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NOT JUST FOR KIDS:
CHILDHOOD, EQUALITY AND THE LIMITS OF FREEDOM IN LIBERAL THEORY

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Abstract

Being labelled as a 'child' has important consequences on how others perceive and treat you. Clarifying what is meant when we talk about 'childhood,' and how this reflects on the way children are treated in practice, is a fundamental part of social justice. The standard in philosophy, law and every-day life is to conceptualise children as fundamentally different from adults. This assumption of difference leads to a system of justice in which children are treated in a particular way: they are provided with certain protections not guaranteed to the rest of the human community, and they have restricted their freedom to exercise certain fundamental rights, which are guaranteed to all others. In short: children are treated differently as subjects of social justice. If one stands on an assumption of equality and freedom as the grounding commitments of a liberal theory of justice, a strong argument is needed to respond to two pressing questions: (1) what makes children categorically different from other humans (in a morally relevant way)?; and (2) how does this assumption of difference legitimises the particular treatment of children which diverges from the assumption of equality and freedom?

This dissertation explores the most relevant ways in which 'childhood' has been conceptualised in contemporary liberal philosophy, and how particular conceptions of 'childhood' frame the way that children should be treated as a matter of justice. In this respect, this manuscript intends to give an answer to the question 'What kind of treatment does a liberal theory owe as a matter of justice to individuals rightfully categorised as 'children'?' The manuscript claims that there are certain constitutive features especially prominent during childhood (framed as vulnerabilities and inabilities) which can legitimise the need to grant differential rights and the exclusive restriction of certain freedoms to some individuals and not others. However, it should be the factual existence or absence of these features (and the correlate granting or restricting of rights) regardless of age what legitimises differential treatment; there is, thus, no principled reason for treating children differently from other individuals. Relying on an assumption of equality and freedom, to which all liberal theories of justice are committed, the manuscript argues that the current differential regime of childhood does a great injustice to children due to the arbitrary standards through which it judges what is owed to them. By shifting the justificatory focus of differential treatment from 'childhood' in itself to the features possessed by children which make them a particular case of justice, we can ensure what is owed to them as particularly vulnerable and unable beings, while guaranteeing their just treatment as equal moral and political agents.

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NOT JUST FOR KIDS

INTRODUCTION:
A World Unfit for Children

"We want a world fit for children"
The Children's Declaration at the Children's Forum 2002

Being labelled as a 'child' has important consequences on how others perceive and treat you. If you are labelled as a 'child' you will probably be judged as weaker, less rational, and maybe more curious, innocent, and imaginative; people will assume that you lack certain abilities, that you are incapable of making certain decisions, and that you behave in a particular manner. Being perceived as a 'child', in short, means being *seen as different*: as a variation from "standard" human beings (i.e. the adult human), with particular strengths, weaknesses, characteristics and behaviours. Being labelled as a 'child' implies, as well, being *treated differently*. You get to go to school while your parents work, you get crayons at restaurants, and you are not compelled to act as seriously as adults do. In addition, because others always know more than you do, and because they understand better than you what is in your interest, then they can tell you what to do and what not to do. While the adults in your household go to sleep at the time they want, watch TV for how long they want, and choose what clothes to wear and what food to eat, you do not have these choices available. They are allowed to say what you can or cannot do, while you are not allowed to do the same to them.

Being seen and treated as different from the "normal adult" due to your labelling as a 'child' is not only a feature of your day-to-day private life, but also affects how you are perceived and treated as a legal and political subject. If you are labelled as a 'child', the system of rights, restrictions and laws that regulate and delimit your life as a citizen also frame you as

a variation from the standard. You are perceived as too vulnerable to work, incapable of making political decisions, and lacking the foresight required to guide your own life. This perception leads to you being treated differently: you do not have to pay taxes, depending on your age you do not go to jail if you do something bad, and you don't have to take care of yourself to survive. You are endowed with certain privileges and protections not granted to the rest of the human population, while having denied rights that others are allowed to enforce and waive for themselves, being restricted from exercising many freedoms that your adult fellow-citizens can execute without coercion. Justice applies different parameters to your treatment, different principles to protect you, and different limits to your scope of freedom. Justice for children, in this sense, implies a different treatment than that owed to other human beings.

But, should this be so? Is it a necessary and trivial truth that children are so different from adults? Is it a necessary and trivial truth that the rules and principles that define justice for children should be different from that for adults? Is a unitary justice *for all* unachievable? The fact that different standards are used to evaluate and judge what is owed as a matter of justice to children and to adults can turn out to be a highly problematic diversion from our basic normative moral commitments. If one is committed to protecting the freedom of all, and to treating all as equals, then a very strong justification would be required in order to legitimise that those labelled as 'children' should not be treated as equals, nor should they have their freedoms protected in the same way as everyone else's. [1]

An evaluation of what justice requires which singles out a quarter of the human population as differing from the norm must be getting something wrong. This does not mean that the justification is inexistent (far from it). Due to our history in claiming equality and freedom for all while unjustly excluding certain groups based on their labelling as "different" (think of women or African-Americans), we may do good in carrying-out an in-depth critical evaluation of the assumed "differences" of children as well. The way that theories of justice conceptualise and treat those individuals labelled as 'children' may be perpetuating biased assumptions about their difference, which ends up legitimising unjust and discriminatory practices. Just as we condemn political ideologies, which single out the group of women or of the black-skinned as, deserving a different treatment from that owed to the group of men or the white-skinned, we must evaluate whether this condemnation should apply to our treatment of the children group as well.

The fact that a large part of the human population is treated differently merely based on

[1] Theories of justice committed to the dual normative principles of equality and freedom will be labelled very broadly in this manuscript as *liberal* theories. Liberalism, in this respect, will be understood here as the very ample family of contemporary theories of justice committed to preserving freedom and equality as their normative objectives.

their ascription as 'children' poses a very difficult question to theories of justice committed to equality and freedom. Namely, how can a theory of justice, which is normatively grounded on equality and freedom, can legitimise the treatment of part of its citizens as both unequal and unfree? This manuscript intends to explore what is in the concept of 'childhood', how it has been interpreted and used in contemporary theories of justice for children, and how it translates into the political practice of differential treatment for those categorised under its heading. By doing this, it aims to provide a stronger conceptual and principled groundwork for further studies of justice for children. It intends to overcome many of the problems that affect the state of the art in the topic, particularly those related to the lack of compliance between the general normative commitments to freedom and equality, and the differential treatment that is given to children.

Section 1 in this introduction offers a brief overview of the main building blocks and milestones to the study of childhood in political philosophy. Section 2 presents the fundamental hypothesis that pervades the research carried out in this manuscript, and the main objectives that it intends to achieve. Section 3 introduces the method used to reach these research objectives, and Section 4 outlines the overall structure of the book.

1. Studying Childhood

A brief historical overview of childhood as a topic of philosophical reflection is in order. This historical overview aims to locate the reader who is not well versed in studies of childhood in the tradition that frames this manuscript.

Although not in a rigorous manner, children are a recurring subject in the philosophical tradition. Childhood has been used to explore the inner nature of the human being; as an example of human behaviour in "primitive" societies; and as a source of information for understanding our creation of values, our acquisition of knowledge, and our socialisation mechanisms. Children (and their relationship with their parents) were also used as a comparative devise for understanding political authority and the relation between citizens and the state. However, it was not until the European Enlightenment, especially with Locke's work on education, and Rousseau's *Émile*, that childhood started being studied consistently for what it is in itself, rather than as an example for other philosophical questions. How we understand 'childhood', what is owed to children, and, how they should be treated, reared and educated, became relevant issues for philosophical reflection. The twentieth century brought into being the philosophy of education as a stable discipline, and the emancipatory movements in the 1960s and 1970s gave rise to critical political, educational and sociological theories of childhood. Later decades have made childhood a fundamental subject in political theory and practice, with documents such as the Convention on the Rights of the Child

(CRC) grounding our contemporary understanding of who children are, and what they are owed as a matter of justice.

1.1. What is a Liberal Theory of Justice?

Before introducing my subject of analysis, I wish to locate the reader in the basic normative assumptions upon which the manuscript is grounded. This research is located within the liberal tradition of philosophical theories of justice. Its aim, in this respect, is to explore the concept of 'childhood' and its socio-political ramifications *within the liberal tradition*. What does it mean for a theory to be grounded on the liberal tradition? It means that it follows a dual normative commitment to protect both equality and freedom through its promotion of a principle of *basic equality* ('equal treatment for alike circumstances'), and a principle of *basic liberty* ('the burden of proof is on the restriction or limitation of freedom, rather than the opposite'). Basic equality commits a liberal theory to ensure that every individual is respected as an equal moral being, and treated accordingly. Basic liberty commits a liberal to stand on a presumption on the side of freedom when deliberating over the legitimate treatment of the individual; this means that any restriction of freedom bears the burden to justify why it diverges from the standard assumption that individuals should be allowed to be free. Basic equality and basic liberty stand as the two grounding assumptions that structure the normative possibilities of a liberal theory of justice: a liberal theory must assume individuals as equals, and only treat them differently if equality requires it; and it must assume individuals as free, having the burden to prove the justifiability of particular restrictions on freedom. These two normative commitments, in tandem, will be referred to as the principle of *basic liberal equality*; a presumption on the side of freedom, and an assumption of equal treatment and respect to all individuals.[2] In this respect, studying justice for children from a liberal perspective implies, very briefly, a commitment to explore: first, the ways in which our understandings of childhood comply with the principle of basic liberal equality; and, second, the mechanisms through which this principle should accommodate children (and their difference) within its prescriptions.

1.2. Children in Modern Political Thought

Modern theories of justice suffered greatly in accommodating children within its prescriptions. The traits and behaviours that allow individuals to be governed by principles of justice were considered to be beyond children's reach. It was assumed that all subjects had

[2] I will not get into the long-standing debates present in the literature regarding the complete meaning and implications of each of these principles. I assume that the partial and open definition given here is one with which most (if not all) liberal egalitarians would agree.

roughly equal physical and mental abilities; that rationality and cooperation are the sources that allow stable political systems to function; and that the act of consent to an authority is that which grants legitimacy to a political power. These were considered as fundamental conditions for the functioning of a political system, but foreign to a child's powers and abilities. If equality, rationality, cooperative behaviour and consent are necessary for being a part of a system of justice, what to do with children, who do not possess these features and powers?

The standard solution in the Modern tradition was to make children an exception to the rule. If a theory of justice is perfect, and children do not fit into it, then children should not be part of the theory. Thomas Hobbes, the father of social contract theory, for example, argued that children's similarities to brute beasts, due to their incapacities to consent, legitimised their exclusion from being treated as subjects of law and justice (Hobbes 1651: II.26.8). They should be considered as under "absolute subjection" to their guardians, and the latter had full authority over their lives (even having the freedom to kill them) (Hobbes 1640: 23.8).[3] Later, philosophers such as Immanuel Kant or John Stuart Mill, took a similar (while not so radical) approach to Hobbes'. While Kant considered children's moral status as dubious, questioning the possibility of considering them as full moral beings with rights (see Zweig 1998), Mill argued that children bearing the same moral and political treatment as adults would actually harm children, thus, it was in their benefit to have their position as political agents restricted (Mill 1859: Ch. XVIII).[4]

Two philosophers are considered the first to address directly the issues that arise from including children in theories of justice: John Locke and Jean-Jacques Rousseau. Locke's *Treatise on Education* offered the first systematic analysis of what is owed to children, introducing the complexities of assessing their moral and political treatment due to their potential to become full liberal citizen, while still lacking the abilities required to achieve this state (Locke 1693).[5] Rousseau's *Émile* (1762) introduced an account of justice for children that focused on who they are in the present, and what they are entitled to *as children*, instead of looking them only as future-citizens. Locke and Rousseau's contributions to the philosophical study of childhood still ground much of the contemporary debate on the topic. The questions of how to define what a child is, what role education and rearing should play

[3] For a thorough analysis of the position of children in Hobbes' political theory, and its implications for the whole contractarian political project, see King (1998).

[4] There are problematic inconsistencies in Mill's position on children, which make a straightforward assessment difficult. While his scholarly work tends to justify a strictly authoritarian regime for children, his newspaper articles and public opinion pieces defended a less restrictive and more respectful treatment of children (see on this, Turner 1998).

[5] For a thorough analysis of Locke's inclusion of children in theories of justice, and the limitations that he encounters see Archard (1998; 2004: Ch. 1).

in our understanding of justice for children, and the particular protections and freedoms that must be ensured to them, are issues thoroughly discussed by both Locke and Rousseau, and their insights frame how contemporary theorists approach the topic of childhood.

Locke and Rousseau spent more time reflecting and explaining how children could (partially) fit in liberal political theory than all of their predecessors and many of their contemporaries. However, the complexities of including children within theories of justice were still unresolved. Locke maintained his focus on building full adult citizens, thus, his account of childhood only captured the future inclusion of children in a theory of justice (when they are no longer children). In addition, Rousseau's own account of childhood lacked universality; his conceptions of justice for children was exclusively accessible to the wealthy and powerful, and it excluded girl children from his theory.

1.3. Liberating Children

The turn to the twentieth century came with an ample production of scientific research on childhood, opening the scope of sources from which children could be studied from a perspective of justice. Three main, relatively sequenced, disciplines were responsible for this: the exponential growth of pedagogical theory and philosophy of education during the first decades of the twentieth century; the birth of cognitive-developmental psychology in the 1930s; and the rise of social constructivism and critical theory (feminism, liberationist pedagogy and sociology) in the 1960s and 1970s.

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

During the 1930s, the study of child development, and cognitive and moral psychological theories opened new routes for understanding childhood through the empirical analysis of children's acquisition of basic human functions, such as language, social behaviour, and rational agency. Jean Piaget's work on the stages of cognitive development during childhood

(Piaget 1932), and Lawrence Kohlberg's reaffirmation of Piaget's discoveries with his research on moral development (Kohlberg 1984), where the roots for a revival of the philosophical interest on children beyond its pedagogical implications, to their gradual inclusion into political theory.

Social constructivism and its revision of our understanding of the source of concepts and historical narratives reverberated into discussions about childhood. The idea that childhood and its characteristics were "obvious" and "trivial truths" was questioned by historians such as Philippe Áries (1962), who argued that the concept of 'childhood' in itself was a social invention of the Enlightenment, and that prior to that, the young were seen and treated in the same way as everyone else. This pluralisation of childhood (throughout time) was reinforced by the sociological research on the varieties of childhood across space; different cultures and rearing traditions led to varied understandings of what childhood was. This empirical research, mixed with rising neo-Marxist theory and the emancipatory political activism of feminism and the civil rights movement, led to a revision of our assumptions of who children were, and a consideration of their oppressed condition in their social and political world. Pedagogical theorists such as Ivan Illich (1970) and Paulo Freire (1970), for example, used this material to defend a conception of education liberated from dominating and oppressive economic and political powers. Political and social theorists, such as Shulamith Firestone (1970), Richard Farson (1974) and John Holt (1974), pressed for the need to include children in the emancipation project of feminists and race activists from adult white males, by ensuring them equal entitlement to all rights possessed by the adult population.

With the twentieth century in its final quarter, studies of childhood had not only grown in number but in their sources of information. No longer were armchair philosophers looking at one child and extrapolating their encounters into universal prescriptions; rather, schoolteachers, psychologists, and sociologists were analysing children with a scientific method, thus allowing for a more rigorous, detailed and nuanced understanding of what childhood is.

1.4. The CRC and a New Liberal Standard

Even if not a part of academia, the International Convention on the Rights of the Child (CRC) (UN GA 1989) can be considered as an important contribution to the studies of childhood in the late twentieth century. There are three reasons for this to be so. First, the CRC was a clear statement about the recognition of children as political beings entitled to be treated as equal members of society. Second, its standing as the most widely ratified Convention in the UN family (only the United States has not ratified it) meant that a global consensus existed on the just treatment of children. Finally, the CRC made conscientious use

of the plural sources of information acquired through the twentieth century (psychology, sociology, pedagogy and political theory) in order to respond to the pressing questions that troubled research on childhood, and to the inclusion of children into the liberal political project. The CRC not only defined the guidelines that should ground justice for children in the international arena, but it did so enshrining children as agents entitled to equal treatment, and to the respect owed to beings with moral, social and political status. The CRC neither defended the absolute passivity of children (as Modern philosophers did), nor did it argue for the full emancipation of children from adult authorities (as many liberationists in the 1970s defended). It focused on the developing nature of the child, and on how her weaknesses and limitations related to her "evolving capacities" in order to establish a system in which they are protected but free.[6]

With the CRC as a guiding lighthouse, the liberal philosophical question regarding how to accommodate children within theories of justice revived. Theorists such as David Archard, Samantha Brennan, Harry Brighouse, Gareth B. Matthews, Laura Purdy and Tamar Schapiro (among many others), retook the questions raised during the Enlightenment, and embarked on the task to overcome the tension between childhood and liberal principles of justice. The accumulative knowledge of their work on childhood, education and liberal political theory (together with that of other prominent theorists during the last two decades; Anca Gheaus, Colin Macleod, Amy Mullin and Adam Swift) is what can be labelled as the Standard Liberal view.[7] Very briefly, it claims the need to include children within theories of justice through a cautious balancing of their interests as vulnerable and dependent beings, and their interests as developing autonomous individuals. The Standard Liberal view denies the need to consider children as an exception to the principles of liberal justice, and thoroughly explores the ways whereby they can be included in theories of justice while accommodating their differences.

1.5. Justice for Children

From the European Enlightment until today, philosophers, political theorists and pedagogues (among many others) have attempted to accommodate the particularities of childhood in the general normative commitments that guides our moral and political world. 'What is a child?' and 'what is owed to children?' are fundamental questions that theories of justice have tried to answer throughout the last couple of centuries. However, the particular ways in which these questions are answered can be at odds with the general normative

[6] The literature on the CRC is very ample. See for example Freeman (1983), Alston (1994), Archard (2004), Lansdown (2005), Nolan (2011), Liebel (2012), Milne (2015), among many others.

[7] See, for example, Archard (2004), Archard and Macleod (2002), Matthews (1994), Purdy (1992).

principles that structure one's theory of justice. If one is committed to equality and freedom as one's dual principled assumptions, how can one account for and justify the particularly harsh restrictions to the freedom of children, and the unequal standards used to judge what is owed to them and how they should be treated? In order for the differential treatment of children to be legitimate, we must be able to show what is special about childhood that makes it justified to diverge from the principled assumption of equality and freedom. This manuscript intends to dwell deeper into this problem, aiming to offer an original understanding of childhood, and of justice for children, which fully complies with our commitments to equality and freedom.

2. Main Hypothesis and Objectives

Any attempt at constructing a theory of justice requires the inclusion of children within its principles. How one understands who children are, and how one prescribes how they should be treated as a matter of justice conditions the lives, interests and opportunities of one-quarter of the current global population. Liberal theories are grounded on the dual principles of basic equality and basic freedom, and, in order to work, they must do so by recognising and including all individuals who are supposed to live under their authority. Accordance between what a theory of justice prescribes, and how it treats its citizens is not only an important task, it is its most fundamental task.

Standing on the advancements made by studies of childhood during the last two centuries, this manuscript explores certain fundamental questions at the intersection between childhood and liberal theory even further. While acknowledging the great advancement made by the contemporary literature as it relates to the inclusion of children within theories of justice, this manuscript considers the present state of the art as unable to give a fully satisfactory solution to the task of accommodating childhood within liberal theory. The accounts presented by the two most prominent liberal positions in the literature (the Standard Liberal and the Liberationist approaches) do not offer a conception of childhood, nor of how children should be treated, in full compliance with basic liberal equality. Liberalism demands basic equality and freedom for all; if children are not ensured this basic equality and freedom, the theory fails to do justice to them. Through an exploration of two fundamental questions that ground the possible status of children in liberal theory, this manuscript offers an original understanding of what 'childhood' is, and how those labelled as 'children' should be treated, in order to overcome grave injustices which are being inflicted on an ample section of the human population.

2.1. Hypothesis and Research Questions

This manuscript studies the contemporary liberal philosophy of childhood through two of

its most prominent strands: the Standard Liberal and the Liberationist approaches. A review of the literature proves the existence of a stable concern in revising and revisiting the pressing contradictions and inconsistencies in accommodating and including children within liberal principles of justice. Considering the urgency of liberal theory to include children within its principles, the manuscript embarks on *a normative evaluation of what is owed to children as a matter of justice*. It looks at what constitutes being a 'child', what this entails regarding a child's fundamental interests, and how this translates into the legitimate treatment owed to her.

Any normative assessment of what is owed to children is conditioned and dependent on how 'childhood' is understood and defined, which characteristics are taken as morally relevant for the definition of 'childhood', and why they are considered legitimate for justifying how children are treated as a matter of justice (Oswell 2013: 5). A theory of justice must, first, test the validity and moral legitimacy of certain fundamental concepts, assumptions and distinctions which characterise and classify certain individual as 'children', in order for it to, later on, address how these individuals should be treated and accommodated within it.

The hypothesis upon which this text relies is that the Standard Liberal and Liberationist strands of the contemporary liberal philosophy of childhood cannot fully accommodate children within liberal theory. The common thread that unifies both approaches is their attempt to address the problematic conflict between the commitment to the principle of basic liberal equality, and the (il)legitimacy of treating children as unfree and unequal. Children are *de facto* treated differently from other human beings. They are endowed with certain privileges that the rest of the population does not have; they are excluded from bearing certain rights that the rest of the population possesses; and they have their freedom restricted in ways that do not apply to others. If a liberal theory wishes to resolve this conflict, it must prove and justify how the differential treatment[8] of children is legitimised or not, by showing its (in)compliance with both the assumption of equal treatment, and the assumption of preserving individual freedom.

Now, at the stage of the hypothesis, this text does not claim that both the Standard Liberal nor the Liberationist views are entirely uncompliant with the principle of basic liberal equality. What it does claim is that, in order for their prescribed treatment of children to be legitimate, they must be able to show: first, how the particular condition of childhood relates

[8] By 'differential treatment' I refer to the bestowing of particular privileges and/or restrictions to some humans but not to others, whereby deviating from an equal treatment to all. In this manuscript, 'differential, 'asymmetric' and 'unequal' treatment are to be taken as synonymous. I prefer the use of 'differential' and 'asymmetric' rather than 'unequal' due to the negative connotations that come with the latter.

to both equality and freedom; and, second, how this condition translates into the particular treatment that is owed to those labelled as 'children'. To do justice to the individuals that we categorise as 'children,' we must appropriately define what a 'child' is, and we must explain how this definition translates into what is owed to her as a matter of justice. Two structural questions, thus, must be appropriately addressed in order to accommodate children within liberal theory:

(1) How should 'childhood' be conceptualised in order for its categorisation to comply with the principle of basic liberal equality? (This question is addressed in Part I of the manuscript).
(2) What kind of treatment does a liberal theory owe as a matter of justice to those individuals rightfully categorised as 'children'? (This question is addressed in Part II of the manuscript).

2.2. Objectives and Main Claim

This manuscript's main objectives are: first, to explore, analyse and critically assess how the two abovementioned questions are addressed in the Standard Liberal and Liberationist philosophies of childhood; and, second, to offer an alternative response to each them, aiming to overcome the conflict between childhood and liberalism through an account of justice for children that is in full compliance with the liberal principles of basic equality and basic freedom.

My review of the literature shows that both approaches studied in this text (the Standard Liberal and the Liberationist views) do not offer a fully adequate justification for how they answer these two questions, thus, their compliance with the principle of basic liberal equality is frail. The Standard Liberal view relies too strongly and strictly on the differences that it takes as distinguishing children from other humans in order to justify its normative divergence from basic liberal equality. The Liberationist view falls prey to the opposite flaw, namely, neglecting certain morally relevant facts of childhood, which require a certain degree of particularism and differentiation to evaluate what is owed to them as a matter of justice. The manuscript claims that both approaches take insufficient consideration of what basic liberal equality demands, and that a just response requires either: (1) a stronger and more rigorous justification for why it is considered that children are (not) morally different from adults; or (2) a different answer to the questions.

In short, I argue that a revised conception of 'childhood' is needed in order for our assessment of justice for children to comply with the principle of basic liberal equality. In answer to the first question (*How should 'childhood' be conceptualised in order for its categorisation to comply with the principle of basic liberal equality?*) the manuscript claims

that there are certain morally relevant constitutive characteristics possessed by many individuals (namely, vulnerability, development and embeddedness) which justify their categorisation as 'children'. However, it considers that a generalised and ascriptive grouping of individuals into this category can be biased, arbitrary and, therefore, unjust. If vulnerability, development and embeddedness are the constitutive elements that ground the moral validity of the category, it is an individual's particular location *in the spectrum of these constitutive frameworks* what should justify their categorisation as 'children'. The strict opposition between two groups (namely, children and adults) based on a generalised ascription is unjust, and a more nuanced conceptualisation is required.

Standing on this revised conceptualisation of 'childhood', and dealing with the second question (*What kind of treatment does a liberal theory owe as a matter of justice to those individuals rightfully categorised as 'children'?*), the manuscript argues that divergence from equal treatment can only be justified based on an evaluation of how the constitutive characteristics of childhood (an individual's vulnerability, development and embeddedness) frame the potential harm that may be imposed on the individual's fundamental interests. The legitimacy of differential treatment depends on an assessment of harm, its sources and the justifiable restrictions that derive from its existence. I propose a tentative method (the Pentagon model) for evaluating the (il)legitimacy of differential treatment, which is capable of tracking the constitutive characteristics of the individual, justifying divergence from equal treatment, while doing so within the binds of the principle of basic liberal equality.

A brief note on what this manuscript does and does not do. My research stands at the level of principles. It does not intend to offer specific prescriptions for political practice; it does not argue for the categorisation of particular individuals into the 'childhood' group; it does not say how the allocation of particular rights should be implemented; nor does it consider how it can be applied into political and legislative practice. Its objective is to explore the ways in which concepts have been used, how they relate to moral intuitions about the subject, and how they should be reframed in order to comply with basic liberal principles of justice. It intends to test the intuitive judgments on justice for children by assessing their validity in relation to the more ample moral commitments that a liberal theorist has regarding what justice requires in general. This does not mean that the applied task of defending particular prescriptions to be implemented in practice is not an important one (far from it); I simply claim that, prior to applied research, the basic concepts and principles which ground the debate must be cleared from potential biases and inconsistencies. A quest for well-grounded concepts and valid principles of justice for children is what this manuscript intends to achieve.

3. Method

This manuscript intends to carry out its objectives by applying the methods of reflective equilibrium and conceptual analysis to the questions at hand. The search for reflective equilibrium (henceforth, the reflective method) aims at achieving consistency and coherence between moral judgments about particular issues, and the general principles and normative commitments upon which the particular moral judgments are supposed to stand.[9] In this respect, the reflective method assesses the validity of certain moral intuitions, and the way in which particular concepts are used, through an evaluation of their coherence with the general principles of justice in which our particular judgments are grounded.

The reflective method is applied at various levels of analysis. First, it is used as a way to evaluate the coherence and compliance of particular moral intuitions regarding justice for children with general principles of liberal justice. Taking a commitment to the principle of basic liberal equality as given, the manuscript assesses whether the moral judgments that pop-up when thinking about "what is owed to children" correspond to the wider commitments one endorses as a liberal theorist. The search for reflective equilibrium, in this sense, implies that we must find a way for our judgements about particular issues of justice to cohere and comply with how we conceive of justice in general.

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

Finally, the manuscript applies the reflective method to highlight what is in a concept, and to assess what makes it relevant for a discussion about justice. The concepts of 'vulnerability', 'inability' or 'harm', for example, are recurrently used as structural elements to evaluate the legitimate treatment of children: "children are particularly *vulnerable* so they should be protected", "children are *unable* to act as autonomous agents, thus, can have

[9] A detailed account of the method of reflective equilibrium can be found in Daniels (2018). The method is based on John Rawls' own account (Rawls 1999: 15-19; 2001: 26-32).

certain freedoms tied to autonomy legitimately restricted", or "children are prone to *harming* themselves and others if treated equally to adults, thus, it is legitimate to treat them differently". In order for these claims to make any sense, the concepts that bear the justificatory burden (vulnerability, inability and harm) must be meticulously deconstructed in order to assess what particular features within them is that which bestows them with justificatory relevance, and how far their prescriptions may go in order for their use to comply with our general principled commitments. In short, the manuscript tests the answers to the research questions mentioned before by evaluating the internal compliance of moral judgments (between particular judgments and general principles) and the external coherence of concepts (between the signifier and the signified).

4. Structure

The manuscript is divided into two Parts, each addressing one of the two research questions mentioned above. Part I (Defining 'Childhood') addresses the questions relating to the definition of 'childhood', the justifiability of using this concept as a political category, and its compliance with the principle of basic liberal equality. Chapter 1 explores the *concept* of 'childhood', assessing why such a concept may bear moral relevance in discussions about justice. The next two chapters critically review the most prominent *conceptions* of 'childhood' present in the contemporary liberal philosophy of childhood. Chapter 2 looks at the Standard Liberal view (labelled as Life-Stage approaches), and raises certain problems that these have with justifying the legitimacy of their definition of 'childhood' as compliant with basic liberal principles. Chapter 3 analyses the Liberationist critique of Life-Stage approaches, and its own conception of 'childhood'. It considers that certain fundamental features that make 'childhood' a morally relevant concept are absent, thus their conception is incomplete. Chapter 4 offers a reconceptualization of 'childhood', which is not affected by the incompliance of the Standard Liberals with the principle basic liberal equality, nor blinded by the Liberationist omission of certain constitutive features that makes the concept morally relevant.

Part II addresses the questions related to the treatment that is owed to 'children' as a matter of justice. Due to the amplitude of this issue, the manuscript focuses almost exclusively on an evaluation of how the just treatment of children is translated into the rights and freedoms that they are owed. I am aware that this is only a partial response to the question 'what is owed to children?' but one only manuscript cannot address all questions that may arise from the topic of justice for children. Part II focuses, thus, on certain relevant debates existent in the literature regarding the rights, protections and freedoms that children are owed

to as a matter of justice. Chapter 5 introduces the basic groundwork for how to understand theories of rights, and the fundamental debates and elements that structure the discussion on the legitimate treatment of children. Chapter 6 explores the proposals offered by the Liberationists and the Standard Liberals to the rights that children should be entitled to have, and the treatment they are owed. It claims that neither one is capable of justifying their approaches to the rights owed to children, and considers the need for an alternative position. It considers that, while it may be legitimate to impose a differential treatment to certain individuals (agreeing partially with the Standard Liberals) the evaluation of the legitimacy of this differential treatment must be carried out through a meticulous exploration of the concept of 'harm' and how this concept frames our intuitions regarding the rights and restrictions that may be legitimately imposed by a liberal egalitarian system on an individual. Chapter 7 offers a thorough evaluation of the concept of 'harm', how it relates to the rights and interests which an individual may have, and proposes a framework for the evaluation of the legitimate restrictions of individual freedoms based on the intersection between harm, abilities and reasons (the Pentagon model). Chapters 8 and 9 offer an in-depth analysis of how children acquire rights, how harm frames our understanding of what rights individuals are entitled to, and of the particular treatment they are owed, based on the particular interaction between the constitutive condition of the individual, harms and abilities. Chapter 8 focuses on the scope and limits of the rights and freedoms that are conditioned by harm, exploring how the concept of 'ability' affects our intuitions regarding legitimate restrictions. Chapter 9 analyses the scope and limits of the rights and protections that individuals are entitled to, based on the harm inflicted by others on the right-holder. It explores particularly harms to children's agency, and considers the role that the concepts of 'oppression' and 'domination' may play in our assessment of harm to individuals labelled as 'children'. The Conclusion wraps-up the discussion, recapping the conceptual groundwork that should structure any liberal account of justice for children, presenting the limits of the research carried out, and the relevant research paths that stem from the conclusions taken out of this work.

PART I

DEFINING 'CHILDHOOD'

I. The Concept of 'Childhood'

"We are the children of the world,
and despite our different backgrounds, we share a common reality."
The Children's Declaration at the Children's Forum 2002

What is meant when talking about 'childhood'[10] varies greatly from culture to culture and throughout time. All legal systems, take a 'child' to be someone below a certain age (usually between 16 and 21 years-old). Many cultures consider those who are yet to arrive to puberty as 'children,' and phrases such as "behaving like a child", used when someone is not acting as an adult should, point at 'childhood' as a state of being in which particular behaviours and ways of relating to the world different from those of the standard adult, are prominent. Some have even argued that the concept of 'childhood', as a way of categorising a human collective, did not come to exist till the seventeenth century, and various African and Asian cultures (and many Western parents as well) consider that a person is and always will be a 'child' in relation to her elders.

However, despite wide variation in the way 'childhood' is used across time and cultures, an essential core which grounds the concept remains. Just as the concept of 'god' has extremely varied interpretations (what makes an entity a god, what characteristics does a god have, who is and who is not a god), we can still make cross-cultural and cross-historical analyses of the concept based on certain fundamental features that define it. We can distinguish, following John Rawls, between a *concept* and its *conceptions* (1999: 5). While there may be (and surely is) disagreement among different conceptions of 'childhood' or 'god', even many of them being incompatible; the concept of 'childhood' or 'god' are

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

relatively stable and fixed, like a common ground which gives sense to the word, allowing it to be functional.[11] So, while conceptions of 'childhood' may differ (what makes an entity a child, what characteristics do children have, who is and who is not a child), there are structural features within 'childhood' that allow us to consider it as a distinguishable concept.

This chapter aims to explore (1) what defines the *concept* of 'childhood', and (2) what makes it morally relevant for theories of justice.[12] In order to find an answer to these two questions, we must first look at them from a more abstract perspective. That is, an assessment of what a 'concept' is (with special concern for concepts that define human collectives), and an exploration of the reason why certain concepts bare moral relevance for discussions about justice. The chapter claims that concepts that refer to human collectives *are biosocial categories*, meaning that the interaction between "natural" and "social" constitutive factors structure and define the classification of human collectives as cohesive concepts. Regarding the reasons why a concept that refers to a human collective may bare moral relevance, the chapter claims that it is *the transformation from a positive to a normative use of the concept* (meaning that it not only describes, but prescribes) what makes it a morally relevant concept for studies of justice. That is, when the categorisation of a human collective affects the way individuals within the collective are perceived and treated by others, it gains moral relevance. I define this normative use of concepts that refer to human collectives, following Iris Marion Young (1990) and Ann Cudd (2006), as *social groups*. Injustice, it is argued here, does not only arise from the harmful and discriminatory treatment of individuals in law and policy, but also from how individuals are categorised and conceptualised. The social grouping of individuals has fundamental implications on their social and political status, and can come into conflict, in itself, with the core normative principles to which a theory of justice is committed.

My fundamental claim is that the concept of 'childhood' fits the definition of a social group. First, 'childhood' is not merely a natural concept, meaning that it is not *exclusively* defined through biological features, but has a fundamental social element in its construction as well, especially tied to how it is distinguished from the category of 'adulthood'. Second, the concept bears moral relevance due to its normative use, which imposes a particular forward-looking regard as to who a 'child' is, and what a child should be. The fact that the normative use of the concept affects the way individuals grouped as 'children' perceive and identify themselves, and, most importantly, the way *others* perceive and treat them, bestows

[11] See Archard (2004: 27-29) for the distinction between the concept and conceptions of 'childhood'.

[12] Discussing the moral relevance of the *concept* of 'childhood' is not the same as discussing the moral value of the *individuals* labelled by the concept. This chapter addresses the moral relevance of using the *concept* of 'childhood' to address certain issues of justice that affect individuals ascribed to it; not whether children should bear moral value or not. The latter is an issue that will be addressed in Ch. 5 in its relation to the grounds for having rights.

on the concept a fundamental moral relevance with special value for the evaluation of what is owed to individuals labelled as 'children' as a matter of justice. Having a clear understanding of what the concept of 'childhood' is, and how it frames our discussion about children is a cornerstone for analysing the justifiability of different conceptions of 'childhood' and of what is owed to children.

1. Concepts and Human Collectives

The usefulness of a concept lies in its capacity to define what we are talking about, and to distinguish it from what we are *not* talking about. When I say, "bring me a chair", the use of the concept 'chair' is meant to delimit the possible entities to which I am referring. 'Chair' implies, first, an inclusive assessment of the set of characteristics that delimit the entities encompassed by the concept; and, second, it works as an exclusionary mechanism, delimiting all other entities that are not encompassed by the concept. When I ask for a 'chair', I am not only asking positively for "an object where one can sit", but I am also asking, in the negative, not to be brought any other object that is not a 'chair'. Internal characterisation (definition) and external differentiation (classification) are the two core features of a concept as a linguistic devise.

When we study concepts that refer to human collectives (as this chapter intends to do), we aim to grasp both their *definition* and their *classification*. This definition and classification can be done at various levels of analysis depending on our purpose. At a first level, when we talk about 'human collectives', we are defining our concept as a physical entity, and classifying it to exclude all metaphysical entities. At a second level, we can define it as referring to animate entities, and excluding inanimate entities. At a third level, we can characterise it as referring to the *Homo sapiens sapiens* subspecies, excluding all other animate entities. Here, we have arrived to the wider concept that may refer to a 'human collective': the *Homo sapiens sapiens* subspecies. From then on, depending on the particular purpose and goal intended by using the concept, our further characterisation and differentiation may vary.

A short side note. The *purpose* behind the use of a concept is fundamental for understanding the legitimate process to classify and define it (Haslanger 2012: 187, see Ch. 6). The creation of particular concepts is a goal-oriented activity; defining and classifying a concept is, thus, *predetermined by its purpose*. This is because the characteristics of an entity that one takes as relevant and the boundaries chosen to distinguish and classify entities are conditioned by the goal one has in mind with its use. For example, if my purpose is not to eat plants that can kill me, I will, then, create the categories of lethally toxic/non-lethally-toxic plants, and, finally, establish the particular characteristics that a plant should have in order to

fall within one of the two categories. I cannot categorise or define a plant without first determining *the purpose of the distinction*. This is because the relevance of the characteristics and distinctions chosen depends on the purpose. The characteristic 'colour red' of a plant may be absolutely irrelevant if my purpose is not to die when eating a plant, because it cannot determine whether a plant is lethally toxic or not; but it may be useful if my purpose is to choose plants to decorate my house on Valentine's day. In short, a purpose for a concept always predetermines its definition, and the appropriate characteristics and distinctions for the given purpose condition the effectiveness of its classification.

I have defined as the purpose of analysis in this chapter to assess the moral relevance of the concept of 'childhood' for theories of justice. In this sense, it intends to explore what is that which makes 'childhood' a concept that may have implications on how those individuals categorised as 'children' are treated as a matter of justice. I will look at this question more abstractly first, and then apply it to the particular issue at hand.

A human collective can be defined and classified in two ways: biologically or socially. We could define and classify a collective of individuals through *biological* characteristics (a collection of beings of the same sex, age, place of birth, eye colour, strength); or by social association (a collection of individuals with the same political inclinations, religion, musical taste).[13] The distinguishing feature between these two forms of categorisation of human collectives is that the first relies on purely *biological* information for characterising and classifying, while the second goes into the more ambiguous territory of looking at the *social* features that allow us to classify a collective of humans jointly. Biological (or natural) categories are strictly non-voluntary, while social classification tends to be conceived as voluntary (to a certain extent). Although it is certainly possible to classify and distinguish human collectives exclusively through biological or social information (especially if we have a descriptive purpose in mind), when our concern is with the moral relevance of concepts, the line between the social and the biological becomes less clear.

Following Sally Haslanger, concepts that refer to human collectives are both natural and social jointly because any classification is a human linguistic practice conditioned by the particular social interest and purpose tied to its definition (Haslanger 2012: 194-198). In this respect, Haslanger argues, we cannot entirely detach social function and activity from the natural world. Our existence in natural bodies and our constitution in natural spaces conditions any social act to those natural elements that constitute us as humans (Haslanger 2012: 211). At a more practical level, it seems difficult to detach natural from social features in human relations. For example, is the place of birth of a person a social or a biological

[13] There can be a third category that develops accidentally (survivors of a terrorist attack, people trapped on an elevator, lottery winners).

characteristic? There is clearly a "natural" side to it (I can geo-locate with precision the specific place of birth in the natural world), but it is also social (in the sense that it refers to the socially constructed state boundaries which are not part of the natural world). In order to avoid misunderstanding, thus, instead of distinguishing between natural and social, I follow Haslanger in embedding the social within the natural, and rather distinguish between *social* and *non-social* features (within the natural) (Haslanger 2012: 213). Thusly, we can distinguish, for example, between the *non-social* classification of sex, as the presence or absence of a Y chromosome in an individual; and the *social* classification of sex (gender) as an individual's (self-) identification as a woman, man, both, or neither. However, many categories ('childhood' among them) are, as will be seen below, inevitably *biosocial*; this means that detaching the biological and social features in the characterisation can be in many cases impossible, whereby the need to always account for their interdependence.

In theory, both non-social and social categories could be used as purely *descriptive* devises: human females are individuals without a Y chromosome, black people are humans with a high level of melanin in their skin, and Muslims are individuals who follow the principles of Islam. Nevertheless, this purely positive and descriptive classification does not entail any inherent moral relevance in itself. Think of individuals who wear size-8 shoes, individuals who were born between 5am and 6am, or Star Trek fans: classification of concepts that refer to human collectives does not necessarily imply any moral relevance to the concept nor to the classification. We may need to classify these latter collectives in order to know how many size-8 shoes to order from the warehouse, to study the impact of the sunrise on childbirth, or to choose a birthday present for a colleague at work; however, there is no necessary moral and political relevance to these categories insofar as justice is concerned.

As my purpose is to assess the moral relevance of a human collective, we must explore why some (such as human females, black Americans, or Muslims) are morally relevant, and others (Star Trek fans or size-8 shoe-wearers) are not. I mentioned the purely descriptive use of the concept of female, black or Muslim. They could be seen, very naively, as not necessarily different in their moral relevance to the Star Trek fans or size-8 shoe-wearers. Nevertheless, their status can change.

In *The Subjection of Women*, John Stuart Mill argued that individuals included in a descriptive category become morally relevant once the features that descriptively categorise them (such as the physical fact of a person's sex) are transformed into socially salient characteristics with implication in laws and social practices (through gendered norms, for example) (Mill 1869: 5). That is, the moral relevance of the concept changes once it shifts from being used as a positive category, to being used *for normative purposes*. It is this transition what gives moral relevance to a human collective. Imagine, for example, a political system in which people who wear size-8 shoes are considered inferior and compelled to act as servants for the rest of the human population (Sen 2006: 26); or one in which humans without a Y

chromosome must stay at home taking care of children; or another one, in which people who follow Islam are taken as evil and should be exterminated; or a last one in which individuals with high melanin levels in their skin are considered as not fully human and are, thus, enslaved. Once prescriptions stem from a classification, issues of justice come to the fore.

The moment in which a descriptive concept entails a particular form of social treatment which constraints and predetermines a person's life, it ceases to be morally superfluous and becomes a morally relevant category. Classification is not necessarily an innocent affair; it does not only map certain definable human collectives; through its normative use, classification of concepts has the power to transform the actual lives, opportunities, actions, and (self-) perceptions of the individuals classified. Classification of human collectives can impose a certain normative order and, as Haslanger notes (2012: 88), may "function more like a script than a map."

2. Social Grouping: The Moral Relevance of Human Collectives

The transformation of descriptive classifications into normative concepts are the fundamental phenomenon, which constitute the reason why certain human collectives are morally relevant for discussions about justice. This section analyses the mechanisms through which this transformation takes place, and the reasons why it endows certain human collectives with moral relevance. It uses the concept of *reification* as a tool to explain what happens when a human collective is normatively classified, and analyses the two approaches to understanding the moral relevance of a human collective (internal and external) through an exploration of Iris Marion Young's and Ann Cudd's views on social grouping. It argues that, although both internalist and externalist phenomena are present in the normative transformation (reification) of human collectives into social groups, the constitutive source of moral relevance lies in its external phenomena, while the internal ones should be considered as (partly) a consequence of external sources.

I have argued that the classification of certain human collectives has transformed from a descriptive devise into a normative one. The human collective of 'women' does not only *describe* the individuals classified, but it also *prescribes* how they should behave, and how they should be treated. This *normativisation* of human collectives is not necessarily harmful, and may even be necessary and justified. For example, pregnant individuals should be ensured an appropriate pregnancy leave because they are especially vulnerable, and need time to take care of themselves and their baby. The justifiability for the normative use of the concept is not dependent only on the collective and/or the prescription in themselves, but is rather conditioned by the justificatory link ('because...') that ties the particular human collective

chosen with its normative prescription. It is the coherent and reasonable bridging of the descriptive collective and the normative prescriptions through its justification what may legitimise it. A certain form of non-essentialism demanding a justification for the linking between the collective and the prescription, is required in order for the normative use of a concept to be legitimate.[14] Potential injustice arises when a certain form essentialism is used as the justificatory link between the concept with its normative implications. That is, when normative prescriptions and their bridge to the descriptive concept become a part of the concept itself. This is what Marxist scholars call the process of *reification*.

Reification was used to denote the process through which the capitalist system transformed an object or person by introducing certain social, economic and political practices as being a constitutive part of the object or person in itself (see Petrović 1991). Once an object is labelled as a 'commodity', Marx argued, the object as a descriptive and positive concept ceases to exist, because its definition (grounded on its exclusive use as a capitalist-market product) already frames and prescribes the possible social uses and practices related to the object. A tree classified under the concept of 'commodity' implies within its definition that it is and should be treated only as a market-good; by classifying a tree as a 'commodity' the capitalist system encloses all possible practices related to a tree to those prescribed by it (Marx 1887: Ch. I, sect.4). The fundamental concern of justice that comes with reification stands on its power to transform a descriptive concept into a normatively charged one, while claiming objectivity (Lukács 1923: 83). It obliterates any moral, social or political disagreement in its use because it preforms and predetermines the possible normative prescriptions tied to it as if they were inherent to the definition of the concept in itself.

We can see how the concept of reification is a useful tool to understand a fundamental reason why certain human collectives may bare moral relevance. Take the case of the 'woman' concept. Once the concept is transformed by certain socially constructed characteristics and prescriptions which are not constitutive of it ('women should stay in the kitchen,' 'women are not good drivers'), the socially constructed features and prescriptions become reified within the concept itself, limiting any normative use of the concept to those that coincide with the reified definition. This reification of social features and practices within the definition of a human collective has huge implications for the individuals classified under it. It frames how they are perceived, how they are treated, and even how they see themselves and how they behave.

I want to consider the possibility of linking this process of normativisation of concepts that refer to human collectives (through the reification of particular social practices and assumptions within its definition) to the discussion on the ontology and moral relevance of

[14] I will not say much more for now on the conditions for the justified normative use of a concept, as I will address it in more detail in later chapters.

social groups. Contrary to simple positive classification of individuals as collectives (in which a concept merely categorises a collective of individuals through certain "objectively defined" common traits), social constructivist and critical theory have used the idea of *social group* to refer to human collectives which bare certain particular traits that grants them relevance as moral subjects for analyses of justice.

The intuitive idea behind critical theories of social groups is that the pure descriptive categories of non-social and social human collectives does not suffice to explain the reasons why certain human collectives bear moral relevance and others do not. Take once again the differences between the non-social and social classification of size-8 shoe-wearers and Star Trek fans, on the one hand, and of individuals without a Y chromosome and religious followers of Islam, on the other. Despite that the first and the third are both positive non-social classifications, and the second and forth are positive social classifications, we do not consider the moral relevance of the first two groups equal to that of the latter two when assessing problems of justice. There is something about being a female human and of being a Muslim, which distinguishes them in a morally relevant sense from being a size-8 shoe-wearer or a Star Trek fan. I have argued that the structural difference lies in the transformation of concepts that refer to human collectives from descriptive to a normative devises.

In the next subsections, I explore two of the most relevant accounts that intend to explain the reason why this shift from a descriptive to a normative use of a concept has implications on the moral relevance of the human collective referred by it: an *internalist* and an *externalist* account of the moral relevance of social groups. Both agree in considering the role that reification plays in the creation of normativised concepts, but they differ in their understanding of the process through which this happens, and on the way in which this normativisation of concepts affects the individuals classified under them. The *internalist* account, gives prominence to an individual's internalisation and self-identification with a group as conditioning its moral relevance; while the *externalist* account considers the locus and source of moral relevance of group classification to external factors which impose a definition of the group on the individuals, regardless of whether they internalise or identify with the grouping or not. I will focus my argument on the internalist account as presented by Iris Marion Young (1990; 1994), and on Ann Cudd (2006) for the externalist one. By engaging in this discussion, I aim at establishing a clear explanation for how concepts that refer to human collectives can bare moral relevance if they are converted into social groups through their use as normative devises. This will allow me, later on, to explore why theories of justice should be concerned with the concept of 'childhood'.

2.1. An Internalist Approach

Let us begin by looking at the internalist account of social groups. Iris Marion Young argues, "A social group is defined not primarily by a set of shared attributes, but by a sense of identity" (Young 1990: 44). It is not necessarily the skin colour which defines a person as part of the social group of African-Americans; it is a person's own identification with the status of a collective, its history, its experiences, ways of life and forms of association which define a person's categorisation within a social group (1990: 43-44). However, identification in itself is insufficient for a human collective to bare moral relevance; a Star Trek's fan identification with the collective does not suffice to consider it as an important classification for issues of justice. There is, for Young, another factor required in order for a collective to gain moral relevance: following Martin Heidegger, she argues that the phenomenon of "thrownness" is necessary for the shift of concepts that refer to human collectives from being descriptive to normative (1990: 46). It is not only a person's identification with the group, but the person's incapacity to escape from identifying with it, which transforms a mere collective into a morally relevant social group. Social structures largely define who we are, and it is the interrelation between this "forced inclusion" and our own identification with it, which defines us as part of a social group. This approach, Young states, manages to show the moral relevance that group membership plays for a person's life (and which should imply giving it moral relevance in discussions about justice) while not assuming anything about the specific attributes that individuals within this group ought to have, thus being tactful to internal differences among them (Young 1994: 723). While "thrownness" would exclude Star Trek fans from being considered as a social group, identification would do the same for size-8 show-wearers. Both conditions must apply, according to Young, in order to consider the moral relevance of a human collective in discussions about justice.

The internalist approach, thus, requires an individual to self-identify and to be incapable of not identifying with a group, in order for her to be part of it. No objective characteristics of individuals are required for assessing their inclusion in a social group (Young is particularly concerned with essentialist interpretations of gender or race). However, grouping does require at least a partial acknowledgment from the individual of the common goals and shared objectives that constitute and frame both the group as a whole, and the identity of its individual members (Young 1990: 9; 1994: 723-724). In a certain respect, thus, social groups have the capacity to *constitute* individuals: "A person's particular sense of history, affinity, and separateness, even the person's mode of reasoning, evaluating, and expressing feeling, are constituted partly by her or his group affinities." (Young 1990: 45). She, of course, concedes to the fact that this identification does not necessarily define who a person is, but it does frame one's modes of action and behaviour at least up to a certain point (Young 1994: 715).

These two conditions, however, do not allow us to understand what is it that endows the

concept of 'African-Americans' with moral relevance for analyses of justice, and why we consider that the collective of Star Trek fans does not have the same status in our considerations. Even if thrownness and self-identification allow us to distinguish Muslims and women from size-8 shoe-wearers or Star Trek Fans, the account still needs to show what makes self-identification and thrownness morally relevant. It does not explain the reasons and conditions that make self-identification and thrownness structural characteristics of a 'normativised' concept with implications on how justice treats those categorised.

2.2. An Externalist Approach

In her book *Analyzing Oppression* (2006), Ann E. Cudd intends to expand on certain omissions of previous accounts on social groups (especially concerning the reasons why they bare moral relevance for analyses of justice) by making explicit a necessary distinction between social group membership which is voluntary from that which is non-voluntary (2006: 34-46). Cudd acknowledges the existence of voluntary social groups, which structure part of our lives and which rely to a great extent on people's intentions in being part of a group for it to exist (political parties, religions, self-conscious racial or gender identification, etc.). However, she aims to expand the category of social groups in order for it to clearly account for collectives of individuals who are *non-voluntarily* labelled as part of a social group, who do not necessarily acknowledge any identification with other individuals of the same group, nor have their identity and behaviour (consciously) affected by being part of the group (Cudd 2006: 35). In considering the non-voluntary features that frame certain social groups, the reasons that grant social groups moral relevance become clearer.

Cudd argues that, in order to understand what is problematic and relevant in social grouping, we need an understanding of social groups which does not rely on an internalist justification for its existence (that a person identifies with the group). Rather, in order to assess their existence, she considers focusing on objective facts about the world, social relations and its consequences. That is, an externalist understanding of the construction of social groups. In her own words:

> The theory of social groups I offer is an externalist account: What makes a person a member of a social group is not determined by any internal states of that person, but rather by objective facts about the world, including how others perceive and behave toward that person. (Cudd 2006: 36).

What Cudd intends to highlight here is the fact that, from a perspective of justice, many of the most relevant classifications that frame and predetermine a person's life and options are *externally* rather than internally constructed. It is the social and political institutions and

practices, though laws, norms, stereotypes and customs that define who is part of which social group, and *how should each social group be treated*. The fundamental claim posed by authors such as Cudd to internalist understandings of social groups is that a person's own perception and acknowledgement of being part of a social group is not a necessary condition for one *to suffer from the consequences of being taken by other individuals and social institutions as a part of the social group*. Self-identification may or may not happen in social groups; it is the external imposition of a grouping to an individual, and most importantly, the externally imposed *normative guidelines* that frame the relation of others with the individuals grouped, what makes it morally relevant. A person with Arab features, for example, need not be conscious of the fact that the particular constraints on her options, and the way that she is treated and perceived by certain others in Europe or in the U.S. is due to others grouping her as an Arab (with all the stereotypes that this may entail). Her (lack of) consciousness is irrelevant to the fact that *the way she is treated* (for better or worse) is conditioned by others' classification of her as part of a social group of Arabs. Even without one recognising oneself as part of a social group, *the consequences and harms that derive from one's differential treatment are morally relevant and must be treated as an issue of justice* (Cudd 2006: 41).

