restraining a person for the time it takes to reveal critically important information relevant to her predominant preference not to do what she presently intends. In the present case, for instance, it legitimizes Tom's restraining Sally until he has been able to tell her that the glass contains poison.

On the other hand, it is implausible that a weak principle of legitimate interference would allow Tom to restrain Sally for, e.g., the time it takes to have the poison sent to a lab for a complete

analysis. More generally, it is unclear how much "critically important information" LEG should allow one to present -- and how persuasive a case one must be permitted to mount -- before one can no longer restrain others.

This matter is important for getting clear on the precise character of LEG. For our purposes, however, we need not refine the principle (along these lines) any further. The important point is that it is a very weak and widely endorsed paternalistic principle applicable to all agents having rights of non-interference.

## 2. Applying LEG to Children

Suppose, then, that young children have full rights of non-interference. One would think that LEG would apply in a straightforward way to children, and thus carve out a class of uncontroversially legitimate interferences into their lives. Things are not as simple as they seem, however.

LEG does apply in certain sorts of cases for children. For example, suppose that Connie, a five year old, is about to eat a substance which looks to be chocolate ice cream but which is in fact a kind of substance that will make her very sick to her stomach for a few days. Suppose further that Connie predominantly prefers not being sick to her stomach to eating any kind of ice cream (having been sick to her stomach more than once). Here LEG seems to fit nicely. It seems right to say that we may restrain Connie from eating the substance for the time it takes to tell her that it isn't chocolate ice cream (and to show her so, if the means are readily available), and LEG seems to justify this judgement.

Unfortunately, LEG does not apply in such a straightforward way to children in cases in which interference is, if anything, more clearly legitimate than in this last case. To see why, consider what it implies in a case in which it is our five year old, Connie, who is about to drink from a glass which contains (a highly potent) poison.

Given that drink the liquid will cause her to die, does Connie predominantly prefer not to drink the liquid? Though Connie may be acquainted with the word `death', and is able to say of death that it lasts forever and that others are sad when one dies, she has no understanding of the ordinary significance of dying.<sup>4</sup> Since that is so, we cannot say that Connie desires to avoid death. In the earlier case involving an adult, Sally's desire to avoid death was presupposed, and it was thus unproblematic to say of her that she strongly preferred not to drink the liquid. But young children do not have a developed concept of death, and so cannot be said to desire to avoid death.

If it is not the case that Connie desires to avoid death, there is no clear sense in which she would be doing something that she predominantly prefers not to do in drinking the poison. (Assume that the poison is quick acting, not unpleasant tasting, and would cause Connie no pain, etc.) Since this is so, and since LEG applies only to agents who intend to do things that they strongly prefer not to do, it appears that LEG, as we have thus far characterized it, does not legitimate our interfering with Connie's attempt to drink the poison.

Now, we take it as completely uncontroversial that interfering with Connie here is legitimate. Given that it is permissible to interfere for similar cases for competent adults, it is surely permissible to interfere for young children. We further assume that for radical liberationists the only available means for justifying such interference is a paternalistic principle in the spirit of LEG

(i.e., one that does not justify interference in cases where the agent is sufficiently aware of what is at issue). We conclude that radical liberationists need to accept some modification of LEG -- one that secures that legitimacy of interference in the clear cases. What we seek now, on liberationism's behalf, is an understanding of LEG necessary to accomplish this.

The following fact, we can agree, is a crucial one. When Connie does develop the conceptual resources to understand the significance of dying, she will then desire that she not die now. This is a desire that she will acquire at least by the time she is a mid-teenager, and which she will hold for (almost) the rest of her life. (We are assuming, of course, that Connie is an ordinary child, being raised in an ordinary home; we are assuming, therefore, that she has a reasonable prospect of leading at least a not unpleasant, not unrewarding life).

This fact about what Connie will want suggests the most plausible manner of understanding LEG so as to legitimate preventing her from drinking the poison. For, if liberationists allow LEG to range over the future desires of an agent, then LEG can be made to apply to Connie's case by taking into account her future desire to avoid death (i.e., the desire that she will later develop for her not dying in the situation being discussed).

In order for LEG to plausibly appeal to future desires, the agent to which LEG refers -- i.e., the being who has full rights of non-interference -- cannot be taken as fully represented by a person at any given stage of his life. Agents, that is to say, cannot be identified with person-stages. Rather, they must be taken to be identified with temporally extended persons. It will follow that the relevant set of desires of a given agent at a given time is some subset of the desires that he/she has, had, or might have in the future.