From this perspective, the core forces that determine a person's inclusion in a social group are *social and externally defined*. Cudd considers this approach more analytically appropriate because it achieves two results: first, it distinguishes clearly between collectives that are morally relevant from others that are not *by delimiting social groups* as *only those that suffer social constraints on their actions and choices*. It is the reified normative prescriptions that come with being classified as part of a social group what confers the concept (of women, African-Americans, Muslims) moral relevance in justice analyses. If an individual experiences important constraints and harms due to others' grouping her, the injustices that arise are group-based, while other individuals who have similar characteristics but are not socially constrained nor stereotyped due to them would not be suffering from group-based injustices, thus would not be part of the social group (Cudd 2006: 50). Second, as mentioned before, the externalist approach avoids the problematic consequences that derive from linking social grouping to self-identification. The ambiguities that arise from an understanding of groups based on the personal characteristics or behaviours of the individuals who are part of the group, and from the problematic cases of people who suffer constraints due to them being stereotyped as part of a group but who do not identify themselves as part of it (Cudd 2006: 44-45).

In short, the fundamental difference between an internalist and an externalist approach to social grouping lies in the weight each of them assigns to the self-identification of the individuals with the group. While internalists consider that identifying is a fundamental feature, externalists claim that whether identification occurs is irrelevant to the assessment of

the moral relevance of the group. The next sub-section expands on the relation between internal and external features in the normative reification of a concept that refers to human collectives, and how this allows us to grasp the particular position that these concepts have in studies of justice.

2.3. The Moral Relevance of Social Groups

In their accounts of social groups, both Young and Cudd have intended to highlight the ambiguous relationship between a person's grouping and her identity. Young, while considering that identification is needed for a person to be part of a group, argues that this does not imply that the person ought to be entirely defined by it. She emphasises this through Jean-Paul Sartre's concept of "seriality" (Young 1994), which considers that certain groupings are constituted through the structural organisation of social relations, imposing norms and treatments that force a person's social regard, while not implying a strictly common identity nor any necessary shared social attributes (Young 1994: 723-724; 2000: 99-102). Cudd stands on this intuition to press the claim even further by arguing that it is the actions, beliefs and attitudes *of others* which define a person's social grouping and its moral relevance in its entirety, even if identification does not occur (Cudd 2006: 44). Social groups are, thus, externally constructed, independent of whether it leads to internal endorsement or not.

The moral relevance of social groups, thus, lies in the way that social and political forces frame a person's options, choices and treatment through their normative reification as part the constitutive characteristic in the collective's definition. It should not matter whether an individual identifies as a 'woman' or not; so long as an individual is *treated* as a 'woman' (implying the framing of the person's options, choices and constraints through a particular normative reification of the concept that classifies her), her being grouped becomes morally relevant, and, thus, a matter of justice. The consequences (be they in the form of privileges or disadvantages) that derive from social grouping, and the sources of normative reification of the concept that refers to it justify treating them as morally relevant categories for analyses of justice. Following Pierre Bourdieu, Amartya Sen has emphasised the need to take social groupings as morally relevant even if they are arbitrary and capricious categories that only exist to reinforce differential treatment of individuals (Sen 2006: 26-27). Furthermore, it is actually this *arbitrary and capricious characterisation* of individuals within groups through biased, overly generalised and stereotyped definitions of who they are, how they behave, and how they should be treated what bestows moral relevance to their position. The social reality in which we live ought to play a structural role in our understanding of what injustice is, what its sources are, and how they must be addressed. The differences and hierarchies created through the imposition of normatively reified social groupings structure and determine our

options, our choices and our life plans even if they do not determine our identity and our self-perception (Sen 2006: 6).

However, this does not imply that social grouping never has an impact on identity and identification. Social groups can (and do) have important implications on an individual's identity formation, in the way she understands her own life and her surrounding environment. Cudd argues that, among the consequences of social grouping, psychological harms and the internalisation of one's position as part of the social group are fundamental for understanding the breadth that such classifications may have on a person's life (see Cudd 2006: Ch. 3 and 6). The normative reification of concepts that refer to human collectives frames the impact it may entail for an individual's own conception of herself.

The constraints and social framings that come with social grouping can lead to individuals identifying as part of the group (Appiah 2005: 66). This may be a positive consequence, in the sense of creating in individuals a consciousness regarding how their classification privileges or disadvantages them. Identification can also have negative implications through corrosive processes of internalisation. Many women, for example, internalise the normatively reified definitions which constitute their social grouping ("you are a woman, so you are weak", "you are a woman, so you should find a husband") making them instruments in the perpetuation and self-fulfilment of the labels and stereotypes normatively reified in the definition of the concept of 'woman'. The internalist consequences that may arise from the labelling of a person as part of a social group are fundamental for understanding possible mechanisms of empowerment or oppression in an individual's own relation with her classification.

Highlighting the external factors that determine a person's inclusion in a social group compels us to take such grouping seriously as a morally relevant concept due to its value in explaining certain relevant sources of injustice that may affect individuals. In short, three elements can be taken as constituting the reasons why certain concepts that refer to human collectives may bare moral relevance for discussions about justice:

1. *Ascription*: external sources ascribe an individual as being part of a human collective. A concept that refers to human collectives is morally relevant when individuals are 'thrown' into it; endorsement or identification can be a consequence of ascription but it is irrelevant to the assessment of the reasons why the classification is morally relevant.
2. *Reification*: the possible uses of a concept that refers to a human collective are prefigured by the inclusion of certain socially constructed assumptions regarding the features, characteristics and behaviours of the individuals classified as being a constitutive part of the definition of the concept. The concept becomes morally relevant if its positive definition is amended to include these socially constructed features.
3. *Prescriptive use*: the moral relevance of a concept depends on its use as a normative devise. The concept not only describes the characteristics of individuals classified under it, but

also has forward-looking implications due to its prescribing a particular treatment and behaviours towards those classified. Its moral relevance derives from the normative implications inherent in the concept: individuals classified are (and should be) treated in a particular way, this having repercussions on the constraints, options, privileges and disadvantage of grouped individuals.

Concepts that refer to human collectives can bear moral relevance depending on how they are constructed, and on the implications that grouping has on the individuals ascribed. I have argued that the core sources that grant moral relevance to a concept that refers to human collectives are of an external nature. Individuals are *ascribed* to a social group, socially constructed practices and assumptions are *reified* within the definition of the concept, and its use implies a certain *normative treatment* of individuals grouped, by prescribing constraints, options and treatment within its definition.

3. The Concept of 'Childhood'

What is left of this chapter will mirror the method of analysis carried out in the previous sections, while focusing particularly on analysing the moral relevance of the concept of 'childhood.' The chapter claims that the conditions for the moral relevance of social groups presented earlier apply to the concept of 'childhood', and considers how this frames the way we should understand the use of the concept as an analytical tool for studies of justice for children. The concept in itself already offers certain general guidelines for how individuals are classified and characterised as 'children', but the guidelines are abstract and vague enough for the *conceptions* of 'childhood' that derive from this groundwork to play much of the normative role.

3.1. The Biosocial Elements in the Concept of 'Childhood'

Thinking about the characteristics of children, it is inevitable to consider certain seemingly non-social physical and behavioural features. Even if only as a matter of degree, the collective of individuals whom we label as 'children' share a side of a spectrum due to their relative possession of certain seemingly biological traits. Children tend to be relatively weaker, more dependent on others for their survival, and more vulnerable to external threats than other humans are. They tend also to be more malleable, receptive and impressionable. They tend to be less prone to thinking about long-term goals, they tend to be more straightforward with their emotions, and they tend to reflect less on the possible consequences of their actions. These relative behavioural and physical traits allow us to frame children as comprising a particular corner in the spectrum of human physical and behavioural characteristics. From

this perspective, the concept of 'childhood' aims to classify individuals who follow this physical and behavioural pattern to a significant extent. Even if the magnitude to which certain particular children possess these non-social traits is debatable, it seems reasonable to state that, at a certain level of abstraction, the classification of 'children' follows these guidelines roughly.

But physical and behavioural relative characteristics are not what structures the non-social features in the concept of 'childhood'; classification of individuals within the concept of has, first and foremost, a chronological foundation, most strongly tied to an individual's living in the first period of the human life. If an individual possessed the relative physical and behavioural patterns mentioned in the previous paragraph, but were to be living in a later period of the human life (let us say she's 45 years-old), we would not classify her under the 'childhood' group. She would be referred to as 'child-like' or 'childish' but she would not be grouped with children *because she does not comply with the chronological condition*. Karl Mannheim called this a *generational* classification, strongly structured on the biological rhythm of human life (Mannheim 1927). This is the first inherent element in the concept of 'childhood': call it generational, age-based or life-period classification; the basic idea is that 'childhood', first, refers to individuals at the beginning of the human life; it is primarily a chronological ordering.[15]

A non-social classification of 'children' as those individuals at the beginning of the human chronology, offers a partial answer to the "who is classified" question, but does not say anything about the "why they are classified", that is, the *purpose* of the classification. As in the cases of 'individuals without a Y chromosome' or 'individuals with high melanin levels in their skin', the purpose for the existence of the concept of 'childhood' (referring to 'individuals in the first period of human life') needs to be explained. One must show why it bears moral relevance, as opposed to other possible but irrelevant groupings such as 'individuals who wear size-8 shoes'.

The first element to be included, in this respect, is the *relational* framework that embeds the chronological distinction within social practices. The concept of 'childhood' is not only a non-social classification, and any use of the concept is conditioned by the social structures that guide relations among generations. Other non-social classifications (such as that of the absence or possession of a Y chromosome) can (in a generalised sense) "objectively" distinguish between two non-social categories of humans (male and female) regardless of whether it is used as a social classification or not. However, 'period of life' or 'skin colour' are not linked to clear non-social oppositions or binaries, but rather dependent on *socially constructed classificatory thresholds*. Where we draw the line between 'white skin' and 'black

[15] Where and how the line is drawn is not part of the concept itself but rather of its conceptions as will be explored in the next chapter.

skin' (to keep it simple) is a social decision. Of course, I can give examples of two extremes in a continuum of skin colour but the dividing line is not given "objectively" by nature. The same happens with the classification by period in human life: the threshold between one group and another (between childhood and adulthood, or adulthood and old-age) are not given by nature; pure non-social chronology does not allow the classificatory process to take place; without social systems we would only have, as Mannheim argues, "birth, life and death" (Mannheim 1927: 291).

This is when the physical and behavioural aspects mentioned above come into play. Even if chronology marks the first grounding element for the concept of 'childhood', it is the possession or absence of certain particular behaviours, traits, capacities, values and states of mind by an individual that give *purpose* to the endeavour of classifying by generation. Different societies assign particular value to certain biological changes (puberty, pregnancy, menstruation, self-sufficiency) and use it as a classificatory mechanism for generational groups (see Broude 1975). The use of physical and behavioural aspects for defining 'childhood' is part of the social classification of the concept because the choice of the relevant characteristics, which justifies categorisation, is socially conditioned. Even if physical strength, reasoning powers or vulnerability to external threats (for example) are non-social traits which simply come with nature and can, indeed, be linked and correlated to chronology, the *choice* of which of these characteristics (and the choice of the level to which they are deemed relevant) as defining who is in 'childhood' depends on their junction to the human practices and expectations that frame our social world. The non-social category of 'generation' becomes a social classification based on *maturity*. Not only is 'childhood' framed as the first period of human life, but it is also framed as the first period of human life *until maturity*. Once an individual in the first period of life has achieved maturity, she stops being a child.

However, what 'maturity' means is not a clear and straightforward thing. 'Maturity' refers (following Merriam Webster) in its most common definition to "completed natural growth or development". What type of growth or development is implied in 'maturity', and when is its completion accomplished, are not necessarily non-social factors. The structure of a society's family life, its economic system and its social expectations all frame and delimit which human characteristics are relevant for assessing maturity, and what thresholds are required in order to assess its achievement. Thus, even if the characteristics usually referred to when classifying 'children' are non-social in their nature, *the choice of characteristics and thresholds for classification are necessarily socially constructed* (Jenks 2005: 6). Understanding the role that social structures play in constituting the concept of 'childhood' is necessary in order to explore the reasons why it may bare moral relevance in discussions about justice.

3.2. The Moral Relevance of the Concept of 'Childhood'

I argued that three phenomena must apply in order for a concept that refers to a human collective to be morally relevant: ascription of individuals, reification in its definition, and prescriptive use. Following Ann Cudd and Iris Marion Young, I labelled these morally relevant human collectives as *social groups*. What is left of this section analyses the concept of 'childhood' through these three conditions, and consider its potential classification as a *social group*.

Ascription

The first condition for assigning moral relevance to a concept that refers to a human collective is that individuals are *ascribed* to a human collective by external sources. Individuals do not have to endorse nor identify with the collective, and they cannot choose whether to be a part of it or not. The assessment of this condition in the case of 'childhood' is straightforward: ascription is inherent to the concept. One cannot choose whether one is a 'child' or not, and one's classification as part of the group happens even before one has consciousness of the existence of the grouping (or consciousness of any kind for that matter). It does not matter how much one wishes to be or not to be part of the 'childhood' group; one's classification depends entirely on external ascription.

Take, as an example, the opposition between a mature and rebellious teenager, on the one side, and a Michael Jackson or Peter Pan type of character, on the other. The teenager may not identify herself as a 'child', considering her way of thinking, acting and behaving much closer to adults than to children, but she cannot escape her categorisation, and may even be punished by law if she tried to act 'as an adult.' Her grouping is entirely dependent on external sources, regardless of her relation to the group. And ascription does not only affect inclusion, but also exclusion from being grouped as a 'child': it does not matter how much does a Michael Jackson or Peter Pan type of adult aspires to be grouped as a 'child', it does not matter how much one behaves and acts as a 'child', classification is externally imposed. Michael Jackson's identification as a 'child' and Peter Pan's desire never to become an adult are irrelevant to their grouping; they cannot be children because others do not ascribe them as such.

Karl Mannheim considered that generational concepts, in this respect, are similar to concepts that refer to economic class. Whether one is a child, or in the lower-class does not depend on one's conscientious endorsement, nor on the active identification with the group; one is, rather, "located" by external forces in the group, regardless of whether one wishes to be included or not (Mannheim 1927: 289-290). Individuals are externally grouped as

'children', and whether they identify or endorse their classification is irrelevant to their ascription. Children are thrown into childhood, and whether an individual stays in the group or becomes part of another is determined in its entirety by external sources. It is certainly true that children can (and do) identify as such, and can develop some form of group consciousness as 'children' (see Mayall 2002). However, this is not the creative source which structures and determines the concept of 'childhood', nor of the classification of individuals within it; an individual's identification as a 'child' is mostly tied to the internalisation process which is a consequence of external ascription.

Reification

The second condition for the assessment of the moral relevance of a concept that refers to a human collective is the *reification* in its definition and characteristics. That is, when an "objective" definition is revised to include certain socially constructed assumptions regarding the features, behaviours and social reality of the individuals grouped. The exploration of the non-social features inherent to the concept of 'childhood' and its inevitable social dimension and dependence (see above) already hints at how 'childhood' is, as well, an inevitably reified concept. A mere positive non-social classification of humans by age, competences or maturity does not equate to the concept of 'childhood'. There is more than simple chronology or maturity in the definition of the concept due to its inevitable dependence on how social practices conceive the human collective of 'children'. As the Zimbabwean legal theorist Welshman Ncube argues, "Definitions of a 'child' and 'childhood' entail more than a specification of age of majority; they articulate society's values and attitudes towards children" (Ncube 1998a: 26). Even if one sticks to a purely non-social definition of 'childhood', the delimitation of the elements that justify such a classification depend on how a society perceives and what it expects from children. Nothing inherent to a human's biological condition can distinguishes 'children', as long as the social purpose for its categorisation is not included.

This is a position strongly defended by sociologists of childhood, and social constructivists in general. The variation across historical periods, across cultures and social traditions of what is meant by 'childhood' is an important proof that a non-social classification based on age or maturity does not equate to what is meant by 'childhood'. As sociologists James and Prout argue: "Childhood, as distinct from biological immaturity is neither a natural nor a universal feature of human groups, but appears as a specific structural and cultural component of many societies" (James and Prout 1997: 8). Classification based on biological chronology or maturity has to pass through a process of reification in order to become useful as a classificatory tool in social relations. Unfortunately, the English language does not have two different words to distinguish between the social and non-social

'childhoods', but this distinction can be made clearer through the example of the 'woman' social group.

We have the non-social concept used to refer to a non-reified classification of individuals based on 'sex' (which distinguishes between female and male humans based on the absence or possession of a Y chromosome), and we have the social concept used to refer to the *reified* classification of individuals based on 'gender' (distinguishing between woman and man, based on the possession or absence of a set of a characteristics and behaviours linked to particular expectations of who a woman or a man are) (see Haslanger 2012: 185ff.) Just as the concept of 'womanhood' is a reified version of 'female human', having in its definition elements external to its non-social source, thus being inherently a social construction, conditioned by its opposition to 'manhood'; 'childhood' follows the same pattern, being a reified version of 'biological immaturity' (to call it some way), making reference not only to the non-social condition and characteristics of its members, but also to how they are socially positioned as opposed to 'adults', how they are conceived, and how they are treated (Jenks 2005: 6-7). The first way in which reification takes place is, thus, through the opposition of 'childhood' and 'adulthood'.

Just as the concept of 'woman' requires its opposition to 'man', 'childhood' is inevitably linked to and conditioned by the definition of 'adulthood'. That is, 'childhood' cannot be conceived except as in its opposition to and difference from 'adulthood' (Jenks 1982: 10). The core reason and purpose for classifying certain individuals as 'children' lies precisely in determining different (and sometimes indeed opposite) needs, characteristics, values and moral demands for this group and for 'adults'. Nevertheless, I must flag following David Archard (2004: 29), that the opposition between these two collectives does not imply that one is taken as necessarily inferior to the other. Although many traditional conceptions of 'child' (and 'woman') have tended to reify their inferiority to 'adults' (and 'men') within their definition, this inferiority is not inherent to the concept itself but rather linked *to particular conceptions*. Actually, many of the most prominent contemporary conceptions of 'child' (or 'woman') have actually countered traditional definitions by focusing on the positive and superior values that come with being a 'child' or a 'woman' (see, for example, in Dwyer 2011).

Sociologist Berry Mayall (2000; 2002) has intended to show the ways in which the reification of the concept of 'childhood' mirrors that of 'womanhood' (Mayall 2002: 23-26). Standing on a feminist understanding of the process through which gender relations have developed (the imposition of social definitions and distinctions based on a person's biological sex), she argues that a similar phenomenon can be perceived with regards to generations (Mayall 2002: 12). Just as women's position has been socially regulated and stratified as inherently different from (and usually inferior to) men's through the imposition of the concept of 'gender' which stereotypes woman's capacities and behaviour; children have fallen trap to similar "generational structures" which organise their particular (and usually inferior)

position in the social world (Mayall 2002: 24). Children's characteristics, capacities and behaviour are reified and standardised through the stereotypes of "childishness"; they are framed as different from the adult population, and thus excluded from the moral and political spheres of social life in which they are deemed as being incapable of participating.

Children, following Young's terminology, are "thrown into" childhood by the adult population (Young 1990: 46): they are grouped as 'children', they are reified as having certain features and behaviours typical to 'children', and then they are treated as if they had these features and behaviours. The purely descriptive classification based on 'biological maturity' is reified through the introduction of social expectations and assumptions of the individuals grouped into the concept of 'childhood'. Children, paradoxically, are not necessarily 'children'; children do not necessarily behave as 'children', and children should not necessarily be treated as 'children.' Distinguishing between the non-reified and the reified elements in the concept of 'childhood' is fundamental for critically assessing the potential biases and assumptions that may be hidden within its definition, affecting how children are conceived as moral and political beings.

Most of the reification in the definition of 'childhood' is not inherent to the concept in itself, but rather dependent on its *conceptions.* That is, the particular characteristics that define what makes a 'child' (i.e. innocent, curious, irrational, weak, etc.) and their relevance in the assessment and classification of 'children', depend mostly on the particular *version* of 'childhood' one endorses. As I dedicate the next three chapters to analysing the most prominent liberal conceptions of 'childhood', I will not say anything more here about the various ways in which the concept can be reified.

Prescriptive Use

The third and final condition for assessing the moral relevance of a concept that refers to a human collective is its *prescriptive use*. That is, a human collective becomes an important subject of justice when there are normative implications inherent in the definition of the concept. The concept not only describes and classifies the human collective; it also prescribes how it should be treated.

In its most minimal sense, the dependent relation of the concept of 'childhood' to that of 'adulthood' already hints at how it acquires prescriptive content in its definition: the dependence is not only semantic, but it reflects on how the social relation between these two social groups should be normatively implemented. Even if 'childhood' is not inherently inferior to 'adulthood' at the level of concept, it does imply, first, a normative distinction of children and adults as "different types of humans", and second, a subordination in terms of authority. A structural element of the concept of 'childhood' is how it prescribes relations of authority and power between the two groups. 'Childhood' and its inherent opposition to

'adulthood' implies a particular power relation between them. Beyond children being non-socially weaker, more dependent and vulnerable (which allows adults to have much control over a child's life, actions and choices, as a descriptive fact), the asymmetry goes beyond this "state of nature" relation of power. It is a reified and normatively embedded socio-political asymmetry between a child and an adult's authority over their own life and the lives of others (both as private and public individuals) (Ncube 1998a: 26). Power in this relation takes a one-way directionality from the adult to the child. A child's world is organised and determined by the adult population. It is the adult who decides how and in what ways is a child permitted to contribute to social life both in the private and public spheres; it is the adult who controls the norms that structure their relationship to children; and, going even further, it is the adult who defines and regulates the relationships that children may have with other children (Mayall 2000: 256-257).

It must be said that this inherent prescription of 'childhood' being under the authority of 'adults' is clearly a matter of degree: the actual impositions and differentiations imposed by the adult population on the child population may be few and benevolent; it may even be that children are not harmed or unjustly treated by the adult's monopoly of power and authority. However, one crucial element remains in any scenario: the adult is always the one who decides how children *should be* treated. Just as the slave who is treated fairly by her master, not being forced to work and given proper care and education, *is still dependent on her master's will*; a child who is treated kindly, given a voice at home, at school and in public affairs, is still tied to and dependent on the adult's will and authority to decide whether to grant certain freedoms to the child or not (see Chapter 9, Section 4). This asymmetry of power is a normative prescription inherent in the use of the concept.

Even if only in this very limited sense, 'childhood' becomes a normatively charged concept. Its use, its boundaries and its characteristics are all constituted based on particular normative guidelines regarding their relation to the adult population (Meyer 2007: 93; Herring 2018: 27). This shows the particular framing of 'childhood' as a normatively charged concept. This does not only imply that children are (positively) under the authority of adults; however, it does prescribe that this is how it *should be*. The classification of certain individuals as 'children' depends strictly on this normative interpretation of the concept. It is the consideration that there are certain particularities about "individuals living in the first period of life before reaching maturity" that require particular prescriptions exclusively directed to them, particular constraints exclusive to their life and actions, and a particular treatment by the rest of the human population, what gives meaning and purpose to the concept of 'childhood'. Something in their biological condition and in their position in our social world requires from us to use the concept of 'childhood' normatively; we use it to assess who they are (as particular beings), what they need (as particular beings), and what is owed to them (as particular beings). I am not implying that there is something categorically wrong

or unjust in this asymmetry, I simply point to the fact that it exist in the foundations of the concept itself, thus, it demands an evaluation of the potential injustices that may come from how these questions are answered.

At this point, I do not intend to make a judgment on the whether the concept in itself, or our conceptions of it, are justified or not from a justice standpoint. It may well be that the ascription, reification and prescriptive intentions in the definition and use of the concept of 'childhood' are indeed the best and most legitimate way of treating children from a justice perspective. It may be that (opposed to other social groups such as those of women or African-Americans) there is no justified claim for considering that the child population is being unjustly treated by the adult population based on their classification as 'children'. However, the fact that certain fundamental inconsistencies in our treatment of children do derive from trying to include them in our studies of justice, compels us to understand the processes through which the concept of 'childhood' is constructed, what is inherent to it, what is not, and how the concept in itself frames and delimits our possible analyses of children in moral and political theory, in order to assess and evaluate the legitimacy of their differential treatment (Nolan 2011: 8, 10).

4. The Concept of 'Childhood' and its Conceptions

I analysed the sources and fundamental uses of the concept of 'childhood' in order to, first, delineate what is and what is not inside its core definition; and, second, to offer a reason why the concept bears moral relevance for studies of justice. Before I close, I want to frame succinctly what the concept of 'childhood' entails (in its definition and moral relevance), and what is its use for assessing justice for those labelled as 'children.'

I mentioned before that concept-formation is a goal-oriented activity, originating from a purpose, which leads to its classification and characterisation. Distinguishing the lexical ordering of the process of concept-formation (first purpose, then classification and characterisation) is important for understanding its value and its legitimacy. In this respect, first comes the 'why' such a concept exists, and then comes its characterisation and classification. Regarding the *purpose* (the 'why') of the concept of 'childhood', the fundamental objective for its existence in a morally relevant sense, is its normative use as *a classificatory mechanism that regulates and prescribes the appropriate social and political treatment for a human collective that is in the first period of life until reaching maturity.* In other words, the concept exists because it allows us to distinguish a human collective that may require a social and political treatment *different* from the "standard" treatment (if we did not consider that 'childhood' should be treated any differently from "standard" social relations,

the concept would bear no purpose at all and would not exist). The justification behind the purpose is that humans in the first period of life until maturity possess certain qualities that make them different from humans in other periods of life in a morally relevant way.

Regarding characterisation ('how') and classification ('who'), the concept in itself does not give many details, being rather open to plural interpretations (conceptions) of the particular characteristics that define it, the boundaries that classify it as different from other concepts, and the justifications for who are included and how they are classified. However, it does structure a basic guideline for its use: a 'child' can be defined as *an individual during the first period of life until she reach maturity*. Nevertheless, this is insufficient for characterising and classifying 'children': different interpretations and conceptions can stem from this basic definition, based on the particular way in which the process of reification of the concept takes place, particularly through the way in which the characterisation question is addressed. This is because the concept of 'maturity' (the dividing line or threshold which classifies who is a 'child' and who is an 'adult') and the characteristics that explain this distinction, vary extensively across time, across cultures and across political and moral theories. There is no way of interpreting 'maturity' and defining the sub-characteristics that individuals must possess in order to be considered as 'adult' or 'child' without reifying particular social practices, expectations and ideologies within the definition of the concept itself.

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

Opposed to most philosophical studies of childhood, I have consciously refrained from starting with a particular and precise definition of who a 'child' is and what characteristics make an individual a 'child'. This is because, as this chapter has intended to show, the concept

of 'childhood' is an *inherently normative concept*, connoting already within its definition a distinction between human collectives who *should be* treated differently as a matter of justice. It's normative use, together with the fact that individuals are *externally ascribed* to the group, and that particular social practices, expectations and ideologies are *reified* within its definition, makes any classification of individuals as 'children' morally ambiguous. This is analogous to the feminist concern with studying the particular treatment of women as a matter of justice without first deconstructing and morally evaluating what comes within the definition of 'woman' (Alanen 2005; Haslanger 2012: Ch. 6). The concept of 'woman' already ascribes, reifies and normatively prescribes, thus, assessing the moral validity of the characterisation and classification of 'woman' is a necessary first step for any assessment of justice towards this social group, before one can give a definition. Before we can assess the moral legitimacy and justifiability of the particular treatment of those labelled as 'children' (which will be addressed in Part II of this manuscript), we must assess the moral validity and justifiability of 'who' is labelled as a 'child', and 'why' this labelling is morally relevant and legitimate. Without normatively assessing whom should we be talking about when we talk about 'children', the issue of 'how to treat them' may be tainted and morally dubious.

I explored what is inside the *concept* of 'childhood', and why it bears moral relevance for studies about justice. I addressed these questions, first, regarding the definition and moral relevance of concepts that refer to human collectives in general, then applied it to the case of the human collective classified as 'childhood'. I considered the biosocial features embedded in their definitions, and distinguished morally relevant human collectives (social groups) from others that do not bear moral relevance. I argued that three conditions must apply in order for a human collective to be framed as a social group (thus, bearing moral value for discussions about justice): ascription, reification and normative prescription. I showed, finally, how the collective referred to through the concept of 'childhood' follows these conditions, thus, bears moral relevance as a social group for discussions about justice.

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

II. The Standard Liberal View: Life-Stage Conceptions of Childhood

"*You call us the future, but we are also the present.*"
The Children's Declaration at the Children's Forum 2002

What is a child? What is so particular about the life, needs and interests of a certain part of the human population that allows us to classify and distinguish them from adults? There seems to be a general consensus on conceptualising 'childhood' as a *human life-stage*; certain definable characteristics, behaviours and features allow us to classify some individuals as 'children,' and to distinguish them from 'adults.' Those who agree with this basic assumption follow a *Life-Stage Conception of Childhood*. However, within this general agreement, the characteristics that define this life-stage, and the process through which a person transitions from it to the next are still debatable questions. Should our understanding of 'childhood' depend on its comparison to 'adulthood'? Which are the morally relevant characteristics that allow us to distinguish between the two? Do these characteristics justify a differential treatment for each life-stage? In order to prove the moral validity of how children are and should be treated as a matter of justice, it must be shown how their conceptualisation is consistent among its purpose, its classification and its characterisation. This chapter revisits three of the most prominent Life-Stage conceptions of 'childhood' present in the Standard Liberal literature (Sapling, Intrinsic-Value, and Pragmatic views), it considers the conditions that these view require in order to legitimise their normative position, and shows that none of them is fully capable of justifying the moral validity of their distinction in compliance with liberal principles. In light of this, we may do well in thinking of children beyond life-stages, at least for normative purposes.

Life-stage conceptions of childhood agree on two structural claims: first, that it is possible to distinguish between two separate stages of life (childhood and adulthood); second, that the condition of individuals within each of these life-stages justifies treating them differently in order to do justice to their particular claims. These are the two reasons why life-stages are considered to bear moral relevance in our assessment of what is owed to different generational groups. Children are conceived as having some particular characteristics (a given age, the possession or lack of certain competences) which frames them within a stage of life called 'childhood.' Life-Stage conceptions, in short, intend to distinguish children from adults, and to define what is owed to each of these two stages of life *separately*. Beyond individual entitlements and duties, your life-stage grounds a set of particular rights and duties that society owes to you (and that you owe to it).

Now, in order for the use of a social group concept (one which is ascriptive, reified and prescriptive) to be legitimised it must: first, show how it complies with the general moral and political principles upon which it stands; and second, show consistency among the purpose of the concept and its characterisation and classification.

Regarding the first, this text addresses exclusively the use of the concept of 'childhood' in contemporary liberal theories of justice. In this respect, the conceptions of 'childhood' presented here must comply with the general liberal principles of justice, which structure it. Even if contemporary political philosophy shows wide disagreement regarding what 'liberalism' is and what it should be, I will rely in this manuscript (as mentioned before, Introduction, Section 1, 'What is a Liberal Theory of Justice?') on a very basic and fundamental understanding of it that could receive widespread consensus. All liberals agree on their commitment to presume individuals as free, and that all should be treated equally. Divergence from these presumptions ought to be justified. This stands on two principles, unified under the term 'basic liberal equality': first, an assumption of *basic equality* (also referred to as formal justice), "equal treatment for alike circumstances"; and an assumption of *basic freedom*, "the burden of proof is on the restriction or limitation of freedom, rather than the opposite". The principle of basic equality implies that individuals should be treated in the same way, unless there are morally relevant differences in their circumstances, which can justify differential treatment.[16] The principle of basic liberty implies that a political system must have an *a priori* assumption in favour of freedom; digressions from it have to be justified. It is clear how these two very basic principles pose a fundamental problem to liberal

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

theories of justice that use the concept of 'childhood'. The fact that the concept implies in its definition that childhood differs from the "standard" adult human group, and that it should receive differential treatment, presses the burden of proof on how their conceptualisation of it complies with the general liberal principles that ground their theory of justice.

The second element that a conception of 'childhood' must address is the consistency between its purpose, on the one hand, and its characterisation and classification, on the other (see Haslanger 2012: 187-191). I have argued in the previous chapter that, while the purpose is already inherent in the definition of the concept, most of its characterisation and classification depends on its particular conception. The purpose is *to define what is owed as a matter of justice (in compliance with the principle of basic liberal equality) to the collective of individuals who are in the first period of life.* I consider that this is an agreeable definition of the purpose of 'childhood' among liberal theories of justice. Now, Life-Stage conceptions stand on the idea that a differential treatment for the collective of individuals during the first period of life is justified. This implies that they must show why their digression from *the assumption of equal treatment* is morally valid by proving the consistency among their *characterisation* of 'childhood', their *classification* of 'childhood', and the fundamental *purpose* in the use of the concept.

This implies that, in order for a Life-Stage conception to justify the differential treatment of children, it must answer to two pressing issues: First, we have the *Characterisation* issue. If childhood is a life-stage, one has to be able to define what a 'child' is; there must be certain clearly definable and morally valid characteristics[17] that allow us to categorise a collective of individuals as falling within the 'childhood' life-stage. Second and closely tied to the first, we have the *Classification* issue. If childhood is a life-stage, one has to be able to classify it as a distinct category of humans, thus, defining the boundary that divides it from adulthood. If there is a difference between adulthood and childhood, we must be able to justify the circumstances under which the transition from one life-stage to the other occurs, and the moral validity of this classification.

For different reasons, and to a larger or smaller extent, I argue that the three Life-Stage conceptions of 'childhood' studied in this chapter are unable to satisfactorily respond to either or both the Characterisation and the Classification questions, if they intend to prove their compliance with liberal principles of justice. Irrelevance and generalisation affect the Life-Stage responses to the Characterisation question; vagueness and arbitrariness affect their answers to the Classification question.

Section 1 explores the Sapling model, which characterises and classifies 'childhood' by using adulthood as its standard; Section 2 assesses the Intrinsic-Value model, which shifts the

[17] Morally valid in the sense of being compliant with the principles of basic equality and basic freedom. When I refer to 'moral validity' I am referring to the compliance of a certain claim with the principle of basic liberal equality.

focus from adulthood to the goods and traits of childhood in itself; Section 3 addresses the Pragmatic model, which classifies and justifies the childhood life-stage through considerations of feasibility and stability, defending an age-threshold. The chapter shows that none of the three models is able to offer a morally valid and satisfactory justification for their strict distinction between adulthood and childhood, and considers that classification based on life-stage does not justify divergence from the principle of basic liberal equality.

1. The Sapling Model

Just as a sapling is characterised based on the plant that it will become, children have tended to be conceptualised through the adults that they will grow up to be. This has been the standard trend since the times of Aristotle. Because of their "under-developed" fundamental virtues, and due to their lack of control over their selves and their actions, children were taken as "incomplete" humans (Aristotle NE, 1097b-1098a; PO 1260a 7-11, 30-32). Their reasoning, sensitive and aesthetic capacities were considered as closer to "other animals, and to the majority of slaves" (Aristotle PO 1341la, 8-16), thus their rearing and education should focus on ensuring that they would escape this uncivilised condition in order to become part of the citizenry (Aristotle PO: VII.17-VIII.7). This is what has been termed the Sapling conception of 'childhood' (Tomlin 2018: 35): "normal adulthood" used as a comparative standard to characterise what 'childhood' is. Sapling conceptions have understood children as "incomplete," as adults-in-potential. The standard plant conditions a sapling's requirements; a child's distinguishing features are conditioned by what "normal adulthood" is, and what a child requires in order to *become* a "normal adult".

The Sapling-child is framed and constructed in opposition to adulthood. Who a child is, and what she is entitled to, is defined through the normal adult; that which the child lacks that the normal adult has, and that which the child requires in order to develop into the "standard" adult grounds its definition. Children are *developing* beings who are still in the process of becoming; they are incomplete due to their physical, cognitive and emotional incapacity to act as "normal" humans. They are not characterised for what they are in themselves, but for what they are "in-the-making". From a normative standpoint, it is the process of transformation, the preparation for adulthood, the "growing-up" of the child what matters (Jenks 2005: 8; Peleg 2013: 524). It is, thus, permissible to diverge from basic equality when dealing with children, because their position as "incomplete" humans justifies and requires them to be treated in a particular way.

Sapling models, in short, characterise childhood as *the stage of development in which a person grows towards adulthood*. David Archard (2004: 41-43) summarises the three

elements that ground this conception:[18]

1. The first, and most fundamental, is a *teleological* conception of 'childhood': children are understood as moving towards their pre-defined objective of becoming adults.
2. Second, this *telos* is not only normatively outstanding, it is also *necessary*: childhood inevitably and vitally moves towards adulthood; the process cannot be detained.
3. Third, this teleological and necessary process is *endogenous*: children are, let us say, "hard-wired" by nature to develop and become adults.

One way of understanding the Sapling conception of 'childhood' is as a descriptive devise that simply illustrates the biological process through which humans grow. The *telos* of a child is to become a larger and stronger self; this is an inevitable and necessary process of "normal" human beings; as long as the "normal" development process takes place, children will become adult individuals. The child's development towards adulthood is, in this descriptive sense, an inherent, innate and inevitable phenomenon; it is simply a biological fact.

However, this naturalistic characterisation of childhood as the stage of development towards adulthood has not been used exclusively as a descriptive devise, but has gained normative content. A Sapling response to the question 'what is a 'child'?' has evolved into a response to the question 'what *should* a child be?' The answer being framed through the requirements that allow her to become an adult. The Sapling conception of 'childhood' does not only state certain facts about how a child grows into adulthood; it also defines a specific set of threshold capacities, abilities and achievements that mark the *telos* of the child within the definition of 'childhood'. Even if the Sapling growth process of humans (or any living being for that matter) is a natural phenomenon, the definition of the *boundaries* and *characteristics* that distinguish between the "incomplete self" (the child) and the end-goal (adulthood) are not natural anymore; they carry normative implications on the way we (ought to) treat persons in different stages of life. It is the moral and rational deficits of children; their incapacity to be and behave as "proper" persons what grounds both the characterisation of individuals as children, and the boundary that distinguishes them from adults.

The Sapling conception has become the dominant paradigm of childhood since the rise of cognitive-developmental psychology, especially thanks to the theories and findings of Jean

[18] I must mention that, to my knowledge, Archard does not endorse the Sapling view; I use his work because it offers the clearest explanation of the Sapling rationale.

Piaget and Lawrence Kohlberg.[19] Piaget, and Kohlberg based on the former's findings, tried to prove that rational and moral development is not an open-ended affair, but rather a very strict process of incremental stages of competence-acquisition determined by the person's stage of maturity. The capacities of judgment and reason available to children do not allow them to go beyond their fear of punishment or their present interests when taking moral decisions. They are, in short, heteronomous and superficial in their decision-making, which makes them incapable of constructing "appropriately" rational justifications for their moral judgments and behaviour (Piaget 1932; Kohlberg 1976). This, however, is a temporary condition. Moral and rational development in both Piaget's and Kohlberg's theories is an invariant sequence (stricter for Kohlberg than for Piaget), that develops naturally from "more primitive" to "more evolved" moral and rational competences (Piaget 1932: 335). Kohlberg's extensive samples intended to show the inevitability and invariance of this "fixed moral development": there is a clear age sequence for a person's rational complexity in solving moral dilemmas "the right way" (Kohlberg 1984:437-438). As a child grows, her moral judgment evolves from considerations of punishment and reward, to credence of authority and social convention, and finally to reflective and self-constructed moral principles (see Gibbs 2014: 84-86). The progress of the child into adulthood is a natural process triggered by the child's own necessity and innate capacity to develop and achieve higher stages of moral development. By using the "standard" moral capacities of an adult as a ruler, children are conceptualised as "incomplete" moral beings. They are not only different from adults; their developing condition requires them to be treated differently.

What we can take from Piaget and Kohlberg is that children are not only saplings in a naturalistic sense (of being physically and cognitively "underdeveloped"), but also in the moral sense: they are insufficiently developed to react rationally, to make responsible choices, and to behave "appropriately" in social situations. They are "incomplete" rational and moral beings, and should be treated as such. This ceases to be a purely descriptive assessment of the biological development of children; the notion of *incompleteness* implies a normative claim for the child's need to acquire certain characteristics in order to be considered as "complete". Assuming that a certain standard of rational and moral capacities are required to be treated equally as political and social beings, the child's incomplete process towards this standard justifies their disqualification from equal treatment (as noted in Archard 1998: 86).

Tamar Shapiro (1999; 2003) offers one of the most insightful philosophical approaches to understanding childhood through this Sapling lens. Shapiro takes adulthood as the standard for the moral and political subject, and a Kantian understanding of autonomy [as "the

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

capacity to be a law to oneself" (2003: 587)] as the threshold to adulthood. Basic equality requires surpassing this adulthood threshold: any individual who deviates from this standard is taken as less than fully autonomous, less than fully human, as incomplete, thus, in need to be treated differently. Moreover, children are always deviants from this standard; they are "incomplete" by definition. With adulthood as the standard, Shapiro argues that childhood should be understood as a "nonideal" and "temporary deviation from the norm" (1999: 735), which demands specific responsibilities from the adult population to ensure that children escape this pre-political and pre-moral state, and become full, active and equal citizens in society (1999: 718-720). Children are, thus, conceived as lacking personhood while being "in the process of developing" it (1999: 716). Adulthood, in this respect, frames the way we understand who children are (defined by their lacks relative to this ideal state), and defines the normative *telos* to which children should arrive: they ought to be raised out of childhood, and escape their liminal status in our society in order to become full moral and political beings (2003: 589).[20]

Sapling conceptions of childhood ground themselves in the non-social claim that humans develop gradually and invariably the necessary abilities required to become full moral beings. Children, in this sense, are understood as "in the process" of becoming full persons. On top of this essentialist claim, Sapling conceptions argue that this process of moral development divides humans into two categories: 'adults' are those who have achieved full moral personhood; and 'children,' who are *incomplete* and still in the process of becoming full moral persons. This distinction is grounded on a threshold of *rationality*; this threshold is defined through the acquisition of certain fundamental competences required for acting as a full morality-capable being. Because children are considered as incapable of achieving this rationality threshold, they cannot be treated as if they were rational. It is justifiable, due to their "incompleteness" to diverge from basic liberal equality, in order to ensure that their particular needs are protected through a treatment particular to them.

1.1. Rationality and Teleology

Development is a core concept for the Sapling conception of 'childhood'. It is the empirical fact that children gradually acquire new competences and reach higher levels of rational capacity, autonomy and moral understanding, which allows them to overcome the "deficiencies" of their stage of life and reach a threshold of adulthood in which they are no longer "incomplete." Opposed to individuals with relevant mental disabilities or to non-human animals, "normal" children are endowed with all the instruments necessary to "escape from childhood" (Cowden 2012: 366). The concept of development is, thus, structural to

[20] Another recent account which follows Shapiro's intuitions is Sarah Hannan's "predicament" view of childhood (see Hannan 2018).

characterising 'childhood' because it compels us to think of children not only as "lacking" but also as having the potential "not to lack". In the Sapling conception, 'development' is understood as a process pre-determined by its teleology, its necessity and its endogeneity: childhood is defined by its development towards mature adulthood, and ends when a threshold of moral and rational competence-acquisition is reached. The Classification question is solved with rationality and moral capacities as a defining threshold for distinguishing adulthood from childhood; and a conception of children as humans in the process of development towards adulthood responds to the Characterisation question. To be treated equally, one must possess a minimum amount of rational and moral competences; if these are not possessed differential treatment is justified.

Regarding the Classification question, the use of moral competence as a threshold for distinguishing adults from children is necessarily arbitrary. There is no way of distinguishing children from adults based on this characteristic without oversimplifying the development process of human beings, or without overvaluing the role that a specific competence plays in the moral development of an individual, and as the justificatory peg for differential treatment. Sapling conceptions of 'childhood' tend to use some form of rational capacities as their standard for moral competence, and as justificatory line for the Classification question: full moral beings are those who possess rational and autonomous competences (social perspective taking, self-sufficiency, reflectivity, etc.) beyond a threshold. However, the definition of the specific competences needed to be considered as "full moral beings" is a much contended and unresolved issue. Even assuming that "full moral competence" can be justified as the standard that distinguishes adults from children (and one that would justify their differential treatment), there seems to be no way of defining what this "full moral competence" entails without falling into extreme vagueness or moral irrelevance.

If a clearly defined and measurable competence is used as the threshold for adulthood (narrow threshold), we would fail to take into account the plurality of characteristics that comprise a "morality-capable being". The definition of moral competence as being grounded on certain rational and cognitive factors, as it tends to be defined by Sapling conceptions, is unable to grasp the non-rational elements that have been proven as structural to an individual's capacity to behave as a moral being. Having the capacity to justify rationally one's moral decisions is not equivalent to having moral capacities in themselves. Jonathan Haidt (2012: Part I) has shown in his cross-cultural analyses that morality is much more strongly grounded on intuitive and emotional factors than on rational ones. Martin Hoffman (2000: esp. Part V) has tried to show the fundamental role that empathy plays in behaving morally, a characteristic that has been proven to exist even in toddlers who have no rational capacities whatsoever (and even to larger degrees than many adults). Equating moral capacity with rationality oversimplifies moral behaviour, while falling prey as well to claims of being a

Westernised (and even a gendered) conception of what morality entails (see Archard 2004: 93-94; Gillian 1982). However, if we try to fix this by using a more ample definition of what moral competence implies, we would fall prey to the problematic issue of classifying and distinguishing in practice between those who achieve such a standard from those who do not (Schrag 1977: 172-173). In this case, even if an ample threshold may allow establishing clear differences in the moral competence of a 5-year-old and a 30-year-old, the grey area in between becomes even more difficult to be differentiated.

There are pragmatic reasons why a strict competence-based threshold that distinguishes children from adults may be unsatisfactory.[21] Joel Anderson and Rutger Claassen (2012) offer two relevant reasons for not considering rational moral competences as the distinguishing feature between adults and children. First, Anderson and Claassen argue that non-ideal considerations must have priority when defining a boundary between adults and children. Their basic stance is that the Sapling threshold has to rely on constant testing mechanisms of competence-acquisition that would be cumbersome to administer, potentially biased and unreliable (2012: 502). Defining adulthood through a specific competence-threshold would imply having to test each individual periodically in order to assess whether the person has achieved proficiency or not, which would require an immense quantity of bureaucratic and administrative procedures. Although this concern does not affect the moral (il)legitimacy of the Sapling standard, nor its (non-)compliance with liberal principles, it is important to flag its difficulties in dealing with its potential implementation.

Beyond the specific issues with defining a competence-based threshold that distinguishes adults from children, there is the problematic assumption inherent in *the teleological characterisation* of development during childhood. As mentioned above, Sapling conceptions assume that childhood develops towards a particular *telos* with "normal adulthood" as its standard. This claim is not only normatively problematic, but also empirically incorrect. Regarding the empirical claim, the idea of a moral *telos* for childhood is based mainly on Kohlberg's cognitive-developmental assertion that moral development is structured by an invariant age-sequence in which individuals progressively "grow out" of certain pre-moral stages of thinking and reasoning into moral and 'adult' stages of reasoning and behaving. There is only one path for the moral development of all "normal" humans. They do not jump stages, nor regress, and they all go towards the same pre-defined moral end-goal. This would entail that we can characterise 'children' as human beings who have not yet reached the 'adult' stages of moral development. This claim has been disproven by many developmental psychologists since its inception (see Gibbs 2014: 86-91). Moreover, it was also proven less strict by Kohlberg's own longitudinal studies of the same individuals across time (Kohlberg 1984: 447). Not only do individuals regress and jump moral stages at different

[21] See below (Section 3) for a full account of the Pragmatic model.

periods of their lives, but also the development process (in the cases in which it does follow an invariant sequence) is not concluded during childhood nor adolescence and prevails during the whole life-course (Gibbs 2014: 89-90).[22] This implies that, conceptions of 'childhood' which rely on a strict staged sequence of rational and moral powers to distinguish children from adults, does not reflect the actual process of development through which varied individuals pass. The fact that the acquisition of rational and moral powers is not strictly sequential limits the legitimacy of characterising a whole life-stage as either possessing it or not. The classification would prove uncompliant with the assumption of basic liberal equality, due to its inconsistent and highly arbitrary grouping of individuals as deserving differential treatment when this differentiation cannot actually be substantiated.

If an invariant moral development that leads to "normal adult morality" is a fiction, how can we characterise 'children' as humans who have not yet reached this "normal adult morality"? It seems highly problematic from a normative perspective to conceptualise 'childhood' as a stage of life that develops into a specific standard of adult morality if it actually does not. This would oversimplify the possible varieties of what 'childhood' is (and can be), and the role that the actual child plays in determining the speed and the objective of her own development process. The fundamental problem with the Sapling model lies in its reification of certain assumed characteristics within the concept of 'childhood', without accounting for their actual applicability to the individuals who are ascribed in the definition. It is, moreover, incapable of fully responding to the two pressing questions: it offers a wrongful characterisation of how human moral development occurs, and it fails to offer a good justification for the threshold it applies to distinguish 'adulthood' from 'childhood'. The claim is that, even if there are morally valid reasons for defending the differential treatment of individuals with varied moral and rational capacities, this differential treatment *cannot stand on a strict separation of the adult and child human collectives as being clearly classifiable on either side of a threshold.*[23]

2. Intrinsic-Value Model

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

[22] To this it must be added that cross-cultural comparative studies of child development have clearly proven that Kohlberg's account does not work if applied beyond the North-Atlantic framework (Lancy and Strathern 1981; Lancy 1983).

[23] Chapters 3 and 4 address in more detail the ways in which we may devise a conception of 'childhood' which can legitimise differential treatment without relying on life-stage differentiations.

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

The basic tenants of the Intrinsic-Value view are resumed in Rousseau's words: children are children and should be treated as children rather than as adults (or adults in the making). The focus on adulthood as the standard that grounds our normative considerations over childhood does not only harm children in their life *as children* but has the effect of "corrupting" and harming their life when they grow-up. The standards through which we judge and conceive of 'childhood' should be based on the characteristics inherent to this stage of life in itself and not to others. Children have their own ways of seeing life, of thinking and feeling, it is these, and not adults', which should ground how we conceptualise 'childhood' and what should be ensured to children. Rousseau argued that we should not overemphasise a child's rearing and education as focusing on their future selves; the value of childhood *in itself* should be protected, and should not be sacrificed for their "uncertain future" (Rousseau [1762] 2009: 105-106).

Despite staying in the shadow of the Sapling-child, Rousseau's conception of 'childhood' began getting strong traction during the last decades of the twentieth century with the rise of the sociology of childhood, and the growth of childhood as a philosophical subject.[24] Concerns with the Sapling-child derived from the fact that they did not only influence the academic and scientific community, but because they became the true *ethos* of the vernacular conception of 'childhood'. Expressions such as "children are the future," "the next generation," or "children are a precious resource" are clear examples of the Sapling conception in our every-day life (Qvortrup 2005: 5; Campbell 1992: 18-20). The idea that children are adults "in-the-making" had become entrenched in the same definition of the concept. Sociologists of childhood were concerned with understanding the present realities of children around the world; how they behave, what troubles them, how they understand their own lives and their relation with their social environment. These were questions that could not be answered through the Sapling's future-looking conception; these questions demanded a reconceptualization of children as beings living in the present (Uprichard 2008: 304). Sociologists did not fully reject the findings of developmental psychology; they considered, however, that the knowledge offered by this branch of thought was necessary but insufficient for a thorough understanding of whom children are, how we should understand them, and what makes them a morally relevant research subject (James and Prout 1997;

24 For the sociology of childhood see especially James and Prout 1997; Mayall 2000; Qvortrup 2005; Jenks 2005. For a comprehensive review of the philosophy of childhood literature see Matthews and Mullin 2015; see also Matthews 1994, and Archard 2004.

Mayall 2000: 244).

A relevant shift made by the Intrinsic-Value model in its characterisation of 'childhood' is its focus of analysis on its *positive* distinguishing traits, as opposed to seeing it merely through its deficiencies. Alison Gopnik (2009) has strongly defended in her own psychological studies with young children the intrinsic value that they have in themselves, and not as unfinished adults: she argued that, in some ways, children "are actually smarter, more imaginative, more caring, and even more conscious than adults are" (Gopnik 2009: 5). Children have a different way of relating to the world, and a different way of reasoning and socialising. Just because this process differs from the ways adults relate to the world does not imply that it should be taken as inferior or defective; their goods and behaviours are as complex and valuable as those of adults, they are simply different (Gopnik 2009: 9). The goods of childhood (that which a child needs for having a good life, and for being treated justly), thusly, are not necessarily the same as those of adults. Treating children as equal members in a liberal society requires ensuring that the goods that give value to this stage of life are respected, valued and provided (Macleod 2002).

In short, the Intrinsic-Value model argues that 'childhood' is a stage of life in itself, not a preparatory process towards adulthood. "Incompleteness" cannot be the justificatory characteristic for children's differential treatment; it must be the values that childhood offers to life what grounds its definition. The Intrinsic-Value model responds to the Characterisation question through the goods and traits that make childhood a valuable stage of life in itself. Philosophers such as Anca Gheaus and Colin Macleod ask from us to see the inherent value of childhood in itself, and to acknowledge the benefits that not being an adult has for the child population. That is, not only do children have interests *qua* children, but also these interests have *an intrinsic value* to the child who enjoys them, pressing the need to have them ensured and protected (Macleod 2010; 2015; Gheaus 2015a). Children are more imaginative, curious, innocent, philosophical and prone to experimentation and variety (Matthews 1994; Macleod 2015: 59-62). These are fundamental capacities that give special value to the lives of children. Moreover, only by leaving aside the parasitic definition of 'childhood' can these goods gain the prominence and value that they are due as structural parts of what being a child is, and what justice for children requires. 'Childhood' is much more than only a preparation for adulthood; it is a stage of life in itself with its own positive traits particular to it which not only distinguish children from adults, but which also give an intrinsic value (sometimes interpreted even as a higher value) to childhood in its own right (see Dwyer 2011: Ch.4). Equality requires taking into account the differences in valued-goods for each stage of life in order to ensure that each group is provided with what actually gives value to their own life (Macleod 2002: 222).

Characterising 'childhood' as an intrinsically valuable stage shifts the focus of analysis

from adults to children themselves. It also expands our understanding of the Classification question: the distinguishing features are not the "lacks" of children as compared to adults, but its special values and capacities. Anca Gheaus, one of the most relevant philosophical defenders of this view, considers the transformation of the child into an adult as a shift "from one intrinsically valuable kind of human being to a different intrinsically valuable kind of human being" (Gheaus 2015b: 2). There is no better or worse; no "unfinished" or "defective"; there are simply two kinds of beings with different positive traits, different values and ways of valuing life, and they should both be respected in their own right, and not necessarily in opposition to the other (Gheaus 2015a). There are particular privileges in being in different stages of life, and justice must ensure that they are protected accordingly (Gheaus 2018: 2-3). When we transition from childhood to adulthood we gain certain physical, emotional and cognitive competences, experience and self-control, which allows us to value life from a different angle; however, we also lose certain relevant abilities especially prominent during childhood (Gheaus 2015b: 11). This fact compels us to consider their differentiation as morally pertinent and necessary. The fact that each stage has its own valuable goods, and its own ways of relating to the world requires the use of separate standards in order to do justice to each group separately.[25]

2.1. Defining the Goods of Childhood

Intrinsic-Value views argue that the Sapling's characterisation and classification of 'childhood' is wrong. Its adult-centred comparative approach to characterising 'childhood' blinds it from conceiving certain fundamental positive traits, benefits and values that childhood has in itself. If we intend to do justice to the claims that children may have as ends in themselves and not as future adults, the Intrinsic-Value model's characterisation of childhood may be a step in the right direction. Instead of framing 'childhood' through the definition of "what they are not", we can better further their claims by looking at them in their present state. That is, we do not treat them differently because they are "inferior"; we treat them differently, simply because they are different. However, there may be reasons why the Intrinsic-Value view could benefit from not taking such a strict approach to the differentiation between the characteristics of childhood and adulthood. A first problem relates to the issue of weighing and classifying what it considers to be the 'goods' and 'values' of each stage of life; the second concerns the potentially harmful reification of what it means

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

to be a 'child' (or an 'adult').

The first problem concerns the possibility of weighting and defining the values and goods intrinsic to each life-stage. This is a necessary condition for Intrinsic-Value views in order to answer to both the Characterisation and Classification questions. In a recent article where he analyses various views on the value of childhood and adulthood, Daniel Weinstock (2018) has argued that Intrinsic-Value views fall prey to the need to measure, weight and compare what they consider as "the special goods of childhood" in order to justify their claim that 'childhood' is a valuable stage of life in itself. Although this debate focuses on the comparative *value* of childhood and adulthood as life-stages, Weinstock's critique is relevant to the issue that concerns us here as well. If Intrinsic-Value views consider that childhood and adulthood should be seen as different life-stages, they must be able to show how their characterisation of what 'childhood' is (and what it should value) differs in a morally relevant sense, from what 'adulthood' is (and what it should value). Weinstock claims that this analysis cannot be carried out without making very troubling assumptions about theories of values, and that an alternative route must be taken (Weinstock 2018: 51).

Sarah Hannan (2018), in a similar line, has claimed that this weighing procedure is necessary for Intrinsic-Value views because a consideration and inclusion of the "intrinsic evils" of childhood in the assessment may lead to them outweighing the "goods". This, she argues, would imply that to live in childhood could actually be bad for children (Hannan 2018: 19-22). Although this critique affects the Intrinsic-Value views' attempt to justify why not having a childhood would be harmful for us (Gheaus 2015a), I believe that it does not necessarily affect the Intrinsic-Value's possible response to the Characterisation and Classification questions. Patrick Tomlin has claimed that if we take seriously the claim that children and adults are different forms of life who value different goods (as Intrinsic-Value views do, and regardless of whether they are actually bad or good for us), then we do not need to carry out a weighting comparative analysis of their relative values (Tomlin 2018). Even if we cannot judge whether not having a childhood or an adulthood would be bad for us, we can still show that there are certain features and characteristics in each life-stage that allows us *to distinguish them* (for good or bad). I believe, however, that the questions of Characterisation and Classification still stand: even if we do not compare childhood and adulthood in order to judge "which is better," we still need to define and assess what makes them *different*.

The Intrinsic-Value model considers that there are certain relevant characteristics, behaviours and capacities that allow us to distinguish between adults and children. Play, experimentation, imagination and curiosity, for example, are core elements of what being a 'child' means, and what gives value to this stage of life as opposed to adulthood (which does not give so much value to these characteristics). On the other side, adulthood tends to come

with other valuable features, such as some acquired responsibilities, more autonomy, or economic and political powers, which are not usually linked to childhood. It is not that these features are either valued fully or not valued at all within each life-stage; rather, it is their *relative* relevance and weight within each life-stage that allows us to distinguish them as being (especially) valuable for either adulthood or childhood. 'Childhood', thus, is defined through the assessment of the relative prominence of certain valuable goods and characteristics, and the relative disvalue of other goods and characteristics.[26]

There is, thus, a morally relevant difference between adults and children in the goods that are valuable during their life-stage which justify treating them differently as a matter of justice. While these goods are objectively valuable and important to all, each life-stage should stand in a privileged position to enjoy a particular type of goods. I wish to ask, however, whether there is a *prima facie* justification for establishing a morally valid distinction between the goods that children and adults should value. I believe the answer is negative for two reasons. First, there may be reasons to question the *prima facie* validity of the distinction between 'children' and 'adults' if based on the assumption that they value different goods (as an empirical claim) due to the role that social constructions play in structuring what we value and how we behave. Second, even if children and adults do value different goods as an empirical fact, this does not compel us to claim that they *should be* differentiated (as a normative claim).

The fact that the distinguishing features between adulthood and childhood are only different in a relative and not absolute sense means that some (or all) adults may give a certain value (and sometimes even a very high value) to what Intrinsic-Value views consider as "childhood goods"; the same may happen with children valuing "adult goods". This does not mean that all adults value childhood goods, nor that all children value adult goods, but that *there is no strict separation between valued goods by life-stage*. If a child can hold political freedoms as fundamentally valuable to her life, and if an adult can hold play and curiosity as core tenants for her own life, what justifying principle would we be using in order to tell the child that she is not owed political freedoms, nor play and curiosity time to the adult? A generalised assessment of the "valued goods" for each life-stage fails to justify its distinction of individuals on both sides of the threshold whose values do not coincide with the descriptive assumption. I believe that this "strict" characterisation of childhood values and adult values as different would not do justice to the *individual's* valued good when assessing what is owed to her as a matter of justice. If the individuals is the core source of concern for liberal theories of justice, we cannot rely on a generalisation of the valued goods of some people in order to assess what is owed to all. The claims of a person would be tied to a

[26] I thank Anca Gheaus for thoroughly clarifying certain elements of the Intrinsic Value view. I hope that I do justice to the position.

generalised characterisation of who a person *should be* and what *she should value* based on her life-stage, and not based on her own conception of the good. If the Intrinsic-Value's objective is to ensure that the claims and goods that children value are taken as matters of justice, there is no legitimate reason to allocate and distinguish goods and values based on life-stage. By focusing on the individual as the primary source of moral concern, we could ensure that all individuals (regardless of their age) have the fundamental goods that give value to their life as a matter of justice (Giesinger 2017: 213). What is required is an expansion of the interests and goods that we judge as valuable for the *human life* by including those that have tended to be omitted as "childish"; a strict distinction between 'childhood' and 'adulthood' is not required in order to address their claim to different valued goods.

Intrinsic-Value theorists could respond to this by arguing that their claim is not descriptive, but normative: that is, it does not matter whether children and adults value different goods as an empirical fact; rather, it claims that there is *objective value* to different goods for different life-stages, thus, they should be ensured because it is good for them.[27] Leaving aside the moral relevance of the empirical validity of the difference in valued goods of children and adults, I consider a second problem that may arise; namely, how a potential blindness to the role that the reification process of who a 'child' (or an 'adult') should be, may affect the way its values are framed and understood.

Let us assume that there are certain clearly distinguishable characteristics and goods that can be categorised as either objectively valuable for children or for adults: playtime is objectively valuable during childhood, and working responsibilities not objectively valuable; working responsibilities are objectively valuable during adulthood, and playtime not objectively valuable. This would be, let us assume, the distinguishing feature that allows us to define the boundary and difference between who 'children' and 'adults' are, and what should be owed to each of them. In order for this claim to bear moral validity and do justice to each group, it still has to show that this difference in objective value is in fact inherently entrenched in each life-stage, and that they are actually valuable *a priori* to different human life-stages, instead of being a consequence of the reification process.

I believe that such a differentiation between the objectively valued goods of childhood and adulthood begs the question regarding the source of "objective value" for these goods. It may indeed come from certain inherent and "true" values that individuals in different life-stages attach to different goods; or it may come from a comprehensive understanding of "what is valuable?" beyond what individuals in themselves may value. Are work responsibilities not valuable during childhood because there is something inherent in childhood, which requires them not to have value? Alternatively, are they not valuable

[27] I thank Anca Gheaus for raising this response.

because a particular societal conception of 'value' does not consider working responsibilities during childhood to be valuable? Is the reduced value of playtime during adulthood inherent to the life-stage? Alternatively, is its reduced value conditioned by particular societal conceptions of 'value', which consider playtime not to have value in this life-stage? I believe neither of the two routes can be justified, nor compliant with liberal principles for one and the same reason: both routes do not take into account *the individual's own account of 'value'*, and beg a justification as to the moral validity of imposing a particular conception of 'value' on individuals who should be free to develop it themselves.

Sociological studies on the construction of gender and generational values is relevant to understand the issues that come with claiming the objective moral validity of certain conceptions of 'value' for particular social groups (such as life-stages). Berry Mayall has strongly advocated for the need to distinguish between the inherent from the socially constructed features that allow us to group a collective of individuals together through "objective assessments" (2000; 2002: Ch. 2). She uses the example of gender differentiations as a way to highlight potential biases that presently affect generational distinctions. There was a time (which unfortunately still has traction today) in which women were taken as different from men based on the fact that they valued (and should objectively value) different goods. While men should enjoy public life, making money and bringing food to the table, women should value the private life of the household, cooking, cleaning and taking care of children. This allowed not only to justify the classification between women and men (as gendered social groups), but it also justified their differential treatment based on what each group should value (women should value household work, and should be respected and protected in their fulfilment of these goods; and men should value public life, and should be respected and ensured the conditions that allow them to fulfil these goods). It may be true that (some) women do value household work (I am agnostic to this point); however, the fundamental point is that this value may have been constituted by a social system that framed household work as an objective value of women which (probably) led to it being considered as objectively valuable *by* women. That is, household work was reified as objectively valuable within the characterisation of 'womanhood' imposing a system of value regardless of women's own perception of it. There is no morally valid reason for considering that household work is an objectively valuable part of 'womanhood' regardless of what individual women actually consider and claim as inherently valuable to them (as individuals). A liberal conception of justice should be weary of the potential reification of harmful social practices as "objective valued goods". The presumption of freedom which grounds liberal principles is illegitimately restricted if an individual does not have the freedom to choose and follow her own conception of what is 'valuable'.

This reification and differential treatment of women based on "objectively valued goods of womanhood" has been irrefutably discredited, and I do not think that I have to justify its

moral and political irrelevance. I consider, however, that just as in the case of gender relations, we should be weary of making the same potential mistakes when we talk about who 'children' are, what they value, and what they ought to value (Mayall 2002: 27). There is no reason to assume that, just because children tend to play more, and adults tend to work more, these should be objectively valued characteristics for different human life-stages. Objective values reified within the categorisation of social groups (race, gender, or religion) have been applied in extremely harmful and unjust ways in the past. I consider that the same mistake may be happening in the case of the social group of childhood. Of course, ensuring the goods of individuals who value differently is indeed a structural part of what justice requires. However, *the strict life-stage characterisation of 'childhood' as having certain objectively valuable goods different from adults' can be problematic in certain cases, especially if it appeals and characterises who a person is and who she should be without taking into consideration her actual particular values*. I consider that imposing the same "objective" constraints on children as has been done with women in the past would go against the fundamental presumption of freedom of any liberal theory of justice.

3. The Pragmatic Age Model

Using age as the basic characteristic and classificatory mechanism for 'childhood' is a standard practice in our everyday life. Even if nothing categorically distinguishes children and adults, age is the way in which children are classified in all state and international legal systems. However, why use age as the classificatory mechanism that distinguishes children from adults? What justifies differential treatment based on age, if one intends to comply with the principle of basic liberal equality? The idea behind the Pragmatic model of 'childhood' as a life-stage is that, even if, as a biological fact, there are no clear distinctions which allow us to characterise 'childhood' as a life-stage, nor a definite biological phenomenon which allows us to define the boundary that distinguishes 'childhood' from 'adulthood', there may be political and social reasons why it is justified to conceptualise 'childhood' as a separate life-stage from 'adulthood' even if they are not *pro tanto* (Franklin-Hall 2013: 242). Contrary to the Sapling conception, which responds to the Classification question (a competence threshold of moral and rational abilities) by characterising 'childhood' as a preparatory stage of moral development, the Pragmatic model denies the need to answer to the Characterisation question in order to give a justified answer to the Classification question. There are, according to it, political and social reasons why we should distinguish 'childhood' from 'adulthood' even if there are no inherent characteristics to either of these stages of life, which can appropriately differentiate them. Some sociologists and philosophers of childhood

have pressed for the need to conceptualise 'childhood' as a socially constructed regime; 'childhood' is a devise or status that does not necessarily follow biological guidelines, but which, rather, follows socio-political interests and regulates social relations (Liebel 2012: 18). Pragmatics argue that the Sapling intention to justify the division between children and adults as a "natural necessity" is unsatisfactory (as shown in previous sections). However, there may still be pragmatic reasons for establishing a clear and straight-forward threshold (defined by reaching a certain age; be it 16, 18, 21 or any other) that distinguishes children from adults due to the consequences for everyone if such a threshold is not defined (Schrag 1977: 177).

Joel Anderson and Rutger Claassen argue that it is not a certain competence-threshold of moral proficiency, nor the aggregation of certain rational and autonomous abilities what grants (or should grant) a person a right to be "treated" as an adult. Adulthood involves, rather, a "seismic shift" in the normative status of a person as part of a socio-political community (Anderson and Claassen 2012: 505). Even if, from a biological and psychological perspective, people do evolve little by little from morally and rationally incompetent beings to fully competent humans, this natural developmental feature is not the determinant reason why the division of these two life stages should exist. A *regime* of childhood, as they understand it, is an institutionally and socially supported system that intends to stabilise the expectations for how certain groups should relate to each other in order to make social and political relations more manageable, more efficient, and more conductive to social stability (Anderson and Claassen 2012: 508). In other words, differential treatment based on age is justified and morally valid because of the beneficial implications it offers to groups on both sides of the threshold, while ensuring the sustainment of the political and legal structure that grants these benefits.

The Pragmatic model concedes to the "biological truth" behind the Sapling conception of 'childhood' as a stage of progressive development of moral and rational capacities, but considers that defining an age-threshold that distinguishes adults from children may be the most effective way of ensuring that each group is treated justly and respectfully. The difficulties and ambiguities in using rationality as a threshold for distinguishing adults from children (see above, Section 1, 'Rationality and Teleology') requires the establishment of *a pragmatic threshold of age* that regulates intergenerational relations. In other words, Pragmatics do not necessarily deny that there are certain relevant behavioural differences between different generational-groups. They consider, however, that the lack of a clear and feasibly implementable distinction that would allow us to group them based on abilities/inabilities, requires the establishment of a proxy age-threshold. This can compensate for the unfeasibility and potentially negative consequences of tracking rationality (or morality) directly. So, the Pragmatic view would argue that, even if there is no clear division between a seventeen and an eighteen year-old, the fact that there is a clear difference between

a five year-old and a forty year-old requires establishing a threshold that allows us to separate what is owed to the two extremes. This is so even when it forces us to treat the grey areas at both sides of the age-threshold arbitrarily. The benefit that it generates, overall, outweighs the harms inflicted in the grey areas.

Even strong defenders of a Pragmatic age-based distinction between adults and children concede that the division is merely a *proxy*, and, if it is used legally and politically, it is only (or mostly) due to pragmatic concerns with efficiency and stability of social relations (Anderson and Claassen 2012; Franklin-Hall 2013), rather than it having any inherent value in itself. An analogy with speed limit when driving is usually given: speed limits are necessary. The harms that would be inflicted by not using speed limits would be great. Even if there is no relevant difference in threat of harm if using 99km/h or 100km/h, and the choice between them is entirely arbitrary, *some* threshold is not only beneficial but necessary in order to reduce the threat of harm when driving (Archard 2004: 86-87). The claim goes that, if no strict division between permitted and restricted driving speed were established, everyone driving at any speed would be made worse-off. Same with age-thresholds for distinguishing adults from children. This distinction is justified by appealing to the need to grant certain rights, freedoms and responsibilities to one part of the human population and not to another *in order to benefit both*, due to the problems that may arise from treating them alike. The externalities that would befall if a strict division of adults and children did not exist would be more detrimental and cause longer-term harms to all individuals (and especially to those labelled as 'children') than under a relatively arbitrary proxy age-threshold.

Not using a strict age-threshold for distinguishing 'children' from 'adults' opens the door not only to allow competent children to become adults at any age, but would also compel present adults to justify their status as 'adults', thus forcing some to be reclassified legally as 'children' (Anderson and Claassen 2012: 503). Anderson and Claassen consider any alternative to age-based thresholds of adulthood as fundamentally *unstable* from a social and political perspective. Any alternative would "undermine the ability of parents to carry out their responsibilities effectively" (2012: 514) due to the lack of predefined guidelines for how to treat a five, ten or fifteen year-old; and they would demand constant negotiation and renegotiation of boundaries of authority between parents and children (*Ibid.*). The same, they argue, would happen in the public sphere: the fact that there would be no simple way for a public official to know the appropriate treatment, rights and duties of a person depending on her age would lead to inefficiency and problematic restrictions on the whole population (2012: 503).[28]

28 A similar critique was presented by Laura Purdy (1992: see 214-215) to Liberationist approaches to childhood. See Chapter 6 for a more thorough analysis of her position.

Pragmatics concede to the fact that this does not imply the absolute exclusion of "minors" from certain liberties, which they are competent enough to exercise. They distinguish, thus, between majority and licence in legal practice: while majority is the status that humans acquire by reaching a certain age (defining you as either a 'child' or an 'adult'); licence responds to the need to grant a role to competence-acquisition in the differentiation of legitimate treatment of individuals. Licence concerns a legal permission to exercise a certain competence (i.e. to vote, smoke, drink, marry, have sex), while majority entails the total relinquishing of any other person than one's self from responsibility over one's actions. Becoming an 'adult' means being recognised by one's socio-political community the status of majority, as a person who is no longer under supervision and legal authority of guardians, and who comes to have control and responsibility over her person and her actions. Anderson and Claassen (2012: 513-517) distinguish licence and majority in childhood through the idea of local and global emancipation.

> 'Local emancipation' will refer to specific exemptions from age-based status-ascriptions while still remaining under tutelage more generally. 'Global emancipation' will refer to exemptions whereby those below the age of majority are no longer under tutelage at all (although they may not automatically acquire all of the rights typically accorded to adults, such as the right to purchase alcohol). (Anderson and Claassen 2012: 512).

According to them, the fact that a person has licence to exercise certain competences does not correlate with the status of adulthood. Even if adolescents in a given country are allowed to vote, run for office, drive, smoke, drink and get married (based on their possession of the competences required to do so), they would still not be adults because they have not been recognised as *globally* emancipated. They are free to exercise certain functions, but are (and should be) still considered as 'children'. With the concept of licence, Pragmatics intend to account for the legitimacy of treating individuals differently in particular spheres, while maintaining a strict life-stage classification for global differential treatment.

Pragmatic's offer one unified response to both the Characterisation and Classification questions: a legal regime that distinguishes 'adults' from 'children' may not be precise *but it is necessary*. The fact that most individuals during the first period of their life tend to have a relatively higher lack in capacities to act as full moral beings over their own lives in comparison to older persons, compels us to establish a definite threshold below which individuals are more strongly protected from certain harms to themselves, freed from relevant responsibilities of adult life, and excluded from the exercise of certain liberties (Anderson and Claassen 2012: 507-509). The fact that competence-based classification (such as that defended by the Sapling model) is unsatisfactory to distinguish 'adults' from 'children' due to its vagueness and unfeasibility, then it is legitimate to establish a pragmatic age-threshold for

'adulthood' (as a proxy). This avoids the harms and instabilities that loosening this distinction would have for those under the threshold and their relation with those above it.

3.1. Age-Threshold and Competence-Acquisition

The consequentialist considerations presented by the Pragmatist model in order to justify the strict distinction of 'adulthood' and 'childhood' as separate life-stages, seem important points to take into consideration. If we can prove that individuals below and above the age-threshold are both highly benefited by its existence, even if it does not follow a *pro tanto* moral justification, we may be compelled to resign to its necessity. I see, however, a fundamental issue with the Pragmatic response to the Classification question. Their concession to the need to take competence-acquisition into account when conferring individual license to exercise certain fundamental freedoms, rights and responsibilities may entail that no substantial content is left within the age-defined threshold of majority. Thus, the strict life-stage distinction between adults and children would become irrelevant. I intend to show that, in legal practice, all (or at least the most important) characteristics that *could* give value to the distinction of 'childhood' and 'adulthood' can actually be conferred (and sometimes presently are) through license instead of majority. If this were so, two issues would be raised: first, that competence-acquisition would play a larger role in what distinguishes collectives of individuals in a morally relevant way; but second, and contrary to the Sapling approach, that this role of competence-acquisition would not imply the need to distinguish between adults and children (as strict life-stages).[29]

Pragmatists argue that conferral of license and of majority are different phenomena with different implications on the people who possess them. Individuals below and above the age-threshold may gain or lose their license to exercise a particular competence (some children may be allowed to drive or to live alone; some adults may lose their right to vote or to run for office). However, majority, understood as a status whereby anyone but oneself is relinquished from responsibility over one's life, should be defined by a strict age-threshold which distinguishes children from adults. Pragmatists argue that the difference between the two is analogous to global and local emancipation: I may be allowed to exercise certain specific freedoms as a child (if I can), but I am still bound by the authority and primary responsibility of adult guardians over my life and choices. I wish to press a question to this distinction: is there anything of moral relevance that is intrinsic and inherent to the majority status that cannot be gained through license? I believe that the answer is negative. If we take away all possible licenses from a person with majority status, the purpose for the distinction

[29] I address only the critique to the Pragmatic view in this chapter. The full assessment of the role that competence-acquisition plays in our understanding of justice will be addressed in in more detail in Chapters 6 and 8.

between adults and children as morally relevant social categories would lose all its content.

Take as a comparison the position of children and of individuals who suffer great mental disabilities (GMD). It may be that a person with GMD above the age-threshold is granted the status of an 'adult' while still being completely deprived of all the freedoms, rights and responsibilities that come "traditionally" with being treated as an 'adulthood' (including the relinquishing of everyone else's authority over one's life and choices).[30] An adult with GMD, who has majority status, may not be granted the right to vote, to have her voice heard in court, to be free from guardianship, to go to prison, to elect a marriage partner, to drive, to drink, etc. (the list is infinite). In this respect, she would not be distinguishable in her political and legal treatment from an infant, even if she bears majority. Can this person truly be considered as an adult if the status-specific treatment that in theory comes with this title is not ensured to her?

If we are to take the concept of 'majority' as the answer to the Classification question, thus, being the legitimate distinguishing trait that differentiates a child's from an adult's treatment as a political, legal and moral subject, does the adulthood status of an individual with GMD grant her anything beyond her being called an 'adult'? This example shows that, even if Pragmatists intend to water-down the role that competences should play in answering the Classification question, it may be that by doing so they are emptying the distinction between adults and children from all of its content. A person with GMD who reaches the age-threshold of majority, does not see any changes in the way she relates to her socio-political world, nor to how she is treated; her reaching the age-threshold would denote a purely random transition without any implications on her life whatsoever. As long as all features which constitute the just treatment of a person as a political and moral subject, are conditioned by the possession of the particular competences required to exercise them, no actual shift occurs in how the law and/or society treats or should treat a person by passing an age-threshold; it loses all its normative force and becomes a purely symbolic distinction.

4. Beyond Life-Stage Conceptions

Life-Stage conceptions of 'childhood' have dominated the way we look at children. They ground our legal definitions of 'childhood', they structure our moral intuitions regarding what is owed to children, and they frame our understanding of how humans develop, and where this development process should lead. I showed that conceptualising 'childhood' as a life-stage requires proving its compliance with general liberal principles by showing the moral

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

validity in their characterisation of 'childhood' ('what is a child?'), and of their classification of 'childhood' ('what distinguishes children from adults?'). I believe that neither of the three is able to justify satisfactorily how their response to these questions complies with liberal principles, thus, either we need a different characterisation and classification that is not grounded on life-stage, or we require a more thorough justification for how life-stages may comply with liberal principles (see Table 1).

Model	Characterisation	Classification	Prescriptions	Issues
Sapling	Adult as Standard	Scalar transition	Differential treatment	Adult-Biased Characterisation
	Children as Incomplete	Competence Threshold	Ensuring Adulthood Achievement	Irrelevant/ Vague/ Arbitrary Boundary
Intrinsic-Value	Child as Standard	Transformative transition	Differential treatment	Reified Characterisation
	Values and Goods of Childhood	Competence/ Value Threshold?	Ensuring Goods of Childhood	Vague Boundary
Pragmatic	Age as Standard	Transformative transition	Differential treatment	Irrelevant Characterisation
	Socially Determined	Age Threshold	Ensuring Social Stability	Empty Boundary

Table 1. Life-Stage Conceptions of Childhood

The Sapling model's focus on the adult-to-be and a narrow conception 'development', leads to a biased characterisation of 'childhood', and the use of either a vague or arbitrary threshold for distinguishing 'children' from 'adults'. The assumption of rational and moral incompetence during childhood that grounds the model, is empirically flawed, and does not offer a clear justification for why differential treatment is owed to different life-stage. I conceded to the Sapling's use of 'development' as a core concept for understanding childhood, but argued that it should be framed in a less narrow and value-laden way, in order for it to do justice to individuals who are in the process of development. The Intrinsic-Value view corrects certain flaws of the Sapling model by focusing its characterisation of 'childhood' on the child herself; I believe this child-centred approach to characterisation is a necessary condition for any assessment of justice for children. However, the Intrinsic-Value view fails to show why the characteristics it assigns to 'childhood' actually benefit children, and how they justify the differential treatment of the childhood social group, without falling into the

problematic reification of harmful social assumptions and practices. Finally, the Pragmatic view avoids the problem of characterisation by assigning an explicitly arbitrary but beneficial age-threshold to distinguish 'adults' from 'children'. Although I conceded to the potentially beneficial role of distinguishing between license and majority, I argued that if taken seriously, majority would be nothing more than a symbolic distinction that still leaves the entire justificatory role for differential treatment of adults and children to an assessment of the possession or lack of certain fundamental competences by each individual. On the contrary, if the majority status does imply a fundamentally different treatment for children, it would fail to be morally valid due to the irrelevance of its justification (social benefit) for why children should be treated differently.

My concern with Life-Stage conceptions of childhood *as normative models* does not imply that they do not have any role to play in our understanding of "what is owed to children as a matter of justice". I am troubled by the assumption that a particular characterisation of who children are based on their life-stage, and a particular classification that distinguishes them from 'adults' (as different life-stage group) are relevant grounds for *our normative justifications* for how we ought to treat children. However, life-stages may be relevant as a *descriptive devise* that ought to be taken into consideration precisely because it does frame the way society understands children, their rights, and our duties towards them. As mentioned in the previous chapter, the concept of 'childhood' bears moral relevance precisely because its current uses of it imply a particular asymmetric treatment to those ascribed to it. I return to the analogy with gender justice in order to exemplify the role that life-stages can play in our moral assessment of 'childhood'. It seems clear that we have moved beyond considering that biological differences between female and male humans could ever justify a differential moral and political treatment for each sex group. Even if there are certain biological features of each sex that allows us to distinguish males and females, this should not bare any weight in our considerations of what is owed to them as equal beings. Discourses on gender justice are still prominent because they still have an impact on the treatment that individuals who are grouped as 'women' are given in our political, social and moral world.

I consider that if life-stage distinctions have any relevance for our moral assessment of what is owed to children, it is because of the way they have framed and transformed how we treat children in practice, rather than because of them having any moral validity in themselves. Even if certain traits and characteristics highlighted by Life-Stage views may prove to have fundamental relevance in framing the reasons why certain individuals are legitimately owed differential treatment (see Chapters 3, 4, 6 and 8), the strict distinction between generational groups should bear no weight when discussing the legitimate treatment of children. As long as we intend to do justice to differently positioned individuals, while being consistent with the principle of basic liberal equality, we must go beyond generational classifications.

III. The Liberationist Conception of Childhood

"We are not just young people;
we are people and citizens of this world."
The Children's Declaration at the Children's Forum 2002

The previous chapter explored some of the most prominent Life-Stage conceptions of 'childhood'. Although certain insights taken from them have not been entirely dismissed, I have intended to show some weaknesses in characterising and classifying 'childhood' through a life-stage lens. If a conception of 'childhood' is to have moral validity for it to explain what is owed to particular individuals, it must be able to justify how its characterisation and classification of children complies with the principle of basic liberal equality. I showed that Life-Stage conceptions, however, do not offer an appropriate characterisation of 'childhood', nor do their accounts of what distinguishes children from adults is morally valid in order for it to comply with basic equality. In this respect, the differential treatment of children should be considered as unjustified if it stands on the positions explored in the previous chapter.

This chapter will study a conception of 'childhood' radically opposed to the Life-Stage views, and to the differential treatment of children defended by Standard Liberals; the Liberationist conception. If there is no legitimate or morally valid justification for conceptualising 'children' as strictly different from adults, the Liberationists argue, the principle of basic liberal equality would compel us to conceive them as equals. If one sticks firmly to the duty of justice to comply with basic equality and freedom, then children should not be distinguished from adults for political and moral purposes. Instead of offering a full and in-depth response to the Characterisation and Classification questions, Liberationists' main objective is to offer an alternative interpretation for why we tend to characterise and classify children as we do; that is, through a life-stage lens. The Liberationist view, thus, approaches the conceptualisation of 'childhood' through an all-encompassing critique of the concept. Standing on a social constructivist understanding of the political definition of 'childhood', it claims that 'childhood' was built entirely through social practices and that its

present characterisation is nothing more than a myth. They argue that children are not inherently different from adults in a morally relevant way; rather it has been the construction of *the myth of childhood*, and its implementation into *the institution of childhood* through mechanisms of segregation, socialisation and normalisation, what has forced children to *become* different. 'Childhood', in this sense, would be the unjust imposition of an authoritative regime on those who are labelled as 'children', and justice requires abolishing this conceptualisation and its consequences through the re-introduction of children into our social and political world as equal members entitled to equal treatment.

Although I am sympathetic to the Liberationist critique, I present in this chapter two fundamental limitations that the Liberationist conception faces when defining and characterising 'childhood'. First, I argue that the social constructivist critique cannot explain the whole picture of who 'children' are. A collection of behavioural and physical traits, which I group under the concept of *vulnerability*, are surprisingly not accounted for by Liberationists. I claim that their assessment shows certain morally relevant differences between individuals, which must be taken into, account when evaluating their appropriate treatment by a political and moral system of justice. Liberationists would respond to this arguing that these traits are a part of the social construction of 'childhood' and that justice requires abolishing the sources that impose these traits. I concede to the need to account for "forced" (pathogenic) sources of vulnerability, but claim that a distinction between different forms of vulnerability must be established in order to separate the vulnerabilities that are morally valid for justifying the differential treatment of some individuals, from those vulnerabilities that are not. Through the concept of 'vulnerability', then, I intend to offer the core morally valid characteristic that may justify differential treatment while complying with the principles of basic equality and freedom.

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

1. The Liberationist Conception

The 1960s and 1970s were particularly active decades for anti-oppression movements around the world. The civil rights and the women's liberation movement, coupled with widespread

manifestations against the Vietnam War, were structural in the United States. In France, workers joined students to fight in the streets against the alienating forces of capitalism. And, in South Africa, the beginning of the end for the Apartheid came with the Soweto uprising, in which black students rebelled against the Bantu Education Act, followed by workers and political activists manifesting against segregation altogether. It was a time of *conscientização*, as Paulo Freire would call it,[31] in which masses of individuals who were in a disadvantaged position came to realise that the world had not been built with them in mind; it was made by and for white wealthy men. Strongly inspired by this general uprising against oppression, many thinkers, especially in the United States, began reflecting on the need to include children among the populations who were being unjustly discriminated against and oppressed by a hegemonic social group; in this case, adults.

Standing firmly on the principles of basic equality and freedom as their normative foundation, child liberationists[32] argued that justice for children could only be achieved by erasing the opposition between 'childhood' and 'adulthood', and by abolishing the political and social apparatus that holds this opposition together. As human beings and as citizens, children are entitled to an equal treatment by their society, and to the assurance of equal rights and freedoms. The method used by Liberationists to define their conception of 'childhood' is based on a critical deconstruction of the social processes through which the concept itself was built. In this respect, while they do offer certain claims as to what they consider to be the valid *characterisation* of childhood, their focus of analysis is on the prior critical evaluation of how the concept has been used in present social and political theory and practice, and why it is unjust. This leads to three basic claims. First, that 'childhood' is a social construction in its entirety, thus, any characterisation and classification of it will always be conditioned by socio-historical context. Second, it claims that the current characterisation of 'childhood' is a myth, wrongly representing who the individuals ascribed under the concept are. Finally, that this mythical characterisation has been implemented through its socio-political classification as the *institution* of childhood. This institution structures our political treatment of children, through mechanisms of segregation, socialisation and normalisation, forcing children to comply and transform into what the 'myth' expects them to be. Liberationists argue that children are made to be and to behave differently from adults, and

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

[32] This is a composite construct of the Liberationist position based mainly on the works of Shulamith Firestone (1970), Richard Farson (1974), and John Holt (1974), and various insights from the sociology of childhood. Although they differ to a certain extent on their particular normative prescriptions, their basic claims regarding why children are suffering from injustice, and what is the solution to amend it, stand on the same grounds. I've taken this route in order to offer the strongest possible position available to the liberationist logic.

then are treated as if they were in fact different. They consider that because the behavioural difference is imposed rather than inherent to them, there is no reason why they should not be treated and regarded as equal members entitled to equal treatment.

1.1. Childhood as a Social Construct

The basic idea behind social constructivism is that certain concepts or ideas conceived as "real" or "objective" have been built, caused or controlled by social and cultural forces rather than being part of the natural world (Mallon 2014). That is, either non-existent entities are brought "into reality" through social forces (we could say that deities, for example, would fall within this category), or existing "natural" entities are conceptually moulded (reified) by social forces in order to fulfil a particular social interest or objective.[33] Understanding 'childhood' as a social construct implies, thusly, that either 'childhood' was brought into existence through social forces, or that certain existing individuals were transformed into 'children' through social forces. Child liberationists stood on this claim, based on studies in the history and sociology of childhood, in order to question the validity of its use as a political concept.

The basic groundwork upon which the liberationists stand was Philippe Ariès historical analysis of the concept of 'childhood' (Ariès 1962). Through a study of the representation of children in the Middle Ages, Ariès claimed that the concept of 'childhood' did not exist in medieval society, and that it was not until the Enlightenment that young people began to be systematically referred to, understood and treated "as children (Ariès 1962: 128). Children in medieval society, according to him, were simply seen as "little people" with no distinct treatment whatsoever; they were part of the social world, and they took on economic and social tasks just as everyone else. The core claims put forward by Ariès, in this respect, were that: first, 'childhood' is a historical invention, not a natural phenomenon; second, that, as a historical invention, it is a construction conditioned by social interests; and third, that if there is anything universal about it, is its use as a classificatory mechanism for the systematic opposition between the world of 'children' and 'adults' (see Oswell 2013: 9ff.).

Despite that Ariès' claim that 'childhood' did not exist during the Middle Ages has been mostly refuted, the other two (its social construction and its segregating implications) still stand. The idea that 'childhood' is not a natural reality, and that its conception is strongly determined by social, cultural and demographic factors has been proven as irrefutable (Pufall and Unsworth 2004: 18). Cross-cultural anthropological and sociological studies of childhood have shown that the particular circumstances, needs and interests of different

[33] This is what has been referred to as 'the process of reification' see the example of 'commodities' in Chapter 1, Section 2.

social systems have led to widely diverging understandings of who children are, and what their role in society is.[34] There is, in this respect, no universal conception of 'childhood', but rather various understandings of what 'childhood' is, which change throughout time and cultures. 'Childhood', thus, can be understood as a social construct.

One feature, however, remains across the plurality of 'childhoods' that have existed at different times and places on earth: its use as an oppositional category that distinguishes normatively the status of children and adults in society. In the words of sociologist Chris Jenks:

> [Childhood] makes reference to a social status delineated by boundaries that vary through time and from society to society but which are incorporated within the social structure and thus manifested through and formative of certain typical forms of conduct. (Jenks 2005: 6-7).

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

The objective of child liberationists (and many sociologists of childhood) in highlighting the social construction of the concept is to press for the need to explore the potentially harmful or unjust implications that may come with its use. If 'childhood' is conditioned by how the social system conceives it, then, the way children are treated in their society depends on the particular normative prescriptions that come with the particular construction in varied social systems. By emphasising the social sources of the concept itself, the stakes that constructed this "reality" can be accounted for more easily. Social constructions, it has been argued, are never neutral: who ever constructs the concept has an epistemic privilege in determining how it is used, and framing how "reality" is conceived (Young 1990: 58-59; Haslanger 2012: 197). The case of 'childhood' is straightforward in this respect: adults constructed 'childhood'; adults chose what defines it, what characterises it, and what distinguishes it. Whether there are vested interests in this construction is an open question. Nonetheless, the fact the construction does have an impact on the actual lives of those ascribed to the group of 'children' (see Chapter 1 in this manuscript) requires analysing what is inside our contemporary liberal conception and practices towards children, in order to assess whether they harm them or not (Alanen 1988: 58). By standing on the idea that 'childhood' is a social construct, child liberationists appeal to deconstruct it, so to evaluate its credentials as a just and morally valid category in political and social practices.

[34] See Lancy (2015: Ch. 1) for a thorough analysis of the debate.

1.2. The Myth of Childhood

In the words of child liberationist, Richard Farson: "Children did not always exist; they were invented." (Farson 1974: 17). What this entails, as mentioned above, is that the particular characterisation of individuals that comes with categorising them as 'children' implies an imposed and generalised presumption of who they are, and what their behaviour is. This is why Farson and Shulamith Firestone have labelled the characterisation of 'childhood' as a *myth* (Firestone 1970: 93; Farson 1974: 18); society has invented a fictitious creature, and has framed the world as if it existed. The contemporary myth of childhood lies in their characterisation as innocent, naïve, weak, innocent and incapable creatures. Society has invented 'children', and expected that those labelled as such behave as the myth prescribes (Farson 1974: 18).

The reification of these particular characteristics to define the broad and heterogeneous group of individuals labelled as 'children' requires a very thick brush. It seems indubitable that, as an empirical reality, not all those who are branded as 'children' actually fit in the characterisation; the multitude of experienced lives of children across the globe in different cultural settings and economic conditions cannot be boxed into the reified characterisation of 'childhood' as innocent and weak "cherubs" (Oswell 2013: 15; Lancy 2015: 13-14). This mythification of children has had, according to Liberationists, various problematic implications: first, that our conceptualisation of them has affected how we study them; and second, that the prescriptive rationale of the myth implies that children are not only positively described as they are imagined, but that they *should* be and behave as they are imagined.

Farson claimed that the psychological development studies that ground the contemporary conceptions of 'childhood' are biased by their standing assumptions of difference, and because children have not been studied under an atmosphere that is not pervaded by prejudices and predetermined expectations (Farson 1974: 11). Responding to scientific research defending the "truth" of the myth of childhood, sociologist Leena Alanen has argued that the scientific frame of analysis of studies of childhood that stands on an assumption of difference has unreliable results (Alanen 2005: 36). Just as in the case of the biased scientific methods for studying Africans, prisoners or homosexuals during the nineteenth and twentieth centuries led to results that were clearly wrong and harmful; the standing assumption that children are "different", implies that scientific research will focus on looking for difference (Alanen 2005: 37).

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

1.3. The Institutionalisation of the Myth

As mentioned in Chapter 1, a fundamental feature that grounds the moral relevance of social groups is the fact that the ascription and classification of individuals into a collective contains a *normative* dimension (see Chapter 1, Section 2). That is, individuals are ascribed *for a reason*; there are objectives in classification that lead to the social and political implementation of the ascription. Social groups are not only described, but are made into reality through their *institutionalisation*. Liberationists have argued that the fundamental injustice in the differential treatment of children stands on the institutions and practices used to convert the myth of 'childhood' into reality. This has been achieved, Liberationists argue, through three processes: the segregation, socialisation and normalisation of children.

Segregation

Through similar mechanisms and institutions that led to women being relegated to a submissive life within the household, children suffered their imposed segregation from adult affairs.[35] The division of the social world into public and private spheres, and the exclusion of children and women from the former, is the first mechanism through which the myth of childhood is institutionalised into reality. Children are ascribed to the private world of the family, and excluded from any direct and active contact with the public world of social, political and economic life (Ennew 1986: 20; Alanen 2005: 40). Feminist theorist Shulamith Firestone[36] argued that the myths of femininity and childishness are closely interrelated instruments that enable the construction of the idea of "family life," and the exclusion of both women and children from adult-male affairs and the larger public world (Firestone 1970: 91). By mythicizing women and children as "pure", "innocent" and "incapable", adult males established a clear justification for institutionalising their lives to protected and supervised spheres where they could not harm themselves, harm others, nor lose their mythical qualities. The need to respect and protect the mythical lives of women and children from the ugliness of a world full of vice, prejudice, violence and promiscuity allowed adult males to take control over them, while claiming to do it *for their own good* (Firestone 1970: 79). In this respect, the natural and physical inequalities between adult males, on one side, and women and children on the other, were not compensated through their empowerment in the political and social world, but rather reinforced through their exclusion from it

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

[36] Firestone's *The Dialectics of Sex* argued that the oppression of women, blacks and children derive from the same source, and must be dealt with together in order to overcome the unjust and oppressive hegemony of white adult males. For the case of children see 1970: Ch. 4.

(Firestone 1970: 89).

On top of the common seclusion of women and children to the private sphere, a second, fundamental mechanism is used to segregate childhood: the modern system of compulsory schooling (Illich 1970: Ch. 2). While the myth of 'childhood' is, in itself a mere conceptual devise, "the modern school was the institution that built it into reality" (Firestone 1970: 81). Compulsory schooling not only made it obligatory to segregate children throughout most of the day and most of years in which they are 'children', but it managed to reproduce an age-class system within childhood, in which children are also separated from themselves (Illich 1970: 26-28). The modern school allows adults to control and pace the development process of children and their transition towards adulthood. It works as a normalising institution (see below) in which the special abilities of the child are disregarded, their contact with other age groups is made hierarchical, and their transition to adulthood controlled and led by standardised practices and procedures (Firestone 1970: 83-87).

Individuals ascribed as 'children' are systematically and arbitrarily segregated from the rest of society, and excluded from that which adults do not consider "proper" for children. This is carried out through certain institutions created with the only objective of keeping children away from the outside world. The institutionalisation of the myth of childhood implies the strict imposition on children of a specific way of behaving, of a specific life-path that they should follow, and certain safe spaces especially made for them. Both John Holt and Farson, standing on Ariès historical analysis, have argued that it was during the seventeenth century, especially from Rousseau's *Émile*, when the institutionalisation of childhood was put into full force (Holt 1974: 11). Based on the mythical classification and distinction of adults and children, the latter were removed from the former's world; children were to exist at home and in the school. Life beyond these spaces should be hidden from them, and any contact with adults outside the home or school should be reduced to a minimum (Farson 1974: 22).

Socialisation and Differential Treatment

Not only does the institution of childhood relegate children to specific spaces delimited by the adult population, but the child's permitted actions and behaviours within these spaces is also limited and restricted to that which adults consider appropriate "child behaviour". Based on the myth of incapacity and irrationality of children, the institution of childhood is legitimised in establishing a particular (and exclusive) standard for how children ought to be treated as a matter of justice. This differential treatment grounded on the myth aims to *socialise* children; that is, it aims to curve their natural impulses, emotions and behaviours in order for them to comply with what society expects from them. Socialisation relies on the normative objective of making children become "decent" adults. Children must be taught

the appropriate capacities, skills and behavioural traits that allow the social system to be stable (Jenks 2005: 15-16).

This necessary process of socialisation implies that it is justified to treat children differently: if we need to curve the child's natural "savage" instincts, we are legitimised in restricting their beings and doings in many ways. The differential treatment of the child group is not restricted to a specific sphere of their life, nor to a particular relation. Young individuals are constrained by their ascription to the child group in all aspects of life. At home, even the affective union that ties them to their parents does not ground a relation of equality; rather it reinforces their subordination and dependence, where they are bound by the precepts of the adult population, and where their behaviour is controlled by rules and standards that apply exclusively to them (Archard 2004: 122). At school, we find one of the most explicit examples of a differential treatment of the child group, where they are compelled to attend, follow instructions, and do as they are told by the adult authorities. In the public sphere, the differential treatment goes even further. It assigns child-specific regulation and rights, it grants them benefits (mostly in the form of protections, and limited liabilities) that the rest of the population does not have, but also restricts in a very relevant way the freedoms that they are allowed to exercise both in their public life (as political actors and citizens), and in the private sphere (as economic and social actors) (Ncube 1998a: 19).

Socialisation, as a fundamental cornerstone of stability for any a social system, comes at a price: the limitation of freedom permitted during childhood. Children are not free within their bubble; even relating to play —which can be considered as the major source of freedom within the institution of childhood—, children are bound and limited by that which the adult population considers appropriate for them (Lancy 2015: 20). Play spaces are delimited by the adult population, play materials (and even playmates) are chosen by the adult population, and the child's access to cultural resources, such as books, TV and films, is bound by that which the adult population considers "child-friendly" (Firestone 1970: 100). Individuals ascribed as 'children' —their behaviour, their social relations and their identity— are, thus, to a great extent determined by the limits prescribed by the principles of socialisation (Farson 1974: 213).

Normalisation

The segregation and socialisation of children has led them to be and behave as adults consider appropriate. Because the adult population has framed children as being a particular kind of being —innocent, incapable, troublesome, inexperienced and frail— the institution of childhood works as a system that regulates, normalises and standardises the plurality of possible beings and doings of particular children by turning them "child-like" (Jenks 2005: 43). Segregation of children in a "walled garden" does not only ensure that children are "protected" from the vicious and harmful world outside, but also guarantees that children

will be and behave "childishly" (Holt 1974: 5). Lack of contact with the world beyond home and the school forces children to behave "like children" —innocently, inexperienced, lacking coping mechanisms—; because they do not have any resources or tools which may allow them to develop capacities beyond those chosen by the socialisation process, they end up self-fulfilling the myth that adults had built about them.

Segregation and socialisation lead children to become what the myth prescribes (Lancy 2015: 25); it *normalises* individuals ascribed as 'children'. Firestone argues that it is no surprise that children in practice *do* behave as the myth conceives them. Their separation from any influences external to child-friendly ones, and their subjection to exclusive contact with other children who are bounded by the same socialisation processes, or with adults who are in charge of putting these mechanisms in motion, makes it almost impossible for them to be "who they really are" (Firestone 1970: 85). She considers that the only bursts of real behaviour that we may see in childhood is from children living at the margins of society, whose parents and teachers do not have the time or willingness to normalise them, being free to roam the adult world, showing us a face of who children can be, widely different from that in family photos (Firestone 1970: 100-101).

According to child liberationists, thus, children are *made into* 'children' through the institution of childhood; they are normalised into it. The myth about who they are, and how they should behave led to their separation from the world of adults; segregated, they would fulfil the adults' expectations by only having contact with the people, resources and experiences that adults allowed them to have. This is especially important, Liberationists argue, when it affects the assumed inabilities of children, and the consequent restriction of children's freedom justified by their inability. If the characterisation of the mythical child stands on the assumption that she lack abilities to exercise fundamental human freedoms, the segregation and socialisation processes will ensure that the scope of choice and action available to her will not allow her to develop the competences required (Oswell 2013: 10). As we cannot develop competences and skills if there is no access to the social and material resources that allows us to acquire them, and if no space for the experience of freedom is given, an individual will not be able to develop the cognitive, physical and emotional traits required, and will end up self-fulfilling the mythical assumption (Peleg 2013: 534).[37]

1.4. Children as Equals

To recap, the Liberationist conception of 'childhood' stands on a critical deconstruction of the use of the concept in political and social practice in order to show its inherent injustice. If a liberal system is grounded on the assumption of basic equality ('equal treatment for alike

[37] More on this in Chapter 8.

circumstances'), and basic freedom ('the burden of proof is on the restriction of freedom, rather than the opposite'), the myth of childhood and its institution, established through children's segregation, socialisation and normalisation, cannot be justified under any circumstances by a liberal political system. The fact that any normative use of the concept of 'childhood' ascribes individuals into the concept, and characterises and classifies them through its social construction, makes doubtful its validity as a justificatory mechanism for differential treatment. The claim that individuals are normalised into 'children' means that, under present conditions, we cannot objectively assess a child's "true" characteristics, behaviours and traits simply because the existent institution of childhood already frames and delimits who children can be and what they can do. A morally valid assessment of 'who children are' and 'what treatment is owed to them' can only be made if they are studied under conditions free from the institution of childhood. "Until society's views as to what a child might be undergo radical change, the child is trapped, a prisoner of childhood." (Farson 1974: 214). Only by testing their true potentialities, behaviours and traits under conditions in which they are taken *as equals*, can it be judged who they are, whether they are different in a morally relevant way, and what is owed to them as a matter of justice.[38]

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

2. Limits to the Liberationist Conception

First, even agreeing that wrongfully ascribing individuals to the 'childhood' group by assuming certain characteristics that they do not possess can be unjust for those grouped, this does not mean that no ascription can be justified. Everyday experience with those we label as 'children' and the scientific evidence of the possession of certain particularly prominent traits and characteristics during childhood allows us to show the moral validity of treating differently those individuals who in fact possess these characteristics. I argue, here, that the constitutive embodiment of certain individuals as particularly *vulnerable* justifies differential

[38] The normative implications that stem from this deconstruction of 'childhood' (how should a justice system be devised in order to ensure children are not oppressed by their institutionalisation? What rights and duties should they have?) will be dealt with in the second Part of this manuscript (see especially Chapters 6, 8 and 9).

treatment while complying with the principle of basic equality.[39]

Second, I consider a possible Liberationist response to the vulnerability critique, which argues that most forms of vulnerability are socially imposed and would not exist if the institution of childhood were not present. I concede to the importance of taking into account the potentially oppressive sources of vulnerability, but argue that we must distinguish between its various manifestations in under to assess how they should be addressed. While many sources and forms of vulnerability which children suffer from are indeed socially imposed, abolishable and unjust (pathogenic), many others are a necessary part of what social humans, as biosocial creatures are (inherent and situational); thus, rather than being abolishable they should be taken as sources of special claims and interests for the individuals who possess them.

While some manifestations of vulnerability give rise to justified claims of differential treatment for children, others may demand imposing restrictions on other agents. In addition, while childhood may be a condition in which these characteristics are prominent, if we take them (and the harm they may cause) as the core element that legitimises differential treatment in compliance with basic liberal equality, it must be implemented to *all individuals* who possess them in a prominent degree.

2.1. Not Entirely Different but Not Equal

Liberationists claim that the institution of childhood unjustly discriminates against children by treating them unequally, thus breaking the foundational liberal commitment to basic equality. Various authors (i.e. Purdy 1992: Part II; Archard 2004: Ch. 6) have responded to this Liberationist claim, arguing that unequal treatment is not necessarily unjust *as long as the circumstances that ground unequal treatment are morally legitimate.* This is, basically, what the principle of basic equality stands on: alike circumstances demand equal treatment; unlike circumstances justify differential treatment. In the previous chapter, I explored various Life-Stage arguments that intend to justify the moral validity of defining 'childhood' as a life-stage through the particular characteristics that they conceive as prominent in childhood. Although I showed that these did not work as a morally valid argument for justifying differential treatment of childhood *as a life-stage*, I want to consider whether they may play a role in justifying certain limits that the Liberationist critical conception of 'childhood' cannot cross.[40]

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[39] In the next chapter, I will address the role that two other constitutive frameworks (temporal and spatial) play in our conception of them.

[40] Here I look at *vulnerability* as a relevant trait; in the next chapter I will address the role that *development* and *embeddedness* play in justifying differential treatment.

Standing against the Liberationist advocacy for abolishing 'childhood', Laura Purdy claims that this assumption of equality towards children forces us to treat widely differing individuals as alike cases. The claim of equality in the Liberationist logic hides under the rug the relevant differences in needs, capacities and interests that children may have (Purdy 1992: 32). There are clear and evident differences between not only full-grown adults and toddlers, but also among children themselves; a moral theory that aims at ensuring justice for all must take these differences seriously in order to compensate for the particular condition that may affect some individuals but not others.

One difference comes to mind when thinking about the particular position of children: their relative vulnerability and dependence as compared to other humans. Taking dependence and vulnerability as two morally relevant characteristics of 'childhood' is not a new claim (see Brighouse 2002: 40). The institution of childhood, criticised by the Liberationists, is precisely grounded on a conception of 'children' as dependent and vulnerable beings (Ariès 1962); also, most of the current advocacy for the priority of protecting children from harm is based on conceptualising 'childhood' as an especially dependent and vulnerable condition (see Dixon and Nussbaum 2012; Lansdown 2005). However, understanding what these two concepts mean, what their internal and social sources are, and how they may be a morally valid justification for the differential treatment of children is a matter that requires further study.

Let us first look at vulnerability. Following Colin Macleod, I define 'vulnerability' broadly as "some kind of susceptibility to harm" (2015: 55). It is not an all-or-nothing characteristic, but rather variable depending on the relation between (1) a person's particular traits and condition, and (2) the features that define the person's social and material environment. The degree to which this environment enables or reduces a person's susceptibility to harm is, thus, structural to understanding how vulnerability manifests itself, and how it becomes especially prominent during the childhood years (*Ibid*). We have, then, a particular proneness to harm inherent in our embodied condition as human beings (some having it more than others do); and its intensity is conditioned by how the social environment is constructed (Goodin 1985: 191).