Recall, further, that LEG as we have formulated it (so as to keep it as weak as possible) applies only in cases where the interfering act is one that the agent predominantly prefers not to do. Now, given the understanding of agents as temporally extended, what should count as predominantly desiring that something be the case? A natural approach is to answer this question by appealing to those desires that the agent is likely to have fairly stably more or less no matter how the agent's life goes. More specifically, say that an agent predominantly desires X at a given time just in case, relative to the life paths then open to her, it is highly likely that any randomly chosen point on a randomly chosen path will be such that the desire is then strongly held. The idea is roughly that a desire counts as predominant at a given time just in case it is sufficiently pervasive over the then possible life paths. Obviously, much more needs to be said in order to fully flesh out an account of predominant desire for temporally extended agents. For our present purposes, however, the above should suffice.<sup>5</sup>

Let us refer to the version of LEG that takes agents to be temporally extended persons, and understands the notion of predominant desires as just indicated as LEG\*. LEG\* -- since it appeals to future desires -- is not as uncontroversial as LEG.<sup>6</sup> It bears emphasizing, however, that LEG\* is about as weak a principle of legitimate interference as liberationists could want. Without it (or some stronger principle), they cannot secure the legitimacy of interfering with acts like those of young Connie's unknowingly drinking the poison.

It is easy enough to see how LEG\* applies to Connie's case. Thinking of Connie as a temporally extended agent, we can say (given our assumptions about her) that the desire to avoid death is predominant for her. Thus Connie predominantly prefers avoiding death to drinking the



liquid. Indeed, since drinking the liquid would cause her death, we can say that Connie predominantly prefers not to drink the liquid.

The satisfaction of these conditions brings LEG\* into play. It authorizes us to interfere with her proposed act until we have informed her of the main reasons that the act is one that she predominantly prefers not to do. But Connie does not understand us when we say "that's poison". Connie will not understand us for years to come. LEG\* thus authorizes us to keep Connie from drinking the liquid until she is able to understand our warning; thus, for years to come.<sup>7</sup>

We are assuming that at least for cases involving death, serious maimings, etc., the radical liberationist must grant the legitimacy of restraining children for long periods of time -- even if they have full rights of non-interference. We have concluded that the basis for the legitimacy of this interference must be some principle like LEG\*. Now, although radical liberationists might not be very concerned with the legitimacy of interferences in the above serious harm cases, LEG\* also legitimizes, as we now argue, interferences with children that radical liberationists will find quite troubling. We will conclude that even if children are granted full rights of non-interference, this does not liberate them in anything like the way child liberationists have supposed.

### 3. The End of Liberation

Many desires other than the desire to avoid death are plausible candidates as predominant desires for given agents. For example, a child growing up in urban America is very likely to develop an abiding desire to live above the poverty line. And, assuming that she is much more likely to be able to do so at least in urban America if she can read than otherwise, and that for most

of her life she will know that that is so, we may ascribe to her the predominant desire to read. (Of course, this may not be so of a child growing up in Borneo.) Similar considerations will justify our ascribing to most children in urban America predominant desires to possess elementary mathematical, verbal, and social skills -- the very skills that public education systems are designed to develop. Let us call these, basic life skills.

Consider, now, the case of an eight year old, Bobby, who wishes to drop out of school. Is it permissible to force Bobby to go to school? Assume that Bobby has the predominant desire to develop the basic life skills. Assume further that Bobby is likely to develop these skills should he continue to go to school, and that he will not develop them (or, at least, is very likely not to develop them) if he does not go to school. Now, in assuming that the skills in question are objects of a predominant desire of Bobby's, and assuming that not going to school is not one of Bobby's predominant desires (though we can suppose that Bobby, at this person-stage, currently prefers not going to school to learning the skills), we have supposed -- so far as LEG\* is concerned -- that Bobby, qua temporally extended agent, predominantly prefers going to school to dropping out.

That, however, isn't enough to bring LEG\* into play in such a way as to legitimate our preventing Bobby from dropping out of school. For LEG\* also requires that we are unable to inform Bobby of the main reasons why he predominantly prefers going to school to dropping out. But why should we think this is so?

Well, imagine that we tell Bobby that he should not drop out of school because, if he were to drop out, he would not develop skills that will be very important to him later. What might he respond? He might claim that he will pick up the skills elsewhere. (We are assuming, remember,

that he wouldn't.) Or, he might claim (falsely, again) that he won't need them.

Bobby can say these things. But what is tolerably clear is that he -- if he is an average eight year-old -- has very little idea of what is actually at stake. Eight year-olds have little conception, for example, of how long a life is, of how much future there is (see Note 6). Without a fairly robust sense of the length of the future, and the concomitant sense of a stake they have in what they presently do, eight year-olds can reasonably be said not to have a grasp of the reasons underlying most of their predominant desires.

If we are right about this, then we may say that, in the relevant sense, Bobby fails to understand us when we tell him the main reasons that he predominantly prefers to stay in school now. Consequently, we may conclude that we may keep him from dropping out of school. At least we may do so if not going to school will ensure that Bobby will not develop the skills that he has a predominant desire to develop. But, given our further assumption that Bobby is unlikely to learn to read otherwise (e.g., his parents don't want to teach him), it is permissible, by LEG\*, to interfere with Bobby's plan to drop out of school. And we may continue to do so for some years to come.<sup>8</sup>

We conclude then, against radical liberationism, that even if Bobby has full rights of non-interference, others may legitimately interfere when he refuses to take instruction in the basic life skills.