Individuals in the first period of life tend to be, to a higher degree than other humans, biologically more susceptible to harms that stem from environmental factors, and from decisions and actions taken by themselves and by others (Jenks 2005: 2). Their relative weakness (physical, mental and emotional) in comparison to other humans makes them highly susceptible to harms (Benporath 2003: 135). This constitutive or non-social source of vulnerability is assumed in most (I would consider all) understandings of 'childhood', and most accounts of justice aim at protecting children from these "natural" manifestations of susceptibility to harm. A child has more limited capacity (reaching impossibility in the first years of life) to protect themselves, to feed themselves, etc.. This makes them extremely

vulnerable to environmental circumstances. Children's physical and mental competences develop gradually, making them especially weak and restricted in their actions in comparison to other humans. Physical harm, injuries, maltreatment and exploitation are especially harmful for a child's life, and children, from a greater to a lesser degree, have very little chances of protecting themselves from these external threats if not given the right support (Schweiger and Graf 2015:7).

A particular form in which children's particular vulnerability tends to manifest itself is through their dependence. Even if we consider that historical, cultural and social differences give rise to different traits for particular children*, dependence on others for survival and development* (from a larger to a lesser degree) seems to be a universal truth of what it is to be a young human being (Lee 2001: 23; Arneil 2002: 88). Unlike other animals who very rapidly acquire the necessary skills to nourish and protect themselves, young humans spend a long time tied to other humans to ensure their survival. Their physical incapacities make them largely immobile, thus, dependent on others to be fed, sheltered and protected. Even when they achieve the physical ability to feed and protect themselves, the fact that they live in a socio-economic system that has its own rules and requirements for independent subsistence ties them to other humans until they develop higher cognitive, emotional and social competences that would allow them to effectively take care of themselves in our social world (Dixon and Nussbaum 2012: 573-574). Furthermore, dependence of the young on other humans is not only tied to biological survival (of being fed, protected, etc.) but also to subsistence as social beings. Children depend on role models to guide their emotional, social and moral development. Humans learn to act as social beings by seeing how others behave, by mirroring their actions and emotions, and by internalising certain behavioural patterns and communication skills (Hoffman 2000: Chs. 6, 10; Bloom 2004: Chs. 4, 5). Dependence, thus, is closely tied to the non-social developmental process of human beings.

This ought to be considered as a fundamental limit that the Liberationist critique of the concept of 'childhood' cannot surpass. If vulnerability and dependence, as Eva Kittay has argued (1999), are structural and inevitable parts of the human condition, both for our survival and for our development and flourishing *as human beings* (Kittay 1999: 29), then treating them as if they did not exist (treating all equally) would actually impose an extra burden on those individuals who possess these characteristics to a high degree (Lotz 2014: 244; see also Herring 2016). This constitutive role of vulnerability in the human condition works as a morally valid justification for differential treatment. Vulnerability is a human phenomenon that, even if especially prominent during the human's first years, pervades throughout our whole life-course to different degrees, affecting individuals in varied ways (see Mackenzie et al. 2014).

The basic claim, in this respect, is that, even when conceding to the Liberationist claim

that the institution of childhood can be harmful and unjust in its treatment of those ascribed to it, this does not imply that certain particular practices, treatments and justifications within the institution are harmful and unjust *per se*. The Liberationist critique that the processes of segregation, socialisation and normalisation of childhood are unjust can still stand, while allowing for our consideration over the legitimate treatment of individuals to *track the particular vulnerability and dependence inherent in their condition* in order to do justice to their differential interests and needs. Even if certain characteristics reified in the myth of 'childhood' are not morally valid for justifying the imposition of an institution of childhood, this does not imply that they are not morally valid for the legitimate differential treatment of *individuals who do actually possess these characteristics.*

In this respect, while the Standard Liberals, through their Life-Stage conceptions of childhood, reified it as being necessarily a period of life of incapacity, implying essential differences between the treatment of children and adults, Liberationists end up reifying in the opposite direction: they essentialise 'childhood' as being necessarily *the same as adulthood*, thus, implying absolute equal treatment for all. Both of them miss the target. The plurality inherent in who children are, and what childhood can be, entails that no strict reification (on one extreme or the other) can be legitimised in order to do justice to the claims of the young.

My first amendment to the Liberationist position is, thus, as follows: the principle of basic equality does not imply equal treatment *regardless of the circumstances*, but, rather, equal treatment for *alike circumstances*. The vulnerability and dependence inherent in the human condition are morally valid characteristics for treating the individuals who possess them differently *in the particular circumstances in which their relative vulnerability and dependence may unduly harm them.*[41] I consider that this ground for differential treatment is legitimate and complies with the principle of basic equality because it takes the particular condition of all individuals *equally*. There is no generalised differential treatment based on highly problematic institutions such as that of 'childhood'; differential treatment grounded on *vulnerability* tracks the effective possession of this trait in all individuals, and treats all individuals with the same level of vulnerability in an equal manner. There seems to be no reason why equally or highly vulnerable adults should not receive the same special protections and care provided to vulnerable children (Herring 2018: Chapter 4). As long as it is the high susceptibility to harm (and lack of control over its avoidance) what concerns us when we claim that childhood should receive differential treatment, then all individuals with equal or relatively high levels of susceptibility to harm ought to be protected in the same way. A unique standard compels us to treat equal cases alike.

[41] I will expand further how this differential treatment may evolve in Chapters 7, 8 and 9.

2.2. Forms of Vulnerability

Liberationists stand on the basic premise that the double standard used to judge children and adults should be overcome, and that equality must be the basis upon which treatment is grounded. My amendment presented in the previous section complies with these requirements. The vulnerability condition uses an equal standard to assess all individuals' legitimate treatment. Now, Liberationists may still argue that if implemented in our present political system, the claim of granting differential treatment to the especially vulnerable can still hide various injustices due to one problem: the idea of vulnerability being a structural part of the human being is not that straightforward. Susceptibility to harm is necessarily *a relational phenomenon* (see Goodin 1985: 110-112). As mentioned above, one's possession of vulnerability is not exclusively tied to one's internal condition, but depends as well on the particular interrelation between one's condition and the external environment (See Friedman 2014; Mullin 2014). Taking vulnerability as a constitutive part of humanity, a Liberationist could argue, leaves the door open to potentially oppressive social conditions that would impose vulnerability on individuals, thus, justifying their differential treatment. The claim here is that an all-encompassing evaluation of vulnerability would open the possibility of powerful political and social groups to impose an institution similar to that of childhood, to all the individuals they wish to keep vulnerable (Herring 2018: 16-18). The fact that the social world conditions an individual's susceptibility to harm means that, depending on the social context, everyone or no one could potentially be labelled as 'vulnerable'. I will argue that this problem can be solved through a clear assessment of different forms of vulnerability, each requiring different mechanisms to deal with the harm it may inflict on the individual.

One way to address this claim would be to try to distinguish between the social and the non-social sides of human vulnerability.[42] Talking about human reliance on the external world, Jean-Jacques Rousseau considered that, beyond our inevitable dependence on nature, humans are (and have become) a *socially* dependent species as well. Dependence on nature, argued Rousseau, does not restrict our freedom in a morally relevant way (we cannot be unfree based on an inevitable dependence of the human species on our environment and certain fundamental goods required for subsistence). However, *social* dependence does impose morally problematic restrictions on human freedom because it may unjustifiably limit our actions based on arbitrary cultural and social customs (Rousseau 1762b: 115). We could try to respond to Liberationists following this line of argument: by considering that *non-social dependence*, due to its inevitability, must be addressed by ensuring that it does not harm its possessor (thus, justifying differential treatment). While some humans may be able

[42] I try to avoid the use of 'natural' due to the inevitable hybridity between social and natural factors; I distinguish, thus, between socially conditioned and non-socially conditioned factors. More on this in Ch. 1, Section 1.

to protect themselves from the potential harms that come from this dependence, others cannot, and their protection must be ensured by those who can. A young child, an elderly person, or a human with great disabilities, who cannot fully protect themselves from the harms that may come from their non-social dependence have a legitimate claim to have their health, nutrition, shelter, bodily integrity and others ensured by others.

On the other hand, social dependence relates to the needs that derive from our condition as *social* beings. Social dependence is built through social life, and the harms that come with it are socially constructed, not natural. Liberationist views have shown great reluctance to accept that these forms of vulnerability are morally valid reasons for differential treatment: great part of the reason why children are strongly harmed by the institution of childhood is because it imposes social vulnerabilities and dependencies on children that would not exist otherwise. If children were free from the constraining forces of socialisation and normalisation imposed by the adult population, they would have much less vulnerable lives than they presently have. While most Liberationists would concede to the fact that non-social vulnerabilities require protecting children from the harms that may be caused due to their possession (which are inevitable), they consider that the restrictions imposed on children that come from their *social* vulnerabilities are oppressive and avoidable, thus should be eliminated.

Even assuming that non-social and social vulnerabilities could be distinguished (which I think they cannot), the socially embedded condition of humans implies that the distinction would not work for classifying morally valid vulnerabilities that justify differential treatment from those that do not; social vulnerabilities come from different sources, and their differentiation is required in order to understand how to address them. Critics of the Liberationist view have argued that Liberationists do not include in their assessment some structural phenomena that define the human condition. Laura Purdy argues:

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

Establishing principles of justice while not taking into account the contexts, relations and particularities of the individuals affected by them is illusory and potentially harmful. We need to be weary of abstractions from certain *descriptive* facts about the actual world in which the issue dwells in order not to fall into harmful idealisations (Young 1990: Chs. 1, 2). In this respect, the treatment that is owed to an individual ought to be framed and adapted to the individual's internal condition, and to the social context in which she lives.

Following the Liberationist reasoning, while our non-social dependence on nourishment is a universal phenomenon, tying us all to our environment and to other humans, socially constructed dependencies compel us to justify their institution. Liberationists tend to go all-or-nothing regarding social dependencies and vulnerabilities, arguing that it is in principle unjust to have them imposed, thus should be eradicated. However appealing this answer may be, social dependencies are not all of the same sort, nor the fact that they are socially constructed means that they are necessarily avoidable, preventable or even harmful. There are social phenomena that, at least to a certain extent, seem inevitable and inherent to *any* socio-economic system, thus, even if socially constructed, must be considered as inherent to childhood (and human-hood) as any non-social vulnerability due to the impossibility of escaping from them in any potential real-world scenario.

The child's socially constructed vulnerabilities are a basic concern for child liberationists. Looking especially at the social manifestations of vulnerability, they argue that a core objective of any work on justice for children is to free them from these social institutions and practices that make them especially vulnerable to their social environment. It is not that children are vulnerable to many harms of our present world, such as walking alone on the street; it is the way streets are constructed what creates this vulnerability for children. Take a child who grows up in a farm. This child's susceptibility to harm deriving from her free movement in her surroundings is much lower than that of a child crawling on a street near to her apartment in Manhattan. Children are not necessarily vulnerable to their surroundings; it is their specific manifestations and constructions, which are particularly hostile to children. The solution in these cases has been the segregation of children into "safe spaces": with physical spaces such as the school, the home, padded playgrounds, cribs; and of epistemic spaces such as restriction to enter bars, or to watch certain movies or play certain video games. These are all examples of the ways the adult population intends to protect children from their susceptibility to harm caused by their social environment. However, there seems to be a problematic assumption that the appropriate solution to protect children from external harms is by segregating children from them, *instead of thinking of ways of abolishing or reducing the threat that these harms may impose* (Qvortrup 2005: 8). The standard used to reduce children's social vulnerability is by treating them differently, while allowing the actual perpetrators of harm to exist without restriction.

I am sympathetic to taking a critical stance towards these social manifestations of vulnerability, but we cannot start a war against social vulnerability *per se*. There is a limit to how far we can reasonably argue against certain forms of harm that threaten children. While many forms of social vulnerability are contingent and non-essential to social life in itself (potentially perpetuating the hegemony of certain powerful groups), others are constitutive and inherent to the social world, and cannot be considered as unjust due to the benefits they

provide to everyone. It seems counter-intuitive, in this respect, to argue that busy cities should be abolished in order to make children less vulnerable to their social environment. Many of us live in hectic and busy cities; the labour market is framed in such a way that makes it impossible for everyone to live in a country-house where children can roam freely. There are limits to how far we are justified to limit society's freedom in order to maintain children's own freedom. We have the interests of many other individuals to take into account as well. In order to offer a just prescription concerning how to deal with the social vulnerability of childhood, we must not forget to frame children within these constitutive social spaces.[43]

Following Catriona Mackenzie's work, I wish to distinguish, thusly, between different sources that may give rise to vulnerability, and how they frame our varied intuitions regarding how they should be addressed as a matter of justice (Mackenzie 2014). She distinguishes between three sources of vulnerability: inherent, situational and pathogenic (2014: 35). *Inherent* vulnerability is similar to the non-social one mentioned above, arising "from our embodiment, our inescapable human needs, and our inevitable dependence on others" (2014: 38). As it is constitutive to being human, it cannot be abolished, and should be rather addressed by ensuring that the proneness to harm does not actually turn into actual harm. *Situational* and *pathogenic* vulnerabilities are different forms of 'social' vulnerability, being context specific and strongly determined by the social, political and economic institutions and practices that frame an individual's life. Pathogenic vulnerability follows the pattern of the Liberationist concern, encompassing the "vulnerabilities arising from prejudice or abuse in interpersonal relationships and from social domination, oppression, or political violence" (2014: 39; see also Garrau and Laborde 2015), thus, being good candidates for being eradicated. On the other side, situational vulnerabilities are those that may come and go in life, depending on the particular circumstances and social practices and institutions that may reduce it or reinforce it, but which are not inherently unjust.

Situational vulnerabilities are caused or reinforced by social factors, but their pervasiveness and immanence in our social world (or any social world) implies that we cannot get rid of them altogether. Losing one's job, for example, is a situational vulnerability. The probability of it happening varies depending on context, and its corrosiveness depends on how it is addressed and dealt with. Situational vulnerabilities are not intrinsically unjust and harmful; their assessment depends on how they are addressed and whether they become pathogenic or not. If the social system in which one lives ensures support to those who lose their jobs, through unemployment benefits, guidance and alternative job opportunities, it ensures that the present situational vulnerability of the unemployed is not reinforced through the provision of appropriate protections. On the contrary, if one's social system does

[43] I will address in more detail the way that the social embeddedness of individuals should be understood in Chapter 4, Section 1.3.

not offer the appropriate protections to the unemployed, the situational vulnerability becomes pathogenic due to the negative role that the social system plays in perpetuating it and reinforcing its effects.

Situational and inherent vulnerabilities can turn sour when they are compounded into pathogenic ones (Mullin 2014: 269). The need to protect the vulnerable has been used historically by powerful groups to justify coercion and unduly restrictions on the life and freedoms for great parts of the human population (Mackenzie 2014: 34). Think, for example, of how men used the (false) claim of inherent vulnerability of women in order to justify their segregation to the household. The condition of children as especially inherently and situationally vulnerable beings becomes pathogenic as well when, on top of their already possessed vulnerabilities, they are restricted from having a voice in the matters that concern them in social, economic and political life. Inherent vulnerabilities should be protected, situational vulnerabilities should be supported, and pathogenic vulnerabilities should be abolished.

Feminist theorists have argued insistently for the need to take vulnerability and dependence as universal characteristics that frame *every* human's existence (Kittay 1999; Mackenzie et al. 2014). We are social beings inevitably dependent and vulnerable to the varying manifestations of social life, and to our personal situation (Fineman 2013; Fineman and Grear 2013). Vulnerability to exploitation in the labour market, or vulnerability to sexual abuse, for example, are issues that concern us (or should concern us) throughout the life-course. Although we are concerned with children suffering harm due to these two conditions, being a 'child' is not what presses our concern; it is vulnerability *as a universal characteristic* what demands that a political community should permit no such treatment. A non-harmful and consensual sexual relation between two adults turns into a high-risk and potentially harmful relation if it happened between a young child and a grown-up, or between a well-established academic and one of his students (regardless of gender). Vulnerability is relational in nature, and its potential to become a pathogenic source of harm derives from an asymmetry between the two sides of the equation. What a social system must aim at achieving is *reducing the correlation between vulnerability and harm* by abolishing the source of harm when possible, or by providing the support required for the vulnerable subject not to be threatened by her vulnerability.

3. Equal Treatment and Vulnerability

The Liberationist critical stance towards the concept of 'childhood' and its institutionalisation through the processes of segregation, socialisation and normalisation are

an important contribution to the discussion on justice for children. This chapter analysed the Liberationist view of 'childhood', evaluating its potential contribution to a conception of the moral and political status of children, which does not rely on its life-stage opposition to adulthood. The Liberationist concern with the unjust institutionalisation of childhood as a separate life-stage, and its advocacy for the need to apply an equal standard when judging what is owed to all individuals, are important contributions. The fact that 'childhood' is a social construction, and the fact the certain generalised assumptions about what characterises 'children' are arbitrary and potentially harmful to those ascribed to them, asks from us not to take our social institutions and our practices towards children at face value.

However, I have argued against throwing out the baby with the bathwater. The fact that the branding of a whole period of human life as 'childhood' may be arbitrary, unjust and unjustified for complying with basic liberal principles, and for institutionalising a generalised differential treatment to those ascribed to it, does not imply that all features and practices within the concept, its conceptions and institutions are necessarily harmful, unjust and uncompliant. My basic critique of Life-Stage conceptions of 'childhood' stood on their generalised and comprehensive ascription of children (and only children) into their characterisation and classification. My basic critique of Liberationist conceptions is that, even if the institution of childhood cannot justify differential treatment, there are certain *human constitutive* traits, characteristics and behaviours that do.

Sigal Benporath, in a similar line, argued that just because children are not strictly different from adults does not mean that they are necessarily the same (Benporath 2003: 132). This is precisely the point that I wish to make: what justifies equal or unequal treatment of individuals must be clearly defined, and the possible implications of equality must be confronted with the biosocial circumstances that grounds our human condition. Differential treatment is justified as long as the circumstances of different individuals require it to be so. Implementing a principle of basic equality for all humans does not imply not taking morally relevant differences into account when defining what we owe to them as a matter of justice; it simply requires *treating equal cases alike*. I tried to hint at the possible role that vulnerability plays as a morally valid feature that justifies the differential treatment of some individuals.

What does this all come to? Life-Stage approaches' intention to justify the generalised differential treatment of 'children' as a group comprised of individuals during the first period of life is arbitrary and uncompliant with basic liberal principles. The Liberationist intention to abolish the concept of 'childhood' altogether implementing a system in which all are treated equally is insensitive to certain morally relevant traits of humans that do require differential treatment. I have intended to offer an alternative route for justifying the differential treatment of individuals based on their possession of morally relevant traits (such as vulnerability and dependence), rather than going all-or-nothing. This implies that it is the particular condition *of the individual*, regardless of age, gender or race, what matters when

assessing the justified moral validity of differential treatment. In order to do justice to the claims of all individuals that arise from their particular condition, we must account for their actual vulnerabilities, and for the social institutions that may worsen or improve their situation. The next chapter will look closer into the appropriate characterisation and classification of 'childhood' following these basic premises.

IV. Re-Conceptualising 'Childhood': Constitutive Frameworks

"We promise to treat each other with dignity and respect.
We promise to be open and sensitive to our differences."
The Children's Declaration at the Children's Forum 2002

Life-Stage and Liberationist approaches to the concept of 'childhood' have been shown unable to legitimise fully how their treatment of children complies with basic liberal principles. While the first does not succeed in justifying differential treatment for children, the second is unsatisfactory in legitimising the validity of strict equal treatment. Feeding from the insights gained from studying the two approaches, this chapter explores a way of conceptualising 'childhood' in which differential treatment can be justified, while complying with the principle of basic equality. It claims that the human life should be defined within three frameworks that structure it, and that 'childhood' should be understood as a condition in which the impact of these three frameworks on the individual's life is acute. The previous chapter already introduced *vulnerability* as a constitutive feature that justifies treating certain individuals differently as a matter of justice. This chapter will explore two other frameworks that structure the human life (temporal and spatial), and how the acute possession of particular features (development and embeddedness, respectively for each framework) work as the triggering characteristics for justified differential treatment in accordance with basic liberal principles.

Humans exist in various, as Charles Taylor would call them, "inescapable frameworks" (1989: Ch. 1). These physical, social and conceptual boundaries delimit and constitute who humans are, who they can be, and what gives value to their life. The previous chapter introduced vulnerability (as a characteristic of the human *embodied* framework), exploring the way in which the embodiment of particular humans (and its relation to the social world)

characterises them as especially vulnerable and dependent beings. Vulnerability, I have argued, can be a source of legitimate differential treatment for those who possess it to a high degree. This chapter looks at two other constitutive frameworks that structure the human life (temporal and spatial), and explains how the condition of exponential *development* (in the temporal framework), and of strong *embeddedness* (in the spatial framework) can justify differential treatment as well. Learning from the limitations that affect strict Life-Stage and Liberationist conceptions, this chapter introduces a more nuanced and sensitive conception of 'childhood', by disaggregating the elements that give it moral relevance. It will be argued that the graded possession of these constitutive elements is what grants justifiability to the differential treatment of certain individuals.

A *temporal* framework implies that humans are structured as beings in time: they are not static; they are in a constant state of change, growth, maturation, and their conceptualisation requires understanding this evolving narrative element in their condition. Just as vulnerability is the structural characteristic that defines the child's embodied framework, *development* is the most prominent feature that structures our intuitions regarding 'childhood' as a temporal condition. I will introduce how this concept has been framed in the literature (particularly by the Sapling conception of it) and will present an alternative understanding of it, based on the works of John Dewey, which is more receptive to the plural answers to what 'childhood' can be, and to what roads it may take. This alternative account of 'development' aims at both framing children as temporal beings, while defending that this temporality is inherent to the human life-course as a whole, thus, breaking the strict boundaries between our traditional categories of 'child' and 'adult'.

As stated in the previous chapter, humans are inevitably tied to their natural and social environments in very complex ways. It frames who they are, who they can be, and their vulnerabilities, dependencies and potentials. This is what I mean by the *spatial* constitutive framework. The interdependence of the human being to the social and natural spaces in which she lives has been studied through the phenomenon of *embeddedness*. I will explore how our interpretation of the way it constitutes the human being affects how we conceive and characterise the human life. While agreeing with the inevitable bounds that embeddedness in our natural and social environment puts on our condition as humans, I claim that its impact on us varies depending on how we, as active agents, interact with and relate to it. Following recent work on social biology and psychology, I consider that, even if the three constitutive frameworks structure and delimit the human life, the individual herself, through her ability to *adapt* to this environment and her condition, transforms the way we should understand the central role that the individual plays in determining the way in which these constitutive frameworks may impact who she is. Before closing, I will look briefly at how this reflection on the embodied, temporal and spatial frameworks of humans speaks to

the classification of children.

The main intuition behind the reflections in this chapter is that there may be routes to understanding what 'childhood' is that do not take an all-or-nothing stance concerning what its specific characteristics are, or which are the particular boundaries that define it. By introducing certain constitutive features traditionally ascribed to the childhood social group as *universal characteristics* that apply to all humans, we pave the way to an account of the moral and political status of children in which they are treated and respected as equals, while accounting for the particular phenomena that justify their differential treatment in certain circumstances.

1. Constitutive Frameworks

1.1. Vulnerability and the Embodied Framework

The first way in which the human life is constituted is through its embodiment.[44] Humans are fundamentally conditioned by their corporeality, and its plural manifestations lead to varied influence of this framework on particular individuals. Children have tended to be defined as beings with a *vulnerable embodiment*, and the fundamental reason why it is claimed that they are owed a particularly protective and restrictive treatment is due to the corrosive effects that their vulnerable condition may have on their life. Exploring the human life without understanding the way its embodiment affects it (as I have claimed that the Liberationists do), can have grave implications on those individuals who are particularly susceptible to harm due to their embodiment. In order to do justice to all, a political system must account for the vulnerability of particular individuals in order to ensure that their embodiment does not impose extra burdens on their lives. Although vulnerability is a characteristic especially prominent during childhood, it is a condition that exists to varied degrees throughout the human life-course. If used as a justificatory mechanism for differential treatment, it must be tracked throughout the whole life-course to do justice to the particular claims that individuals have based on their embodied condition.

1.2. Development and the Temporal Framework

Our embodiment as vulnerable beings plays a relevant part in our understanding of what it is to be human, and is of particular importance for understanding the moral relevance ascribed to childhood. However, framing children merely as 'especially vulnerable embodied

[44] As I have already explored this issue thoroughly in the previous chapter, this section will only outline the basic conclusions taken there. For a full analysis see chapter 3, Section 3.

beings' is not enough. Our concern with what is particularly relevant about children relates to another constitutive feature: their temporal condition as *developing beings*. We are not only concerned with who they are in the present, but also with who they will be in the future, and who they are in the process of becoming. From birth, humans are in a constant state of flux. Their needs, their capacities, and their weaknesses change and evolve at a very high speed. In order to understand who they are, we must assess them within the temporal framework that constitutes them.

Understanding 'development' as a core characteristic of childhood is not new. In fact, the Sapling model, as presented in Chapter 2 (Section 1), took this as the structural characteristic that defines what 'childhood' is: 'children' are humans who are in the period of life in which they are developing into full adult humans. They do not only live within a temporal framework, but they are actually *defined* by their temporal framework. Being a 'child' is nothing more and nothing less than a being in a particular period in the human life, with an expiration date defined by its end-goal: adulthood. In this understanding of 'childhood', the development process is teleologically driven, necessary and endogenous. In Chapter 2, I already addressed two interrelated problems that I saw with the Sapling conception of 'development' and, thusly, with their conception of 'childhood': first, that it arbitrarily and vaguely distinguishes between 'developed' and 'developing' humans; and, second, that it characterises the latter based on reified assumptions of what it means to be the former. Here I want to explore whether it is possible to maintain the temporal framing of children as humans in development, while avoiding the problematic and unjust implications that affect the Sapling's understanding of it. I want to consider an alternative route proposed by John Dewey, which maintains the concept of 'development' as structural to what gives moral relevance to childhood, while avoiding the determinism inherent in the Sapling conception of it. The basic claim is that development is neither particular to childhood (even if especially prominent during childhood), nor teleological.

Before moving on, let me address briefly a distinction between two understandings of how development may be temporally determined in order to avoid misunderstandings later on. The temporal framework can constitute an individual's life in two ways.[45] A first one refers to the teleo*nomy* of a person's development. That is, the natural and biological end-oriented temporal process of the human being, which forces her to grow, change, wither and die, without human intervention, and without a necessary goal or purpose. The second one refers to a teleo*logy of* human development. That is, a goal-oriented process that is triggered by particular human intentions or purposes (Mayr 1998). The teleonomy of human development simply points to the inherent and inevitable biological fact of our temporal

[45] See the roots of the distinction in the biological literature in Pittendrigh (1958).

framing (we grow, we become taller, stronger, more cognitively developed, we die). A teleology of development, on the other hand, is a human-initiated process which directs the temporal framework in a particular socially prescribed direction (the rational, self-sufficient adult standard goal to be achieved during childhood is an example of this). By standing against the understanding of 'development' endorsed by the Sapling model, I am simply saying that we must distinguish between the two ways in which the development process of humans as temporal beings can be determined by its *telos* [without a goal (teleonomical), or as a socially-driven (teleological) goal].

Dewey on 'Development'

The philosopher and pedagogue John Dewey was one of the first researchers on childhood who saw a problem with conceptualising the temporal framework of 'childhood' as teleological and predetermined by the goal of reaching adulthood (see especially Dewey 1920: Chs. 4, 5). Dewey argued that this comparative conception which opposed the temporal frameworks of children and adults (the first being temporally framed by growth, while the second by decay), has two limitations. On the one hand, the intrinsic characteristics of children, and the value that childhood in itself grants to the life of an individual. On the other, the role that the same temporal framework of growth actually plays for the life of the adult human as well (1920: 49-50). Opposed to the teleological understanding of development in the Sapling conception, where the child unfolds her "latent powers toward a definite goal [adulthood]" (1920: 65), Dewey endorsed a *teleonomy of the human temporal framework*, in which *the whole life* is understood as a process of development. Not only do children change and develop, but all humans do as well. According to Dewey, we are all temporally framed as developing creatures, and humans radically change throughout their whole life-course. Development is not a phenomenon exclusively tied to childhood, but is rather a universal phenomenon, demanding that our normative considerations over what is owed to everyone to take into account this constitutive fact (1920: 49-54). This does not imply that the higher speed and intensity in which the development process of certain humans —think of both children or the elderly— should not be given priority; it simply implies that, even if this is a feature particularly prominent during certain periods of life, we cannot be blind to its impact on all of them.

Dewey considered human beings as endowed with particular *plasticity* in their condition (their malleability to change over time; for better or worse). While all humans change and grow, there are particular phenomena, some internal to the person, and others affected by external factors, which make them more or less malleable. While the plasticity of children or the elderly is elevated by their own temporal framing, during our whole life we may be confronted with situations which reinforce our plasticity (an identity crisis, loss of job, having

a child), and these are all elements of our developing condition as humans (Dewey 1920: 57-68). Seeing human beings as in a constantly developing condition implies that we cannot delimit a threshold that distinguishes between the needs, interests and capacities of "developing" and "developed" beings. Plasticity implies seeing humans in all of their temporal facets; it demands an understanding of what is owed to them as beings in the present, as what they will become in the future, and as what they are in the process of becoming as developing beings.

Through an emphasis of development as a universal trait of human life, the temporal framework in which we locate children becomes both an ephemeral and a permanent condition. From conception, the human being starts a never-ending process of change. Its physical and mental abilities grow and decay, its emotions shift and adapt depending on the circumstances, its future aspirations turn achievements or failures, reframing how it understands itself, and its present actions and circumstances later become memories and experiences. "Life means growth" (Dewey 1920: 61), making development a *permanent* temporal framework of the human life.

The work of Allison James and other sociologists of childhood offers an important insight to what this temporal framework of human development means, and what it implies for our conception of 'childhood' (James et al. 1998; James and James 2004; Uprichard 2008). Sociologists of childhood have argued for an understanding of the child as not static, nor reified within its life-stage, but rather being situated in her own past, present and future (James et al. 1998: 207). The life of the adult and the child are not two different lives that should be assessed separately, as Patrick Tomlin's caterpillar notion of childhood would argue (2018); they are both *relative categories* that represent the same evolving person who has a stake and a claim for being considered in all of her temporal facets simultaneously (Uprichard 2008: 306). This claim is related to the "complementarity of life-stages" idea mentioned before (Gheaus 2015a; Weinstock 2018; see Chapter 2, Section 2) but takes it a step further. Not only are the interests of the child and the adult complementary, but they are (or at least should be seen as) indistinguishable in many aspects. The child has a claim to be treated justly in the present, she also has a claims to have a just adult life, and to be treated justly as a developing being (Peleg 2013: 540).

Three claims derive from the reflections in this section. First, the temporal framework that constitutes the human life should be conceived as *teleonomical*, rather than teleological. Second, the development process within this temporal framework is a *universal* phenomenon, inherent in the human life as a whole. Finally, its inherently *gradual* nature implies that no strict opposition should be established to define it. Development is a never-ending process. The idea of development becomes more or less exponential at certain moments in life (which vary depending on the internal and external circumstances of the

particular individual). However, this does not imply that development stops completely; certain phenomena usually ascribed to childhood never leave us (at least not most of us), and this is fundamental for when we conceptualise individuals in their temporal framework.

I follow, thus, Sigal Benporath's (2003) basic stance on how we are to understand what 'childhood' is in relation to their temporal framework. First, "children are not strictly different from adults", there being no normatively relevant reason (at least from this temporal facet) to establish a clear-cut dichotomy between the two. Second, that, despite the absence of a morally justified clear-cut distinction, we can nevertheless emphasise certain especially salient traits of the human condition that allow us to group particular interests, justifying the need for differential treatment to those who require it (Benporath 2003: 131-132).

The fact that there are no clear-cut differences between two life-stages of human beings, and that the temporal framework of the human development process is a continual and gradual condition, without a particular predefined teleology, forces us to be weary of potential reifications of the characteristics, needs and interests of differently positioned individuals (Archard 2004: 45). In the previous chapter I explored how the concept of vulnerability, which grounds our embodied framework, can be used to justify the differential treatment of those who possess it, but argued that this in no way justifies differential treatment based on the strict opposition between possession and lack, but rather conditioned by its *relative existence*. We must conceive of the temporal framework in the same way. Our developing condition justifies differential treatment, but it does so in a relative manner, depending on the degree of its effects, rather than on a binary opposition between "developing" and "developed" beings.

This account allows us to make use of the concept of 'development' as a grounding feature of childhood, without having to follow the deterministic (teleological) implications that may derive from a Sapling understanding of it. In other words, the moral relevance of the development of children can be endorsed without granting special preference to the future adult when assessing a child's claims, nor by defining it as an exclusively child-feature. Growth does not have an end; it is an end in itself (Dewey 1920: 60).

1.3. Embeddedness and the Spatial Framework

I explored the embodied and temporal frameworks that constitute human life, and have claimed that vulnerability and development ought to be core elements for any characterisation of the possible moral relevance that childhood may have for normative prescriptions. This section looks at the *spatial* framework that binds the human (and the child's) life. It is standard in disciplines that study the human condition to consider framing

the human being in the spatial context that surrounds it. In normative political theory, this claim has been made central to the work of communitarians (see, for example, Taylor 1989: Part I; Sandel 1998: Chs. 1, 4) and critical theorists (see Young 1990: Chs. 1, 2) through an emphasis on the social structures that prefigure any consideration of morality and justice. Normative theories need to take into account the realities and binds that society imposes on what justice or morality are (and can be) (Young 1990: 5). The social environment inevitably conditions children (and all humans for that matter). Conceptualising and characterising 'childhood' demands understanding the spatial framework that structures it.

By highlighting the need to assess children in their social environment, we do not necessarily have to concede to the normative priority of the social over the individual. The claim can be weaker: if we intend to transform the present state of affairs and understand the human condition, we must have a clear understanding of the role that the social world plays in human lives, rather than trying to solve it in a vacuum. There are certain unsurmountable limitations imposed by our human condition as biological and social beings, which do not allow us to build perfectly just societies. If not aware of these limitations (as descriptive facts about the world), providing normative prescriptions, overcoming the harmful effects created by these social phenomena, and endorsing the potential benefits that we can reap from them becomes impossible.

Being constituted by a spatial framework can be defined through the condition of *embeddedness.* The main idea behind embeddedness originated with the economic-historical tradition initiated by Karl Polanyi's critique of formal economic models (Polanyi 1944: esp. Chs. 4 and 5). It considers that certain models of behaviour and normative conceptualisations of how the world should work are detached from the specificities of social context and history, presenting themselves as (mostly) universal and "universalisable" theories (Granovetter 1985: 483-484). This would be a "disembedded" normative theory. Opposed to it is an understanding of normative and behavioural models of the human condition, which take the interdependence between the individual, the social context and the historical conditions in which they are embedded as structural to any evaluation. The need to take embeddedness seriously in political philosophy has tended to stand against ideal and rationalist conceptions of justice. Amartya Sen, for example, has dedicated a great part of his career to showing the flaws behind rationalist models of behaviour that do not take non-ideal conditions and social context into account (Sen 1977), as well as with the problems in ideal theories of justice that detach themselves from the particular embeddedness of human societies in order to establish the most "objective" norms for moral and political conduct (see Sen 2006; 2009: Part I). If our intention is to establish an operational conception of 'childhood' that can prescribe just normative guidelines, the spatial framework that embeds

children in a particular social context is a necessary feature.[46]

Embeddedness can be understood in two ways: as a non-social and a social phenomenon. *Non-social embeddedness* refers to the natural environment that constitutes the human life. It is strongly related to our *embodied* condition, expressing the phenomena that arise from our location as humans in a natural world. *Social embeddedness*, on the other hand, refers to the constitutive framework that bind us as human beings, inherent to and defined by our living in a particular social system.

Children are strongly embedded beings. From birth, humans are introduced and socialised in specific social contexts that frame the way they think, the way they develop, and their identity as a whole. This binds our discussion of childhood in two ways: first, embeddedness in childhood implies that social forces influence the concept itself; and, second, that the particular embeddedness of children frame and delimit whom the individual child is, and who she can be. Anthropological, psychological and sociological research on childhood have intended to use this fundamental spatial constitutive framing of the human condition, in order to question the validity of universal characterisations and classifications of 'childhood', due to the two above mentioned forms in which embeddedness affects who a child is (in general and in particular).

The work of the anthropologist David Lancey, for example, shows that, beyond certain frameworks that bind who children are *in general*, 'childhood' is a plural concept that transforms in radically different ways depending on the society that is studied. Not only does the conceptualisation of 'childhood' change, but the particular lives and understandings of the child herself do as well (Lancy 2015: Ch. 1). As I have already explored the role that particular social frameworks play in constructing the concept of 'childhood' (see Chapter 1, Section 3), here I want to look more closely at the ways in which the embedded nature of children affect who they are, and who they can be (at the individual level).

Psychological studies on human behaviour and child development have clearly shown how environmental factors strongly condition the cognitive development through which the child passes, and the individual's construction of herself and her identity (Schaffer 1996: 60). Linking it to our exploration of the *embodied* and *temporal* constitutive frameworks, the fundamental claim made by the psychological literature is that these cannot be detached from the spatial environment in which the child grows, because environmental factors can play as

[46] Bear in mind that the spatial constitutive framing of childhood as embedded is not a normative claim, but merely a positivist description: I am not saying that children *ought to be* embedded in their particular social environment; I am barely stating that children *are indeed* embedded in their social environment. So, regardless of whether we consider that embeddedness has any normative value (as an end-goal), we must concede to the fact that it is an empirical reality of childhood (and humanity, for that matter).

constitutive a role in determining who the child is as her genes do (Schaffer 1996: 46-50, 96). Even if we can distinguish certain particular elements of a person's identity as being tied to nurture, and others to nature, most of our behavioural patterns, our development, and our processes of identity-formation are profoundly affected *by both sources*, making the child's social embeddedness as constitutive of 'who she is' as her genes.

Sociology has also explained how the social environment frames what 'childhood' is, and who children are. Just as in the case of the temporal framework, the spatial framework considers the universality of the child's embeddedness, while claiming for particularity in what this entails for specific children (Jenks 2005: 6-7). All conceptions of 'childhood' and the particular identities, behaviours and characteristics of children derive from particular social environments, implying that childhood and its conceptions vary greatly depending on the specificities of local contexts and time (not all childhoods are the same, nor do they embody the same vulnerabilities or development processes) (Pufall and Unsworth 2004: 18). This is strongly affected by how the socialisation processes of young humans is enabled by the child's particular embodied and developmental conditions (Lee 2001: 39; Jenks 2005: 38). Young humans are incredibly receptive beings, who are in a constant state of assimilation and imitation of the behaviours and practices of those around them (Adams 2008: 43). This is why it was argued in the previous chapter that the Liberationist negation of the necessity of social constructions in the children's treatment as political beings is simply impossible. There are certain fundamental limitations that a normative theory of childhood needs to take into account; and their embedded nature is one such constitutive frame.

Dewey on 'Embeddedness'

As it has been presented up until now, the concept of 'embeddedness' seems to point towards a relatively deterministic understanding of the role that the spatial framework plays in the life of the individual. In other words, it points at a conception of the 'child' (or all humans, more generally) as a passive receptor of external influences which define and determine who she is. This account of the spatial framework would determine the characteristics and classification of 'childhood' in its entirety. I wish to explore an alternative understanding of how the spatial framework relates to the life of the individual, inspired by John Dewey's educational theory.

Charles Taylor can be considered as one of the most prominent philosophers who have endorsed this strongly embedded condition of the human being, and applied it to how this frames how we ought to think about our moral and political world (Taylor 1989: Ch. 2). Taylor goes beyond the purely "descriptive" account of human embeddedness (which is what the psychological, sociological and anthropological literatures do) to argue that, not only are humans *descriptively* embedded in their "horizons" (as he calls them), but that this dependence of the human on the scriptures given by its social system is what constitutes and

what *should* (normatively) constitute our personhood, and our particular position in the moral universe (Taylor 1989: 27). As a critique of the Liberationist position, I argued in the previous chapter that certain social constructions and practices must be taken into account (as descriptive facts) in order to evaluate what is the just normative response to their existence (see Chapter 3, Section 2). Taylor's account of the role that social practices play in constituting the individual would lead to an stronger critique than that put forward in the previous chapter. Not only is the separation of the child from her particular socially constructed frame a descriptive fallacy (as I claimed), but that it is also normatively harmful to separate the child from her particular social reality. This is so because it is this reality what gives any sense to individual identity formation, and to an individual's conception of herself, the right, the good and the just (Taylor 1989: 25-32). Understanding embeddedness as a normative concept would imply that, only through the *adoption* of the particular conception of life in one's social environment (sociologists would call it 'internalisation'), can one develop as a human agent (see also Appiah 2005: Chs. 1, 2).

However, the fact that we are all tied to our social world does not imply that we are submitted to it strictly and unilaterally. Even if we are constituted through our spatial framing, do to it providing the "horizons" through which we understand ourselves, these still leave an ample space for the particular way in which the individual adopts the particular influences from her external environment. John Dewey understands the process of human development and learning as tied to *experience* (Dewey 1938). It offers an interesting approach to illuminate the spatial framework of childhood, by including the child as an active agent in its construction. I will expand on Dewey's idea of experience to lay bare the fundamental role that children's active interaction with their spatial framework plays in defining who they are, and how they should be characterised.

As mentioned previously, the basic claim made by Dewey regarding 'human development' is that we should stand against a *comparative* understanding of it. The basic mistake made by "preparation theories" of childhood (Sapling conceptions) is that they take child development as a stage of life *opposed* to adulthood (Dewey 1920: 59): children develop *into* adults; they unfold their potential towards achieving a set of competences pre-determined by their capacities and by their social environment (1920: 65). This, Dewey argued, promotes a conception of childhood as a *passive* stage of life, in which, even if children develop endogenously, they are doing so only to accommodate their capacities to *the exogenous standards of adulthood* imposed by a particular social setting (1920: 60). This would be analogous to understanding that the embedded nature of humans makes them merely passive recipients of what their social environment and what its exogenous standards impose on them. Dewey considered that this is enabled through a "lacking" conception of 'childhood' and child development, which takes the latent capacities and potentialities of the

child in the *negative*. Opposite to this, he proposes to look at them as positive features:

> It is noteworthy that the terms "capacity" and "potentiality" have a double meaning, one sense being negative, the other positive. Capacity may denote mere receptivity, like the capacity of a quart measure. We may mean by potentiality a merely dormant or quiescent state—a capacity to become something different under external influences. But we also mean by capacity an ability, a power; and by potentiality potency, force. Now when we say that immaturity means the possibility of growth, we are not referring to absence of powers which may exist at a later time; we express a force positively present – the *ability* to develop. (Dewey 1920: 49).

This approach offers an alternative route that avoids understanding 'childhood' as a passive stage moving towards its teleology, rather considering 'childhood' as an active endeavour in which the child herself defines not only the means through which she develops *but also its goal*. For Dewey, the idea of an endogenous development in Sapling theories is insufficient; it takes the child as an actor who is in charge of moving the wheel, but who carries out her role directed by an externally imposed objective (Dewey 1897: 105). In Dewey's understanding, it is the child herself who controls (and should be permitted to control) both the means *and* the ends of her development. Of course, she still grows and develops, but she does not do it out of a natural necessity to arrive to a socially predetermined stage. She does it as way to make use of her inherent capacities and potentialities to adapt herself to the environment around her, and to adapt the environment to her own potential. 'Development', in Dewey's words:

> is essentially the ability to learn from experience; the power to retain from one experience something which is of avail in coping with the difficulties of a later situation. This means power to modify actions on the basis of the results of prior experiences, the power to *develop dispositions.* (Dewey 1920: 53).

Dewey's account of 'experience' offers an interesting linking point between the temporal and spatial constitutive frameworks. If the temporal framework of 'development' is not predefined by a teleology, through the child's own active moulding of her temporal frame, then, even if her embedded condition does give a structure to the child's spatial framework, it does not do so absolutely. Through the idea of "development as experience", Dewey puts children in the driver's seat of their own characterisation process (see Dewey 1938); they feed from the external influences and stimuli that come from their spatial framework, while transforming them according to their own experience and character. In his own words, "purely external direction is impossible. The environment can at most only supply stimuli to call out responses. These responses proceed from tendencies already possessed by the

individual" (Dewey 1920: 30). Both the temporal and the spatial frameworks are transformed by Dewey's account of experience: development becomes an open-ended process defined by *the child's own active interaction with her social environment* (1938: Ch. 3).

Moreover, not only does the child play an active role in her interaction with the social environment, but the actual choice of the environment that frames her (delimited of course by those accessible to the individual, as Taylor would argue) is also within her control. Dewey concedes to the limitations imposed by our embeddedness in a particular social system, but considers that we still actively choose which elements of it we give relevance to, thus, to a certain extent, choosing our own place in the spatial framework. He gives the example of the astronomer being more constrained and embedded in the spatial framework of the stars within the reach of her telescope, than by much of the social life physically surrounding her (Dewey 1920: 13). Even if limited by the opportunities available, a child still makes use of her own inherent tendencies and character to construct and transform her own spatial framework. The sporty individual is framed by the football field, the reader by the library and its books, and the religious by church.

Dewey's open-ended account of 'childhood', which grants a strong role to the individual in actively driving her own development process, and constructing her own place in the social world, transforms how the temporal and spatial frameworks constitute a child's life (see 1938: Chs. 1, 5). The child, her development and her relation to her environment are neither a purely individualist and endogenous affair, nor are they necessarily submitted and passively determined by the external pressure of social influences. The child neither atomistically creates herself, nor does she merely *adopt* what her social world gives her: a complex interaction between the self and the world is what determines who the individual is. This reflects the idea of *adaption*. Taking the embeddedness of children seriously does not imply that they are inevitably trapped in and are passive recipients of their social environment. Their *adaptive condition* highlights that, while the social environment embeds the child within a particular set of options and choices (the spatial framework), it is the individual's own active interaction and transformation of herself and her environment what guides the development process (temporal framework) (Dewey 1930: 130).

2. Adaption and the Individual Framework

Conceptualising 'childhood' as *adaptive* implies framing children as not built from a blank slate by their social environment (*pace* Locke), rather, it requires understanding them as entering the world with certain dispositions and a character that frame the way the social environment affects and interacts with their particular condition and experiences. This has

been labelled in social development theory as the *transactional model of development* (Sameroff 1975): a child's developmental process is not purely determined by nature (her innate endowments), nor uniquely controlled by nurture (her social environment). Rather, its path is determined by three variables: first, the natural dispositions of the child (the nature factor); second, the environmental conditions (the nurture factor); and third, the interaction between the *specific* character of the child and its *specific* environment (see Schaffer 1996: 390-395; Moshman 2011).

2.1. Sources

The psychological literature on child development provides relevant insights into this dialogical relation between the child and her constitutive frameworks. There are certain basic dispositions within each human being that are inherent to their character *prior to any socialisation*; that is, the child is already endowed with a particular (rough) character innately, before any framework can have an effect on her. Steven Pinker, for example, has defended the role that an individual's pre-social character (namely, her genes) plays in determining a person's identity, her development processes, and her relation to her social environment (Pinker 2002: esp. Ch. 3).[47] Pinker considers that, even though individuals are always embedded in their particular social context, tied to their embodied condition, and trapped in their temporal frame, the manifestations through which these influences reveal themselves on each individual differ and depend on the person's own "innate" dispositions. In a similar line, child development theorists such as Paul Bloom (2004) and Martin Hoffman (2000) have studied the (more or less) universal processes of development of children: how they acquire a moral language and understanding, or how they develop their social and emotional ties. They argue that, while we can define certain standards for how these processes evolve in human children, these are not entirely procedural mechanisms through which children passively receive and submit to what the environment demands, but ones in which children play an active role in guiding their own developmental processes so as to accommodate the environment in which they live to their own character and disposition (see Bloom 2004: 19-24; Hoffman 2000: Ch. 2).

The fundamental element is that the internalisation and socialisation processes, with which the Liberationists were so concerned, are not exclusive nor all-powerful sources in the definition of who a child is (or who she should be). These processes should be considered, following John C. Gibbs' terminology, as "opportunities" accessible to the child, over which the particular individual has a relevant amount of control (Gibbs 2014: 68). The embeddedness of humans in their spatial framework, even if it delimits to a certain extent the

[47] This account includes *in utero* embeddedness as part of the child's frameworks.

available options to which an individual has access, is still sufficiently open for the particular character of the individual to be able to adapt (to) it, and to transform it according to her own experiences and character. In this respect, we could consider that, besides the three constitutive frameworks mentioned before, the person's character, her particular way of conceiving the world and herself, work as a fourth (individual) framework, which plays a structural role in determining what the human life is, and how the other frameworks affect and interact with it.

2.2. A Philosophical Account of 'Adaption'

The idea of 'adaption', and the inclusion of an *individual* framework in our conception of the human condition, intends to avoid two errors from opposite sides: the unencumbered and the reified (Bhaskar 1979: 45-46). On the one hand, conceptualising the human life devoid of the frameworks that bind and limit it (unencumbered) leads to harmful idealisations of who humans are and what they can be. On the other, taking the social world (and its impact on the constitutive frameworks) as an absolute that determines who individuals are in their entirety, has the problematic consequence of reifying social practices and customs as if they were objective and unavoidable. It also fails by portraying humans as purely passive recipients of external influences, and as comprehensively trapped in their particular temporal and embodied conditions.

I will not say much on the error of unencumbered conceptualisation as I have done so already.[48] It suffices to say that the error of unencumbered conceptualisation (defining 'childhood' in a vacuum) is extremely problematic. Humans are defined by their condition as embodied, temporal and spatial beings. These frameworks are fundamental to understand the human condition due to the high embodied vulnerability, the exponential development in time, and the receptivity to the influences of their spatial environment particularly prominent during certain periods of the human life. Conceptualising 'childhood' without acknowledging the structural role that these features play in any child's life may hide problematic injustices that derive from them, and may omit relevant constitutive characteristics of children, thus leading to problematic normative conclusions regarding 'what a child is', and 'what is owed to children.'[49] If our intention is to offer a just and morally legitimate conceptualisation of 'childhood', we must account for the role that these frameworks have in outlining its characterisation.

Regarding the error of reified conceptualisation, acknowledging childhood as structured

[48] As argued in the previous chapter regarding the harmful omission of the embodied vulnerability of childhood (see Chapter 3, Section 2), and above on the need to account for their development process and their embedded nature.

[49] The implications of an unencumbered error in children's rights theory will be analysed in Chapter 6.

within embodied, temporal and spatial frameworks, however, should not imply the absolute submission of the individual to a particular preconception of what these frameworks are, nor how they should constitute the life of a child. This is especially relevant when assessing the role that the social world plays (and should play) in determining who a child is. Many African scholars on children's rights[50] are adamant defenders of the need to take the spatial framework as structural to understanding justice for children, but not because the social is normatively valuable, but because it is unavoidable. The dependence of the child on her social environment, practices and culture, tends to be considered as a claim of communitarian or relativist theorists who stand in defence of particular customs and traditions, and against the imposition of external (usually Western) standards of justice. Nevertheless, many of them emphasise embeddedness not as a normative prescription ('children should be constituted by the practices and traditions of their social world') but merely as a descriptive fact about the world that has to be dealt with as a matter of justice. Kabeberi-Macharia (1998), for example, strongly advocates for the need to look at the specific relations and interactions within a social environment in order to understand the potential sources of domination and discrimination that arise within it. Her assessment of children (girls in particular) in their spatial framework is grounded on the concern with how the immanence of the social world can (and usually does) hide harms to children cloaked as traditional or cultural practices (she shows particular concern with practices such as female genital mutilation). The spatial framework is fundamental in determining 'childhood', but this does not imply that *every* spatial framework is necessarily beneficial for children. Because of its inevitability, we must assess children within their constitutive frameworks, *without normatively reifying how these should constitute what a child is, nor what she is owed*.

By acknowledging the importance of social influences on the child's life, I am considering them as a descriptive fact, rather than (necessarily) as a normative prescription. Being embedded should not mean that children *passively discover and adopt* the life predisposed by the adult members in their society (Sen 2006: 5); being embedded, rather, means that children *actively experience and adapt* to the life predisposed by the adult members in their society. The social world provides influences, stimuli, opportunities and limitations to which the child adapts, and from which it chooses, based on her own dispositions and character (Sen 1998: 23-24). 'Adapting to' implies that the child has a character of her own (an individual framework), not passively adopting what is thrown at her, but actively navigating her environment in order to construct herself. A child's constitutive frameworks may bind the scope of her possible lives, capacities and options, but she still has (and should have) choice and control over the particular external influences that define her, the particular path through

[50] See, for example, the chapters in Ncube (1998b).

which these influences guide her, and the particular way in which she confronts them (Sen 2006: 35-36). Seeing childhood as adaptive —understanding children as having certain control over their development process, over their acquisition of abilities, and over their navigation of the social world— does not imply detaching them from their constitutive frameworks; it simply argues that they should not be conceived as being passively determined by them, rather playing an active role in their construction.

Understanding children as *adaptive* allows us to concede to the constitutive frameworks that structure the human life, while granting a central role to the individual herself in deciding how this process takes place. Two normative implications arise from this in conceptualising the human life: first, we must be aware of the role that the constitutive frameworks play in outlining who an individual can be; and, second, we need to acknowledge the central part played by the individual herself in determining how her interaction with these constitutive frameworks evolves. The interaction between the child and her frameworks in defining 'who a child is' abolishes the possibility of framing 'childhood' as a "unilineal, natural, inevitable and universal progression" towards a specific set of characteristics, and a predefined understanding of what adulthood is (Nolan 2011: 2). By emphasising this complex relation between the child and her frameworks, we are opening the door to considerations of the child as being an active agent in her own characterisation process *from the beginning*. By taking the child as an agent with certain dispositions prior to any socialisation process, we consider the responsibility that the socio-political community has in *respecting the child as an actor*, and in *fostering her development path in accordance with her personal dispositions*.

3. Re-Conceptualising 'Childhood'

This chapter explored a disaggregated conceptualisation of 'childhood' that learns from the insights and limitations of both Life-Stage and Liberationist approaches. There are three constitutive frameworks (embodied, temporal and spatial) that delimit any possible classification of 'childhood', and which highlight the particular characteristics (vulnerability, development and embeddedness) which may legitimise the potential differential treatment of the individuals who possess them to a high extent: their embodiment as *vulnerable* beings, their temporality as *developing* beings, and their spatial framing as *embedded* beings. On top of this delimitation, I claimed that we must interpret the relation of the child to these frameworks as *adaptive* (the individual framework); children are not passively pushed or dominated by these frameworks, but rather play an active role in determining how they evolve, affect and determine their life. This leads to three principles for conceptualising 'childhood':

a) 'Childhood' must always be evaluated based on the embodied, temporal and spatial frameworks that constitute the individual;
b) Variations conditioned by individual adaption to the frameworks must be accounted for;
c) It is the interaction between the individuals (b) and their constitutive frameworks (a) what explains a person's condition, thus, the legitimacy of their differential treatment.

This understanding of how 'childhood' ought to be conceptualised, based on its relation to the constitutive frameworks, questions the validity of all-or-nothing accounts of 'childhood' in two ways. It questions, first, the validity of a standard (objective) track and pace in which we assume the development process of childhood takes place, by claiming, rather, that the temporal and embodied frameworks of childhood are not predetermined and unilineal, but rather conditioned by the child's own particular character and her interaction with a particular social environment. And second, it questions the possibility of predetermining 'what a child is' by relying exclusively on the spatial framework in which she is embedded; an understanding of the active role the child plays in navigating and adapting (to) her environment, requires a conceptualisation of 'childhood' open to the variable adaptive processes that children (as individuals) in particular circumstances take.

The relation between the individual and the three frameworks is complex (see Figure 1). Not only do the three frameworks affect who an individual is, but the individual herself also transforms these frameworks and how they influence her. An individual comes into the world endowed with dispositions that prefigure her temporal and embodied frameworks and her relation to the spatial environment (in T_0). The latter frames the individual through its influence on her self-identification, on her attachments and opportunity-sets, and depending on how the particular social system promotes, protects or restricts her vulnerabilities inherent to her embodied framework, and her particular temporal framing as a developing being. The latter two have a direct effect on who the individual is and who she can be, by limiting the scope of options available based on her abilities and potentialities (in T_1). This dynamic interaction between the individual and her frameworks repeats itself through time and across the whole life-course (T_2, T_N), with periods in which the influence of (some of) the frameworks is less prominent, and others in which the influence is much more acute.

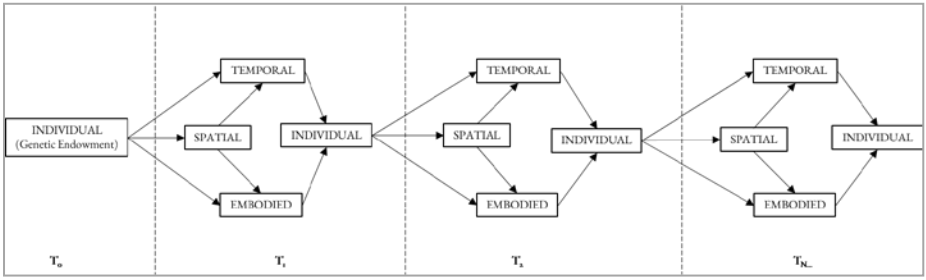

Figure 1. *Interaction among the Constitutive Frameworks across Time*

The particular "acuteness" of the impact of the three constitutive frameworks on an individual is that which may justify the need to grant differential treatment to a particular individual, while complying with the principle of basic equality. It is the complex interaction between an individual's vulnerability, development and social dependence what justifies classifying an individual as a 'child', and, thus, in need of particular protections and restrictions as a matter of justice. We are more or less 'children' at different periods of our life, relating to varied circumstances and depending on our particular adaption to our frameworks. The claim that differential treatment is required in order to do justice to the needs of certain individuals is legitimate *as long as it tracks the acuteness of the influence of the three constitutive frameworks on the individual's life*. The impact and potential harm that the individual's vulnerability, development and embeddedness may cause her legitimises her potential classification as a 'child', and the moral validity of granting her special protections, restrictions and provisions not ensured to the rest of the human population. The particular normative implications on the rights that individuals are entitled to, and the justifiability of implementing differential rights and restrictions, is a matter to be dealt with in-depth in the next Part of the manuscript. My objective here was, simply, to question the validity of current conceptions of 'childhood' from a liberal standpoint, and present what I consider the constitutive elements of 'childhood' which must be account for in order to do justice to what is owed to the individual. This revision has intended to prove the normative need to ensure differential treatment to certain individuals as a matter of justice, while complying with basic liberal commitments.

Joel Feinberg used the idea of "relative-child/relative-adult" to emphasise the blurry line dividing these two groups if one takes into account the individual's particular condition. He argued that 'childhood' and 'adulthood' should be "only useful abstractions from a continuous process of development, every phase of which differs only in degree from that preceding it" (Feinberg 1980: 95). If we want to ensure equal respect to the situation of each

individual, we must be weary of reifying categories, and rather devise a system that ensures appropriate treatment owed to individuals based on their actual condition rather than on harmful generalisations. Re-conceptualising 'childhood', thus, goes beyond simply claiming that the age or abilities required to be an adult should be reduced or revised; rather, it argues that we should pluralise and disaggregate what this strict category means, in order to see what justifies its existence, and apply its standards equally to all individuals.

This chapter addressed certain relevant questions that arise when trying to conceptualise what 'childhood' is. It argued that any evaluation of the human life must acknowledge the role that certain constitutive frameworks play in its assessment. The strong impact of three frameworks (embodied, temporal and spatial) tend to ground our intuitions about what makes 'childhood' a morally relevant category for discussions about justice: children are highly vulnerable, in an exponential development process, and strongly dependent on their environment. However, I argued that a fourth feature must be included within the picture in order to understand the relation between these three constitutive frames: the individual framework based on the individual's condition of adaption. Humans are not only passively defined by their embodied, temporal and spatial framing; they, on the contrary, play an active role in determining how these frameworks affect them. This implies that we cannot generalise the impact of the constitutive frameworks, but that the individual's active experience of and adaption to them force us to individualise our assessment of a person's justified and legitimate treatment. Opposed to Liberationists, I claimed that there are fundamental features that legitimise differential treatment to certain individuals. However, against Life-Stage approaches, I argued that this cannot be an all-or-nothing classification; it depends, rather, on the particular interaction among the frameworks that structure an individual's life throughout the life-course in an open-ended manner.

My main objective in this Part of the manuscript was to explain the moral relevance of the concept of 'childhood', and to assess the justifiability of the most prominent conceptions of 'childhood' in the literature from a standpoint of their compatibility with basic liberal commitments. I showed the limitations of both Life-Stage and Liberationist conceptions of 'childhood', and presented an alternative which proves the justifiability of treating certain individuals differently based on their possession of certain morally relevant traits (agreeing to a certain extent with Life-Stage approaches), while proving the unjustifiability of imposing strict generational classification for differential treatment (in line with Liberationists). Having offered an in-depth exploration of the concept of 'childhood' and its value for normative theories of justice, the next Part will address this manuscript's second objective: to offer an account of 'what is owed to children' in compliance with basic liberal principle.

PART II

THE JUST TREATMENT OF CHILDREN

V. Grounding Rights: Sources and Legitimate Claims

"Until others accept their responsibility to us, we will fight for our rights.
We have the will, the knowledge, the sensitivity and the dedication."
The Children's Declaration at the Children's Forum 2002

The previous Part of this manuscript focused its evaluation on the moral relevance and legitimacy of the concept of 'childhood', and its conceptions. It considered how 'childhood' may stand as a morally relevant human category for justice purposes, and how it must be re-conceptualised and disaggregated in order to legitimise the differential treatment for those labelled as 'children'. Standing on that groundwork, Part II of this manuscript intends to explore how this account of 'childhood' translates into the discussion on the just treatment of children. Assessing justice for children can take varied routes: one can evaluate justice for children, for example, by accounting for the duties that others have towards them (O'Neill 1988); by the fundamental goods that should be distributed to them (Macleod 2011; Gheaus 2015a); or by the rights that they should have guaranteed (Archard 2004). This manuscript takes rights as the lens for exploring the just treatment of children. This is for two reasons. First, a rights-based approach is the one which best accounts for the treatment of children as equal agents, entitled to be treated as subjects (rather than objects) of justice. Second, a rights-based approach can encompass much more than just entitlements: an analysis of rights includes a study of the grounding claims that justify their possession; it includes an exploration of the duties that others may have to ensure that rights are protected; and it enables an evaluation of the symmetries and differentiations in the provisions, freedoms and restrictions owed to different sections of the human population. In short, starting from an assessment of rights allows me to explore the status of children in different conceptions of justice, the particular characteristics that are taken as morally relevant for the differential

treatment of children, and the mechanisms and justifications which may legitimise an asymmetric treatment of individuals (in their protections, restrictions, privileges and freedoms) as a matter of justice.

Part II, first, introduces the basic framework that structures its study of rights, it explores, then, the most prominent approaches to children's rights present in the contemporary liberal philosophy of childhood, and it will, finally, offer an original and in-depth account for the legitimacy of differential treatment of certain individuals, and how one may accommodate children within it. My intention is to offer a general groundwork that aspires to revise the debate on children's rights. Throughout what is left of this manuscript, I will guide the discussion by giving examples of particular applications (certain rights, freedoms and duties that children may have). However, I do not intend to give a detailed prescription of which particular rights should be bestowed to 'children' as a matter of justice, nor the most appropriate way of allocating them. My aim is to establish a stable groundwork for the just treatment of children, which may achieve this using an equal standard to evaluate the just treatment for all individuals. The basic claim defended in this Part of the manuscript stands on the overall insights brought from the previous one. Children have an equally justified claim to holding all the rights to which the rest of the human population has access to; and, if the conferral of any differential privilege or restriction is in order, it must be legitimised based on the particular condition of the individual (her embodied, temporal and spatial framing), and not grounded on her social grouping. In this respect, this Part offers the guiding principles for understanding rights, the mechanisms through which they are acquired, and the various ways in which they may be violated. Beyond its compliance with the principle of basic liberal equality, the political process will condition the specific content of particular rights.

This chapter's main goal is to introduce the basic debates and the fundamental concepts that ground the philosophical debate on rights, and, particularly, how it has been applied to the case of children's rights. Before analysing the implications that our revised conception of 'childhood' has on differential treatment, on the potential privileges and restrictions that may be justifiably imposed on the rights of certain individuals, we need to clear out some groundwork on what it is meant when one talks about "rights", what grounds the possession of rights (what are the sources of right-holding),[51] and which are the information sets (the legitimate claims) that should be taken into account in an evaluation of rights-allocation.

[51] This question has bifurcated into two different debates: a first one, on the study of what gives an entity moral status (understood as the basic condition for any moral concern, thus for the possession of *any* rights) (Jaworska and Tannenbaum 2013; Arneson 2014); and a second one, which, standing on a particular understanding of moral status, considers the source of right-holding *among* entities with moral status. This chapter mainly focuses on the latter question, dealing with the former only when it is relevant for its implications on the latter.

Thus this chapter has two objectives in mind: first, to explore the nature of right-holding (what grounds a person's claim to hold rights?); and, second, to explore which claims are justified for their translation into rights, in accordance with the principle of basic liberal equality. I will claim that, while taking an Interest theory to right-holding is more appropriate than Choice theory to ensure the legitimate claims of differently-positioned individuals; the Interest theory requires a fleshing out (what are legitimate interests?) in order to avoid problematic implications. I use, thusly, Amartya Sen's typology for the evaluation of fundamental human interests, in order to clarify what "rights protecting fundamental interests" should mean.

Section 1 introduces and explores the current debate between Interest and Choice theories of rights. The debate between these two approaches is structural to any discussion on the rights to which children may be entitled. The chapter sides with Interest theory as the most justifiable grounding for rights, while agreeing with the fundamentality that choice (and agency, being the factual ability to choose) plays in the distribution of particular rights. Having defended interests as the most appropriate source for right-holding, Section 2 applies Amartya Sen's conceptualisation of the appropriate spaces of evaluation of the quality of life to give content to the plural interests that a theory of rights must take into account when evaluating the particular allocation of rights. I argue that rights can be understood as protecting capabilities, and that these may come in the form of well-being and agency freedoms and achievements. Having defined in this chapter the fundamental groundwork that will structure my theory of rights, I will move on in the next chapter to assess how the Standard Liberal and the Liberationist have conceptualised children's justified right-holding.

1. Choice and Interest Theories of Rights

The first question that must be dealt with is, what are the grounds that justify the possession of rights? Robert Goodin and Diane Gibson (1997) categorised the existing approaches that intend to give an answer to this question into two models: choice and interest theories of rights.[52] For choice theories, the grounding justification for a person having an X right relies on an individual's capacity to enforce or waive the correlative duty to it; that is, rights protect a person's choices (1997: 186). On the other side, interest theories argue that rights are not supposed to protect choices, but rather human interests of sufficient importance so as to impose duties on others to enforce them (1997: 188). That is, for a person to have an X right,

[52] For the overall justification for choice or will theories of rights see Hart (1973), Sumner (1987) and Steiner (1994). In the case of interest or welfare theories see MacCormick (1976), Raz (1984a, 1984b) and Kramer (1998). Two thorough overviews of the debate can be found in Wenar (2015) and Archard (2016).

this individual must have a fundamental interest in X being ensured for her and protected. The source that we consider as justifying rights-possession frames in a very important way who is included under its protection and the treatment owed to individuals as a matter of justice. Choice theories consider that the reason why a right should be protected stands on an individual's willingness and active claiming of a right being enforced. This implies, thus, that only those individuals, who can willingly and actively claim or waive a right, have the right in question, excluding all those who are incapable from holding it. On the other side, interest theories argue that beyond choices, it is a person's fundamental interests and well-being (as a human being) what justifies a certain right being enforced, thus no capacity is required in order for an individual to bear rights; it is our humanity and our fundamental interests *as humans* what grants us a right, regardless of whether we can willingly enforce and claim it ourselves or not. Each of these positions lead to widely differing conceptions of how we should deal with the rights of particularly vulnerable and relatively incapable individuals such as children; depending on the grounds used to justify right-holding, certain individuals may be entirely or partially excluded.

1.1. Thick Choice Theory

Adherents to Choice (or Will) theory consider that the core function of a right is to protect an individual's factual exercise of choice. Not only must the right-holder's claim invoke a duty on others, but she must also have the power and the capacity to either enforce or waive the right in question (see Hart 1973). This implies that only individuals who have the power and the capacity to enforce or waive their rights can be considered as right-holders.

Choice theories can be defended in a thick or a thin version. A thick choice theory defends that rights should *only* protect choices; a thin version would concede that rights *predominantly* protect choices, but that certain non-choice rights required for choice to exist must be ensured as well.[53] The basic consequence of taking a thick approach to choice theory is that children (especially young children, infants and other relatively dependent individuals), because of their inability to choose, would not qualify as right-holders. Having the factual ability to choose (according to defenders of this view) is a fundamental pre-condition for being a right-holder. Moreover, is not only choice, understood as being able to express one's preferences (a child of whatever age can and does express her preferences), but *rational* choice, what allows a person to claim the enforcement of a right. A thick choice theory, thus, requires right-holders to have certain precondition abilities to reason, to understand and to act according to the consequences of their choices (Purdy 1992: Ch. 3). In other words, it requires having *agency* and an understanding of the implications of one's

[53] I will explore the thin version after looking at the Interests theory's response to thick Choice theory.

actions.

James Griffin has argued that the core element that grounds rights is the feature that distinguishes humans from other beings: their *personhood* (which implies being able to factually exercise one's agency above a certain threshold) (Griffin 2002: 20-21); those who are not in control of their personhood should not have the rights ensured to human persons. Griffin argues that there are good reasons to owe respect to individuals not bestowed with factual agency, and that we may have other justifications for protecting beings from certain threats and harms, but they are not rights claims. Because of an infant's reduced ability to understand the consequences of her choices (say, of waiving her right to have an education, or to have three meals a day), and because of her reduced ability to link her present preferences and impulses to her overall well-being (both in the present and the future), she cannot hold rights even if we may have other justifications for ensuring her well-being.

Following a thick choice theory, a large part of the human population (due to not having full personhood) would not be entitled to be considered as "fully human", while, maybe, some highly capable ape or intelligent alien could be included under the heading, thus being entitled to having rights protected. James Griffin states: "Human rights can then be seen as protections of our human standing, our personhood. And we shall understand personhood better by analysing agency." (2002: 20). For Griffin, the quality of "being human" is equated to "personhood," and "personhood" equated to a certain threshold factual capacity to exercise agency (2002: 21-24).[54]

Both in modern economic theory, and in many theories of justice, an assumption exists in which dignified and respectful treatment to those who cannot bear rights can be accomplished simply through our personal moral sense of obligation, our love, or sympathy towards non-right-holders. Many political theories of the family, for example, consider unnecessary (and even harmful) to grant individual rights to children because the natural concern and care of their parents towards them will undoubtedly ensure that their needs will be protected.[55] However, there are both empirical and principled reasons why this relegation of the needs of children to the will and choice of their parents is inadequate.

As to the empirical side, it is beyond question that certain parents do take (and would take in any imaginable scenario) the utmost care for the needs of their children regardless of

[54] 'Agency' being understood, following Griffin's own definition, as being factually able to "choose one's own course through life... have at least a certain minimum education and information and the chance to learn... one must have at least the minimum material provision of resource and capabilities that it takes... others must also not stop one from pursuing what one sees as a good life." (Griffin 2001: 311).

[55] This assumption stands on Gary Beckett's economic model of maximisation of utility within the family. For a thorough critique of Beckett's model and John Rawls' endorsement of it in his theory of justice, see Nussbaum (1999: Chapter 2).

whether they have rights of their own or not. However, the ever present practices of discrimination, neglect and abuse within the household towards children, women, the elderly or individuals with disabilities, shows that this reliance on "natural affection and goodwill" (as Rawls would define it; Rawls 2001: 165) for protecting the most vulnerable, is entirely flawed. Relying on the family for taking care of the vulnerable overlooks the existing disadvantages and inequalities in the treatment of individuals within these private spaces (Deneulin 2009). Female children tend to get the worst out of this situation, with wide empirical evidence suggesting that, without public intervention and institutional protection of rights, they suffer from under-nutrition, lack of education, and subordination (Himonga 2008: 79-80; Comim et al. 2011: 19). It may be that in an ideal world we would not have to rely on rights to protect the most vulnerable (or any person for that matter), but in our present reality it would be blind to ignore the excessive discriminatory practices to which the particularly vulnerable and dependent suffer from within the private sphere (Freeman 2007).

Beyond the empirical reasons why trusting family love and care for the protection of the vulnerable within the household, there are principled reasons why this approach cannot stand. A liberal theory stands on the basic idea that each individual should be taken as an end in herself (Nussbaum 2000: 56-59). The principled commitment of liberal theory to the ethical predominance of the individual implies that rights-discourses which do not ensure rights to some individuals because they are biologically dependent on the choice of others (as a thick choice theory defends), would be legitimising the higher value of the lives of some individuals over others. Respect for the life and dignity of particularly incapable individuals would be only (if at all) indirectly achieved through the respect for the life, dignity and choices of the privileged group of right-holders.

A thick interpretation of choice theory leads to clearly problematic implications for how we presently understand what society owes to individuals who do not meet the agency requirements imposed by it, such as young children or other particularly dependent and incapable individuals. It implies that there are humans who would not fall within the category of right-holders simply because they are unable to claim their rights for themselves temporarily or permanently (Archard 2016: 5). Not all humans have the ability to exercise choice through the standards demanded by Choice theorists. Some are permanently incapable (think of the mentally disabled, or children who will die before they achieve this ability), and others are temporarily incapable (children who will achieve this ability, the comatose, individuals with Alzheimer's, and other humans who, due to sickness or disabilities, have mental breakdowns). It seems difficult to justify a theory of rights which, through its basic definition excludes the sections of humanity who tend to be in the most vulnerable positions, and who are the most prone to being harmed and wronged if not protected, from bearing rights.

Two problematic correlations in Griffin's account must be corrected if choice theory is to make any sense. A first problem, highlighted in Matthew Kramer's classic Hohfeldian critique of choice theory (Kramer 1998: Section 2), considers that the equation between an individual bearing a right and an individual having the *power* to enforce it is flawed. It may be true that a certain degree of factual agency abilities is required in order to have legitimate power to enforce or waive a right, but this does not mean that a right is not possessed even if one does not fulfil the requirements necessary for exercising its power. Take the example of an individual in a coma: it would seem absurd to say that a person who is in a coma, due to her incapacity to enforce or waive her right not to be tortured leads to her no longer having the right not to be tortured (see MacCormick 1976); this would mean that, if I managed to induce a coma to a person (without infringing her rights), I would be allowed to relinquish her possession of any rights whatsoever.

This is tied to a second problematic issue with choice theory, namely its erroneous equation of a species denominator ('human') with a set of capacities that do not necessarily correlate with the species (namely, the factual ability to exercise agency). Neither are all humans necessarily full agents (think again of some children or the severely mentally disabled, to use Griffin's own examples), nor are all agents necessarily human (think of highly intelligent apes, intelligent space aliens, or even certain computers or robots). Rights that we should have "as humans" and those that we should have as "persons factually able of exercising agency" are and should be assessed separately. I may be willing to concede that certain restrictions and limitations on the particular conferral of freedoms which require factual agency can be legitimately limited to only those "persons factually able of exercising agency"; but this should not imply that all rights can and should be grounded and justified based on this ability. If we wish to understand the rights that differently-positioned individuals are entitled to, then the category of 'persons' (understood as rational agents) must be disentangled from the category of 'humans' (understood as the species), so as to account for the varied conditions and sources that may justify the possession of a right by a particular individual.[56]

1.2. Interests Theory

Critics of choice theory have intended to solve the potentially difficult implications of taking rational agency as the determinant feature that grounds a person's right-holding by redirecting the source of an individual's justified claims to her *interests* (i.e. MacCormick 1976; Raz 1984a; Kramer 1998). That is, even if as "rational agents" we have certain particular

[56] I will expand on the various types of rights claims conditioned by an individual's particular condition in Chapters 6 and 8.

rights that should be made exclusive to those who are factually capable of exercising them; other rights ought to be universally guaranteed to the human population without discrimination, and regardless of one's abilities. The main claim behind this approach is that rights should be understood as being grounded on certain basic needs which all humans have a fundamental interest in, and which can justifiably enforce a duty on the rest of the moral community to have them protected (Raz 1984a: 195). Membership to the human species bestows a certain set of fundamental entitlements, which the rest of the community must not infringe. In this sense, and opposed to Griffin's account, it is our *humanity* what grounds our rights, rather than our personhood. By appealing to the foundational role of the interests of *humans*, rather than the choices of *persons*, these theories intend to offer a more stable ground for the endowment of rights that ensures protecting all individuals in the human species, regardless of their capacities and potentialities.[57]

A fundamental element in interest theory is its separation of the possession of a right from the possession of the power to enforce it. If an interest is of such importance as for it to demand a duty on others to protect it, the interest and its possibility to be enforced is a sufficient condition for an individual holding the interest as a right; however, this does not imply that the right-holder is directly entitled to enforce or waive the right. The power to enforce it requires being "factually capable of making the choice" (Kramer 1998: 64). In this sense, an individual who is factually incapable of choice but who has an interest of sufficient importance to impose a duty on others to protect it has the interest in question as a right, even if not the power to enforce it (MacCormick 1976: 311). An external party who acts on the non-chooser's best interests can enforce the power.

Harry Brighouse offers one of the most deeply reflected justifications for an interest theory of rights, particularly as it affects the case of children (Brighouse 2002). He argues that using an interest-based ground for rights allows us to include non-choice-related claims within a discourse on rights, while not denigrating the importance of choice-related ones. This is because one of the fundamental interests that we have as humans is to have our choices respected and protected. Those capable of choosing, thus, must have their choice protected because it is in their fundamental interest, while those who are not capable of choice still have a relevant interest both in *developing* the capacity of choice, and in having their non-choice-related interests protected as well (Brighouse 2002: 37-39). Therefore, while staying alive is a fundamental interest that should be protected as a right for all humans, choosing whether to

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

stay alive may be a fundamental interest only for those persons who are factually capable of choosing whether to waive this right or not.

The main achievement of interest theories such as Brighouse's, is their acknowledgment of the importance of choice for a certain part of the human population, by framing the capacity to choose as one of the fundamental interests that ought to be protected for those capable of exercising it; while, at the same time, being able to account for other rights (particularly tied to well-being) that are in the interest of all humans, regardless of abilities. In this respect, Brighouse distinguishes agency-based rights from well-being-based rights in order to disentangle the particular grounds that can be assigned to rights of differently positioned individuals. Depending on our particular condition (our vulnerability, our dependence and our inabilities), we have different fundamental interests, thus, changing our claims to particular rights. While choice-able agents have an interest in having both their well-being (to a certain extent) and their choice protected, choice-unable humans have an interest in having their well-being protected to a greater extent due to their high dependence and vulnerability, but (because of their inability to choose) do not have an interest in having their choices and agency protected.[58] However, they do have a fundamental interest in developing the capacity to choose and in becoming choice-able agents, thus, among the rights that they must have ensured, is the right to develop this ability (Brighouse 2002: 46).

In short, interest theories do not necessarily exclude the relevance of choice from the fundamental interests of individuals; rather, they aim at framing choice and the rights tied to it as separate from those that are linked to well-being interests (Raz 1984b). The interest theory's critique of choice theory does not argue against choice as grounding (some) rights, rather it shows concern with the exclusion of other non-choice-related interests which a great part of the human population has.

1.3. Thin Choice Theory

How have choice theorists responded to the interest theory critique of and response to the thick choice approach? Griffin's particular answer is that, just because we ground the source of rights on a factual ability to choose (possessing agency), does not necessarily imply that (some) children (and other vulnerable and dependent individuals) would not be included within this framework (Griffin 2002: 27-28). Griffin argues that, as long as it can be shown that a person is *potentially* capable of choice (regardless of her age), the minimum conditions that would allow her to become an agent (in the future) should be ensured, and she should be considered as a right-holder with access to the resources and protections needed for her to achieve this state (2002: 26-27).

[58] A more in-depth exploration of Brighouse differential rights system in Chapter 6, Section 3.1.

Griffin sticks with choice (and agency) as the sole ground for rights due to interest theory's inevitable inclusion of a wider array of beings besides human animals within rights-discourse. If it is fundamental interests what grounds a right, he argues, all sentient beings who have these same interests would have to fall within the definition of right-holders (Griffin 2002: 26). In order to not fall into this trap, argues Griffin, it is appropriate to ground rights on choice, while ensuring that those *potentially capable of choice* have what they need in order to achieve the threshold which will grant them full personhood (and right-holding). He distinguishes, thus, between persons who are highly likely to become agents, from those whose potentiality is merely linked to their species-ties rather than actual likelihood (2002: 23). While a child (he does not give age proxies) could be considered as potentially capable of agency and choice, thus a right-holder; infants, the comatose, the severely mentally disabled of any age, or dogs would not be considered as neither right-holders, nor potential right-holders due to their factual inability to choose and their lack of potentiality to do so (2002: 28). Griffin considers that there may be weighty *obligations* to all these excluded beings, but that these obligations should be clearly distinguished from rights discourse.

This leads to a 'thinner' understanding of choice theory. That is, rights are grounded on choice, *and* on the fundamental requirements that allow a potential agent to develop the capacity to choose. Laura Purdy (1992) takes a similar an approach in her work. She argues that, even if a focus on choice as being the source of rights restricts children from being granted *equal* rights to adults, they still have relevant claims to have *relative* rights protected in order to ensure that they develop the abilities required to exercise their full set of rights later on. Her main point of contention is that choice ought to be the standard source for rights, and when choice cannot be exercised, a person's interests in developing choice must play this role. Because children are incapable of exercising choice in a meaningful way, then they are justifiably excluded from having rights that are grounded on this ability. However, they still should have ensured as a right the protection from harms that may arise from their inability to exercise choice rights, and to have fostered the development of the capacities required to become choosing agents (Purdy 1992: 43-54).

This is in line with the above-mentioned separation between two different sources of rights: on the one hand, we have the possession of the right in itself, which does not require factual agency; and, on the other, we have the right to exercise the power to enforce or waive the right in question. A potential agent (due to her present inabilities) can be justifiably restricted from holding the power, but cannot be restricted from having the right. Thus, the weight of choice theory moves from it justifying the source of right-holding on agency, to justifying *power-holding* on agency. All agents and potential agents hold rights, while the power to enforce or waive a right is limited to those deemed able of exercising it. In this sense,

children and other non-agent humans have rights, but the power to enforce or waive them is exercised on their behalf by an appointed representative (see Cohen 1980: 48; Hart 1982: 184). Just as I have a right to defend myself in court, but must "borrow" a lawyer's capacities in order to enforce my right effectively due to my inability to do it by myself, children and other particularly dependent individuals can, as well, borrow the power of factual agents, in order to have their rights enforced even if they cannot do it themselves (Cohen 1980: 56).

Now, it seems that little is added to an interest theory by taking a thin approach to choice theory. Matthew Kramer has argued that once a choice theory concedes to the possibility of separating the grounds for the power of enforcement of a right from the grounds for holding the right itself, the theory loses its "choice" structure, having to justify the existence of the right on the individual's fundamental interests instead (Kramer 1998: 65). A representative cannot enforce a right on behalf of an individual who is incapable of choice if not through a consideration of the right-holder's interests. Thus, it can be considered that a thin approach to choice theory ends up converging strongly with the intuitions defended by interest theories, especially if assessed from the perspective of non-agent individuals. Both distinguish between the grounds for possessing the power to enforce a right, and the grounds for holding a right (thus, justifying the existence of rights to non-agent humans). Both consider necessary to include among the grounds for rights-allocation the particular interests and claims that individuals have as potential agents. Finally, both agree that all humans incapable of being or of becoming agents should have their dignity respected and protected (be it by granting them rights linked to their non-agent interests, or by assigning weighty obligations to society over them), even if they do not have rights that are linked to their capacity to exercise choice.

This concession of thin choice theory is sufficient, at least, to justify that children and other non-agent humans are indeed entitled to hold certain fundamental rights. Thus, for our present purposes, the debate regarding what grounds specific rights for particularly positioned individuals can be left for later on.[59] To summarise, humans are entitled to have certain fundamental choice and non-choice related interests protected, which can justify the imposition of duties on others to guarantee them, thus, standing as grounds for rights. What is left of this chapter dwells more deeply into what these fundamental choice and non-choice related interests may be. Depending on how one interprets what counts as a "fundamental interest" may affect greatly the consequent definition of what counts as a right. Thus, I wish to give content to the concept of 'fundamental interests' by exploring the evaluative spaces that must be accounted for in order to assess what types of claims are of sufficient importance in order for them to be potentially ratified as a right that an individual has. I will do this through Amartya Sen's conceptualisation of the basic evaluative space for assessing

[59] I address the tension between grounding children's rights on choice or interests more thoroughly in Chapter 6.

fundamental human interests, in order to lay bare the plural base (both tied to choice and to non-choice fundamental interests) that grounds rights-holding.

2. The Evaluative Space of Fundamental Interests

Both choice and non-choice related interests ground rights-holding. What is left of this chapter explores the types of interest that may be considered as sufficiently "fundamental" to justify their consideration as rights. There may still be a disagreement regarding how these two grounds of rights relate to each other, the way in which they justify certain particular rights, and who bears an interest to a particular right; here I simply intend to present a groundwork typology of fundamental interests which will allow us to understand the information sets that comprise the evaluative space for justifying rights within a liberal theory of justice. For this, I look at Amartya Sen's seminal distinction between well-being and agency as the two core grounds for fundamental human value and interest (Sen 1985; 1992), and the two forms in which these two fundamental interest may exist (as achievements and as freedoms).

2.1. Well-being and Agency Interests

In his critique of utilitarian theories and of welfarist accounts of moral value, which focus exclusively on objective assessments of well-being, or on desire and preference satisfaction, Amartya Sen argued that such narrow information sets are unsatisfactory for understanding what gives value and quality to a human life (Sen 1982; 1983; 1985; 1992: Ch. 4). Many interest theorists of rights have tended to equate interests to well-being. Joseph Raz's understanding of interest theory, for example, highlights that it is an individual's well-being what should concern and ground a discourse on rights (Raz 1984a: 195; 1984b: 1).[60] As shall be seen, well-being can be a misleading and highly malleable concept. Classic conceptions of 'well-being' tend to take it as a passive state in which an individual is healthy, secure, nourished and happy. However, such a narrow understanding of well-being does not portray the full range of potential interests that we may have as humans.[61] Although these states of being (being healthy, secure, happy, etc.) are necessary parts for an evaluation of what is owed to a person, and what is required for an individual to have a life with value, an analysis of a person's

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

[61] See Crocker (2008: 160ff) for a thorough critique of traditional conceptions of 'well-being' and his defence of a more ample definition of it.

fundamental interests cannot focus exclusively on their narrow definition as merely well-being interests (Sen 1985: 186-187). Sen considers that, beyond this first category of human interest, which he labels as *well-being achievement*, three more categories require our attention when evaluating a person's fundamental interests and, thus, her potential rights-claims: well-being freedom, agency achievement and agency freedom (see Table 2). Two different grounds exist for a person's fundamental human interests (well-being and agency) and two forms in which these interests could be protected (as achievements and as freedoms). These four categories should be distinguished and explained in order to lay bare the various information sets required for assessing the evaluative space for rights-claims (Sen 1993: 35; Alkire 2002: 9).

Well-being achievement Achieved beings and doings related to one's well-being which one has reason to value.	*Well-being freedom* The freedom to achieve beings and doings related to one's well-being which one has reason to value.
Agency achievement Achieved beings and doings that one has reason to value, regardless of their impact on one's well-being.	*Agency freedom* The freedom to pursue beings and doings that one has reason to value, regardless of their impact on one's well-being.

Table 2. Amartya Sen's Evaluative Space for Human Fundamental Interests (adapted from Hart and Brando 2018).

The basic intuition behind Sen's typology is that, in his own words: "The *freedom to have* any particular thing can be distinguished from actually *having* that thing. What a person is free to have, not just what he or she actually has, is relevant" (Sen 2004: 335). I do not only have a fundamental interest in being healthy, nourished and sheltered (well-being achievement); I also give a structural value to and have a fundamental interest in the freedom to define what my well-being entails, how I should achieve it, and, even, whether I want to achieve it or not (well-being freedom). Going back to the discussion in the previous section on the grounds for right-holding, Sen considers that, even if there are certain fundamental human interests (such as well-being achievements) that could be objectively defined as valuable for the human life, thus, being grounds for rights, choice, and the space left for me to be free to choose the processes through which I achieve this well-being, is also of structural value to my life as a human, and must be taken as a fundamental interest. I do not only have an interest in being healthy and nourished (as an achievement), I also have a fundamental interest in having the freedom to define my own path towards health and nourishment. For example, I should not only have my cancer cured (well-being achievement), but I should have the freedom to choose (conditioned by access to adequate information) whether I get

chemotherapy, radiotherapy, or homeopathic medicine to achieve this. I should not only be nourished (well-being achievement), but I should also have the freedom to achieve this state with the food I choose, instead of being forced to eat what is objectively better for ensuring my well-being achievement.

According to the above, we have important interests both in having our well-being achieved, and in having the freedom to achieve well-being. However, what gives value to a human life goes beyond these two types of interests. For Sen, the evaluative space for conceptualising fundamental human interests must account for one's *agency* interests as well. Assume that, in the above examples, I decide that I do not want to have a cancer treatment because I believe in the sanctity of the body, thus, do not want any intrusive medical procedures; or that I decide to go on a hunger strike as a religious or political statement, thus not fulfilling my well-being achievement conscientiously. Even if I am taking decisions that can be harmful to my well-being, the grounds on which these decisions stand are not tied to well-being itself, but rather to a larger set of interests, objectives and beliefs that I hold as fundamentally valuable to my life beyond their impact on my well-being: my *agency* interests.

The information taken from the agency interests of individuals is fundamental for understanding what is owed to them on top of what their well-being requires (Sen 1985: 221). A society in which individuals have their well-being protected as a right (survival, nourishment, health, shelter, etc.), and the freedoms to achieve this, would be fulfilling its obligations to individuals only with respect to a person's interests in well-being (Sen 1985: 197-198). However, this scenario does not engage with the full range of valued interests that we have as humans. This society could be fully disregarding the larger fundamental interests of humans as agents by, for example, not allowing them to choose a career, how many children to have, or what religion to follow. A person's claims go far beyond their interest in achieving well-being, and sometimes their agency goals may even directly conflict with their well-being interests (as in refusing intrusive medical treatment, or going on a hunger strike) (Sen 1985: 186-187). Agency, thus, gives fundamental value to the human life, regardless of the benefits it may bestow on one's well-being. In Sabine Alkire's words, claims to agency can be framed as those that refer "to the freedom to bring about achievements one considers to be valuable, whether or not these achievements are connected to one's own well-being or not." (Alkire 2002: 6 fn.18). In a certain respect, then, well-being interests are partially tied to agency interests, while not all agency interests can be framed as related to a person's well-being.

Agency interests play a structural role in Sen's conception of the value of human life because they highlight the *active role* that individuals play (and should be allowed to play) in controlling their own life and its development, through their own conception of value. Instead of seeing rights as passively guaranteeing to individuals the protections and provisions that they need "objectively", Sen conceives of individuals as doers and as judges of their own

interests (Sen 1985: 208). It is the freedom that individuals should have to pursue their own values and interests what grounds their justice claims (Sen 1999: 19). We should judge our social and political life and its institutions based on their capacity to contribute to the enhancement and their guaranteeing of the freedoms (and the conditions required for these freedoms to exist) that make individuals active agents in their own life both concerning their well-being, and to their values beyond well-being (Sen 1999: xii-xiii).

The fundamental conclusion that arises from Sen's analysis is that an assessment and an understanding of the potential claims that a person may have relies on plural sources of information that must be assessed through the different manifestations that a person's interests may take. A person's well-being clearly plays a structural role for an individual's interests; not only in the sense of achievement, but also, in many cases as a claim to choose freely how and whether to achieve a certain well-being function. On top of a person's well-being interests, we have the more general and expansive interests that derive from human agency. There are cases where an individual's well-being and agency clash and there is no clear-cut reason why well-being should be considered to trump agency interests.

By distinguishing well-being and agency we highlight two core aspects of a human's life that ought to be guaranteed and fostered, while clarifying the two different forms in which these two interests may be ensured (as achievements or as freedoms). This allows us to see the diversity in the sources of interests that humans may have, and the different forms in which our standard conceptions of well-being and agency may be framed and realised. It is not the same to say that children's well-being achievement should be protected, than to argue for their right to well-being freedom. In the same line, Sen's approach allows us to understand more clearly the role that interests that go beyond well-being may have on a person's life.

Our interests go beyond simply staying alive, healthy and warm. Humans tend to pursue goals that not only surpass their well-being but that even defy it. We value social recognition, dignity, identity, friendship, love, our leisure time, political, religious and aesthetic commitments; we value choosing our own path in life, deciding what clothes to wear, what to eat, what career to follow. These are not banal values; we may even consider that they are what makes our lives truly human.

2.2. Achievements and Freedoms

Besides the distinction between well-being and agency, Sen presses for the need to differentiate between two forms in which these two fundamental human interests may manifest themselves: as achievements and as freedoms. As mentioned before, there is an important difference between having one's agency and/or well-being ensured as an *achievement*, (let us say through the passive reception of benefits), and having the

opportunity to achieve one's agency/well-being while keeping the freedom to choose how and whether to achieve it (Sen 1985: 201). For Sen, in a liberal society, most of a person's rights should not be targeted at achievement but rather at having the *substantive freedom* to achieve. This stands in line with the liberal principle of basic freedom: the individual herself is better located than an external actor to decide how she should lead her life, and what makes it worthwhile; there is a presumption on the side of freedom, and our core interests as humans rest on the side of freedom.

Framing human interests only as achievements neglects the difference between, for example, a person who freely chooses to restrict her well-being achievement, from another who has it restricted due to the absence of the conditions which would allow her to achieve it. Sen gives the example of a conscientious faster who, for reasons of personal commitment (be it political or religious reasons), decides that she does not wish to eat anything. An exclusive assessment of well-being achievement would not be able to distinguish the case of the conscientious faster from that of a person who is starving due to lack of means to buy food (Sen 1985: 201). By not considering freedom as an interest to which an individual has a claim in itself (freedom being, merely, an instrument for her to accomplish her achievement interests) we are omitting a great part of what it is valuable to the human life (Sen 1983).

Focusing only on achievements as the fundamental interests that ground rights can have the added problem of imposing a conception of the good and a priority-value set to individuals who should be entitled to have the power to choose for themselves the road they wish to pursue with regards to their life in general, and to their well-being in particular (Sen 1985: 218). Imagine again the conscientious faster being forced to eat in order to achieve a required "objective" standard of well-being. There seems to be no possible justification for a liberal political system to consider that the freedom interests of the faster are less valuable and worthy of protection as rights than her well-being achievements. If we consider individuals as capable of choice, an assumption on the side of freedom is necessary for any liberal theory that intends to maintain its name (Sen 1998: 19).

It must be noted that, when Sen talks about the fundamental value of freedom, and the fundamental interest of having this freedom protected, it is not only the negative aspect of it what concerns him (in the sense of non-interference with a person's choices and will); moreover, freedom is valuable when it exists in its *substantial* form. One is not free (in a Senian understanding of freedom) simply by being free from interference; a structural part of our interest in freedom is in having secured the appropriate conditions (internal and external to the self), and the opportunities and options which allow this freedom to be actually exercised.[62] Having a fundamental interest in the freedom to read, for example, goes

[62] On the internal and external conditions for the existence of freedom, see Chapter 8, Section 3.

farther beyond the mere duty not to interfere with an individual reading. If I have a fundamental interest in having this freedom protected as a right, my interest encompasses having the internal abilities to exercise this freedom (being literate) ensured, and the external conditions that would allow me to exercise it (having access to an education that will allow me to develop the internal abilities, and having access to reading material in my own language). What use could there be to have the freedom (as non-interference) to read guaranteed as a right, if I am illiterate, do not have access to education, nor to valuable reading material?

Sen, thus, advocates for considering *capabilities* as the fundamental locus of what is owed to individuals, and as the fundamental interest that ground right-holding: capabilities entail having both the freedom (in the negative sense) to achieve certain fundamentally valuable beings and doings, and having the internal and external conditions (particular to a person's situation) which allow this freedom to be exercised. He opposes capabilities to both negative freedoms (in the sense of non-interference), and to functionings (Sen 1999: 75). While negative freedoms fall short of what is owed to a person due to them only guaranteeing a formal lack of restrictions for one to be or to do something; functionings (understood as achievements, and factually realised states of affairs) go too far, by "forcing" an individual to be or to do something without letting her choose how and if she values this achievement.[63] Having the capability to read guaranteed as a right implies, first, not being interfered nor forced to achieve this function (neither prohibition nor duty), and, second, having the conditions that allow one to effectively exercise this freedom. This entails, for example, having one's cognitive capacities protected and fostered, having the training and education required for learning to read, and having access to reading material and other needed resources for achieving this function. As long as the conditions are in place for a person to be substantially free to choose how to lead her life, and as long as it is within her reach to achieve her own objectives for herself or through collective endeavours, there seems to be no reason why achievements should take priority over freedoms in rights discourse (Sen 1985: 201-202).

Amartya Sen's typology of the information sets that evaluate the values of a human life works as an important starting-point for discussing what is owed as a right to individuals. His claim that well-being and agency are both fundamental interests which should ground rights, and that their assessment must account for the way they are protected as freedoms and as achievements gives structural content to the previous discussion on the grounds of rights.

[63] There are, of course, certain functionings which Sen considers as fundamental and basic for the existence of any capability, and, depending on particular instances, it may be justified to ensure these achievements rather than only the capability to achieve, as, for example, when the achievement is beyond the capacity of the individual to realise it by herself through her own freedom (Sen 2007).

Sen's conceptualisation offers an important framework for evaluating potential right-claims, and for understanding the plurality of information sets which may justify the need to guarantee that certain human interests are protected in the form of rights.

3. The Fundamental Interests of Children

The basic objective of this chapter was humble but structural to our discussion. When reflecting on the grounds for the rights that are owed to individuals as a matter of justice, we must be sensitive to the plural information sets that may feed into our evaluation. A clean and simple definition of rights being exclusively grounded on choice or on interest will fog the plurality of values in a human life, and which ground their enshrinement as fundamental rights. Using Amartya Sen's typology for the evaluative space of human value has allowed me to clarify the structural role that both well-being and agency interests ought to play in our discussion on rights, and the fundamental distinction between advocating for rights to achievements and rights to freedoms. Encompassing them all, I have argued that these fundamental interests should be protected *as capabilities;* meaning that if an individual has a fundamental interest in X, she should be ensured the substantial freedom to achieve X (having protected and fostered the internal and external conditions which allow this substantial freedom to exist).

I have said little, however, about the particular implications that this may have on another issue at hand: namely, how would this translate into the particular assessment of the rights that should be ensured to those individuals labelled as 'children' and to others who are differently-positioned (this will be dealt with in the rest of this Part). Based on my conclusions in Part I, and on what has been said in this chapter, it suffices to say for now that: first, the expanded evaluative space for the assessment of right-holding presented in this chapter (under the information sets of well-being and agency achievements and freedoms) ought to be taken as the fundamental structure for evaluating the appropriate allocation of rights to individuals; second, that the use of this evaluative framework does not equate (necessarily) to all individuals having all interests in the evaluative space guaranteed as rights. The particular condition of children (and of other especially dependent and vulnerable individuals) may still require from us to give more weight to some interests than to others in order to ensure that they are not unduly harmed through an evaluation of their claims that is insensitive to their particular circumstances (their constitutive frameworks). In this respect, even if we consider that certain freedoms and agency interests are fundamental to the human life, we may be justified in restricting them for a section of the human population if their conferral poses irreversible harms to their possessor, if they pose high risk of harm to others,

or if they do not have a sufficiently legitimate interest in holding them.

Standard accounts of children's rights, within this evaluative space, tend to defend a strong focus on achievements, especially well-being achievements, as the basic interests that can justify their protection as rights for the 'child' population. Even if our intuitions regarding children's rights pulls us towards the achievement and well-being side of the evaluative space —by focusing our endeavours on protecting their bodily integrity, health, good nutrition, and an educational system which enables the goods and values that we consider as better promoting the fundamental interests of children in the present and as future adults—, the structural importance that the freedom aspect plays in any consideration over right-holding in a liberal theory of justice compels us to reflect cautiously on how far are we justified to limit freedom without overstepping the legitimate boundaries imposed by the principles of equal treatment and the basic presumption of freedom. An assumption that increasing a child's freedoms correlates with a reduction in their achievements (especially their well-being) relies on a simplified understanding of the role that these two manifestations of well-being and agency play in a person's life, requiring a more in-depth evaluation of their possible negative correlations and interactions. The next chapter explores the ways in which the Liberationists and the Standard Liberals conceptualise this interaction between the different fundamental interests that form the evaluative space for right-holding, and their particular implementation in the case of children.

VI. Children's Rights: Liberationist and Standard Liberal Approaches

"while we promise to support the actions you take on behalf of children, we also ask for your commitment and support in the actions we are taking – because the children of the world are misunderstood."
The Children's Declaration at the Children's Forum 2002

To re-cap, rights protect fundamental interests. Following Amartya Sen, these fundamental interests may relate to our well-being or our agency, and can be ensured as freedoms and as achievements. Assessing the particular rights to which an individual is entitled requires an evaluation of how the condition of the individual may frame which interests are legitimate grounds for rights. This chapter looks into the most prominent interpretations of this basic groundwork in the case of the rights of children. The fact that freedoms and achievements may come into conflict demands an evaluation of their trade-off in order to ensure that the particular rights that are guaranteed actually protect an individual's interests instead of harming them. Liberal rights-discourses tend to give more prominence to freedom interests over achievement interests: a liberal stands on its presumption on the side of freedom when assessing what is owed to an individual; and this tends to lead to an understanding of rights that predominantly protect freedoms.

Throughout liberalism's existence, however, one group has been overwhelmingly used as an example of the limits to the presumption on the side of freedom: children. Even if liberals ground rights, first and foremost, on the fundamental interest of individuals in having their

freedom protected, it has been considered that an alternative standard is necessary for evaluating the interests of children. Based on an assumption that children are unable to properly exercise freedoms due to their lower cognitive, rational and emotional abilities, it is in their fundamental interest to have their well-being and their achieved states of being protected, instead of their freedoms. Standard Liberal accounts of children's rights tend to take this form: because of children's inability to control their actions and choices, and because of the negative consequences that their freedom would have on others' and on their own overall interests, it is morally legitimate to judge that children's interest in freedom is trumped by their interest in having their achievements protected.

Opposed to the Standard Liberal views, Liberationists have intended to offer an account that does not require bracketing children from the basic liberal principles that define justice for everyone else. Liberationists claim that *in principle* our evaluation of the interests that ground the rights of children should stand on the same presumption on the side of freedom as it does for everyone else, and that, if restrictions of freedom (and an asymmetric rights-allocation) are considered as legitimate, an equal standard should be used to assess its legitimacy in the case of both adults and children.

This chapter explores the role that the principle of basic liberal equality plays in our evaluation of children's rights. It does so by confronting the Liberationist and the Standard Liberal approaches to children's rights, and aims to show that neither one can fully comply with the conditions imposed by the principle of basic liberal equality. Liberationists, on the one hand, disregard the structural role that incompetence and harm play in legitimising an asymmetric treatment for children. The principle of basic liberal equality does not require an equal treatment *tout court*; it should account for the role that two elements play in justifying variation from equal treatment: first, how incompetence to exercise a freedom may legitimise its restriction as a right; and, second, tied to the first, how the overall negative consequences that would come from equal rights for children legitimise their limitation during childhood, while complying with the principle of basic liberal equality. I will argue that, although these two critiques do pose a grave obstacle to the Liberationist advocacy of guaranteeing to all children the full range of freedoms as rights, neither of the two addresses the Liberationists' fundamental claim: that an equal standard for the evaluation of the legitimate restrictions of freedom should be applied *to all individuals*. Although restrictions based on incompetence and harm can be justified, their legitimation depends on the use of an equal evaluative standard that takes the presumption of freedom as a guiding principle, in order for it to comply with basic liberal equality. I will argue that the implementation of such an equal standard for the evaluation of the legitimate treatment of individuals is a fundamental element of justice.

On the other hand, I concur with the Standard Liberals in their endorsement of

competence-acquisition as a necessary requirement for certain freedoms to be justifiably protected as rights, but up to a certain point. I claim that there are certain problematic implications in the particular methods through which Standard Liberals defend this view: first, they are unclear on the standard used to evaluate the legitimate treatment of children (whether it is equal to that of adults or not); second, that neither harm nor competence-acquisition (which ground the Standard Liberal's intuition for asymmetric rights-allocation to children) are all-or-nothing concepts. Rather, I argue that various elements play a role in our evaluation of the existence and moral relevance of harm and competence-acquisition; thus, their evaluation (as a matter of degree) must be accounted for in order to clarify why and when it may be legitimate to allocate asymmetric rights to certain individuals, while complying with basic liberal principles.

Section 1 introduces the Liberationist approach to children's rights, and highlights their endorsement of an equal standard. Section 2 explores two critiques to Liberationists present in the literature (the harm and incompetence critiques), and considers their applicability. Section 3 looks at the Standard Liberal view, analysing three different ways in which it has been defended (differential, gradual and in-trust), and shows the concerns which may be raised to each of them. Section 4 evaluates the legitimacy of the Standard Liberal view, agreeing with its endorsement of harm and competence-acquisition as conditioning features for rights-allocation, while criticising their inability to account for the varied ways in which these two features may exist, and how this affects our evaluation of the fundamental interests that should be protected as rights.

1. The Liberationist View: Equal Standard, Equal Freedoms

Child liberationists attempted to make the best out of the emancipation movements of the 1960s and 1970s by including child liberation as part of the plight against oppression. Among their fundamental claims was their advocacy for the radical revision of the rights to which children are entitled. Standing on their critique of the myth and institution of 'childhood,'[64] they claimed that a fundamental peg in the unjust institutionalisation of 'children' is the process of rights-allocation, which arbitrarily and wrongfully limits the freedoms that children are entitled to possess and exercise. Standing on the principle of basic liberal equality (a presumption of freedom, and equal treatment and respect to all individuals), the standard position that restricts children's freedom to exercise certain fundamental rights is inherently unjust. If all individuals are to be treated with equal respect and dignity, and a presumption

[64] See Chapter 3 for an overview.

on the side of freedom pervades any unduly intrusion of the state on individual affairs, then, an equal standard should be used to judge the legitimate treatment of all individuals, and children (as a group) should be bestowed with the full range of rights possessed by the adult population. They advocate, first, for an equal standard for all when evaluating an individual's possession of certain rights; second, against the prejudiced assumptions regarding children's incompetence; and, third, for including children within the liberal presumption of freedom.

For the Liberationists, children are treated both by law and in practice as non-equal members of their society. This is not necessarily due to them (as individuals) having different rights, but mainly because the standard used to judge who is entitled to which set of rights differs for the child group and for the adult group. The strict and arbitrary institutionalisation of the 'child' social group assumes as a matter of fact that there is something inherently different about children (as a group) which justifies their asymmetric treatment; if any difference in law can be morally legitimised, it must be through the application of one and an equal standard for judging who is owed (as an individual) a particular set of rights (Farson 1974: Ch. 3).

This double standard, Liberationists argue, is portrayed particularly through the different information sets used to evaluate the fundamental interests that ground the rights of children and of adults: while a presumption of freedom grounds the evaluation of how an adult's interest in well-being and agency achievements and freedoms relate to each other; a presumption of achievement grounds the same evaluation in the case of children. While for an adult it is taken as a given that her freedom (as a right) to self-determine her own affairs is the best way to ensure the fulfilment of her fundamental interests; for a child, it is the protection of her achievements (overriding freedom) which can best ensure her fundamental interests (Farson 1974: 9). Justice is done to adults by granting them the freedom right to self-determine their own affairs, and justice is done to children by restricting their freedom right to self-determine their own affairs. Liberationist claim that this evaluation is biased and harmful, and question the basic assumption that children's fundamental interests lie in the achievement side of the spectrum, which leads to them not having a justified claim to freedom because it is not in their interest to have this claim.