More generally, we can say this: The sorts of freedoms that radical liberationists have thought they could purchase for young children by insisting that they have full rights of non-interference will not as a matter of fact be purchased by such means. For, young children often intend to do things that they, qua temporally extended agents, predominantly prefer not to do.

Indeed, many of the choices that radical liberationists have claimed that young children should have -- to drop out of school, to leave home, etc. -- are exactly of this sort. Since young children are unable to understand the reasons that (as temporally extended agents) they predominantly desire not to do these things, LEG\* -- a principle that liberationists must accept -- allows us to prevent young children from doing these acts. Awarding children full rights of non-interference does not have the result of freeing them to do what the radical liberationist wants.

#### 4. Conclusion

For the sake of argument we have assumed that all minimally rational children have full rights of non-interference. We have seen, however, that ascribing full rights of non-interference to young children does not have the effect of freeing them in the ways that radical liberationists have championed. It would, however, have the effect of freeing teenagers in the ways which moderate liberationists have sought.

To see this, note first that even young teenagers have the conceptual resources to understand what Bobby or Connie do not, viz., how long a future is. Of course, the ability to understand such things develops over time. Plausibly, however, that development begins around 13 (see Note 4), and has typically reached completion by 18. As this ability to understand develops, there will be increasingly fewer interferences legitimated by the "time to inform" clause of LEG\*, and thus progressively more of the decisions of teenagers will be such that interference with them will not be judged to be permissible by LEG\*.

In effect, then, LEG\* marks an important distinction between persons, based on what they

can and cannot understand. Most adults fall on one side of this distinction and most (relatively young) children fall on the other side of it. Consequently, the ascription of full rights of non-interference to all minimally rational agents leads to moderate -- not radical -- child liberationism.

In more general terms, our discussion illustrates the substantial distinction between formal freedom (e.g., possession of full rights of non-interference) and effective freedom (e.g., the moral impermissibility of interference by others). LEG and LEG\* are weak paternalistic principles that allow interference in order to inform the agent of critical information. Whether an agent is capable of understanding the critical information depends, of course, on his/her cognitive make-up. Consequently, formal freedom -- for children or anyone else -- does not guarantee effective freedom.<sup>9</sup>

## Notes

- 1.. J. Holt, Escape from Childhood (Harmondsworth, Penguin), 1974, pp 149-150. See also H. Cohen, Equal Rights For Children (Littlefield, Adams), 1980.
- 2.. John Holt, cited above, is a radical liberationist. C.A. Wringer, Children's Rights, A Philosophical Study, (Routledge & Kegan Paul, London, 1981) is a moderate.
- 3.. John Stuart Mill, in On Liberty, endorses a version of LEG (see Chapter V).
- 4.. Here, and below, we assume that quite young children are unable to understand claims that crucially require a conception of the length of one's future. We take it that at least part of what is required for such understanding is the ability to think at a fairly significant level of abstraction. It is uncontroversial that this ability begins to develop only at early adolescence. See, for example, Sternberg and Powell, "The Development of Intelligence" in Handbook of Child Psychology, Volume III, P. Mussen ed. (John Wiley and Sons, Inc.) 1983, especially pp. 403-404.
- 5.. A more careful formulation of the conditions for predominant desire for X would state that only points at which the agent is capable of desiring X are relevant. For example, points during an agent's infancy are not relevant for determining whether a desire to drive sports cars is predominant. In

In addition, a more careful formulation would address the issue of whether only of possible future desires, or also past desires, are relevant.

6.. One might suppose that, in allowing LEG\* to range over one's future desires, all sorts of objectionable interferences would thereby be legitimated. It might seem that it would justify interfering with adults' choices that do not suitably satisfy their future desires. This is not so, since LEG will justify interference only for as long as it takes to inform the agent of some relevant information about what will satisfy his/her future desires. For adults this will typically justify interference for only very brief periods (e.g., a few seconds). It is only because children cannot be suitably informed that the period of legitimate interference can be much longer.

7.. Applying LEG\* may well be extremely difficult in some cases. For it may not be obvious what sorts of desires the agent is likely to hold in the future. So it will be difficult to determine whether the agent strongly desires something in the relevant sense.

Even though this is so, it does not cast doubt on the validity of LEG\* itself. Further, there are cases where LEG\* is clearly applicable: Connie's is such a case; so, we trust, are the cases we consider below.

8.. It might be objected that, in making Bobby wait until he is old enough to understand our warning, we are doing the equivalent of making Sally

wait until the poison has been analyzed by a laboratory. This objection, however, misses the mark. The difficulty in Bobby's case is not that the relevant information is hard to get, but rather that Bobby cannot comprehend it. Thus, his case is quite unlike the case with which the objector would like to equate it.

9.. We've benefitted from the comments of Nathan Brett.