Regarding the benefits that this achievement-focused approach to children's rights generate (by protecting children's basic well-being and functionings), Liberationist have considered it as a double-edged sword. On the one hand, it offers children certain securities and protections that previously did not exist (protection from exploitative work, from violence, extended care and provision of all basic necessities), putting them in a relatively privileged position regarding the protection of their well-being achievements. On the other, however, it achieves this while imposing the almost complete exclusion of children from having a claim and a fundamental interest in having their freedoms protected as rights (Holt

1974: 10). Even conceding to the benefits that the special protection of well-being achievements may provide to children, compliance with the principle of basic liberal equality requires showing why freedoms should be overridden, and what justifies a focus on achievements when assessing the fundamental interests of children. If the presumption of freedom considers illegitimate to limit an adult's freedom in order to protect her well-being, then it should apply the same standards to the allocation of rights to children. If we stand on an assumption of equality, and on the equal moral and political worth of all human beings, there seems to be no justification for implementing a different standard for evaluating the legitimate interests of children and adults; they should be judged and evaluated through an equal standard. How can we judge, Richard Farson asks, whether a child has a fundamental interest in exercising freedoms if we have never given her the chance to do so? (Farson 1974: 8).

The acquisition of a set of competences usually considered as present in adult humans (rational capacities, reasoning abilities, understanding of consequences and responsibilities) —what James Griffin called 'agency'— is at the heart of the legitimation against giving equal rights to children. It is assumed that these competences are not fully developed in the child population so it is justified to limit the exercise of freedoms that require it. Child liberationists have responded in different ways to this claim: Firestone (1970: 100-101) has used the case of children who are outside of the institution of 'childhood' (street working children for example) to show the actual potential that children have as rational and competent agents when they do not pass through the process of segregation, socialisation and normalisation. Farson (1974: 29-34) has claimed that, even if we cannot say without reasonable doubt that children, today, are indeed competent and rational agents, this does not mean that, if they were not institutionalised, they would behave in the same way. John Holt, in a similar line, has argued that the exclusive focus of rights protecting children's well-being achievements does not allow us to evaluate who children actually are. The standard presumption against freedom in the evaluation of children's rights traps children in a "walled garden" in which they are forced to be and to behave "like children" (as the reified conception of them expects them to) (Holt 1974: 5). He considers it unjust to force children to be "childish" and then argue that they should be treated as 'children' because they are "childish". Through the adult's restrictions on the freedoms that children are allowed to exercise (standing on a presumption *against* freedom), adults frame, bind and mould the potential abilities of children to exercise the freedoms that are restricted for them (Holt 1974: 4). It is not that children are naturally incapable of not behaving "childishly"; it is the oppressive binds of their mythification and institutionalisation that forces them to act in the way society that expects them to.

Other authors, such as Howard Cohen (1980: 48-56), have claimed that individual

competence is not always necessary for exercising freedom rights: just as adults borrow the capacities of more competent adults to exercise many of their freedoms (think of lawyers, doctors, accountants), we could conceive of children as being entitled to borrow the competence of better positioned individuals to exercise many of their freedoms. Although the Liberationists' overall positions regarding the relation between child's competences and their rights differs, they all agree in that the standard presuppositions that guide our legitimation of the restriction of freedoms to children should be revised.

The Liberationist position defends, thus, a strong and strict principle of equal treatment: there should be no *prima facie* reason for treating adults and children differently; any right and freedom to which adults are entitled, should be accessible to children as well. As Holt famously argued, children should have the "right to do, in general, what any adult may legally do" (Holt 1974: 1); they should have the freedom to "escape from childhood" if they so desire, and it should be in their hands to choose whether they wish to live in their walled garden, or to escape from it. Contrary to what some critics believe, this does not imply that children should be *forced* to bear adult responsibilities and freedoms, nor compelled to exercise all their rights. Conferral of equal rights for adults and children implies that law must protect and take action against interference with a person's decision to exercise a certain right (regardless of the person's age); if a child claims her right to emancipate from her parents' home, the law should protect and enforce it, but no one can nor should compel them to do so. It is in the child's hands whether she exercises her rights or does not (Holt 1974: 57).[65]

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

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

[65] It is not clear from the Liberationist position whether adults should be entitled as well to have this particular choice or not (the right to stay in childhood or bear adult responsibilities and freedoms). Compliance with their defence of an equal standard to judge child and adult affairs would imply the need to allow this freedom for adults also. This puts Liberationists in a very complicated position: either they follow their strict standard and allow adults to be free to choose whether they want to escape from their adult responsibilities and receive the protections of 'childhood' (which would lead to highly problematic issues); or they would be forced to concede to the necessity to impose separate standards for each group in certain cases (which would weaken their principled claim). I thank Serena Olsaretti for pointing to this problem.

Children are not forced to behave as adults nor compelled to forgo of their childhood; they are simply allowed and free to determine their own affairs. Whether this means deciding to stay within the traditional spheres of childhood, or taking on the rights and responsibility of economic independence, it is for the child to decide. If it is acceptable for adults, it should be acceptable for children, and vice versa. Ensuring that any person, regardless of how young or old, can self-determine her own life should be the core concern of any liberal polity. Mere inability to exercise a right is no justification for withholding it; on the contrary, the relative weakness of those incapable of exercising certain rights implies that society should take even greater care in ensuring that it is protected and safeguarded (Farson 1974: 32).

2. Limits to Liberationist Rights

There is an attractive simplicity and elegance in the Liberationist strict-egalitarian approach to children's rights. It avoids the burdensome and morally problematic issue of singling-out a particular portion of the human population and excluding it from the right to exercise certain fundamental human freedoms. By taking the presumption on the side of freedom and the principle of equal treatment as its basic tenants, Liberationists provide an argument in favour of equal rights for children, which, at least from the perspective of compliance with basic liberal tenants, is difficult to counter. However, even if this elegant equation of children and adults as right-holders is appealing at the principled level, it immediately raises concerns to anyone who reflects on it from its practical side, and its implications. Critiques of the Liberationist view have appeared mainly from two sides: on the one hand, there is a concern with the lack of clarity in the Liberationist understanding of the role that *competences* should play in the conferral of rights to individuals; on the other, a *consequentialist* concern can be raised as to the practical implications that the Liberationist view may have on the actual freedom of children, and on the protection of their other fundamental interests.

2.1. Rights and Competence-Acquisition

David Archard has argued that certain Liberationist arguments are not entirely consistent among them, especially in relation to competence-acquisition and what this entails for equal treatment (see Archard 2004: Ch. 5). Archard considers that two core arguments in the Liberationist position are not consistent: (a) Liberationists argue that children's competences may be much more developed than assumed, thus, they should be allowed to exercise fundamental "adult" freedoms; and (b) Liberationists argue that (a) implies and grounds children's fundamental interest in having all rights that adults hold protected equally (Archard 2004: 74). According to Archard, there is a clear inflation of the claim stated in (a)

(children's competences) for it to be able to justify (b) (equal rights). The underestimation of the competences of children does not necessarily lead to them being entitled to equal rights; it simply claims the need to redress certain biases and assumptions that we have of children, thus demanding a higher level of freedoms *relative to their actual competences*, while still allowing for legitimate restrictions of freedom to those children who do not actually have the competences required to exercise it (Archard 2004: 75).

There is nothing inherently unjust in the restriction of rights to individuals who cannot exercise them, as long as the actual competence required for exercising a particular right is evaluated (Archard 2004: 90). It is not unjust to restrict a person who has no driving competences to have a driver's licence, nor it is unjust to not allow anyone who desires to do an open-heart surgery to do so (Archard 2004: 87): the presumption of equal treatment, upon which the Liberationist intuition stands, does not require treating every individual in the same way regardless of their particular condition; it demands, on the contrary, *to treat each individual according to her particular circumstances* (Archard 2004: 87-88). Let us say that a 14 year-old child has the competence required to vote and to act as a full political citizen; this would require granting *her* the same freedom rights tied to these competences which are guaranteed to all other individuals who have the same competence. This, however, does not necessarily justify guaranteeing these freedom rights to all children (think of infants, for example) regardless of whether they do have the competence in question or not. If part of the Liberationist argument stands on the unjust undermining of children's actual competence to exercise certain rights, this means that rights are indeed tied to competence, thus, those who do not have the competence can be legitimately excluded.

2.2. The Harm of Equal Rights

Laura Purdy (1992) presents a critique of the Liberationist view grounded on the consequences that would arise from its implementation. Even conceding to the strict equal distribution of rights endorsed by Liberationist, in principle, the real life consequences and the harm that its implementation would have on the lives of children (and society as a whole) could compel us to adjust its scope in order not to harm those whom it intends to protect (Purdy 1992: 9). Purdy argues that the impact of a liberationist system on society as a whole, and on children in particular, must be evaluated when judging whether equal rights and freedoms for children can be justified (Purdy 1992: 15; 190).

As stated in the previous chapter, rights should protect fundamental human interests. Rights, in this respect, should be understood merely as instruments that protect interests, but the final word is given to the interests themselves. If, thusly, the conferral of certain rights puts at risk an individual's interests rather than protecting them, there may be no ground to

justify their holding. So, even if we take as a given that freedom (and protecting fundamental freedoms as rights) is a cornerstone of a liberal political system, if a certain freedom right imposes a grave (risk of) harm to an individual's interests, then it can be considered legitimate to limit this freedom because it is the interest in itself which bears the normative strength (Purdy 1992: 11).

Granting equal rights to children, argues Purdy, is not the best way to ensure that their fundamental interests are protected; the potential harms that may come from the conferral of certain rights to children (linked to their lack of competence to exercise them), and the priority of protecting interests over rights, justifies their limitation. Children's non-freedom interests (especially those tied to their well-being achievements) need to be protected from harms they may inflict on themselves and that others may inflict on them (Purdy 1992: 17, 217). Think of the case of an eight year-old child having a right to self-determine, for example, her economic life, her relationships, health or nutrition. It would seem clear that this blanket permission would lead to larger setbacks on her overall interests than if these freedoms were restricted to her. She would have her freedom expanded by having the rights to choose her line of work, to choose sexual partners, or to have a final say over medical decisions; but her risk of being exploited in the labour market, of agreeing to relationships which may harm and oppress her, and of risking her life and health due to lack of foresight over the impact of certain medical decisions or nutritional choices would greatly increase.

It may be that some, very few, children would be able to benefit from the possession of equal rights, but, Purdy considers, standard intuitions and evidence of children living without special protections and restrictions show that the overall interests of the average child would be greatly harmed by their possession of equal rights (Purdy 1992: 44). This claim does not only stand on the present well-being of the child, but also on how her present freedom may hamper her development of competences later on, and the long-term impact that it may have (Purdy 1992: 88). Granting a young child the freedom to choose what she wants to eat for every meal may lead to irreversible eating disorders and reduced health (in the present and throughout her lifespan). Granting a child the freedom to choose whether she wishes to go to school or not (in the present) will deter her abilities to even conceive the value that formal education has over her long-time interests. Granting a child the full freedom to contracts and economic independence puts her in a highly vulnerable position due to the very high risk of exploitation and to her insufficient understanding of the potential consequences that these commitments may have on her life (Purdy 1992: 214-215). Temporarily protecting a child from herself and from others by restricting her freedom in the present is a necessary precondition for *actual* freedom to exist later on. By granting freedom to all children today, argues Purdy, we are ensuring that the average child will not be free tomorrow.

2.3. Incompetence and Harm as Limits to Rights

These two concerns raised against the Liberationist view are strong. Theories of children's rights should take seriously into account the potential consequences that may come from their prescriptions, and the inevitable constraints with which children live that are both internal to their constitutive frameworks (their vulnerability, development and dependence), and structured by their external environment. In this respect, it seems that the Liberationists' appeal to strict equality in the allocation of rights, and their advocacy for the protection of all freedom rights to children has inevitable limitations. On the one hand, following Archard, the variability in children's competence and ability to exercise certain rights implies that a strict equal distribution of rights does not make any sense; on the other, Purdy's concern with the potential harms on the individual's overall short and long-term interests if granted the full set of freedom rights in the present can justify their restriction.

Purdy's and Archard's core concern with the Liberationist view lies in its insufficient contact with the particularities internal to the condition of children, with the social factors that inevitably frame the position of children in our social world, and how this reflects in their legitimate scope of freedom. We cannot properly define what is owed to children (or anyone for that matter) without understanding who they are, and how their rights may reflect on their fundamental interests. I argued in Chapter 4 that achieving equality requires accounting for the morally relevant features of particularly positioned individuals, which may legitimise differential-treatment. The variability in the individual's condition (their embodied vulnerability to their own actions and those of others, their dependence on others for the promotion of their fundamental interests, their embeddedness in particular social environments, and their regard from a large temporal framework which takes into account the interests in the present, in the future and as developing beings), are all structural variables in the evaluation of the appropriate treatment of particular individuals. A strict egalitarian approach to the allocation of rights may lead, in fact, to more unequal and unjust outcomes than an alternative. If we want to do justice to the fundamental interests of children and other differently-positioned individuals as to the rights to which they should be entitled, both the variability in *abilities*, and on the potential *harms* that may come with the possession and exercise of rights must be included within our evaluation.

I consider, however, that neither of the two critiques goes to the heart of what the Liberationist approach to children's rights intends to do: namely, to present *a principled critique against the use of a double standard to evaluate the legitimate treatment of children and adults*. Conceding to the variability in the rights to which individuals are entitled, based on their particular abilities and risk of harm, does not necessarily contradict the Liberationist principle that an equal standard is required in the assessment of *everyone's* legitimate

treatment. Our present moral and legal systems stand on a double standard for judging an adult's and a child's capacities, rights and freedoms. While the standard for children stands on an assumption of them being incapable and unfree until proven otherwise, adults are assumed as capable and free until proven otherwise. There is without a doubt no *prima facie* reason for this being so.

Defending an equal standard, of course, does not lead to a strict egalitarian allocation of rights; more humbly, it aims to treat people equally unless there is a morally relevant difference that justifies not doing so (Cohen 1982). If particular interests are what determine rights, the circumstances that affect the evaluation of interests do not only vary across the adult-child distinction, but they, rather, vary from individual to individual (Cowden 2016: 23). In the words of legal theorist James Dwyer: "Equal consideration of their respective interests might actually compel disparate treatment, if they have very different interests or different characteristics that dictate different means of satisfying similar interests." (Dwyer 2011: 12). The fundamental aim of treating individuals equally, is to treat and protect their *fundamental interests equally*, not their rights. An asymmetric allocation of rights can be perfectly legitimised if it is required for ensuring an equal protection of interests. I consider, in this respect, that a revision of the Liberationist position is required: while maintaining the principled need for an equal standard to evaluate the legitimate allocation of rights to individuals (as Liberationists claim), variation in individual entitlements tied to the particular condition of the individual must be accounted for in the evaluation of a person's legitimate treatment.

3. The Standard Liberal View

A consensus exists in the contemporary literature regarding the flaws of the Liberationist position. If rights are supposed to protect an individual's fundamental interests, then the inclusion of certain basic achievements (especially well-being achievements) in the case of highly vulnerable, dependent and incompetent individuals is necessary.[66] By not taking into account children's particular proneness to harm, and their inabilities to make effective use of many rights, one cannot make sense of some of our most basic intuitions regarding the particular protections that are owed to children. Their condition as especially vulnerable and dependent individuals imposes a duty on others to ensure that the basic interests that derive from their vulnerable and incompetent condition are protected and insured during these

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

times of particular weakness in which they cannot protect them for themselves (Lansdown 2005; Schweiger and Graf 2015: Ch. 2).

However, a concern with children's well-being should not be blind to the core role that agency and freedoms play as relevant interests in a person's life. Children are not considered as their parents' (or the state's) property anymore; their right to speak out their concerns, to have a say in the issues that affect them, and to have the conditions that allow them to be and become full moral and political agents has become a basic tenant on current discussions on children's rights. This twin framing of children's rights as showing concern for both their well-being and their agency is palpable, for example, in the International Convention on the Rights of the Child (CRC) (UN GA 1989). The CRC provides well-being rights to children based on claims to protection from harm and provision of fundamental goods. It ensures agency interests through the inclusion of participation rights, seeing children not only as recipients of benefits, but also as subjects capable (to a certain degree) to participate and speak for themselves (Lansdown 2005: 15; Liebel 2014: 68-70; Hart and Brando 2018).[67]

This dual aim of protecting children from their particular weaknesses and of fostering their participation, however, can lead to problematic and conflicting conclusions (Archard 2004: 60). While well-being interests, and a focus on ensuring achievements to children, leads to a consideration of them as passive recipients of benefits; promoting their participation, choices and freedoms entails an understanding of children as active participants in their own life, in which they are not patients, but agents in themselves. This leads to an important tension: not only do the two kinds of rights contain a different understanding of how children are perceived as political subjects, but also the content and exercise of the two kinds of rights can lead to direct conflict in their fulfilment of the child's interests. Enshrining a child's well-being achievements as fundamental rights that ought to be protected can very probably come into conflict with the child's well-being and agency *freedoms;* and fostering their freedoms can have a negative effect on their achievements. A fundamental task of the Standard Liberal literature on children's rights has been, thus, to explain the nature of this tension and to propose a way to ensure that a child's claims to both freedoms and achievements are acknowledged, while taking into account the particularities of childhood.

I explore here what could be termed as the Standard Liberal view on children's rights, through three of its more prominent versions: Brighouse's Differential, Brennan's Gradual, and Feinberg's In-trust models. Although each defends a different evaluation of freedoms and achievements as fundamental interests that ought to be protected as rights, they all agree

[67] A proper analysis and exploration of the CRC, and how it addresses the questions raised in this manuscript, would require a dissertation on its own. I have begun to explore the applicability of the thesis presented here to the case of the CRC in Hart and Brando (2018); Brando (forthcoming); and Brando (n.p).

on the role that harm-avoidance and incompetence play in determining the trade-off in the evaluation of which well-being and agency freedoms and achievements are owed to children as a matter of justice.

3.1. Brighouse's Differential Model

Harry Brighouse's approach to children's rights considers that agency is a matter of a person's life with utmost importance, but that, due to the incapacity of children to properly exercise agency freedoms, we must consider that their agency rights (understood in the sense of all liberties and rights that come with agency; i.e. freedom of expression, religion, conscience, voting rights, etc.) should be guaranteed *only* to the adult population (Brighouse 2002). While we have a fundamental interest in self-determining our affairs, exercising our freedoms and acting as agents, lack of capacity to "effectively" exercise these interests justifies their restriction during childhood (Brighouse and Swift 2014: Ch. 3).

Brighouse argues that children have present and future well-being and agency interests, but that, due to the potential threat of their present agency harming their future agency and well-being interests, we must not consider their present agency as qualifying for protection as rights (Brighouse 2002: 45; Brighouse and Swift 2014: 61-62). Brighouse considers that, because of the high risk of long-term negative effects in allowing children to exercise their agency freely in the present, the rights and freedoms that come with agency should not be protected for children until one can be sure that they have the ability to understand the impact that these freedoms have on their other present and future well-being and agency interests (Brighouse and Swift 2014: 62). The appropriate conditions should be in place for the child to be able to achieve a threshold of agency capacity required to exercise the freedoms and rights that come with it; "she must be taught to be able to empathize and sympathize, reason about principles, think about moral rules, discipline her own behaviour" (Brighouse 2002: 42), before the actual entitlements and freedoms that come with agency can be granted to the child. The differential model, thus, concedes that the development of these capacities is a matter of degree but, as a matter of political concern, it seems reasonable and just to impose a strict threshold below which certain claims are not taken into account.

The differential model shows concern for the fundamental interests that children have in their present, their future and their development (their temporal framing), while claiming that their particular condition entails that some interests may have priority over others in order to guarantee the assurance of *all* interests throughout their life-course. It stands on the idea that children are *potential* agents, and this potentiality is what should be protected. While their interests as vulnerable and dependent human beings require the protection of their present well-being, their interests as potential agents only demand the protection of

their capacity to develop into capable agents, but not the right to exercise these freedoms in the present (Brighouse and Swift 2014: 67). The focus is, thus, "to safeguard their immediate welfare rights and their prospective autonomy." (Brighouse 2002: 51).

Because childhood is conceived as a stage of incompetence for exercising certain freedoms, it gives *predominance to the future interests* of the person, by ensuring her present well-being, and the development of her future agency. A child may have a present agency interest in not going to school, but due to the long-term impact that this decision may have on her future well-being and agency, it is justified not to take her present agency interests as claims of justice.[68] There is a primary concern in this approach with the "future person": not only are the agency claims of children restricted due to the potentially negative effects that granting them may have on the person-to-be, but when agency claims are to be protected it is only (or mostly) due to their desirability in order to prepare children for their future duties and freedoms, instead of their intrinsic value for the child *qua* child (Liebel 2014: 77-78).

David Archard offers a similar view when arguing against children's fundamental interests in having their choices protected (Archard 2004: Ch. 6). For Archard, an interest must be of sufficient (or overriding) importance in order for it to justify one having a right to its protection (Archard 2004: 91-97). If children cannot make choices (cannot factually exercise agency and well-being freedoms), then it is safe to assume that they cannot have an interest important enough in exercising the agency and well-being freedoms tied to these choices. On the contrary, children do have fundamental interests in having their present well-being achievements (and their future agency) protected, which justifies these being guaranteed as rights (Archard 2004: 92).

The intuition behind this model is that adult human beings are only able and entitled to exercise their freedom and have it protected as a right because it has been denied to them during childhood (Archard 2004: 93). If, as Liberationist would argue, children were entitled to exercise their agency and well-being freedoms as adults do, they would be unable to develop the competences necessary for effectively exercising these freedoms later on (assuming that they actually managed to live until adulthood). In short, the differential model considers both well-being and agency as important interests to be evaluated in the assessment of legitimate rights-allocation but by distinguishing between a child's present and future interests, it is appropriate to prioritise well-being interests in the present, in order to ensure both well-being and agency in the future.

I see various problems with this model. First, there is a problematic issue, which was raised

[68] Based on a consequentialist position, Laura Purdy (1992) would offer a similar justification for why a child's present agency interests should not be considered as justice claims.

before to Life-Stage conceptions of 'childhood' (Chapter 2, Section 2.4): namely, the problem of assessing the treatment and rights that individuals are owed to as a matter of justice based on statistical discrimination and their reified ascription into groups with predetermined weaknesses and inabilities. The opposition assumed by authors such as Brighouse and Archard, between an age-definable collective of incompetent individuals and another of competent individuals has been shown in the previous Part of this manuscript as illegitimate and uncompliant with basic liberal principles.

An account that shows more sensitivity to the variable and gradual development process in the human life, and which considers and values the potential capacity of children to be and to behave as agents in certain aspects of their present life is required in order to not unjustly and arbitrarily restrict certain fundamental freedoms to those children capable of exercising them. Both Archard and Brighouse concede to a certain extent to this "gradualist" critique, while still considering that this does not require a de-bundled approach to the allocation of rights to the specific acquisition of particular competences. Brighouse concedes to children's competence in exercising certain freedoms, and for the need to have a scope of freedom to develop into full agents. He claims, however, that this is insufficient to justify granting to them these freedoms *as rights*. Bearing the full-breadth of responsibilities and liabilities that come with right-holding would harm them more than benefit them, while, at the same time, threatening the stability of family structures (Brighouse 2002: 46-51). This is a problematic claim. First, the argument of the threat to family values to justify restrictions of children's freedom cannot stand any liberal test. If we treat each individual as an end in herself, there is no legitimate justification for the restriction of an individual's freedom based on the sustainment of the institutions that have restricted the freedom in question. As mentioned before in this text, justifications for slave-ownership and reactions against women's liberation have lost this battle already. Not only is the claim that the family must be sustained as it is (even if it means restricting the freedom of individuals within it) impossible to justify from a liberal standpoint, but even the claim that "they should not have to bear those responsibilities *for their own good"* is also fundamentally questionable. If we stand on the presumption on the side of freedom, and we consider that an individual is competent enough to exercise this freedom, paternalistic interference with the individual's fundamental interests in pursuing *her own good through her own means* is unjustifiable.

Even if, from a theoretical standpoint, the strict opposition of 'children' and 'adults' cannot stand, there may still be certain pragmatic arguments which may justify differential treatment of children as a group (even if there are individual children who should not be treated differently). Age-based rights-allocation tend to justify a differential treatment based on pragmatic reasons, seeing it as a proxy that can be used both in the private and public arenas to regulate and stabilise social relationships (Anderson and Claassen 2012; Franklin-

Hall 2013). Archard, for example, claims that a strict age-threshold that distinguishes two groups having a different set of rights is justified simply because the alternative (the granting of rights based on a "competence test" for each freedom) would be expensive, cumbersome and potentially corruptible (Archard 2004: 90). Although I concur that it would pose more work on administration in the granting or restricting of rights, I do not see how this extra expense and burden cannot be perfectly justified.

There are alternatives to the blanket prohibition/permission that is defended by the Standard Liberal view as defended by Brighouse or Archard, for example. I wish to consider the important role that *licensure* may play in reframing and pluralising the way we understand the moral legitimacy of restricting freedoms, and the justified scope of action that may be owed to children and other particularly incompetent individuals, which does not lead to problematic all-or-nothing normative positions. Present legal assignment of particular rights and freedoms in many (if not most countries) show that not even in current legal practice the idea of an all-or-nothing freedom rights-allocation is in place.

It is true that all present legal systems have an age of majority to distinguish between adults and children, but they all take as well a more gradual approach to the allocation certain specific rights based on a multi-threshold system of licenses. While the standard for possessing *political* rights and duties is 18 years (for being allowed to vote, to be tried as an adult, etc.), other fundamental liberties and duties fluctuate in their threshold: the legal drinking-age globally ranges from 13 years (beer and wine consumption accompanied by a guardian) in Germany, passing through 16 in various European countries, reaching 21 in the U.S. and being illegal in many Muslim countries. The age of sexual consent varies as well from 12 year-olds (in various Mexican states) to 19 (in Indonesia), or until marriage in various Muslim countries. There are even cases where voting rights (traditionally considered as a proxy for adulthood) are prior to age of majority (16 years in Scotland, Austria and Brazil, for example). These are just some examples of the wide divergence in the licencing age-thresholds established in different states.[69]

If we are to concede to the pragmatic need to use age-thresholds for the granting and restricting of certain rights and duties (which I believe we should not), we might rather follow the Brazilian example, which actually takes a much more nuanced understanding of what reaching 'adulthood' means, by taking seriously the role that competence-acquisition plays in its evaluation. In Brazil, although the official age of majority is 18, this is not an absolute and strict threshold but merely a "guiding proxy". Adulthood in the Brazilian legal system is

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

actually more strongly tied to competence-acquisition than to age: a person under 18 may cease to be considered as a child if she gets married, if she becomes a public official (i.e. military service), if she finishes an undergraduate degree or if she is economically self-sufficient (Brazil 2002: Art. 5). Individuals from 16 years onwards are allowed to vote, and to be considered as full part of civic life (Art. 3), and this right can be relatively restricted (for an individual of any age) to prodigal individuals, to drunkards, drug-addicts, and to people who are temporarily or permanently incapable of controlling their will (Art. 4).

This example shows that 'adulthood' does not necessarily have to be tied to a strict age-threshold, and that it may actually vary depending on the willingness of a person to achieve this status (in the case of minors), and on the acquisition and capacity to exercise certain competences which is what grants her a treatment as a full citizen by the socio-political community. The Brazilian example shows a route that, while generally using age as a proxy, still stands on the principle that, if it is incompetence what legitimises the restriction of an individual's freedom, then, if proven competent, an individual ought to be entitled to have the rights and freedoms tied to her competence.

3.2. Brennan's Gradualist Model

The differential model concedes to the fact that the child's ability to exercise agency is a matter of degree rather than a black-or-white affair. However, it considers it justified to establish a threshold through which the claims of a person transform from predominantly protecting their interest in well-being achievement to protecting their interests in freedom. The *gradual* model defended by Samantha Brennan (2002) endorses this graded understanding of agency development, and a graded acquisition of competences, taking it as the core feature for framing the fundamental interests that a person is entitled to have protected as rights. The basic idea behind the gradualist model is that, while assuming that achievements and freedoms (she terms them as interests and choices) are both fundamental grounds for a person's rights, they ought to be understood as an evolving continuum in which the unit of moral and political concern starts from an exclusive focus on a person's interests and achievements, gradually transforming to protect a person's choices and freedoms, based on the gradual acquisition of the competences required to exercise freedoms and choices (Brennan 2002: 63).

The continuum, according to Brennan, implies a degreed transformation of a child's rights to having her interests and achievements protected to the adult's rights to choice and freedom: "We can view the transition from childhood to adulthood as the gradual transition from being the sort of being who has interests but not the ability to protect them oneself to becoming a full-fledged autonomous chooser." (Brennan 2002: 65). Opposed to the

differential model, the gradualist understanding of children's agency and freedom rights is more receptive to understanding 'childhood' as a variable condition that may exist to different degrees (as was defended in Part I of this manuscript). While the differential model defends a strict shift from having well-being rights to having agency rights, the gradualist model argues that we should not rely on a strict distinction between the rights of adults and children, but rather frame it as a gradual transformation. By framing children's agency and freedom abilities as a gradually developing characteristic, we can justify a focus on the achieved well-being interests of the child during the first stages of life, while gradually shifting the focus to the individual's choices and freedoms as she develops the abilities required to exercise them. While in the differential model, the agency claims of many individuals below the threshold would not be considered as a matter of justice, the gradualist model grants legitimacy to agency claims gradually to those who have the acquired competences to exercise it without the necessity of a strict threshold.

A basic intuition behind Brennan's model, which responds to the claim of equal rights made by the Liberationists, is that if rights are merely instrument for protecting fundamental interests, then rights can be overridden if one's or another person's interests may be better protected if a certain right is restricted (Brennan 1995). Considering benefit-provision (on top of harm-avoidance) as a legitimate reason for the restriction of particular rights, then we can justify a child having her choices and freedom rights restricted if this ensures that her (or other's) overall interests are better protected through the restriction (Brennan 1994: 424-426).

I believe that this interpersonal trade-off is highly problematic from a liberal perspective. First, it assumes that individuals can be legitimately considered as means for the achievement of benefits for others. Brennan gives examples of trade-offs between the interests of two individuals which can justify overriding the rights of one in order to protect the more important interests of the other: my right not to lose my arm may be justifiably overridden if my arm is required for saving the life of another person. I understand the intuition that we may have a moral duty to waive a certain right if by doing so we can protect a second person from an even worse outcome. However, this should not imply that I lose my right not to have my arm chopped-off in order to save a life; without my consent, it would seem highly problematic to cut my arm off in order to save a life. Allowing one person's rights to be restricted merely because it may generate higher benefits to a second person cannot stand if we do not take the ability to consent (and to waive the right) into account in our evaluation. It would be highly problematic if, for example, we were allowed to chop-off an arm from an unconscious infant in order to save another person's life; without an individual's consent, an appeal to a second person's benefit cannot justify by itself overriding the first person's rights.

I believe that this applies, to a certain extent, to the intrapersonal case as well, especially in the crucial moments of an individual's transition from having her interests (achievements)

protected to having her choices (freedoms) protected. Brennan assumes that we can clearly devise an objective list of fundamental interests of the individual, which legitimise overriding her own choices. But, who should judge, and how should one evaluate the trade-off between an individual's achievements and freedoms?[70] In order for Brennan's gradual transition from interest-claims (protecting achievements) to choice-claims (protecting freedoms) to make sense, an arbitrator and an objective list of interests is required to assess whether a person's achievements override her freedoms or vice versa. Brennan appeals to the need to take priority consideration for a person's achievements. For example, if a child's well-being freedom (choosing what to wear during the winter) does not lead to the expected achievement being fulfilled (not catching a cold), then it is legitimate to consider that her interest in not catching a cold overrides her interest in choosing what to wear. For Brennan, thus, it seems that rights *always* protect achievements, they just sometimes do it, indirectly through freedom rights (if these ensure the achievement), and sometimes directly if the freedom rights cannot ensure the achievement:

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

In other words, for Brennan, it is always the *achievements* of a person that are protected; it is just that they may sometimes be more efficiently protected through a person's own judgment rather than through an external metric that defines what is and what is not good for her and in her interest.[71] The basic intuition behind using interests as a standard for judging whether we should respect a child's freedom or not relies on the idea that freedom is merely a tool that may (or may not) effectively promote our well-being and our overall achievements, *if we*

[70] The evaluation of the legitimate trade-off between protecting achievements and freedoms is at the core of the discussion on children's rights; my detailed analysis and own account for how to address this tension will be presented in Chapter 8. See also Hart and Brando (2018) for its application in educational practices.

[71] This is in clear agreement with the present legal standard for framing children's rights: the best interests principle. The CRC acknowledges the tension between the protectionist (achievement-focused) and the participatory (freedom-focused) interests of children, and considers that the appropriate arbitrator in cases of conflict and tension should be the child's best interests. For an assessment of the 'best interest principle' in the legal literature see Alston (1994) and Freeman (1997; 2007b).

know how to use them.[72] The objective of the gradualist approach is, then, to ensure that we do not encroach on an individual's capacity to foster her own goods and achievements through her own freedom (if she is capable of doing so), while ensuring that those who do not know how to make the most beneficial use of freedom have their fundamental achievements and interests protected as well. Making freedom instrumental to achievements, already poses problems in itself, if this model is assessed from its compliance with liberal principles. It leads to the possibility of eradicating freedoms altogether from the evaluative space of fundamental interests, as it makes freedom entirely conditional, first, on its instrumental role in protecting achievements, and second, on the political system's particular conception of which achievements are valuable, and how they may be best achieved.

Brennan's model may lead to potentially harmful restrictions on a person's (of any age) freedom rights altogether. If the end-goal is to "ensure one's best interests," which would be the correct evaluative mechanism to assess what these best interests are? In Brennan's model, choice and freedom do not count as fundamental interests because the right to freedoms and choices is conditioned by a person already qualifying as being capable of best promoting her own fundamental interests through choice. This leads to one's interests having to be (always) evaluated and qualified *regardless of one's choices and freedoms*, thus, leaving the scope of freedom exclusively conditioned within the realm of what promotes best one's achievements. The Gillick test used to assess a child's competence to consent to medical treatment in the UK is an applied example of this "best interest" approach (Gillick v. West 1985). It evaluates whether children are "competent enough" to consent to medical treatment but their choice can still be overridden if the experts consider that the "competent" child's choice is against the expert's opinion on the child's best interest (see Herring 2018: 29-30).

Instead of expanding the freedom rights ensured to those children who are capable of choosing and who would be restricted from exercising these freedoms under a differential model, Brennan's gradual model, *reduces freedom for everyone whose choices do not best ensure their fundamental interests*. Appealing to one's abilities to foster one's best interests as the ground and legitimating force for freedom rights would require an objective theory of the good which can regulate our understanding of who is capable of achieving her interests autonomously, and who requires paternalistic interferences to do so. Achievements should play a role in our evaluation of an individual's fundamental interests, but they do not always necessarily trump and override freedoms. If agency and well-being freedoms are to be considered as structural to our evaluation of what is owed to a person, their value cannot and

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

should not be entirely conditioned by the individual's ability to protect for herself an objective list of what her best interests are. It may be true that freedoms play, to a certain extent, an instrumental role in promoting achievements, but if we stand on the liberal intuition that we are justified to pursue our freedoms beyond their beneficial impact on our achievements (and on an objective standard for determining what our interests are), then we must explore alternative understandings of rights-allocation which give freedom of choice and agency a more prominent and intrinsically valuable role.

3.3. Feinberg's In-Trust Model

The third model, which follows the Standard Liberal view, is Joel Feinberg's in-trust approach to children's rights (1980). Feinberg claims that, even though it is legitimate to restrict an individual's exercise of a certain right due to incompetence, this does not imply that the individual does not have the right in question; the rights that an individual cannot exercise are kept in-trust, and protected from violation until the individual can enforce them herself.

Similar to the differential model, Feinberg's account of children's rights starts by distinguishing between rights that belong only to the adult population (A-rights), those that belong only to the child population (C-rights), and those that are common to the whole human population (A-C-rights). In addition, similar to Brennan's gradualist approach, it understands the process of acquisition of freedom rights in an incremental manner based mainly on a person's ability to exercise them.

A-C-rights encompass all fundamental interests that are present and predominant throughout the whole life-course (think of right to life, bodily integrity, not to be tortured, etc.). A-rights, possessed only by the adult population, are those mainly linked to political freedoms and agency (to vote, to imbibe, to free exercise of religion, etc.) which "could hardly apply to small children" due to their incapacity to exercise them (Feinberg 1980: 76). Finally, C-rights are those that apply especially to children due to the particular condition they live in.[73] Feinberg divides the latter type of rights into two sub-sections: one comprises those achievement interests (especially prominent during childhood) that stem from a person's *vulnerable and dependent condition*, and which ensure the basic instrumental well-being that she cannot provide for herself (nourishment, shelter, etc.). The second sub-section comprises a group of rights that he terms "rights-in-trust", or labelled together as "right to an open future" (1980: 77). The basic idea behind rights-in-trust is that, all the A-rights that a person cannot effectively exercise due to physical, mental or emotional incompetence, are

[73] Feinberg concedes to including some adults as possessors of these rights "only in unusual or abnormal circumstances" (Feinberg 1980: 76).

kept and protected for the person until she acquires (or recuperates) the abilities required to exercise them. The logic behind rights-in-trust is that: first, certain rights are conditioned by the competence to exercise them; but, second, because they can be violated before the individual is competent, they must be protected throughout the whole life-course. He gives the example of a person's fundamental interest in walking freely:

> The right to walk freely down the public sidewalk as held by an infant of two months, still incapable of self-locomotion. One would violate that right in trust *now*, before it can even be exercised, by cutting off the child's legs. (Feinberg 1980: 77).

Feinberg intends to show that we must acknowledge the existence of certain justice claims of children to all rights even if they do not have the ability to exercise the interests tied to these rights. A two-year-old toddler has a fundamental interest in having her future right to walk down the street protected, even if she cannot walk down the street in the present. Inability to exercise a right does not restrict a person's interest in bearing the right; it only limits her power to enforce it. While the differential model would not be entirely able to deal with the potential implications of violations of the future claims of the child due to its focus and distinction between the adult interests and the child interests, Feinberg's in-trust approach ensures that the child's future interests (whenever they may arise) will not be violated in advance by granting her rights that protect their potential selves and their potential interests before she has developed them (Feinberg 1980: 78).

An important element in Feinberg's rights-in-trust, as opposed to the gradualist model, is that *choice* (freedoms) always grounds a person's claims. The main objective behind Feinberg's reasoning is not necessarily to ensure that an individual's best interests are met, but that *her choices* (both actual and potential) are always kept open, until she has the competence to exercise them. This avoids falling into the potentially harmful freedom restrictions that affect the gradualist model. Children are not seen as persons who completely lack agency and who require only their interest in achievements being protected; children always have choice-related interests, and these should be protected regardless of whether they can exercise them or not.

When discussing A-rights and C-rights, Feinberg does not imply the existence of a strict threshold that divides them. Adulthood and childhood, for Feinberg, are to be taken as categories *in a relative sense*. Some especially vulnerable and dependent adults may be appropriate holders of certain C-rights, while some children can be considered as holders of certain A-rights:

> Many or most of a child's C rights-in-trust have already become A rights by the time he is ten

> or twelve. Any "mere child" beyond the stage of infancy is only a child in some respects, and already and adult in others. (Feinberg 1980: 95).

Feinberg's categories portray the relative position of an individual's competence to exercise certain freedoms and their relative dependence on others for the fulfilment of their well-being achievements. Following the rationale of a disaggregated conception of what a 'child' is, presented in the previous Part of this manuscript, individuals, for Feinberg, are not categorised either as children or as adults; rather, they can be right-bearers of both child rights and adult rights depending on their particular condition, competences and circumstances.

The basic idea in Feinberg's conception of rights is that, regardless of whether a person has the abilities to exercise a right, she does have the right in question. Another feature highlighted by the rights-in-trust model is that a child's agency capacity must be taken seriously at all times. Just because a child is incapable of exercising a given right today does not imply that she will not have the competence to exercise it tomorrow. From birth, children do play an active role in the construction of their own lives, their own identity and their interest sets; the fact that they are unable to exercise their agency *fully* does not mean that they cannot be entitled to have it protected, nor to have all freedom rights restricted simply because they cannot exercise some of them.

Feinberg's in-trust model suffers, however, from a lack of clarity in conceptualising the *process* through which C-rights become A-rights. Feinberg is not clear whether a two year-old who shows a volition to vote, and claims the right to exercise it, should be allowed or not to do so. He defines (at least from a descriptive perspective) "infancy" as a separate stage of life from childhood, while acknowledging the possession of many agency rights and freedoms during childhood, although it is not clear up to what point does he consider it as legitimate.

From Feinberg's perspective one can only take that "rights-in-trust" become A-rights *in the moment that they are effectively exercised*. The individual's act of stating her intention to walk down the street and effectively doing so transform the protection of her future exercise of the right into a present interest through its exercise. The effective exercise of feeding yourself, of voting, etc. transforms the C-right into an A-right. But, how does this process come about? Feinberg states that the protection from violation of a right prior to its exercise is the fundamental interest that a person has regarding a right that she is incapable of exercising. This is certainly a necessary but not a sufficient condition for fully protecting the person's right: other requirements ought to be in place as well. The simple negative protection of children's rights-in-trust cannot portray the full breath of conditions that are required in order for an "incapable" individual to develop the ability to exercise a particular right or freedom.

A child cannot be ensured that she will be able to exercise certain freedoms and develop

certain competences just through the negative protection from violation of her future rights, nor by leaving her future open; certain fundamental preconditions must be fulfilled in order for a child to convert her internal capacities into substantial freedoms (as mentioned in the previous Chapter). Feinberg does consider certain preconditions which, "derive from the child's dependence upon others for the basic instrumental goods of life –food, shelter, protection" (Feinberg 1980: 76). He considers that, as long as options are open and their rights are not violated, children will gradually transform their potential into competences through a naturally endogenous development process. But this is still insufficient. Besides the requirements that derive from a child's dependence, we must consider those that arise from their development and adaptive processes. As Mianna Lotz argues, the protection of rights-in-trust should go beyond its purely negative protection, by including the positive duties, the social conditions and the developmental requirements which actually promote and enable a child's eventual ability to exercise most agency rights and freedoms (Lotz 2006: 546).[74]

Differing from the previous two models, Feinberg's model argues in favour of a stronger role for choice as a fundamental interest, and, thus, as a ground for rights. Even if it is not our present choice what grounds some of our rights, we have potential freedoms that needs to be protected and be kept open. The condition of children as "incapable" in many facets of their life justifies the protection of certain rights that are not guaranteed to the rest of the human population. Namely, their incapacity to exercise choice over many fundamental well-being interests directly requires that others ensure their provision by exercising their choice rights on their behalf. Through the acquisition of the required competences and their effective exercise, children's rights-in-trust transform into adult rights. It is not that they did not have these agency rights before, but that the way in which they are protected differs. There is, however, a missing element in the evaluative assessment required by Feinberg's model: the process of competence-acquisition through which the child passes in order to be able to exercise certain competence-dependent freedoms and rights effectively is still lacking certain clarity. A more in-depth assessment of the process of competence-acquisition, the various social conditions for this process to take place, and the correlation (or lack thereof) between freedoms and competences is still pending.

[74] It has been argued, as well, that Feinberg's model, by intending to keep all options open to the child in order for her to choose for herself once she has acquired the competences required to do so, misses the inherent value that certain projects and commitments play in an individual's life (see Mills 2003; Bojer 2000). By not taking into account the path-dependence involved in an individual's development process, and how the child's present interests may frame what she values and chooses later on, Feinberg's open-future may end up leading to lives empty of value (see Arneson and Shapiro 1996; Callan 2002)

4. Problems with the Standard Liberal View

The three models sketched in the previous section differ in certain respects, but their common endorsement of the critiques posed to the Liberationist model allows one to consider them jointly. They all agree that granting the full set rights and freedoms to children would inevitably lead to grave risk of harming them due to their particularly vulnerable and dependent condition; and they consider that the acquisition of competences and states of beings which allow a person to make effective use of certain freedoms is a necessary precondition for an individual to have a right tied to their exercise. I wish to expand, however, on what these two claims entail, and how their endorsement may require a revision of the Standard Liberal models in order for them to comply with the principle of basic liberal equality. First and foremost, the particular restrictions and privileges that legitimise asymmetric rights-allocation must pass through an equal standard for evaluation (as Liberationists rightfully defend); second, that an in-depth exploration of the process and features that enable the acquisition of the expected competences required to exercise certain rights must be carried out in order to clarify what particular restrictions can be legitimised or not based on their conditionality to competence-acquisition.

The rights that are granted based on a person's lack of ability to counter harms (tied to vulnerabilities, dependencies and incapacities) are *achievement rights*. The high risk of harm that threatens individuals based on their vulnerabilities and dependencies demands guaranteeing certain fundamental protections to those who are unable to deter these risks for themselves. Well-being achievements (being nourished, nurtured, healthy, etc.) are, thus, fundamental interests of highly vulnerable and dependent individuals. However, achievement rights go beyond pure well-being; they encompass larger non-well-being related interests as well, particularly tied to the individual's temporal condition as a developing being. The differential model expands the realm of achievement rights that ought to be provided to children to include their interests in developing agency, rational, emotional and social capacities. What Brennan's gradualist model entails when defending the "interests" rights of children includes all features of a person's life which are fundamental to her as a human being, and which she cannot protect herself through her own choices. Feinberg's in-trust model, as well, gives particular prominence to non-well-being achievements in its understanding of what is particularly owed to children: not only must they have ensured the resources and goods required for their basic subsistence and survival, but they are also endowed with a larger set of protective rights (to an open future) whose objective is to ensure that all children have protected and fostered the fundamental potentialities that will allow them to bear the full breadth of adult rights later on.

The three models' understanding of freedom rights, however, differ to a greater extent

than their common endorsement of protecting interests in achievements. While Brighouse considers that freedoms (particularly tied to agency) only bare relevance as fundamental interests in a child's future, thus legitimising their restriction during childhood, the gradualist model argues for the conferral of rights tied to a person's choices as a person acquires the required competences to achieve her interests through them. Feinberg's in-trust model, although it also limits full freedom rights (in the sense of having the power to enforce or waive them) to only to those capable of exercising them; it includes the protection of freedom rights (in the negative sense of non-interference) throughout the whole life-course in order to ensure that they are not violated prior to their exercise.

In short, the normative frame upon which the three models stand is that the particular *inabilities* of children ground our intuitions for why it is legitimate to grant them exclusive achievement rights, and to restrict their exercise of certain freedom rights. It is because they are incapable of fending off for themselves the harms that derive from their vulnerable and dependent condition what justifies their conferral of certain protection rights; and it is the assumption that they are incapable of understanding what the exercise of freedoms implies (and how this may harm them) which justifies their restriction of most freedom rights. Inability and its impact on harm are, thus, the structural elements that legitimise the particular treatment of children in the Standard Liberal view.

Nevertheless, in order to understand the legitimising force of inability and harm in the differential treatment of some individuals, we must offer a clear account of what counts as 'harm', and what counts as 'inability'. I consider that two conditions are required in order to offer an account of asymmetric rights-allocation based on harm and inability. The first condition is the use of an *equal standard* to evaluate the morally relevant interests, harms and inabilities that may justify differential treatment. If it is considered that the relevant reason why children are owed a particular set of rights is their risk of harm and their specific incompetence, then, it must be the existence of harm and incompetence, rather than a stereotyped ascription to a group, which legitimises differential treatment. As it has been argued in previous chapters, reified conceptions of 'childhood', of children's capacities and behavioural patterns can lead to establishing highly arbitrary distinctions, which do not do justice to who particular children actually are, and what they are actually capable or incapable of achieving. We must offer, thus, a standard for differential treatment that applies to everyone equally. The liberal principle of equal treatment implies that all individuals in the same circumstances must be treated by law and justice in an equal manner; the use of different standards of harm and incompetence to judge the restriction of rights to children and to

adults cannot be legitimised, and it is entirely uncompliant with basic liberal equality.[75]

This leads to the second condition: vulnerability, dependence and inabilities are not blanket conditions. Individuals are vulnerable to differing degrees, dependent on varied external crutches, and incompetent to act in different spheres of life; bundling an individual's entitlements based on a particular inability cannot be justified. If particular restrictions or privileges are to be justified based on the particular condition of the individual, then it should be the particular correlation between specific rights and the particular vulnerabilities, dependencies and inabilities of an individual what can legitimise differential treatment. This has two implications. First, it implies that right allocation (if conditioned) must track the particular features that ground it; and, second, that the particular standard (the degree to which a characteristic is relevant) must adapt to the requirements for a particular right. These two conditions will be further developed and analysed in the upcoming chapters.

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

Liberationists present an account of children's rights that defends the application of an equal standard to all in order to judge which interests have priority. They claim that freedom interests have more weight than achievement interests do, and that the former should be ensured for all humans as fundamental rights. I have endorsed their defence of an equal standard to evaluate fundamental interests, but have sided with the Liberationists' critics in arguing that an equal standard does not imply an entitlement to equal rights. Variable proneness to harm, and the particular incompetence of certain individuals to protect themselves from harm and to exercise certain freedoms effectively justifies restricting freedom rights in particular circumstances, thus, giving more weight to the achievement (particularly well-being) interests in certain cases.

I explored, then, three models that ground differential treatment based on harm and incompetence (the Standard Liberal models), and considered them needing a revision. The Standard Liberal view relies on a strict dichotomy between freedom and achievement interests, which complicates the possibility of conceiving a more nuanced assessment of an individual's claims to have plural forms of interests protected. Although relying (correctly, I

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

believe) on harm and incompetence as legitimate grounds for differential rights-allocation, the three models' lack of a clear definition for what counts as 'harm' or as 'incompetence', and of the close relationship between particular harms and inabilities with particular interests and rights demands further study.

Standing on insights from both Liberationists and Standard Liberal views of children's rights, the next chapter aims to explore the particular relation between the concept of 'harm' and rights, and the particular elements which must be included in an assessment of 'harm' for it justify particular protection of fundamental interests or the legitimate differential treatment of certain individuals through their restriction of certain freedoms.

VII. Rights, Freedoms and the Harm Principle

Two important conclusion were taken from the previous chapter's examination of the Liberationist and Standard Liberal approaches to children's rights. First, rights are intermediaries for protecting harms inflicted on an individual's fundamental interests; thus, both the justification for an individual having a right, and a legitimate reason for restricting the rights to which an individual is entitled are conditioned by a right's capacity to protect an individual's interests from harm. Second, the allocation of rights based on their protection from harm to fundamental interests must be evaluated using one and an equal standard for all individuals. Based on these two guiding conclusions, this chapter introduces an original mechanism for assessing the limits that can be legitimately imposed on an individual's actions (The Pentagon Model), so to protect the same or another individual's fundamental interests. The interaction between five composite factors determine whether a fundamental interest is being wrongfully setback.

Despite that the concept of 'harm' is intuitively clear (we can all imagine clear cases of an individual being harmed), as it refers to an individual's *fundamental interests*, 'harm' is a highly complex notion. This chapter explores what is behind our intuitions as to *what counts as harm*, and how this allows to differentiate between harms that justify the protection from them as rights (wrongs), from mere offences or inconveniences. Standing on John Stuart Mill's Harm Principle (1859) as the core and sole legitimate reason for restricting an individual's freedom, I explore Joel Feinberg's own interpretation of it and its reach (1984; 1986a; 1986b). This will structure the chapter's further examination of how the evaluation of a wrong must be carried out, and how it illuminates the discussion on the legitimate limits of individual rights and freedoms, based on five composite elements which must be accounted for when evaluating the protection of an individual's fundamental interest from being wronged: (1) the *gravity* of harm, (2) the *probability* of harm, (3) the *ability* sets of the actor, (4) the *voluntariness* of the potential victim, and (5) the *reasonableness* of the purpose of

action. The interrelation between these five elements structure what I label the *Pentagon Model*. This mechanism offers the tools to judge whether a threat of harm justifies its protection as a right, and whether a particular freedom can be legitimately restricted in order to protect an individual's fundamental interests. I will argue that any legal or political attempt to limit an individual's freedom asymmetrically, diverging from the principle of equal treatment and from the presumption on the side of freedom (the principle of basic liberal equality) has the burden of proof on its side, and must evaluate its claim through the Pentagon Model.

Section 1 introduces the concept of 'harm', its relation to rights, and the legitimacy of restricting freedoms. It presents the two elements that condition what we count as 'harm' (its gravity and probability). Section 2 presents the Harm principle as defended by Mill (as harm to others), and explores its legitimising force in restricting freedoms of harming parties, and protecting rights to potential victims. Section 3 offers an expansion of Mill's Harm principle, arguing that it can account for more than only harm to others (as Mill would claims), including, as well, the protection of fundamental interests from certain forms of *self-harm*. It considers how the interaction between three elements (the actor's abilities, the victim's voluntariness, and the reasonableness of action) account for the legitimacy of restricting self-wronging freedoms, without appealing to paternalistic principles. Section 4 puts together the various elements explored throughout the chapter, presenting the composite Pentagon model for the evaluation of legitimate restrictions of freedom in order to protect fundamental interests. It aims to assess what counts as harm, thus illuminating the fundamental interests that should be protected from harm as rights.

1. Harm and Fundamental Interests

Rights aim to protect individuals from suffering setbacks to their fundamental interests, and, if a particular right does not reduce the threat of harm it is supposed to protect from, this can be a legitimate reason for not granting this right to an individual. Rights to freedom of contract or association, for example, intend to protect an individual's agency interests in choosing her line of work, and who she relates to in the public or private sphere; thus, protecting her from the harms that come from forced labour, or forced relationships. If these rights cannot ensure that an individual's interests are protected from those harms (due to the individual being, for example, incapable of making a voluntary choice in these circumstances) then it may be legitimate to not appeal to such rights in order to protect the individual from those harms to her interests.

The conclusions taken from the previous chapter (competences and consequences as

legitimate reasons to restrict rights) stand on the idea that rights protect individual's fundamental interests from being harmed. If an individual's inability to exercise a given freedom leads to her harming herself or others, implies that the freedom in question is harming interests rather than protecting them, thus, can be justifiably restricted.[76] The consequentialist account is straight-forward in this respect: if the consequence of an action leads to harming fundamental interests, then it can be legitimately restricted; if the consequence of an action leads to benefit (or sustainment) of fundamental interests, then it can be legitimately enshrined as a right. Rights are supposed to be instruments that protect the fundamental interests of individuals. These fundamental interests (as mentioned in Chapter 5) can be conceptualised as capability sets, encompassing a person's well-being and agency interests in the form of both achievements and freedoms. If an individual's X fundamental interest is adversely and wrongfully affected by Y (which can be an action by the own person, or by another individual or collective party), then Y can be claimed as *harming* X, thus a right to protection from harm to X by Y can be justified.

Conceptualising rights as protecting fundamental interests from harm is not a novel idea.[77] I follow here, Joel Feinberg's basic account, in which harm can be understood as *the wrongful and adverse affecting of an individual's fundamental interests* (Feinberg 1986b: 3-4).[78] However, what does it mean for one to wrongfully and adversely affect an individual's fundamental interests? In order for a concept of 'harm' to play an effective role in normative theory, it must be precise enough in its formulation and grading in order for it to allow for an appropriate evaluation of how it reflects on the rights which should protect an individual from it (Feinberg 1984: 12). I consider that a precise formulation of harm can be an extremely messy endeavour, requiring the balance among many conditioning factors, which in their own are comprised by a plurality of elements.[79] For reasons of clarity, thus, I will develop my

[76] Although 'ability' and 'competence' will play a structural role in my assessment of the legitimate restriction of freedoms, I will bracket their detailed evaluation till the next chapter, in which the various approaches and understandings of the interaction between interests, abilities and rights is explored.

[77] I rely mostly on Joel Feinberg's Millian understanding of harm as a core principle of justice (1984; 1986a). Among others, Judith Thompson (1990) has endorsed as well an account of right-holding based on the protection from harm.

[78] I have merged in this definition the two different ways in which Feinberg considers that an interest can be harmed: by "adversely affecting another party's interest in a way that wrongs him or, alternatively, wronging him in a way that adversely affects his interests." (Feinberg 1986b: 4).

[79] As will be seen later on, I consider that evaluating the justifiability of protecting an individual from a risk of harm (thus, the assessment of what can be considered as a fundamental interests to be protected as a right) is comprised by the degreed existence and balance among five factors (The Pentagon model): the gravity of harm, the probability of harm, the actor's ability, the voluntariness of the victim, and the reasonableness of the purpose of action. The interaction among the differing grades in which each of these factors exist for a given action determines the legitimate protection of an interest X of an individual.

account gradually by including the various elements one by one as they arise.

1.1. The Magnitude of Harm: Gravity and Probability

Harm can be assessed by two factors: its gravity (the consequences it has on an individual's interests), and its probability (the likelihood of it happening) (Feinberg 1984: 187-188). Gravity is conditioned by the extent to which an action adversely affects an individual, the duration of the harm, and the period required to recuperate from it (Feinberg 1986b: 9-10). Probability, on the other hand, is conditioned both by the statistical and intuitive evaluation of the risk of it occurring (Feinberg 1984: 190-193). Harm, (the wrongful and adverse affecting of an individual's interests) is not an all-or-nothing affair, and neither is the moral relevance of the interests that may be legitimately protected from it: it is not the same to say that I am harmed if someone pinches my arm (thus, having a fundamental interest in not being pinched), than to say that I have a fundamental interest in not having my arm cut off. The gravity of the harm inflicted on an individual's interest is graded. The same happens with the probability of harm: my potential right to have my interest in not being run-over by a drunk driver protected is much higher than my potential right to have my interest in not being crushed by a falling meteor protected. The variable probability of a harm occurring, thus, affects our assessment of how to protect interests which may be wrongfully and adversely affected by it.

Although variation in gravity and probability is an extremely nuanced affair, I consider that a four level grading suffices to account for our intuitions of the potential magnitude of harm on our fundamental interests (see Table 3). Variation in the gravity and probability of harm can affect our potential claim to have a certain interest protected as a right, and the threshold for determining whether an action can be considered as harming an individual's interest varies depending on its particular gravity and probability. Meaning that, it is not the probability or gravity in themselves what justifies protection of an interest, but rather the particular aggregation of both elements. Therefore, even if we consider that the gravity of harm is high enough to justify protecting as a right my interest in not having this harm inflicted, a very low probability of it happening can reduce the justifiability of its protection. My claim here is, put simply, that if the aggregate of the gravity and probability of a harm on an interest leads to a positive sum (>0) (following the grading in Table 3), it may be justified to protect it as a right; on the contrary, if the outcome is a negative sum (<0), the magnitude of harm can be considered as too low to justify protection (and restriction of action).[80] If the

[80] Two things must be noted: first, as I will include other elements that play a role in our assessment of the legitimate protection of interests as rights (reasonableness, voluntariness and ability), the evaluation will still argue that a positive sum (>0) on the aggregation of the five elements legitimises protection from harm, and a negative sum

gravity is very high, the threshold of probability goes down, and if the probability is very high, the threshold of gravity falls. I claim, thusly, that an evaluation of the justified protection of an individual's X interest as a right is partially determined by the magnitude of harm that may be inflicted on the individual's interest. As will be seen later on, the gravity and probability of harm are both necessary but insufficient factors for assessing the justifiability of an X interest being protected as a right.

GRAVITY	PROBABILITY
Irrevocable (+2): Action that entirely defeats the possibility of having an X interest; its impact is irreversible.	*Certain (+2):* There is no doubt that the expected degree of gravity (or higher) will be inflicted by an action.
Corrosive (+1): Action that leads to an individual's X interest entering a downward spiral; it is nor irrevocable but it worsens.	*Likely (+1):* There is a high possibility for the expected degree of gravity (or higher) to be inflicted by an action.
Hindering (-1): Action that reduces the positive progress of an X interest by stalling it, without setting it back.	*Unlikely (-1):* There is low possibility for the expected degree of gravity (or higher) to be inflicted by an action.
Disturbing (-2): Action that only interferes or puts an inconvenience to the positive progress of an X interest without hindering it.	*Improbable (-2):* There is almost no doubt that the expected degree of gravity (or higher) will not be inflicted by an action.

Table 3. Variable Degrees of Gravity and Probability of Harm.

Now, as harm is always inflicted on someone (an object cannot be harmed) its magnitude (gravity and probability) cannot be simply determined through an impersonal and objective evaluation; it demands taking into account the individual's particular condition (her constitutive frameworks). Feinberg himself has claimed that a precise formulation of 'harm' must rely on a strict threshold defined by the standard expected magnitude of harm to the

(<0) does not. This will apply both to cases of harm to others and harm to self. Thus, we must take the position defended in this section (and the role played by the gravity and probability of harm) as a partial evaluation; they are necessary but insufficient (alone) for the assessment of interests that justify their protection as rights. Second, I have consciously left the neutral sum (=0) undetermined due to human variability in conceptions of justified risk of harm, and due the possibility of existing cases in which infraction of a person's interests may be considered as justifying punishment/compensation from the perpetrator, while no right having been infringed. When the other three factors are added, the number of possible cases that lead to a neutral sum is highly reduced. I cannot go more in detail into this possibility, but will deal with parts of it in later chapters (see Chapter 8, Section 4, and Chapter 9, Section 4).

"normal" individual (Feinberg 1984:50-51). In other words, Feinberg claims that, it is that which we could consider as harmful to the fundamental interests of a "normal" person what justifies protections from certain harms as rights; those with excessive vulnerabilities to "normally harmless activities" cannot claim protection beyond the "normalcy" threshold (1984: 50).

This is where I have to diverge from Feinberg's account of harm. Following the conclusions taken from Part I of this manuscript, a conception of protection of interests tied to a "normalcy" threshold is unable to account for the inevitable variability in the human condition, and for how the constitutive frameworks of our vulnerabilities, dependencies and developmental processes condition our existence, and affect the particular interest that we may have for "higher than normal" protection from harm as a right. An account of harm sensible to the particular condition of an individual requires an evaluation of both the gravity and probability of harm *as it varies throughout the particular vulnerabilities and dependencies of individuals*. I do not believe that this is an unfeasible and unpractical way to go; it is precisely the intuition that variable susceptibility to harm justifies different thresholds, why the law tends to protect vulnerable groups to a higher degree. Children or the elderly are a clear example of this. The fact that governments tend to impose higher standards of protection from malnutrition, infirmity, or physical, cognitive or emotional harms to a child or an elderly individual than to a "normal" forty year-old male stands on the intuition that variable vulnerability, dependence and development processes affects how we understand both the gravity and the probability of a harm to an individual's fundamental interests occurring, thus, forcing us to adapt what we mean by 'harm' to the variability in the human condition.[81]

The following sections explores the two forms in which children and other particularly vulnerable individuals may have their fundamental interests harmed. Standing on the idea that rights are instruments which intend to protect an individual's fundamental interests from harm, both other-inflicted and self-inflicted harms are the two core reasons why we may consider justified to allocate rights asymmetrically in order to ensure that the particularly vulnerable condition of certain individuals is appropriately protected. The basic intuition, standing on John Stuart Mill's Harm principle (1859), is that the justifiability of restrictions of freedom can only be morally legitimated if they target the (potential) perpetrator of harm, and never its victim. I claim that most approaches present in the literature tend to defend

[81] It must be noted that, although Feinberg is clear and straight-forward in his claim that the "normal human" defines the justified threshold of harm, his account of the specific harms that affect particularly-positioned individuals do justify the protection of their interests as rights. His work on children's rights studied in the previous chapter (Feinberg 1980) clearly shows that, despite his principled account of harm as being defined through a strict threshold, his more applied theory proves to be more adaptive to the variability in the human condition.

restrictions of freedom on the (potential) victim of harm —in this case the child—, which, I will argue, do not have any substantive justification.

2. The Harm Principle

The first and most basic reason why it is necessary to protect an individual's fundamental interests is due to the risk of them being harmed *by other* parties. Namely, rights intend to define the limits of an individual's interests which should not be wrongly and adversely affected by other individuals. This section explores how harm to others, as it applies to the case of children, can legitimise the restriction of individual freedoms in two ways: first, it imposes limits on the freedom of others which may harm a child's fundamental interests; and second, it imposes limits on the freedom that children themselves may be allowed to exercise in order to protect others from harm that may be inflicted on them by children.

Remembering the critiques to Liberationist rights (Chapter 6, Section 2), a first concern that arose was precisely tied to how equal rights for children may actually limit and reduce the protections that are ensured *to* children from harms that are caused by others. Protecting all adult freedoms to children as rights, would potentially make children more vulnerable to economic and sexual exploitation, or would abolish (or greatly reduce) the duties of justice that other individuals may have for ensuring a child's health or nutrition. A child having full rights for self-determining her own affairs would absolve negligent parents from not providing children with appropriate care, or would make it permissible for children who are incapable of understanding the consequences of certain deals and agreements to "consent" to economic activities that may harm their well-being and agency interests.

John Stuart Mill's *Harm Principle* is a relevant starting-point for understanding the role that rights play in protecting from harm which may be inflicted by others. For Mill, harm to others is the most important (and in his account, the sole) condition that legitimises a government's restriction of individual freedom. Mill famously defined it in the following way:

> the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. (Mill 1859: 197).

Mill's claim that the only reason for restricting an individual's freedom is to "prevent harm to others" implies that: first, each individual has a fundamental interest in not being harmed by others; and, second, that each individual has a fundamental interest in only having her

freedom restricted if it impinges on another individual's fundamental interest to not be harmed. It may be claimed that this is too thin an understanding of harm and of the legitimate restrictions of freedom in order for it to be able to justify certain protections that particularly vulnerable and dependent individuals may require in order to have their fundamental interests guaranteed. Take the case of an infant who depends on someone else to provide her with food in order to stay alive. If one interprets "not harming the infant" merely as "not actively inflicting harm" on the infant, one could conclude that one is not harming the infant if one neglects her. This obviously goes against all possible intuitions that we have towards this case, and if we stand on fundamental interests as the core ground for right-holding, then, if the magnitude of harm (its gravity and probability) that is caused to an infant by neglecting her need for nourishment is a positive sum, then we could claim that she is entitled to not have this fundamental interest harmed (regardless of whether it is through act or omission).

Joel Feinberg has argued that there are two forms in which an individual's freedom can be legitimately restricted (Feinberg 1984: 11): as having *a prohibition* from exercising a certain freedom, thus, restricting an individual to act in a certain way; or as having a *duty* to carry out a particular action, thus, restricting an individual's freedom to act in any other way. Infringement of both prohibitions and duties can be considered as acts of harming, even if they harm in different ways. While a prohibition limits my freedom by not allowing me to take a certain path of action (leaving open all other acts that are not prohibited), a duty limits my freedom by compelling me to take a specific path of action (leaving open *only* the action that is specified). This distinction allows me to clarify how certain omissions (such as neglect of an infant) can count as harm by others on the infant even if no one has actively harmed the child. If harm to others can be inflicted by not fulfilling one's duties, then we can account for how neglecting a child's nourishment needs (taking for granted that this is a fundamental interest of the child which ought to be protected as a right), is in fact an act of harming the child, due to infringement of my duty to ensure that this fundamental interest is not harmed.

An individual's condition as a particularly vulnerable and dependent subject can lower the threshold of harm that others may inflict on her, thus, legitimising the expansion of rights which may be required to protect her fundamental interests from a more ample variety of threats. The fact that not all humans are equally equipped to deal with external threats compels us to ensure that this does not equate with them having a higher magnitude of harm unprotected. An individual's particular condition (her vulnerability to external threats, and her dependence on others for the fulfilment of fundamental interests), thus, ought to be accounted for in our evaluation of what counts as harm. In fact, many of the most problematic harms that affect differently-positioned individuals precisely derive from structural and systemic "omissions" of their particular condition as dependent and vulnerable from the overall evaluation of harm, by taking "normalcy" as the standard account

of protection that the government must guarantee.

Urban streets, for example, tend to be structured around the needs and interests of the "normal human" to drive and walk. While urban structures tend to enable "the standard" to exercise many fundamental freedoms while protecting them from harms, it has the side-effect of strongly influencing the probability of individuals with different abilities, interests and vulnerabilities (such as children or the disabled) to use these spaces in an equal manner, imposing, as well, a higher risk of harm (both in gravity and probability) for those disabled and very young users. Taking harm to others as a serious limit to a person's (or collective's) freedom, it seems difficult to justify the fact that individuals who are particularly vulnerable to our present construction of public spaces, and who should be considered as having an important interest in using and occupying these spaces just as the "normal human" has, are barred or excluded from them and their use in order to allow the "normal human" to exercise her freedoms, claiming to be protecting them from the risk of harm that may threaten them if they use them.

When we hear claims that streets are not safe for children, that working environments may be exploitative of children, or that sexual activity can be harmful to children, we are actually claiming that there are certain individuals (children) who are particularly vulnerable to *harms inflicted by others*. Our principled concern, in this respect, should be with restricting the freedom of those who perpetrate and enable these harmful phenomena, relations and practices, rather than restricting the freedom *of the victim*. We consider that we should keep children off the streets because they may be run over *by others*, that we should keep them off the labour market because they may be exploited *by others*, and that we should keep them away from sexual activity because of the risk of harm that may be inflicted on them *by predators and abusers*. All these are instances in which we may be mistakenly bundling together the victim's vulnerability with the perpetrator's inflicted harm, thus justifying the restriction of the freedom of both. As a partial claim, and all things being equal, I argue that there is no legitimate justification for restricting the freedom of the vulnerable victim, in order to protect her from harms imposed on her by others. It is the freedom of the perpetrator of harm which should be restricted, in principle.[82]

There seems to be little justification for limiting a child's freedom based exclusively on the fact that *others* may harm her. Just as we consider just and necessary to protect the

[82] This is a partial claim because I have not yet introduced three other elements that play a role in our assessment of the legitimate protection of fundamental interests as rights: the victim's voluntariness, the actor's ability, and the reasonableness of the purpose for action. As I will argue later on, in cases where a certain freedom is conditioned by consent and ability, we may judge that certain restrictions on the victim's freedom may be legitimate as it becomes a case of non-single-party self-harm in which the victim would be partially liable for the harm caused to herself (see Chapter 8, Section 4).

vulnerabilities of women in public spaces by restricting the sources of harm to them, rather than the woman's own freedom; or as we consider just and necessary to protect the vulnerability of the worker that comes from the asymmetry of power with her employer by restricting the latter's freedoms; we must conceive the protection of the particular vulnerabilities of children to being harmed by others in a similar manner. If the harm derives from sources external to the vulnerable person, there is no principled justification for restricting the victim's freedom in order to avoid the harm. The burden should lie with the harmful party.

I analysed already how the Harm principle would apply to the legitimate restriction of freedom of others in order to protect the child from harms to her fundamental interests. In what is left of this section, I look at how the Harm principle may speak to the legitimate restrictions of freedom that could be imposed *on the child herself* in order to protect the fundamental interests of others. This is a relatively straight-forward affair but certain clarifications are in order due to widely held assumptions of what applying an equal standard to rights-allocation for children and for adults entails. I address, first, a widely held misinterpretation by critics of Liberationist rights that claims that the Liberationist freedom for children would enable and allow children to harm others in many ways; I will show why this concern is incorrect. Second, I will briefly look at how certain "public harms" may legitimise the restriction of certain liberties to children, claiming that an equal standard may allow (and even require) endorsing certain duties of children, thus legitimising more restrictions than Liberationist would consider as just.

Critics of Liberationist rights have tended to equate the freedom they want to grant to children to a type of anarchic laissez-faire system in which children bear no responsibilities for their actions, while keeping their scope of freedom entirely unrestricted.[83] This is, simply, an extremely wrong interpretation of what the equal standard defended by Liberationists entails. Children, just as any other human being, can have their freedom legitimately restricted by the Harm principle. Their legitimate scope of freedom stops when the fundamental interests of others can be harmed by its exercise. The adult population who live

[83] Laura Purdy (1992: Ch. 3) uses examples of laissez-faire pedagogical experiments in which children have no duties whatsoever, in which they are allowed to do whatever they want, in which no rules, authority or guidance is imposed on them, as small-scale proofs of the failure of a Liberationist approach to children's freedom. Her particular case-studies are problematic for two reasons: first, her cases are not actually applications of the Liberationist principle of an Equal Standard, but rather cases of pseudo-anarchic pedagogies which Liberationists would definitely not endorse; second, her choice of cases is strongly biased by her focus only on failed attempts at giving freedom to children (I would label it licentiousness rather than freedom, actually), while disregarding cases of pedagogical success in granting children more freedom (the Montessori system or the Summerhill school, are just two examples). For my account of freedom in education, see Hart and Brando (2018).

and interact with children have fundamental interests in not being harmed by others as well, and these weigh as much as the children's own interests when evaluating the legitimate limitations that can be imposed on the freedom of both. Of course, children's higher susceptibility to harm, and their stronger dependence on others for the fulfilment of their interests implies that the Harm principle can justifiably limit adults' freedoms to a greater extent in order to ensure that it does not harm children or other vulnerable and dependent individuals, but this does not imply that children are allowed to do whatever they want.

Not harming others is a clear and straight-forward first limit on a person's freedom: as part of a social system, children bear certain fundamental duties to society. The first of these is, as for any other citizen, their duty not to harm others. Just as the adult population must follow the rules, schedules, morals and laws of their society in order to ensure their embeddedness and its sustainment, children should be bound by the same strict limits as well. Critics tend to argue that Liberationists appeal to a full and unrestrained emancipation of childhood from the social order. This is far from true: an appeal to an equal standard for delimiting the freedom of adults and children merely claims that if a child must abide by a rule, then an adult must abide by the same rule, and vice versa (Farson 1974: 5). No one is claiming that every whim, wish and tantrum of a child should be catered; no one is claiming that children should be allowed to roam the streets free from constraint and authority. The only claim that is being made is that if a restriction on freedom exists or does not exist, it should treat equal cases alike. If my romantic partner starts crying that she wants ice-cream for breakfast, and that I should bring her ice-cream for breakfast, I do not have a duty to fulfil her whim; there is no reason to assume that equal freedom for children would entail the duty of parents to do everything children ask them.

Another legitimate restriction to an individual's freedom justified by the Harm principle stands on the duty to sustain (or enable the sustainment of) the system which protects her freedoms (Feinberg 1984: 11). I have a duty to sustain the ethical, moral and political community and standards that allow me to exercise my freedom. This may justify certain basic duties of children to acquire language skills, deliberative capacities, and minimum social and political socialisation which enables their ability to behave as responsible members in the life of their community, and to understand the moral and legal bounds of their position as free individuals. Compulsory schooling could be an example of such a duty: it may be claimed that an unschooled society does not only harm the unschooled themselves, but wrongfully and adversely affects the fundamental interests of the rest of society as well. We must ensure that all citizens have the tools required to cooperate, to be and to become a part of their social system. This leaves space for imposing a duty to *all individuals* to achieve a certain standard of education as a minimum necessary for social behaviour.

However, this particular compulsion should not been seen as a duty only imposed on

'children' (in the Life-Stage understanding of them); it is a *universal* responsibility to acquire the necessary skills for sustaining the system that protects one's freedom (regardless of age). The fact that this principle is usually implemented during the first period of one's life is a contingent fact based on the simple practicality that the sooner an individual is socialised, the better outcomes it can produce for all (including the individual herself). We can see a practice analogous to this duty in the case of many state policies towards foreigners. Regardless of age, gender or race, you have the duty as a foreign national to acquire the basic skills, practices, and ethical codes required to be a part of the community from which you are receiving your protections. This duty may come in the form of language classes, cultural immersion courses, local-buddy policies, or civics and politics tests.

The Harm principle shows how an equal standard may be applied to assess the legitimate restriction of individual freedom, while overcoming concerns by both Liberationists and critics of Child Liberationism. On the one hand, the Harm principle can account for the right of vulnerable individuals to have their fundamental interests protected from harm inflicted by others; on the other, it allows us to offer a first legitimate restriction of a child's freedoms without having to resort to double standards in order to do so. I will move now to look at the possible ways in which self-harm may legitimise further restrictions.

3. Legitimate Restrictions: Ability and Voluntariness

A core feature of Mill's Harm principle is its intention to avoid all limitations of individual freedom which are not tied to harming others. He, thus, adamantly, excludes self-harm as a legitimate reason for limiting a person's freedom:

> He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign. (Mill 1859: 197).

Mill's concern with an authoritarian and despotic political system, and his belief that the most effective way of ensuring that a person's fundamental interests are fulfilled is through the individual exercising her own choices free from external constraints, were the core reasons why harming one's self did not qualify as a legitimate restriction of freedom. He considered, however, that there were certain particular cases in which it could apply: all those individuals who are *incapable* of fully understanding and pursuing their own fundamental interests (namely, children and "barbarians") can have their freedom legitimately restricted in order to protect them from themselves, ensuring their development into free and equal persons (Mill

1859: 197-198). An appeal to the threat of harm to children's fundamental interests if allowed to take full control over their freedom is the core concern and legitimating reason behind their exclusion from having freedoms equal to those of adults. As developing individuals, children are still in the process of acquiring the tools that will allow them to exercise their freedom appropriately; until they reach a point in which they achieve human maturity, they must be protected from themselves.

3.1. The Harm Principle and Paternalism

Liberal theorists have tended to argue that this protection from self-harm does not actually rely on the Harm principle, but actually opposes it. If the Harm principle states that individual freedom can only be restricted in cases in which it may wrongfully and adversely harm the fundamental interests *of others*, the restriction of freedom to protect an individual from self-harm must rely on an alternative justification. As presented in the previous chapter, authors such as Harry Brighouse or Samantha Brennan have claimed that this protection from self-harm may be justified because the core ground for rights is their protection of fundamental interests; if a fundamental interest can be harmed by an action, then it is legitimate to deter the harm, regardless of what its source is (Brighouse 2002; Brennan 1994; 2002). This is what has been defined as the freedom-limiting principle of 'paternalism': "the interference of a state or an individual with another person, against her will, and defended or motivated by a claim that the person interfered with will be better off." (Dworkin 2017). In my response to Brennan (see Chapter 6, Section 3.2) I have claimed that this appeal to an individual's own good and the protection of her fundamental interests as a justification for limiting her own freedom is problematic for various reasons.

First, throughout history (and much of philosophy as well) the appeal to a person's own good to restrict her freedoms has not been judged through an equal standard in its implementation. While the presumption on the side of freedom and the Harm principle have stood as the structural principles of justice which regulate social and legal relations, paternalism has been applied almost exclusively to individuals ascribed to reified social groups. Women throughout history have been relegated to the private sphere *for their own good*, natives in colonised regions have been forced to give up their traditional social and religious practices and follow Christianity *for their own good*, and even ethnic groups have had their rights to civic and political freedoms restricted by appealing *to their own good*. If we consider problematic to appeal to paternalism in order to justify the restriction of freedom in these cases, I believe that we should show concern with its use when appealing to it in the case of children. This whole manuscript has revolved around the basic idea that social grouping (through its ascriptive and reified inclinations) is a dubious base for legitimate

normative decisions.

This does not mean, however, that paternalism should be entirely dismissed as a potential justification for the restriction of an individual's freedom. We could imagine a political system in which restriction of freedom for the individual's own good applies equally to all: it does not matter if you are black or white, female or male, child or adult, disabled or not disabled, as long as your own actions may harm your own fundamental interests the state may be required to restrict your freedom. An equal standard can be used, thus, to implement paternalistic policies. We actually see this argument behind the implementation of helmet laws, prohibition in the use of narcotics, or protection from suicide.[84] I believe, however, that endorsing such a justification can have a slippery-slope effect, which could bring to life the fears that led Mill to defend his Harm principle as the sole freedom-limiting principle; namely, the potential loss of individual freedom in its entirety. If prohibition of narcotics is legitimate, why not ban cigarettes, alcohol, or fatty foods? If helmet laws can be enforced, why not restrictions on the exercise of any risky activity or extreme sport? If suicide laws can be in place, why not eliminate the right to choose one's preferred medical treatment all together? These are obviously extreme (and even for some) absurd examples, but if paternalism is considered as a legitimate justification for restricting freedom, these restrictions could be (and actually have been in many legal systems) legitimised and implemented based on this same claim of promoting "the own good of the individual". I consider, however, that the basic tenant of Liberalism, the presumption on the side of freedom, cannot allow paternalism as legitimate principle for restricting freedom. If among our fundamental interests is our interest in living our life through our own choices, and by allowing to reach our well-being and agency achievements through our own freedoms, even the slightest appeal to paternalism should be avoided.

However, denying any role to paternalism as a legitimising force for the restriction of freedom does not imply that certain acts of self-harm cannot be legitimately restricted through a more complex analysis of the Harm principle itself. In this respect, I follow Feinberg's intention "to reconcile our general repugnance for paternalism with the seeming reasonableness of some apparently paternalistic regulation." (Feinberg 1986a: 25). Following Feinberg's own account of self-harm (Feinberg 1986a: Chapter 20), I will argue that by assessing the graded voluntariness of a potential victim of harm, and the ability of the potential perpetrator of harm (which in the case of self-harm are both the same individual) certain restrictions of freedom can be legitimised without appealing to paternalism as a justifying argument.

[84] A defence of a similar paternalistic view can be found in De Marneffe (2006).

3.2. Ability and Voluntariness

In the previous chapter, I claimed that an individual's possession (or lack thereof) of particular *abilities* and competences could work as a legitimate reason for not granting certain rights to particular individuals if they do not possess the required competences to make use of them.[85] Protecting others from harm is the first reason why certain rights and freedoms may be conditional to the acquisition of particular abilities. The primary reason why driver's licenses or medical licenses are conditional to proving one's competence as a driver or as a medical doctor lies in the need to protect other's fundamental interests from an incompetent individual harming them. Note that here we are speaking of the *abilities of the potential actor of harm.* It is the freedom of the individual who may inflict harm, whom can be legitimately restricted due to her incompetence. This is clear enough. But, how would this apply to the case of self-harm? Should an incompetent driver in an empty city (in which no one else can be harmed by her driving) be restricted from driving as well? Should an incompetent surgeon (with no family, friends or social relations) be restricted from taking out her own kidney?

Only having information on the perpetrator's inabilities may take us to respond either negatively or positively to the justifiability of restricting this individual from exercising her freedom to harm herself (and only herself). This is due to the role that another element plays in our evaluative judgment: the *voluntariness of the victim* (consent and endorsement) in having this risk of harm imposed on her. Our intuitions regarding the permissibility of both the driving and the kidney scenarios are conditioned by the victim's consent or endorsement to the risk of harm that may befall her if she exercises her freedom. If the individual is entirely conscious of the risk of harm that may befall her if she drives without knowing how, or if she attempts to take out her kidney —meaning that she fully understands her incompetence, and understands and consents to both the gravity and probability of her harm, and of their impact on her well-being interests—, our judgment would probably incline us towards the permissibility of exercising this action. On the contrary, if the individual is entirely clueless of the potential impact that her driving or surgery may have on her and her interests —meaning that she does not understand the breadth of her incompetence, nor the full gravity and probability of harm—, then, our judgment would probably incline us towards restricting the individual from exercising this freedom. This is what has been termed in common law as the *volenti non fit injuria* doctrine. If an individual endorses, understands and consents to the risk of harm, freedom should not be restricted (Feinberg 1986a: 176-180). In other words, voluntariness of the potential victim of harm can delegitimise restrictions.

[85] By *abilities*, I mean the full set of physical, cognitive and emotional skills, competences and attitudes which an individual requires in order to effectively achieve a function. I will explore in full detail the various forms in which 'abilities' may exist, and the elements that comprise them in Chapter 8.

The Standard Liberal approaches presented in the previous chapter claimed that the structural justification as to why it is legitimate to restrict children's freedom rights is due to the child's inabilities as a rational agent (see Brighouse 2002; Brennan 2002: Feinberg 1980). It is their assumed condition as incompetent in exercising freedoms which may harm them, and their lack of voluntariness in having harm inflicted on them (due to they not understanding nor endorsing the magnitude of harm that may befall them) what legitimises restrictions of freedom. Now, in the children's rights discussion it has been assumed that these two elements (competence and voluntariness) are two parts of one and the same principle (due to their focus on cases of self-harm), but if one looks at harm (regardless of whether it is self-inflicted or caused by another individual) we can see that each element points towards different subjects (to the ability *of the perpetrator of harm*, and voluntariness *of the victim of harm*). In the case of self-harm, of course, both victim and perpetrator are the same individual, but this should not imply that they could be conflated. An assessment of harm requires evaluating each separately in order for it to explain how instances of self-harm may be legitimately restricted.

What the distinction between the ability of the perpetrator and the voluntariness of the victim adds to our assessment of harm is the possibility of conceiving fundamental analogies between certain cases of harm to others and cases of self-harm, namely, how the victim's endorsement (or lack thereof) to the harm that may be inflicted on her (separated from the perpetrator's freedom) affects our judgment over the justifiability of an action, regardless of whether the perpetrator is different from the victim or not. The Harm principle stands adamantly in restricting an individual's freedom in order not to harm another's fundamental interests, because we can generally assume that the potential victim is not taking on this risk of harm voluntarily; her consent and endorsement of the harm inflicted on her has not be requested or endorsed. Our intuitions, however, change if the victim does voluntarily consent and endorse a potentially harming action by another. Take the case of an individual A voluntarily consenting to a medical doctor B removing one of her kidneys. A's (as a victim) consenting and endorsing the risk of harm triggers our judgment. Of course, our knowledge of the (in) competence of the doctor also affects it, but it is a separate element in the evaluation. Assuming the competence of the perpetrator as invariant, whether A and B are the same person or not, should not affect our judgment. Be it in cases of self-harm (me operating on myself) or harm by others (a doctor operating me), the degree to which I am voluntarily consenting to the harm that will be imposed on my well-being interest can affect the evaluation of whether operation is legitimised or not. Both stand on the same basic assumption: that cases in which a potential victim of harm is not putting herself at risk voluntarily may legitimise restricting the action.

3.3. Reasonableness

I have presented in Section 2 the role that the magnitude of harm (gravity and probability) play for our intuitions of the types of harms to fundamental interests which rights should protect, and have introduced the role that inability and involuntariness play in our consideration over the legitimate restrictions of freedom. This section, first, explores how their joint assessment affects our evaluation of harm. It then, presents how epistemic limitations from the side of the decision-maker regarding the objective assessment of these four factors conditions the appropriate evaluation of harm. It, thusly, introduces a fifth element which intends to work as an epistemic crotch in the evaluation: the value judgment of the reasonableness of an action.

Although I consider possible to claim that instances of self-harm can be legitimately restricted without appealing to a paternalistic principle, I wish to consider shortly how they work when, on top of voluntariness, we include the magnitude of harm into the picture. As mentioned before, the magnitude of harm (gravity and probability) should not be seen as strict and objective thresholds, but rather variable depending on an individual's condition. Our conceptualisation of how vulnerable and dependent an individual is should work in our evaluation of what the gravity and the probability of a certain harm is.

Take the case of an individual (can be a child or an adult) who is lethally allergic to peanuts, and is about to eat a Snickers bar without knowing that it contains peanuts.[86] Both the gravity and the probability of harm are extremely great, and the individual is entirely ignorant of the threat that will befall her if she eats the chocolate (she, as a victim, does not consent to the magnitude of harm). Our intuitions lead us to consider that it is perfectly legitimate to stop her from trying to eat the chocolate. There is no difference in this respect between a young child who still does not understand her allergy to peanuts and an equally allergic adult who wants to eat a Snickers bar without being aware that it contains peanuts. Our justified restriction of the freedom in both cases is based on the overall aggregation of the magnitude of harm involved in the action and the involuntariness of the victim.

Now, an evaluation of harm is not always that clear cut. In most instances, we do not have all the objective information necessary (at least not in a detailed form). The particular degree of the victim's voluntariness, the ability of the person who is exercising a freedom, and in many cases, even the magnitude of harm cannot be clearly pin-pointed, from our own epistemic perspective (as enforcers). For this reason we must include in our evaluation the value judgment of the reasonableness of a certain action, as considered by the person (or collective) in a position to restrict the freedom (see Feinberg 1986a: 101-104). Says Feinberg:

[86] This example is inspired in Mill's 'decrepit bridge' scenario. I have amended it to include other elements into the equation (see Mill 1859: 296-297).

> When we judge another's actions as "unreasonable," we are criticizing them, unfavorably evaluating them, rejecting them. Our judgment expresses our unwillingness to advise or encourage the actors to perform them, on the ground that they are counterproductive means to the *actor's* goals. (Feinberg 1986a: 111).

Due to epistemic limitations on the social capacity to judge with precision the particular condition of victim and actor, we are compelled to use our own value judgment of a certain action in order to assess whether it is reasonable to restrict it.

Simply put, the value judgment of the justified scope of freedom and harm are conditioned by the position, values, and considerations of the individuals (or collectives; the state, particular institutions, etc.) who are in a position to legitimately allow or restrict a freedom. As there must always be someone in the position of judge in the evaluation of fundamental interests, this particular evaluative judgment must play a role in our assessment. This is what I label the *reasonableness* condition. An assessment of the reasonableness of an action is a third-party value judgment. It relies on the individual's (or collective's) evaluation of the value that the purpose of a certain action may have for the victim. As our epistemic limitations for our decision over how to act (whether to restrict an action or not) in all possible cases (both general as implemented by law; or particular, as whether I should stop a child from crossing the street if there are cars passing) do not always allow us to determine without reasonable doubt the particular ability of the perpetrator, the particular voluntariness of the victim (and sometimes even the magnitude of harm), we must rely on our own social or individual judgment regarding whether we should refrain or not from imposing a limit on freedom. Among the features that ground the evaluation of reasonableness are: our judgment regarding the value of the particular freedom that may be restricted; the value of the achievement that intends to be reached through the exercise of freedom; and the evaluation of the alternatives which may exist to reach a given achievement which may incur less harm than the particular action taken.[87]

4. The Pentagon Model

This section brings everything together and introduces a novel method for the evaluation of harm that gives rise to legitimate restriction of freedom in order to protect an individual's fundamental interests from harm based on the interaction between the five elements presented above (gravity and probability of harm, victim's voluntariness, actor's ability, and

[87] This is based on Feinberg's account of the factors that determine the (un)reasonableness of a risk of harm (see 1986a: 101-104).

reasonableness). It aims to work as a tentative guiding standard through which one can evaluate all cases of harm assessment (regardless of whether they are self- or other-inflicted), to judge whether a particular restriction can be justified based on the Harm principle, or, rather, if freedom should prevail. I consider five composite elements structuring our evaluative space:

Gravity of Harm: the extent to which an action adversely affects an individual, the duration of the harm, and the period required to recuperate from it. It varies depending on the particular condition of the victim (her embodied vulnerability and dependence, and her developmental interests).

Probability of Harm: the statistical and intuitive evaluation of the risk of it occurring. It varies depending on both the ability of the actor (see below), and the particular condition of the victim (her embodied vulnerability).

Ability of the Actor: the full set of physical, cognitive and emotional skills, competences and behaviours which an individual requires in order to achieve a function effectively. The particular developmental condition, and adaptive capacities affect its assessment.

Voluntariness of the Victim: the degree of willingness of the victim to have a harm imposed; her endorsement of and consent to the risk of harm which may befall her. It is conditioned by the external constraints to consent, and to the internal abilities (mainly rational and autonomous competences) required to endorse and consent.

Reasonableness of the Action: Value judgment of the third party in a position to allow or restrict an action, regarding the justifiability of the purpose for action, the existence of alternative , and the trade-off between potentially conflicting interests.

Just as it was done above with the gravity and probability of harm, a graded quantification of the other three elements most be carried out (see Table 4). Evaluation of the justifiability and moral legitimacy of restricting an individual's freedom is conditioned by the sum of the five elements. A positive sum (>0) implies the justifiability of restricting the freedom of the actor in order to protect the victim from the potential harm inflicted on her fundamental interests; a negative sum (<0) considers the risk of harm to a victim's fundamental interests insufficient for it to legitimise restricting the actor's freedom.[88]

[88] If the assessment of an element is irrelevant to an evaluation, it should be quantified as zero. Of the five elements, this especially affects the evaluation of ability. When, for example, the actor is causing harm for harm's sake, X's ability to achieve her purpose is irrelevant to the assessment of the legitimacy of restricting her freedom.

GRAVITY	PROBABILITY	INABILITY	INVOLUNTARINESS	UNREASONABLENESS
Irrevocable (+2): Action that entirely defeats the possibility of having an X interest; its impact is irreversible.	*Certain (+2):* There is no doubt that the expected degree of gravity (or higher) will be inflicted by an action.	*Unable (+2):* Actor does not have any mental, physical nor emotional ability for realising X.	*No Consent (+2):* Victim has not consented nor endorsed potential harm.	*Entirely Unreasonable (+2):* The expected outcome from action X is of no value as compared to harm.
Corrosive (+1): Action that leads to an individual's X interest entering a downward spiral; it is nor irrevocable but it worsens.	*Likely (+1):* There is a high possibility for the expected degree of gravity (or higher) to be inflicted by an action.	*Capacitated (+1)*: Actor has basic mental, physical and emotional endowments for realising X.	*Forced Consent (+1):* Victim consents to potential harm due to external circumstances.	*Avoidable (+1):* Less harming alternatives to X exist. Harm is not necessary.
Hindering (-1): Action that reduces the positive progress of an X interest by stalling it, without setting it back.	*Unlikely (-1):* There is low possibility for the expected degree of gravity (or higher) to be inflicted by an action.	*Partially Competent (-1):* Actor is in the proximal zone of competence-acquisition for realising X.	*Unreflexive Endorsement (-1):* Victim consents and endorses potential harm without full understanding of its magnitude.	*Reasonable (-1):* Potential harm can be judged as reasonable due to relative value of X or lack of alternatives.
Disturbing (-2): Action that only interferes or puts an inconvenience to the positive progress of an X interest without hindering it.	*Improbable (-2):* There is almost no doubt that the expected degree of gravity (or higher) will not be inflicted by an action.	*Fully Competent (-2):* Actor possesses all physical, mental and emotional competences required to realising X.	*Deliberate Endorsement (-2):* Victim understands the magnitude of potential harm, consenting and endorsing it.	*Fully Reasonable (-2):* Potential harm is entirely justified due to both the value of X and lack of alternatives.

Table 4. Graded Quantification of The Elements in the Evaluation of the Legitimate Restriction of Freedom.

4.1. Radar Visualisation of the Pentagon model

A visualisation of some examples of harm assessment, and the legitimate protection of interests as rights can aid in understanding how the Pentagon model works. Imagine a five-cornered radar graph with each element comprising one corner of the radar (see Figure 2). The negative values are towards the centre of the pentagon and the positive ones towards its extremities. The standard threshold which delimits between cases in which freedom can be legitimately restricted or enabled lies in the equal-to-zero pentagon (dotted line). If the sum of all of the five vectors is higher than zero, an action can be legitimately restricted; if, on the opposite, its sum is lower than zero, the risk of harm does not justify restricting freedom.

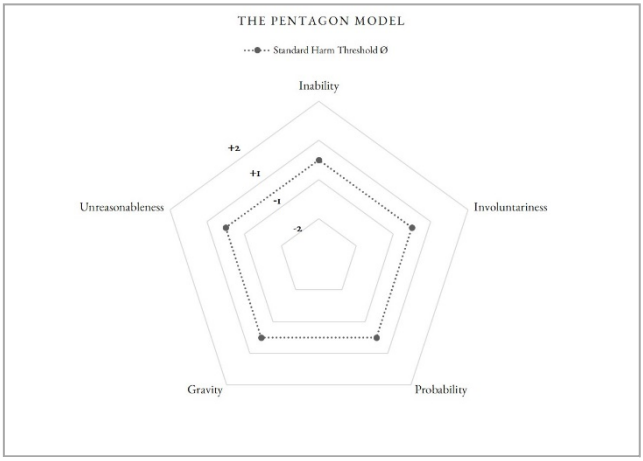

Figure 2. Pentagon model for the evaluation of legitimate restrictions of freedom based on harm.

Let us look at how our intuitions regarding the justifiability of restricting freedom is reflected in the Pentagon model through some of examples. I will exemplify how the model works by briefly introducing scenarios in order to assess whether the five elements in the Pentagon model works in judging the (il)legitimacy of harm.[89]

[89] Bear in mind that the total possible combinations in the Pentagon model equals to 1024 scenarios. There is no possible way that they can all be explored and evaluated in one paper. My objective is merely to offer certain examples that elucidate how the model can represent most of our intuitions regarding the evaluation of legitimate and illegitimate restrictions of freedom based on risk of harm to an individual's fundamental interests, while offering a clean assessment for more debatable cases. These do not represent the full breadth of the analysis required to evaluate the legitimacy of restricting an individual's freedom; they are merely brief examples through

First, two examples of clear legitimate restrictions:

a) Superman (Figure 3): an entirely unable and non-endorsing child wants to jump off a fourth-story window intending to fly like Superman. This is a clear example of legitimate restriction of freedom. Regardless of the potential agency and freedom interests the child may have in flying like Superman, the magnitude of harm to the child's well-being, the degreed voluntariness of the child as victim, his abilities as actor, and the reasonableness of him carrying-out this action are all in the outmost corners of the radar. The gravity (G) is irrevocable, its probability (P) certain, the actor is fully unable (A) to deter the harm by himself, he is entirely non-consenting (V) to the potential threat, and the expected outcome of the action is of no value as compared to its risks (R). (G2, P2, A2, V2, R2) =10.

b) Drunk driver (Figure 3): a drunk individual driving through a crowded street at 150 km/h to get to a party. This portrays a similar scenario as the previous one. The main difference is that, opposite to (a), this case's victim and actor are not the same individual. (G2, P1, A1, V2, R2) =8

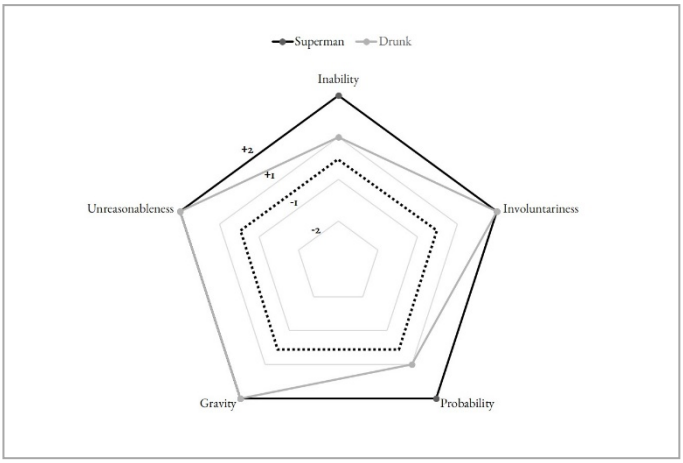

Figure 3. Radar visualisation of the Superman and Drunk Driver Scenarios.

Now, two examples of illegitimate restriction of freedom.

which the reader can grasp the basic idea for how the model works. Alternative evaluations of the same cases could be argued for as well.

c) Preteen Piercing (Figure 4): a preteen wants to get her belly-button pierced at a certificated tattoo parlour. The worst that could potentially happen is that she would get an infection that could easily be treated (G-1). The probability of this happening in a certificated environment would be unlikely (P-1), due in part to the full competence of the actor (the professional body piercer) (A-2). Even if we could assume that the preteen is not carrying-out a deliberate endorsement (meaning that she does not fully understand the risks tied to the action to which she is consenting) she still exercises an unreflexive (V-1) or, at worst, a forced consent (V+1) if one interprets peer-pressure as playing a fundamental role in her decision. Regarding reasonableness, although the purpose of action, and the objective to be achieved is of a superficial value, the fact that the magnitude of harm is so low implies that it is not entirely unreasonable (we could even interpret that the potential improvement in the preteen's self-esteem may actually make it reasonable to a certain extent) (either R+1 or R-1). (G-1, P-1, A-2, V1, R1) = -2. Of course, if we were to change the expertise of the body piercer, or the sanitary conditions of the establishment, both inability and probability would rise, shifting the balance in the assessment.

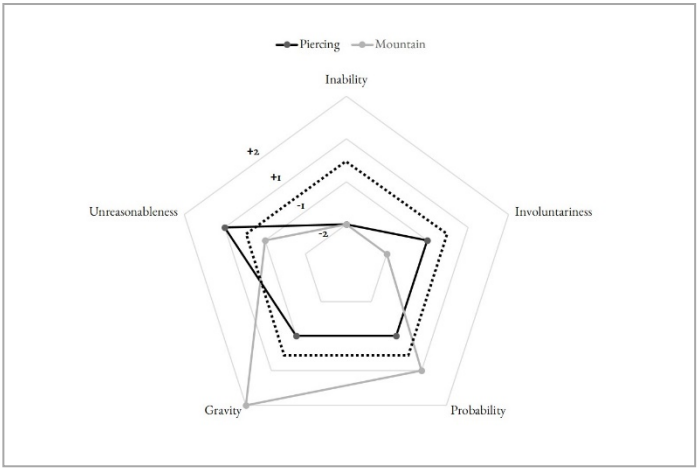

Figure 4. Radar visualisation of the Piercing and Mountain Climber Scenarios.

d) Mountain Climbing (Figure 4): a trained mountaineer climbing up a cliff without ropes. This is a case where the particularly high voluntariness of the victim and the ability of the actor play a crucial role in determining our intuitions of the possible legitimacy of enacting freedoms which may bear a high magnitude of harm. Although the gravity of harm that may befall the climber can be irrevocable (G+2) and its probability high (P+1), the fact that she is fully competent for the required action (A-2), and that we can assume her as deliberately

endorsing the risks that come with it (V-2) tweak our intuitions regarding whether she should be allowed to act against her own well-being interests. Reasonableness may affect our final assessment, but considering that climbing mountains may be a structural part of this individual's way of life and what gives value to it, may lead us to judge it as, at least, reasonable, (R-1). (G2, P1, A-2, V-2, R-1) = -2.

There is an intuitive moral impulse to reject the legitimacy of enabling sexual agency freedoms during childhood. I wish to look at two final scenarios related to sexual agency in order to test why and up to what point is this restrictive inclination justified.

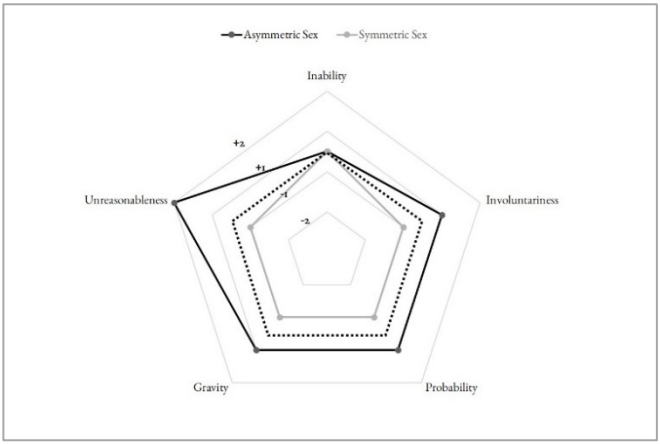

Figure 5. Radar Visualisation of the Asymmetric and Symmetric Sex Scenarios.

e) Asymmetric sexual encounter (Figure 5): A child after puberty is forced by her uncle to have sexual relations with him. In this and the next scenario, the ability of the actor plays no role in the assessment (A0). Risk of harm is not tied to the physical, mental and emotional competences of the actor but, rather, it exists as inherently tied to the sexual act in itself and, very importantly, to the voluntariness of the potential victim. Our evaluation of the magnitude of harm in this instance, is more complex than in the previous ones. This is due to the fact that harm is not only linked to physical well-being interests which are more directly quantifiable (among them, we could consider the child getting impregnated, or an assessment of potential violence involved in the act), but also to emotional well-being interests and to fundamental agency interests that the child may have threatened by the act. Even assuming that the magnitude of physical harm to her well-being interests is inexistent, her emotional scarring, and the assumption of the child consenting to the act due to fear can very gravely

affect her emotional well-being and agency interests. Reasonableness plays a relevant role here as well. The meaninglessness of the objective as compared to how it may harm the victim's fundamental interests makes such an action entirely unreasonable. (A0, V1, P1, G1, R2) = 5.

f) Symmetric sexual encounter (Figure 5): I want to contrast the prior scenario with an alternative in which two children before puberty consider experimenting sexually between them. Even assuming that the children's understanding of the action and of the potential threats of harm that it may impose are low, the absence of coercion and the lack of serious (if any) relevant risks of harm to the children's well-being interests, legitimise the justifiability of not restricting this freedom to children. (A0, V-1, P-1, G-1, R-1) = -4.

This chapter has aimed to elaborate the role that harm assessment plays in evaluating the legitimacy of restricting an actor's freedom in order to protect individual fundamental interests from wrongful and adverse setbacks. I considered how John Stuart Mill's Harm principle frames our intuitions regarding what should rights protect: it is the fundamental interests of an individual that may be wrongfully harmed, which triggers the need to protect them as rights. This chapter considered how the Harm principle, going beyond Mill and standing closer to Joel Feinberg's interpretation of it, could work as a legitimising principle for instances of both harm to others and self-harm. In this line, I argued that paternalistic justifications for restricting freedom could be avoided, due to the capacity of the Harm principle by itself to accommodate most of our intuitions regarding the cases which tend to be justified through appeals to paternalism. Through the separate assessment of the ability of the actor and the voluntariness of the potential victim of harm, the Harm principle can judge the legitimacy of a freedom without having to appeal to separate principles of justice. For the case of children which concerns this manuscript, I claimed that an evaluation of their just treatment should explore separately the particular restrictions and protections which are owed to them due to harm caused *by them* (both to themselves and to others), from the particular protections to children and restrictions to others which stem from harms caused *by others* to children. This diverges from the traditional distinction between harm to self and harm to others. I argued that the evaluation of legitimate restrictions is a complex affair requiring a judgment of the interaction between five graded elements (gravity and probability of harm, ability of actor, voluntariness of victim and reasonableness of action) which determine whether individual freedoms should be protected or restricted. I labelled this as the Pentagon model for the evaluation of legitimate restrictions of freedom.

Chapter 6 studied how two arguments play a fundamental role in determining why the differential treatment of certain individuals may be justified: an argument based on the

evaluation of different susceptibilities to harm tied to an individual's constitutive framework; and an argument based on how the acquisition of competences, and the particular abilities of an individual, can legitimise differential treatment in the realm of rights. This chapter considered the basic elements that should ground the evaluation of the first argument (tied to harm); the next two chapters will offer an in-depth exploration of how the second argument (competence-acquisition) should be understood, and how the process of the acquisition of competences and its relation to susceptibility to harm should frame the differential treatment in the particular case of children.

VIII. Freedoms and Abilities: Harm and the Process of Capability-Formation

"I have my own views, plans, and ideas, though I can't put them into words yet."
Anna Frank – *The Diary of a Young Girl*

Rights ought to protect an individual from harms which may setback her fundamental interests. The previous chapter considered the elements which must be studied in order to evaluate whether an individual's fundamental interests are being wrongfully setback. I presented the Harm principle as the core legitimating force for an asymmetric rights-allocation, and proposed the Pentagon model as mechanism for evaluating the legitimate restrictions of freedom in order to protect individual fundamental interests. This chapter focuses its attention on one particular element of the Pentagon model: an agent's (in)abilities as a legitimate reason for restricting an individual's right to exercise certain freedoms.

Standard intuitions regarding the justifiability of restricting freedoms during childhood derive from the intuitive force that a person's (in)abilities play in assessing their legitimate treatment. While we are all endowed with a bundle of fundamental rights that are granted to everyone based on our being part of the human species, many other rights and duties are tied to our particular condition as vulnerable individuals, and to our ability to exercise certain functions. Although the fundamental grounding behind a liberal theory implies a primary concern with ensuring an ample scope for individual freedom, the particular susceptibilities to harm tied to a person's condition and inabilities justify limitation on individual freedoms in order to deter from harm that may be caused by the unable individual (both to herself and to others). This chapter and the next aim at exploring how an individual's vulnerability and

inabilities may justify particular restrictions of freedom (this chapter), and particular protection from others (Chapter 9). Using the capability approach as a method to conceptualise what is owed to individuals as fundamental rights, I will argue here that, even if certain freedom rights are conditioned by an individual's ability to exercise them, the process through which abilities develop (capability-formation) and the particular degree to which an individual can be considered as "able", demand a more nuanced understanding of how freedom rights should be protected, and the scopes of freedom which cannot be restricted to "unable" individuals. In short, if harm is the core principle which legitimises restrictions, then a clear evaluation of the relation between abilities and harm must be carried out, whereby providing a legitimate ground for allocation of freedom rights.

Understanding the role that abilities play in our theory of rights requires an assessment of what being (un)able means, and how this may translate into particular privileges or restrictions. In this respect, my intention in this chapter is to answer to the following questions: first, how should the concept of 'ability' be understood? And, second, how does ability bind our understanding of the legitimate restriction of freedom rights? I will offer a response to the first question based on a capability interpretation of the concept of 'ability,' and, from this view, I will consider how it would reflect on our discussion of the legitimate freedom rights that ought to be ensured to children. While conceding to certain fundamental limitations to the freedoms that children may be allowed to exercise due to inabilities, I will argue that there is a larger role for freedom in our discussions on children's rights due to the active role that children play in their own development process, and in the construction of their own life and identity (their adaptive condition). By establishing a clear groundwork on the freedom side of the debate on children's rights, the following chapter will address the issue of achievement rights in more depth, and the role that harm inflicted by others plays in defining what is owed to individuals in this respect as a matter of justice.

Section 1 reviews the conflict and tension between achievements and freedoms in Amartya Sen's capability theory. Based on this distinction, Section 2 presents a typology of different forms of 'ability', it offers an in-depth assessment of the various ways in which it may exist, and the role that capability-formation plays in our understanding of the legitimate restriction of freedom. Section 3 explores two conditions that structure the process of capability-formation, namely, conversion factors and scaffolding freedoms. Section 4 presents the way in which my concept of 'ability' and the process of capability-formation reflects on the discussion on children's rights by looking at the particular claims that derive from the different forms of ability and how they relate to our evaluation of harm and the legitimate restriction of freedom rights.

1. Freedom and Achievements during Childhood

A core tenant of the capability theory as defended by Amartya Sen is that the appropriate objective of justice is to guarantee the substantial freedoms that allow individuals to function (1999). A basic concern of liberal theory lies in leaving an ample space for the individual to make self-determining decisions about what she considers valuable, and on how she decides to lead her life. A just liberal society must ensure that the conditions, protections and spaces are in place for her to be able to choose for herself how to make use of these conditions, protections and spaces. This is the reason why protecting individual freedom is structural to the liberal project. However, the fact that many goals that an individual intends to achieve are beyond her scope of action and ability may oblige the polity to guarantee achievements rather than freedoms in particular circumstances. Sen considers that children are a relevant example in this respect: although we are, in principle, concerned with ensuring the freedom of individuals (both as agency and well-being freedoms), the fact that children, from a larger to a lesser extent depending on their temporal condition, cannot exercise these freedoms or may not even have the willingness to exercise them, requires a revision of what rights have priority (at least in these or similar cases), and how far should we focus, thus, on protecting achievements rather than freedoms (Sen 1985: 204; Sen 2007). He argues that not only should we focus on children's achievements rather than their freedoms, but that, among achievements, our primary concern should be with ensuring their well-being.

In the same line as the differential model of children's rights presented previously (Chapter 6, Section 3.1), for Sen children should not only *not* have an interest in exercising fundamental freedoms, but even the *existence* of freedom interests during childhood is put into question. Agency in particular and freedoms in general require an ability and an intention to exercise them; if no ability nor intention are in place, there are no interest in having these claims protected as rights. He gives two reasons for why children ought to be ensured achievements rather than freedoms: first, because they are unable and unwilling to exercise many freedoms; and second, because the child's possibility of exercising freedom is preconditioned by the existence of certain basic achievements (say, being nourished, or physically, mentally and emotionally healthy) which should take priority (Sen 2007: 9). For example, a child cannot be allowed to exercise choice over whether to eat ice-cream for all her meals because allowing her to exercise this freedom can have negative implications on her ability to exercise freedoms later on. If a child is allowed to choose whether to attend school or not, this could lead to the child not acquiring basic competences such as reading and writing which are preconditions for, later on, being able to find a job, to be politically informed, and many others (see also Purdy 1992; Brighouse 2002). An expansion of freedoms, in this respect, does not necessarily entail an expansion of options and opportunities; it may

actually have the contrary effect of closing many doors that would otherwise be open. Choices have costs, and having the right to choose ought to entail an ability to understand the costs and consequences that derive from these choices (Sen 1992: 59).

I intend to argue that, in the case of children, the relation between freedoms and achievements is not as a clear-cut as assumed by Standard Liberal approaches such as Sen's. Of course, a certain tension and trade-off exists when evaluating between children's interests in freedoms and achievements but, I will try to show that their relation is not necessarily dichotomous but can be, rather, complementary. Not only do children's ability and willingness to exercise freedoms and to aspire to agency objectives that go beyond pure well-being vary widely due to external conditions, and based on their particular embodied, temporal and adaptive frameworks (as will be shown later on), but a child's interests in freedom and achievement may actually complement each other if the appropriate external conditions and support are in place.[90]

There are four possible scenarios for the relation between achievements and freedoms (see Figure 6). The vertical axis reflects the scope of freedoms that a child is allowed to exercise, and the horizontal one highlights the achievements in both agency and well-being to which a child has access. The relation between these two axes distinguishes four possible scenarios: Ø, (stagnant), in which neither freedom nor achievement are provided; F, (laissez-faire), in which there is a negative correlation between freedoms (enabled) and achievements (restricted); A, (coercive), in which an opposite negative correlation occurs between achievements (ensured) and freedoms (restricted); and, finally, FA, (optimal), in which both freedom is enabled and achievements realised.

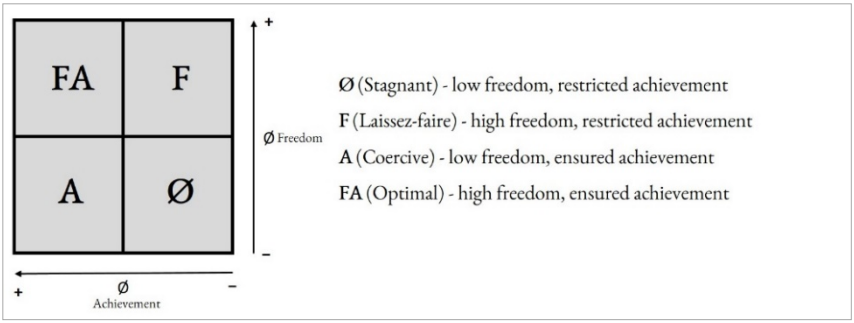

Figure 6. Interaction between Freedoms and Achievements. Source: Hart and Brando (2018).

[90] For a thorough analysis of the relation between freedoms and achievements during childhood, and its implication for educational practices, see my Hart and Brando (2018). What is left of this section, and certain parts of this chapter are partially based on that research.

A child's particular condition may lead to her having a life structured within one of the four scenarios in the freedom-achievement diagram. At the lower-right space, we encounter the worse scenario, in which a child is neither ensured achievements nor her freedoms (stagnant). Low protection from risks, lack of provision of the conditions and resources that allow the child to be healthy and cared for, and restriction of her freedom, leave the child in a position in which her freedoms are constrained and her achievements unfulfilled. At the upper-right side of the diagram, we find scenarios in which children have their freedoms enabled, while not having their achievements protected (laissez-faire). While the child exercises her freedoms without unduly restrictions, being free to choose what to eat and wear, where to go, what to do with her life, and who to associate with, she is not protected from risks that stem from her particular vulnerable condition. Children living on the streets, some children in the inner-city in many U.S. urban areas, or those with little adult guardianship and control are the most some examples of children living in this scenario. The case of street children is very relevant in this respect. They tend to have a very large scope of freedoms; not only choosing where to live, where to work, or what to do, but also making use of their participation rights in order to voice their concerns, to organise among themselves in order to improve their condition, and to work in tandem with adults and organisations that may foster their claims.[91] However, their freedom does not tend to transform into a larger achievement vector (at least not in exponential levels); they are still lowly protected from the risks that come from living in the streets, from the harms that their health may incur, and from having a minimum standard of well-being in general. Freedom comes at a price, and the particularly vulnerable position of children can make this price rise even higher.

On the lower-left side of the diagram, we find children who have their achievements protected, while having their freedoms restricted (coercive). This is the standard scenario in which we imagine children living, and in which we traditionally consider that they should live.[92] By limiting their exposure to risks, to making their own choices, or to having a say in their affairs, children are protected from the potential harms to their achievements that may come from their exercise of freedom. This is supported by strict provision of the conditions that makes children's achievement flourish. They are nurtured well from an early age, they receive appropriate food both at home and in school, they receive care and protection from the adult population, and tend to be enclosed in "safe spaces" which ensure low risk of harm

[91] This can be considered close to the scenario which Firestone (1970) considered as giving the most sincere view of who children actually are (see Chapter 3, Section 1.2).

[92] Standard Liberal views of children's rights would probably locate children in this scenario (see Chapter 6, Section 4).

to their physical, mental and emotional well-being. This is the standard scenario in which we conceive the life of children, at least until they reach their teens: we should protect them from harms, and provide them with what we consider good for them, regardless of the cost to their freedom.

The Standard Liberal conception of what we owe to children (close to the coercive space) stands on the assumption that there is a necessary negative correlation between freedom and achievement. Children are in a scale between being free *or* having their achievements protected, thus, any increase in a child's freedom necessarily implies a reduction in her achievement vector. There is, however, a fourth possible box in the relationship between freedoms and achievements: the optimal (FA) space. Although the relationship between freedom and achievement does entail a trade-off to a certain degree, a scope of action exists in which negative correlation is not the only possible outcome. A child's achievement vector is high, while her freedoms are not curtailed in this scenario. That is, a child is not only granted freedoms which allow her to take control over her life, voice her needs, interests and how to achieve them, but all this is done while ensuring that she is physically, mentally and emotionally protected.

Allowing children to reach the FA space seems to be the appropriate objective for any rights-based system that intends to do justice to the full space of fundamental interests that an individual may have. Focusing exclusively on freedoms is analogous to leaving children on their own, without the support and tools that they may require in order to pursue and achieve their own achievement standards. Their particular vulnerabilities, dependencies and inabilities makes them susceptible to many harms to their achieved well-being. However, focusing exclusively on achievements many not only arrest the child's ability to take control over her life and to play an active role on her own development, but also may even limit certain mechanisms and processes that stem from the child herself, which can better ensure her achievement goals to be fulfilled.

2. Three Forms of Ability: Capacity, Competence and Capability

Two interdependent features define in which of the four freedom-achievement scenarios a child lives: one internal to the individual, and another grounded on external factors. The internal element is tied particularly to the child's level of ability to exercise freedoms, which conditions the possibility of her freedoms affecting her achievement vectors. The external element comprises the social factors which condition a child's possible abilities, her development and her protected achievements. When we talk about 'ability', we tend to take it as an existent or inexistent feature. That is, either a child is able to ride a bike/make a

political decision/choose what food to eat, or she is unable to exercise each of these freedoms. I wish to explore the possibility of devising a deconstructed version of what an 'ability' is, in order to show the various degrees in which an individual may be taken as (un)able to exercise a given freedom.[93]

When dealing with the issues of childhood, two different forms in which a person's agency (understood as the ability to make choices for oneself in a self-determining way, and realise them) are considered: as a potential ability in the process of development, or as acquired agency. John Rawls, for example, argued that a basic characteristic of what is to be a human being is having the capacity for a sense of justice and a capacity for developing a conception of the good. These latent endowments that all humans possess from birth are distinguished in Rawls' account from an individual who has the capacities for a sense of justice and for a conception of the good factually developed, realised and exercisable (Rawls 2001: 19). In a similar vein, the three approaches to children's rights presented before[94] take this same intuition as the grounding feature which justifies the differential treatment of children: they take the agency endowments of human beings as existing either in a latent form as potential abilities, or as factually realised and exercisable. A child is one who has the latent potential for agency but who still is unable to exercise it, and the adult is one who is endowed with agency and exercises it. Freedom rights, in this respect, are conditioned by the developed ability to exercise agency, implying that it can be legitimate to limit them for those who are not full agents.

I do not intend to reject this basic claim. It seems perfectly straightforward to argue that if a certain freedom requires an ability to exercise it (meaning that an ability is required for the freedom to not cause grave harms to oneself or to others), it is justified to ensure that only "able" individuals are allowed to exercise the given freedom. However, the process through which a latent ability becomes a realised ability is not a blanket affair, and most approaches that deal with this boundary between being "able" and "unable" do not offer a clear answer to how they conceive this process taking place (Gasper 2002: 446-447; Crocker 2008: 171). The process of development through which latency becomes achievement is not straightforward (Alderson and Goodwin 1993). How do we pass from a latent endowment to the actual ability to exercise it? This is a particularly important question to address in the case of children whose temporal framework as developing beings implies that they are in a constant evolving state. Children's abilities have to be understood as necessarily dynamic and

[93] Mhairi Cowden offers a similar account of the child's process of ability-formation, while not relying on the capability approach but on a Hohfeldian account of rights. See Cowden (2016: Ch. 4)

[94] Chapter 6, Section 3. See Brighouse 2002; Brennan 2002; Feinberg 1980.

adaptive; this process of adaption and development is what should be accounted for.[95]

Some simple examples. A five-year-old child clearly has the latent capacity to read, but this does not mean that she is able of doing so. She may have the cognitive and reasoning endowments required for developing reading skills, but if she does not have contact with written material, if she is not taught the basic procedures that allow her to transform visual icons into sounds and concepts, there is no possibility of the child's potential capacity to read to become anything else than that: a capacity. This applies to all ages and stages of life. In my present circumstances, I have a latent capacity to surf but the actual skills that I would require to be able to exercise this capacity are not in place: I do not live nor spend long-enough times by the sea, I do not own a surfboard, I have never been motivated to pursue surf as a hobby, and I do not have the least idea of what I must do if I find myself in the water with a surfboard. To understand how these latent capacities can become actually exercisable, one must look at the process through which potentialities become realised: the process of capability-formation.

The concept of 'ability' ought to be deconstructed in order to show the process through which an "unable" person becomes "able" to exercise a certain function. Returning to the vocabulary developed by capability theorists, what we have in front of us is the process through which biological latent endowments can become functionings through the existence of capabilities to function (Crocker 2008: 174). That is, an 'ability' is more than simply an internal power; it implies having the appropriate conditions, and developing the skills and behavioural inclinations which allow one to exercise a given function.

Martha Nussbaum (1999; 2000) was one of the first to offer a clear understanding of the different forms in which one might be considered as "able" through her distinction among three types of capabilities. The first form in which one can be considered as "able" is by having *basic capabilities*, which comprise all the innate equipment and latent powers that are required to exercise a certain function. Since birth, we are endowed with the sight and sound-making skills required for most human actions (such as reading, or speaking a language), we are also endowed with the basic capability for reasoning and social interaction. However, the existence of basic capabilities does not ensure that one is actually able to read, to speak a language, or to rationalise in any meaningful way, if one does not develop and transform these innate potentials into *internal capabilities*. The latter encompass the mature acquisition of certain basic functions which ground a person's ability to do and to be; one is "able" in the level of internal capabilities if one has the aggregation of all the elements internal to the person which are required for her to function in a certain way. Not only can I see, but also I have the

[95] See for example Sadlowski (2010) defending the development of capabilities as the foundational claim of justice for children. See Peleg (2013) for a similar claim based on a rights-based discourse.

internal capability to understand the meaning of symbolic language, allowing me to transform sounds and images into words and concepts, thus, being internally capable of reading. Nussbaum's last form of 'ability' are *combined capabilities*. Although the possession of internal capabilities ensures that an individual has everything she requires *within herself* to exercise a function, combined capabilities emphasises the *external conditions* and supports required for this function to be meaningfully exercisable: I may be internally capable of reading but if I do not have access to any written material, or if I am not allowed to read by my legal or social system, then I do not have a combined capability (Nussbaum 1999: 44; 2000: 84-85).

For terminological clarity, I wish to leave aside Nussbaum's various terms for labelling the different forms of capability, and distinguish levels of ability between capacities, competences, and capabilities to function.[96] A *capacity* includes all the basic endowments, innate material and latent potentials that allow us to exercise a function. What distinguishes, for example, between a toddler's and turtle's ability to speak Catalan is that the toddler has the capacity to do so, while the turtle does not.[97] The toddler's capacity to speak Catalan, opposed to the turtle's incapacity, is the first form in which a being may have a fundamental interest in having a certain function protected as a right. Beyond capacities, a *competence* implies the existence of matured skills, be them physical, mental or emotional, required to exercise a function. Being competent implies that, if allowed to exercise a function, one would succeed (Cowden 2016: 43).[98] The capacitated toddler and a Catalan native speaker, in this sense, are distinguished by the latter's competence to speak Catalan opposed to the former's mere capacity. Acquired competence, in this sense, may transform the particular ways in which the competent individual's interests are protected as rights.

But there is still a final distinction. An individual can be a competent Catalan speaker but may have this freedom restricted due to external constraints (think of Catalan speakers under the Franco regime). This is what the term *capability* intends to portray. A capability encompasses both the acquired competences and the external conditions required for being free to exercise one's competence. Take the case of being able to ride a bike: a *capacity* to ride a bike implies that I possess all internal endowments required to exercise this function. Having a capacity, I cannot actually ride a bike but, provided with the appropriate environment, physical and mental development and training, I will be able to do so. The *competence* to ride a bike implies that this potential has been achieved. I have now learned to

[96] Alternative terminologies exist in the literature for conceptualising the different level of ability. See, for example, Dowding (2006) or Cowden (2012, 2016).

[97] This is an amended version of Cowden's example (2016: 41-42).

[98] For a thorough analysis of the distinction between capacity and competence, see Cowden (2012; 2016: Ch. 4).

keep my equilibrium; I have the physical strength and the security in my abilities which allow me to ride a bike effectively. Finally, the *capability* to ride a bike implies that I am not only competent enough to do so, but that the external conditions and freedoms that actually allow me to bike are in place. At the most basic level, I must have the freedom to ride a bike in order to have it as a capability; if law forbids me from riding a bike, I would not have the capability. In addition, there are material conditions that must be in place in order for me to ride a bike: I must have a bike that works and accommodates to my size, and there must be roads.

To recap:

(i) Capacity: the counterfactual ability to function; one is in possession of all the fundamental cognitive, physical and emotional endowments required to exercise a certain freedom; i.e. I have all the internal endowments required to surf waves.

(ii) Competence: the possession and actual realisation of all the latent capacities required to function; i.e. I have learned the equilibrium and swimming skills required to use a surfboard in the water.

(iii) Capability: the substantial freedom to exercise a certain function; understood as the possession of the required competences, and the existence of the external conditions required to function. Following Sen, I consider 'freedom' as analogous to capability (Sen 1999);[99] being free to do X implies having ensured all internal and external conditions required to be able to do X; i.e. I have the capacity and competence to surf, and I also have access to a surfboard, to the sea, and am allowed by my legal and social system to freely exercise this function.

As mentioned before in this manuscript, capabilities are the objective to which we should aim when considering what we owe to individuals as a matter of justice. Ensuring that people are able to do and to be what they consider as valuable by having ensured the internal and external conditions required to achieve this, is the appropriate metric to which justice should aim. Nevertheless, the fact that capabilities depend on the protection and promotion of both the latent capacities and the acquisition of competences, demands looking at the particular interests that may be involved in me being "able" to differing degrees. Ensuring capabilities demands having the conditions that allow capabilities to form and develop. The strong dependence between functions, capabilities, competences and capacities implies that a concern with one requires the protection of the other. In order to explain what this entails

[99] This is in the same line of Schmidt's (2016) Ability view of freedom, in which "To be able to J [...] implies having both the internal ability (physical, cognitive, etc.) and the external resources and opportunities (absence of external restraint, monetary resources, etc.) to J. Being able to J is considered both a necessary and sufficient condition for being free to J." (Schmidt 2016: 187).

for our discussion on rights, it is necessary to explore what is inside each of these concepts, how they relate to each other, and the particular processes through which a person is able to achieve them. The following section explores the process of capability-formation, and will introduce the particular protections, provisions and freedoms that must be in place in order for this process to take place. Of particular importance are the conversion factors and the scaffolding freedoms that allow capacities to turn into competences, and the latter into capabilities.

3. The Process of Capability-Formation

Creating capabilities is the appropriate objective to which we should aim. It is the duty of a liberal political system to ensure that the conditions and substantive opportunities are in place for a person to be able to be and to do (achievements) what she deems valuable for her own life. This is the evaluative space in which our fundamental interests dwell (Sen 1985). However, I have argued that if one has a substantial interest in a given function and is not able of realising it due to un-acquired abilities, it can be legitimate to protect the expected achievement directly instead of the freedom to achieve it. This section argues that an "unable" individual is owed more than just the achievement that she is unable to realise for herself. Her particular condition in the process of capability-formation implies the existence of other fundamental interests that an individual may have: first, that her development of the required capabilities for her to take control over her achievements later on will be secured (linked to her temporal condition as a developing being with future interests); and second, that her freedoms (in the present) will not be unduly restricted simply because she is not fully able to exercise them (linked particularly to the adaptive potential inherent in the human condition). Beyond the three types of ability mentioned in the previous section, two relevant features structure and determine the process of capability-formation: conversion factors and scaffolding freedoms. The process from having latent capacities to developing fully-fledged capabilities requires the appropriate protection of these two forms of support in order to allow individuals to become substantially free.

In order to achieve a function through one's own freedom, one must convert one's latent capacities into acquired competences, and the latter into capabilities (see Figure 7).[100] What

[100] There is another factor that conditions the achievement of a functions, which is not tied to development of abilities (in the strict sense), but rather linked to the person's character. It comprises all the motivational elements which are needed for achievement (see willingness, aspirations, motivation). These motivational features are determined to a certain extent by the social environment (for example through the social promotion or disregard for the exercise of a certain function, and the possible restrictions that limit its plausibility). See on aspirations

this entails is that any deliberation about the freedom rights that are legitimately owed to an individual has to account for the conditions that allow this freedom to exist, and the process through which these can be achieved (as capabilities). Conditioning the process from capacity to competence to capability are two elements: first, the *conversion factors* that allow the development process to move forward; and, second, the *scaffolding freedoms* in the zones of proximal development (ZPD) which fuel the transition between types of abilities in the capability-formation process.

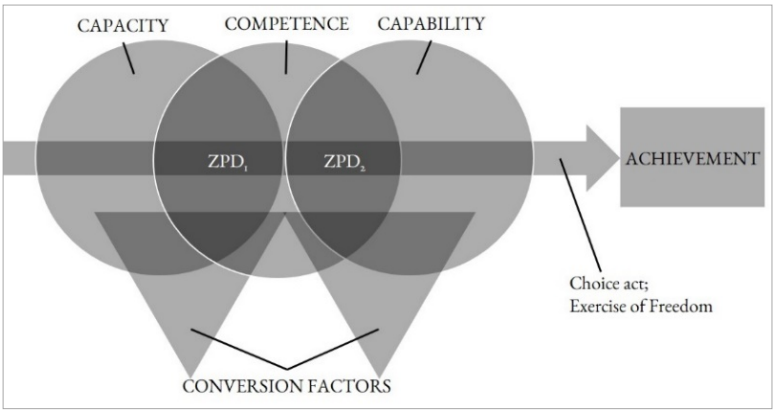

Figure 7. The Process of Capability-Formation

3.1. Conversion Factors

Capability-formation is a socially-conditioned process; it is enabled and fostered through conversion factors. Not only are we all framed within a social world which embeds our abilities in our social environment, but the particular dependencies of vulnerable individuals makes the social conditions in which their development process takes place of structural importance. Conversion factors can be defined as the necessary instrumental pegs that allow a person's internal endowments to be transformed into actual capabilities through the existence of the appropriate external conditions. It is not only the internal resources of an individual, nor the external conditions alone what fuel the capability-formation process; the

Hart (2012; 2016); on motivation and development see Deci et al. (1991). To a larger extent, however, motivational features are tied to innate characteristics - the personality and genetic traits of the individual. There is abundant psychological evidence on the role that genetic endowments play in framing the character, overall personality traits of an individual and how this conditions her achievement vector. See Pinker (2002: 372-378); Plomin (1990); Bouchard (1994). My account of this feature in Ch. 4, Section 2.

particular interaction between the individual and the external world determines how this process evolves (Wolff and de-Shalit 2007: 173). As mentioned before (Chapter 4, Section 2), the adaptive abilities inherent to the human life imply that the individual's particular condition influences how the external conditions affect her, while, simultaneously, the external conditions frame how the individual's development process takes place. Conversion factors, in this respect, are that which allows the individual's capability sets to exist and expand.

Conversion factors range from the most basic environmental requirements for survival (such as the existence of water, food or oxygen) that keep us alive, to social conditions, provisions and support of various kinds (infrastructure, education, social norms, power relations, customs, institutional arrangements, rights, etc.) (see Gasper 2002; Lessmann et al. 2011; Robeyns 2006; 2017: 45-47). Conversion factors trigger capability-formation in two ways: by providing the resources and external conditions that allow *the conversion of capacities into competences*, that is, ensuring internal conversion of latent abilities into their realisation through the acquisition of the necessary skills and behaviours (physical, mental and emotional); and, second, by ensuring *the external conditions that allow competences to convert into capabilities*. To exercise a capability one requires legal protection of this freedom, access to infrastructure and resources, and a social environment that enables its exercise, among many others (Biggeri and Santi 2012: 378-380).

Take, as an example, the role of conversion factors for an individual's ability to read: conversion factors are required both to transform a person's capacity to read into a competence (through education, socialisation, protection of cognitive capacities, etc.); and they are required for converting the competence into a capability or freedom (through its promotion, accessibility of reading materials, right to freedom of thought, expression, access to information etc.). Without conversion factors the capability-formation process is unachievable: not only is a child's transformation of her latent capacity to read into an actual competence conditioned by many conversion factors, but, very importantly, conversion factors are structural to a person's transformation of competence into actually exercisable capabilities and freedoms. Think of a society as Margaret Atwood's Gilead in *The Handmaid's Tale* (1986): we find here a whole country of women who do not have their capacities thwarted and who have acquired all the competences required for reading, but who live in a socio-political system in which reading is forbidden to them (it is not only frowned upon, but it is prohibited by law); these women have the competence to read but are not ensured the conversion factors required for turning these competences into capabilities and actual freedoms.

The conditionality of an individual's capability sets on conversion factors that sustain, promote and enable both the transformation of capacity to competence, and competence to

capability shows how rights may be required in order to protect fundamental interests of an individual at different stages of ability. A child can have her interests harmed by not being provided with the conversion factors required for her to maintain her capacities, develop competences or have access to capabilities.

A fundamental element to note when assessing the fundamental interests that come with differing degrees of ability, and the required conversion factors to fulfil these interests, is that the particular condition of an individual demands variation in the conversion factors provided. Amartya Sen's critique to utilitarian thought and to resourcist measures of equality (such as Rawls or Dworkin's) is that the ability of differently-positioned individuals to convert external resources and options into competences and capabilities varies depending on their particular vulnerabilities, dependencies and social needs (Sen 1992: Ch. 5; 2009: Ch. 12). The same external conditions that make the streets safe to walk for an adult may not be sufficient to ensure that children and certain disabled individuals (or even animals) can safely use these spaces. Many external conditions that are usually assumed to be of fundamental importance for adults to be able to convert competences into capabilities (say, for example, monetary resources) may be absolutely or almost absolutely useless for a young child. This means that, when assessing the way conversion factors ought to be framed in order for them to protect and enable the fundamental interests of differently-positioned individuals, we must understand the plurality of ways in which social conditions may affect these individuals with particular inabilities and vulnerabilities (be it due to sex differences, socioeconomic status, or cognitive and physical inabilities), and the structural social and institutional context that must be in place in order to ensure the overall enabling of conversion (through entrenched freedoms or rights and securities, for example) (Robeyns 2005: 99; Comim et al. 2011: 8-9).

In other words, understanding how children's capability-formation process may evolve implies taking their adaptive condition seriously, and understanding how the particular situation of the child demands different conversion factors in order for capabilities to develop (Clark and Ziegler 2014: 217). The social conditions in which an individual is embedded are structural to what is owed to them: neither can she develop in a social vacuum, nor can a one-size-fits-all mechanism ensure that the varied requirements of differently-positioned individuals are met (Comim et al. 2011: 8). An equilibrium must be found between what is needed to ensure that the fundamental interests of children are met (in general), and the peculiarities of the child and her milieu which force a revision of our abstract theoretical models in order for them to adapt to the actual conversion of external provisions and protections into competences and capabilities (Baraldi and Iervese 2014: 48; Biggeri and Santi 2012).

3.2. Proximal Development and Scaffolding Freedoms

The pedagogue and cognitive-psychologist Lev Vygotsky (1978) introduced the concept of 'zones of proximal development', as a way of linking the various stages that comprise the process of capability-formation during childhood through the role that experiencing freedom may play in this process. According to Vygotsky, our learning abilities, and the development process from capacities to competences to capabilities is not an achieved/not-achieved situation, but is rather strongly dependent on *the transition periods* which allow us to move from one level of ability to another (See ZPDs in Figure 7, above). The basic idea behind 'the zone of proximal development' is that our potential to move to greater functions and to form more advanced competences and capabilities is strongly tied to us being positioned in situations in which we still do not have the full ability to exercise a function but in which we are allowed and fostered the freedom to do so in collaboration with others (Vygotsky 1978: 85-86, see Ch. 6).

John Dewey's account of 'experience' presented in previous chapters highlights how having spaces of freedom is fundamental for the process of capability-formation actually to take place (see Dewey 1938). It is the necessity of confronting "unable" individuals with their own inabilities, and allowing them to push the limits of what they can do through their own active engagement in their learning and development processes which fosters higher achievements, and the growth of mature competences (Dewey 1920: Ch. 4; 1938: Ch. 3). Dewey considers that this applies to all types of competences and capabilities. Only through the actual experience of exercising freedoms can the ability to exercise them develop (be it for learning how to ride a bike, or to more complex agency freedoms such as deliberating between right and wrong, choosing a career path, etc.) (Dewey 1897: 108). Development and learning can be best enhanced by leaving space for the child to experience freedoms that she is still not "able" to exercise, and by enabling her active participation in her own capability-formation. What this means is that freedom is not only an end-goal of exclusive exercise for those fully able to use them (as the Standard Liberal views would argue regarding agency rights); rather, freedom is one of the fundamental pegs whereby the capability-formation process of an individual is enabled and fostered. According to Dewey, an individual cannot have the "mental attitude" required for being free if she is not allowed a space of "movement in exploration, experimentation, application" of her inabilities and lacks (Dewey 1920: 357). Making the most out of the adaptive condition of a child requires making her an active agent in the construction of meaning, experience and identity in her own life.

This is what Jerome Bruner (together with other colleagues) labelled as "scaffolding" (see Bruner 1960; Wood et al. 1976; Ninio and Bruner 1978). As a critique to developmental

theories which argued that the freedom allowed to a child in exercising tasks had to be equated and matched to her presently acquired abilities, Bruner showed through his studies on the acquisition of language skills that this system actually stagnates and arrests the development of higher competences and more complex skills. Contrary, he argued that it was actually by locating children in situations and tasks that are beyond their present level of ability what fosters their engagement with the task at hand, learning through their own confrontation with previously non-encountered problems (Wood et al. 1976). Children develop much more stable systems of deliberation, understanding and self-government by being allowed to confront their own inabilities and by learning from it through their exercise of non-achieved freedoms (Bruner 1960: 33). Scaffolding, thus, entails the permissibility (and even necessity) of locating individuals who are yet unable to exercise a certain competence in situations in which they overcome their inabilities through their own experimentation of failure, risk and success.

As to our concern with understanding the role that achievement and freedom rights ought to play for "unable" individuals such as many children, we must understand the tension between what a child is able to do, what a child is free to do, and the "scaffolding zone" (or zone of proximal development). If a child does not have the competence to ride a bike, it seems counter-intuitive to give her a two-wheel bike and leave her free to stroll down a mountain trail by herself. If, on the other hand, we have a child who does have the necessary capacities and is in the ZPD, but who is not given the freedom to exercise them, make mistakes and take risks, it may be that she will never be actually capable of riding the bike herself (Freeman 1997: 367).

As seen in the previous chapter with the Pentagon model (Chapter 7, Section 5), inability to exercise a function is not a sufficient condition in itself to justify the restriction of freedom. The complex interaction between the five elements in the evaluation of legitimate restriction of freedom demands an assessment of how an actor's particular level of ability relates to the magnitude of harm, the voluntariness of the victim (which may be the actor herself), and the reasonableness of the purpose for action. However, why leave space to an unable individual to be free to harm her achievements? Would it not be better simply to put a threshold which enables less threat of harm to those who have particularly vulnerable achievements? Although this question may seem irrelevant to some readers at this point, it seems important to repeat the two core reasons why we may consider illegitimate to restrict certain freedoms even if risks of harm are incurred.

First, and foremost, it is legitimate to allow an individual to harm herself due to the intrinsic value that a liberal theory grants to freedom and agency as fundamental human interests. We have a fundamental interest in being free and in choosing how our lives develop. Choosing our own path, making mistakes and taking risks to our achievements (if we so wish)

is a cornerstone of the liberal project. We must be allowed and enabled to construct ourselves and our identity, rather than having an externally imposed account of who we should be and what we should value. Although we are embedded beings, conditioned by our social environment, we are not passively controlled by our social structures, as if we were blank slates; we are adaptive creatures who should be allowed to navigate our environment, transform ourselves and our milieu based on our particular character and inclinations which frame who we are and what we value.

Second, there is an important instrumental reason to enable freedom to those unable to exercise it: the process of capability-formation requires the exercise of freedom prior to competence in order for it to move forward. Spaces of freedom (scaffolding freedoms) are necessary for the individual to become competent in their exercise. If I never take the training wheels off my bicycle, I will never acquire the competence to ride it. I need to fall, I need to scrape my knees, and I need to fall again in order to learn to ride my bike. It is my own experiencing of my own limitations, my potential and my mistakes what allows me to develop the agency required to take control over my life.

4. Freedom Rights, Harm and Capability-Formation

Following once again Amartya Sen (1985; 1992), the goal of justice should lie on ensuring the fundamental capabilities of individuals; that is, a liberal theory of justice system should be concerned with guaranteeing that people have and develop the substantial freedoms which allow them to choose which functions to achieve and how to do so. If the end goal is ensuring capabilities, then we must understand the claims that derive from each particular form of ability (capacity, competence and capability) and those that arise from the conditionality of both conversion factors and scaffolding freedoms. Abilities may condition freedom if an ability is necessary for an actor to exercise it, or if an ability is necessary for the victim of potential harm to endorse and consent to a given risk. In other words, the intuition behind inabilities as legitimate constraints on freedom stands on the fact that the legitimacy of certain actions is conditioned by the actor's abilities, and the victim's voluntariness to the risk of harm.

The claim that a person who is "unable" to exercise a certain freedom (meaning that her exercising it would lead to causing relevant harms to herself or to others) should not have the right to exercise it has been a recurrent theme in this manuscript and in the debate on children's rights in general. It is this fundamental claim tied to the basic assumption that children are "unable" which defines the Standard Liberal conception of children's rights. This chapter has aimed to show that what we understand by 'ability' and consequently by

children's 'inability' must be disaggregated. Being able to exercise a freedom, our ability to understand the risks, stakes and consequences involved in taking control over our choices, is not a blanket affair, but rather a matter of degree (Crocker 2008:178). Reaching a stage of competence or capability that makes me able to make the most effective and beneficial use of my freedom is a gradual process conditioned not only by the external resources and supports, but by the individual's own internal resources, characteristics and available opportunities. Ability to exercise freedoms cannot come from an environment devoid of opportunities to exercise it, and certain forms of freedom may be required, even in the case of "unable" persons in order for the full ability to develop later on.

4.1. Rights and Dynamism

A core element in my revision of the concept of 'childhood' in Chapter 4 was the need to understand the dynamic and plural aspect inherent in the human condition, and its special relevance in certain stages of development. Dynamism is especially important when evaluating children's fundamental interests by taking into account their temporal framing as malleable and developing beings. This chapter aimed to show the dynamism inherent in the process of capability-formation. An individual's abilities are not fixed or static, but rather evolve through particular experiences, social interaction and physical, mental and emotional growth (Lansdown 2005: 15), passing through different stages which require a particular external response whereby allowing it to move forward. This particular emphasis on the dynamism inherent in childhood requires an evaluation of rights which considers this variability. Children are neither fully unable, nor fully able. Fluctuation in their abilities and vulnerabilities is a great part of what their conditions is grounded on, and a system of justice must be able to consider this variability.

A theory of rights which intends to take children's condition seriously, must be able to address their temporal and evolving condition (Eekelaar 1994; Liebel 2014: 69-70). I consider that Joseph Raz's own account can be of use in this respect. Raz (1984a; 1984b) argues that the particular prescriptions which come with a right (what duties and prohibitions it imposes, what freedoms it allows, what provisions it secures, etc.) is not fixed by the right itself, but rather conditioned directly by the fundamental interests which the right is supposed to protect (Raz 1984a: 199-200). What this means is that the particular normative content of a right transforms in accordance with what the particular condition of the individual requires in order to have her fundamental interests protected. Going back to the 'reading' example, if I have a right to read, what this right entails changes depending on my particular condition. If I am a toddler, my right to read may imply that I should have all my cognitive capacities protected in order not to have my future freedom to exercise this right

thwarted; if I am a child with linguistic capacities, my right to read may imply that I be provided with the resources and education which would allow me to develop the competence to read; and if I am a competent reader, my right to read implies my having access to reading material, and having ensured my freedom to realise this function without unduly interference. A dynamic understanding of the normative content tied to a given right intends to account for the plural ways in which the fundamental interests of differently-positioned individuals can be protected without the right in question changing. I will explore below how this dynamism could be framed based on the levels of ability tied to the process of capability-formation.

4.2. Capacities and Rights

Despite their particular vulnerabilities, dependencies and inabilities, children are (normally) endowed with all *capacities* required to be agents, and to exercise all human-ascribed rights and freedoms. It seems obvious that certain particular rights ought to be conditioned by a person having the capacities required to exercise them. While a bird does not have rights to education due to its incapacity to gain anything from it, a child cannot have a right to fly due to her incapacity to gain any capabilities from its exercise.[101] However, a bird may have a right to fly and not to be caged, and a child (of any age or stage of ability) has a fundamental interest tied to her capacity to benefit from an education. It is the individual's temporal interest in developing this capacity into a capability what grounds her fundamental interest in having this capacity protected from harm, and fostered in its development (see Jaworska and Tannenbaum 2013; 2014).

What does this mean in practice? Take a new-born baby who has barely any cognitive or physical competences. She cannot benefit from having political freedoms, from being allowed to choose what clothes to wear, what food to eat, or what religion to follow. However, the fact that she has the capacity (in the sense of latent endowment, and potential development) to exercise these freedoms and rights, can justifiably impose certain obligations on others to ensure that this capacity is not harmed. Feinberg's concept of C-rights (Feinberg 1980) presented previously (Chapter 6, Section 3.3) allows us to understand the types of rights that may be linked to capacity. We have, on the one hand, the protection (in the sense of non-violation) of the full breath of freedoms and rights that are granted to human beings; and, on

[101] One may argue about the potential obligations to *create* capacities for unable beings. The case of children with disabilities is relevant in this respect: although they may be incapacitated to ever exercise certain fundamental rights and freedoms, we believe that based on their humanity we have a duty to ensure that they have the conditions which would allow them to exercise certain rights even if they are incapable (see Arneson 2014; Nussbaum 2006: Ch. 3).

the other, we have both the protection and provision of the fundamental resources and states of being (conversion factors) required to sustain these capacities. In the most basic sense, rights to capacity must encompass all fundamental survival and development needs which allow a person to stay alive and grow. It is being in a stage of capacity what justifies an individual being entitled to the protections and provisions which she cannot ensure for herself (see Lansdown 2005). A stage of capacity is at the same time a positive and a negative stage. It is positive in the sense of implying the existence of the endowments and the latent potential required to exercise rights and freedoms; it is negative in the sense that the individual is still unable of protecting these rights for herself, or of ensuring the conditions that would allow her to develop them.

This introduces the fundamental role that conversion factors play in sustaining capacities. Children depend on their social environment and on the conditions that it offers in order for them to be able to maintain and actualise the capacities that they naturally have endowed. The social conditions do the task of sustaining the dependent child's *capacity* set, and, later on, enabling its conversion into specific *competence* and *capability* sets. In its most basic sense, all (or most children) are born with the capacity to grow-up and develop. It is part of the human nature to develop larger physical, emotional and cognitive ability sets. However, if a child is deprived of the nurture, nutrition, health and education required to sustain her capacities, it may be that she will not only not be able to develop capabilities, but she may not even live till then. The vulnerable and dependent condition prominent during childhood puts the responsibility over the child's capacities to become capabilities strongly in the hands of the social environment. A toddler cannot control her health, nutrition, care and education; she is embedded in certain social and environmental conditions (her parents, her community and her government, among many others) that frame her conversion capacities, and that play the structural role in ensuring to her the conditions that will allow her to have that which she requires to survive and develop (Crocker 2008: 172-174).

This entails, in short, that when we frame the full set of rights and freedoms through the capability-formation process, we can justify the need to grant particular protections and achievement rights to children and other vulnerable and dependent individuals based on their capacity to bear the full set of rights and freedoms. It is not that individuals who have not reached more developed forms of ability do not have the full set of rights and freedoms; they simply have them in a different way (Feinberg 1980; Raz 1984a). By acknowledging a child's full set of rights and freedoms, we argue for the role and responsibility that others have to ensure that these rights are protected, in a form that coincides with the stage of the process in which the individual is.

Amartya Sen has defended a way in which we could conceptualise the various fundamental freedom rights that ought to be ensured. Thinking of freedom simply as an

individual having full control and power over it by exercising it herself does not account for the plural ways in which a freedom may be protected and fostered (Sen 2007). Considering freedom rights as solely tied to individual control is blind to the fundamentally embedded and dependent nature of human life and of freedoms. Not only are social conditions and conversion factors required for freedom actually to exist, but these do not only take the form of resources or institutional structures, but also of *people*. We cannot reasonably be expected to realise all possible capabilities required for exercising our full set of rights and freedoms; humans constantly rely and depend on other humans for securing and achieving what they value in life (Sen 2007: 9).

Howard Cohen has argued that what happens in this capacity stage of capability-formation is that particularly dependent and vulnerable individuals *borrow* the ability of better placed others in order to have their full set of rights and freedoms ensured (Cohen 1980; 1982: 152). In order to be free to fly a plane, I borrow the capabilities of a pilot; in order to have my health ensured I borrow the capabilities of doctors; and in order to have my rights ensured in a court of law I borrow the capabilities of a lawyer (Cohen 1982: 184). Inability, in this sense, is not a sufficient justification for restricting particular rights. Just as we, adults, must borrow the abilities of others to exercise some of our most basic rights and freedoms (meaning that we are not beyond the stage of capacity in relation to certain abilities, and that we may be as dependent as a child in the exercise of certain freedoms and rights), children as well must be understood as placed in a similar circumstance as to a larger set of capabilities, rights and freedoms (Cohen 1982: 153). It is a person's relevant dependence on others, and her prominent susceptibility to harm to her own inabilities what justifies particular protections and achievements, and the permissibility of borrowing others' abilities. Lack of ability, in this respect does not justify the restriction of the right in question; it actually imposes a larger obligation on others to ensure that the right will be fulfilled.

4.3. Scaffolding Rights and the Pentagon Model

The stages of transition between different types of ability are structural to understanding the particular fundamental interests that children may have tied to their developing condition, their particular potential and limitations. Simply protecting an individual's capacities does not ensure that they will be able to develop them into actual competences. If we consider capabilities as the objective to achieve, we must ensure that the whole process of capability-formation is enshrined and protected. This is the reason why assessing the particular interests that individuals have in the stages of transition is structural to our assessment of rights.

In order to be able to exercise many rights and freedoms fully, we require the acquisition of certain competences necessary for their exercise. The transition from capacity to

competence is not necessarily natural and endogenous. Contrary to Piaget's account of moral and rational development, which defended that the natural development process of children led to them acquiring more mature competences endogenously, Jerome Bruner (1960) claimed that this change was strongly conditioned by the way the process of transition developed. This seems clear enough. A child who has the capacity to read or to ride a bike requires certain forms of support and freedom in order to convert this capacity into a realised competence. The social conditions and conversion factors (education, socialisation) which allow a child to transform her innate potential into actually exercisable competences are structural to the capability-formation process, and should be understood, thus, as core interests that any person has.

As mentioned before, the zones of proximal development (ZDPs) are the transition stages in which the individual shifts from one form of ability to another. The transition from capacity to competence is one from latent potential to realisation. Competence requires its exercise, and the ZPD highlights the necessary spaces of freedom for the child to experience the exercise of competences she is yet to acquire. ZPD_1, (see above Figure 7), is a stage in which a certain trade-off and balance between achievements and freedoms must be provided for the individual. On the one hand, the lack of competence of the child to exercise a given function (say ride a bike) puts her achievements at risk if she is allowed to exercise this freedom; however, without being allowed to exercise her freedom within the ZPD_1 there is no possibility for the child to actually develop and convert her capacity into competence.

Beyond freedoms, ZPD_1 comprises as well a large set of necessary achievement rights. Just as capacity implies a fundamental interest in having the basic needs for survival and sustainment of capacities protected, transition to competence requires that the social conditions and conversion factors needed for development of competences to be in place as well. In other words, I am not only entitled to have my possessed capacities protected, but I am entitled as well to have the substantial opportunity to develop them into competences. Schooling, in this respect, plays a fundamental role as a tool for ensuring competence-acquisition. Our current system requires education and socialisation in order to convert our present potentialities into actually exercisable competences. In order for my right to read to mean anything, the conditions that allow me to develop this competence must be in place.

How should we understand the scope of freedom and its justified limitations in ZPD_1? The Harm principle must ground our evaluation of the legitimate boundary between restricting and allowing freedoms. We could distinguish, thus, between three different regimes of freedom rights conditioned by three different forms of harm that they may cause: non-harming freedoms, harming freedoms, and indeterminate-harming freedoms. When talking about the legitimate restriction of freedom, we must understand the impact that its exercise may have on our conception of harm in order to assess whether its restriction is

justified or not.[102]

A first element when discussing the relation between harm and freedom is noting the role that *voluntariness* of the victim plays in our understanding of justified risk of harm. With adults as with children, we consider that a lack of knowledge over the potential harms that may befall from one's (or another's) exercise of freedom is an important element in the assessment of whether the action may be legitimately restricted or not. A person who intends to cross the street without knowing that a car will crash into her if she does so is a simple example. Regardless of a person's age, it seems perfectly justifiable to protect the person from crossing the street, thus, restricting her freedom right to do so, simply because we have fundamental information that she does not have over the magnitude of the harm that will come with the action.

When we talk about the justified restriction of freedom for children we tend to use cases such as these, of irrevocable harms, as an example. I cannot allow my child to try how broken glass tastes like, or to explore whether she can fly from the window like Superman, because the harm that will be caused by this exploratory freedom is not only irrevocable but also unavoidable. The agent of freedom is not only under an extremely high risk of harm, but she is also unaware that this harm exists (thus, being considered as a fully non-consenting and non-endorsing victim). It seems clear that cases such as this justify restrictions of freedom. I would include under this heading most harms that are not only irrevocable in the present, but also those which lead to high-gravity and high-probability of harm throughout the life course (corrosive harms) (see Lansdown 2005: 52).

However, all freedoms do not necessarily entail irrevocable risks, and we can conceive of certain freedoms not being tied to harm at all (understood as the wrongful and adverse setback of fundamental interests). Non-harming freedoms, following the Pentagon model, go beyond harm not being caused *at all* by an action (meaning that its gravity and probability are both -2); it implies, merely, that the sum of the evaluation of the elements (magnitude of harm, voluntariness of the victim, ability of the agent, and reasonableness in purpose for action) is less than zero. Therefore, not only should harmless actions, strictly speaking, be enabled, but potentially harmful actions which do not reach the threshold of legitimate restriction should be enabled as well (see Chapter 7, Section 4.1). If the core legitimising reason for limiting freedom is the risk of harm it may involve, and if the threat of harm is inferior to the required standard for restriction, then nothing can justify it being limited.

[102] I will be assuming here the three forms of harm as based on the Pentagon model presented in Chapter 7, Section 4): non-harming freedoms are those whose quantifiable sum is less than zero, harming freedoms are those whose quantifiable sum is more than zero, and indeterminate-harming freedoms are those whose quantifiable sum is zero or indeterminate.

Take the case of sexual exploration prior to sexual maturity presented before as an example. Children from a very early age start being curious about their sexuality and their genitals, and, beyond taboos and religious dogmas, a child being free to explore her sexuality, even if she does not know nor understands what it means or how it is done, seems absolutely harmless.[103] Even if we are to consider that certain competences are needed to become factual sexual agents, a "sexually incompetent" child experiencing and experimenting with her sexual agency is a victimless affair which not only does not inflict any harm (of any kind to her or others), but it also has the instrumental value of fostering and promoting the development of a better understanding of the human body and human sexuality, thus improving her abilities as a developing agent. Of course, the child in the transition from sexual capacities to competences may require guidance, support and information from the part of the social environment in order for her to be better equipped to develop this capability (and this should be ensured as part of the conversion factors required for the capability-formation process), but support and guidance does not imply impositions and restrictions, which may actually arrest and harm the development process, rather than protect it.

In between harming (>0) and non-harming (<0) freedoms we find the thorny category of *indeterminate harms* (=0, or unquantifiable). These can be divided into two camps: first, freedoms that can harm an incompetent person, but whose harm is not irreversible (low-gravity and high-probability harm); and second, freedoms that can gravely and irrevocably harm an incompetent person, but whose probability is very low (low-probability and high-gravity harm). The example of a child who is slightly allergic to peanuts trying a Snickers' bar is an example of the first (low-gravity/high-probability); and a case of a child being kidnaped if allowed to walk alone in her surrounding neighbourhood is a case of the latter (low-probability/high-gravity). How to deal with these cases? I consider that a final answer cannot be given for all cases; this is precisely the reason why the Pentagon model leaves sums equal to zero as indeterminate. The particular condition of the child, her particular character, and the particular social environment in which she dwells all condition the response to how much freedom should be permitted in these particular circumstances. The *reasonableness* element (the third-person value-judgment of the purpose for action), as was argued in the previous Chapter (see Chapter 7, Section 3.3), was included in the Pentagon model precisely with these cases in mind, and it tends to work as deciding feature in many instances. However, the model still leaves the possibility of evaluations to lead to an indeterminate result, and I consider this legitimate due to the inherent indeterminacy in the evaluation of many real life scenarios. As

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

a rule of thumb, however, I would be inclined to take the presumption on the side of freedom as a guiding principle. Nevertheless, this is entirely up for discussion, and I do not have the space to take a principled stance on this issue as it would require a case-by-case analysis.

Much has been discussed about the particular issues with children having the right to exercise choice over various phenomena that affect them greatly (i.e. divorce settlements, adoption, consent to medical treatment) (see, for example, Alderson and Goodwin 1993; Archard and Skivenes 2009). But, as this manuscript intends (very humbly) to present only the basic groundwork structures which allow us to revise and evaluate the legitimate treatment of children in a liberal political theory, I will not present my own personal account of how my theory, and my model for the legitimate restriction of freedom, applies to particular debates.[104]

4.4. Competence Rights and ZPD_2

Reaching a stage of competence for a given ability implies that a person has already acquired all necessary internal requirements and skills (be they physical, cognitive, social or emotional) which are needed to exercise a given freedom. Standing on the assumption that a person's incompetence may justify restricting freedoms, then, acquiring the necessary competences to exercise a given freedom works as the boundary above which no restriction of the same freedom can be legitimate. This is the reason why ZPD_2 is in direct contact with ZPD_1 (see above Figure 7): once a person has passed the transition period from capacity to competence, she immediately embarks in the experiential transition from competence to capability. What does this mean? That once a competence level is reached the social conditions and conversion factors required for a person's competence to become substantial freedoms and capabilities become fundamental interests. A competent person is entitled to have the external conditions which ensure that she is able to exercise the freedoms tied to her acquired competences. Beyond this point, individuals should be in a position in which they are not only fully capable of choosing whether to achieve the capability sets available to her, but the socio-political system ought to ensure that this is indeed actually realisable.

A relevant point to remind here is that the process of capability-formation is a *particular* process. That is, a child does not convert all her capacities into competences and into capabilities at once; rather, different capabilities develop at different times, and many can be

[104] My condition as a human dependent on monetary conversion factors for bodily sustainment implies that the scope of my work is conditioned by the available resources for research. I intend to address the application of my theory of rights to particularly relevant cases of childhood, once my fundamental interests as a vulnerable embodied being are protected through further funding opportunities. I thank, in advance, the KU Leuven Research Council for providing me with post-doctoral funding to carry this out after completing my PhD.

considered as pre-requirements for the development of others. Different competences develop at different moments of a child's life depending on the child's own character, her adaptive condition, her social environment, and the development of previously acquired competences and capabilities (Comim et al. 2011). In this respect, the process of capability-formation portrayed above in Figure 7 transforms into a single branch for the larger system of a child's development process (see Figure 8), in which the acquisition of certain competences and capabilities in time T_1 expands the vector set of other possible capabilities, opening the door to other potential freedoms available to the child in $T_1 + n$ (Ballet et al. 2011: 31), while closing others, indefinitely. What this entails is that the child's competence and capability sets at a certain moment predetermine the scope of other possible capabilities sets available later on. And this is not only conditioned by the individual's internal development, but, very importantly, it relies directly on the social conditions and conversion factors which allow or restrict the expansion of these sets through three mechanisms: the *protection* of the child's basic needs that derive from her dependence; the *provision* of the fundamental external conditions that allow her to achieve competences; and the *promotion* of her freedom and agency to exercise certain capabilities.

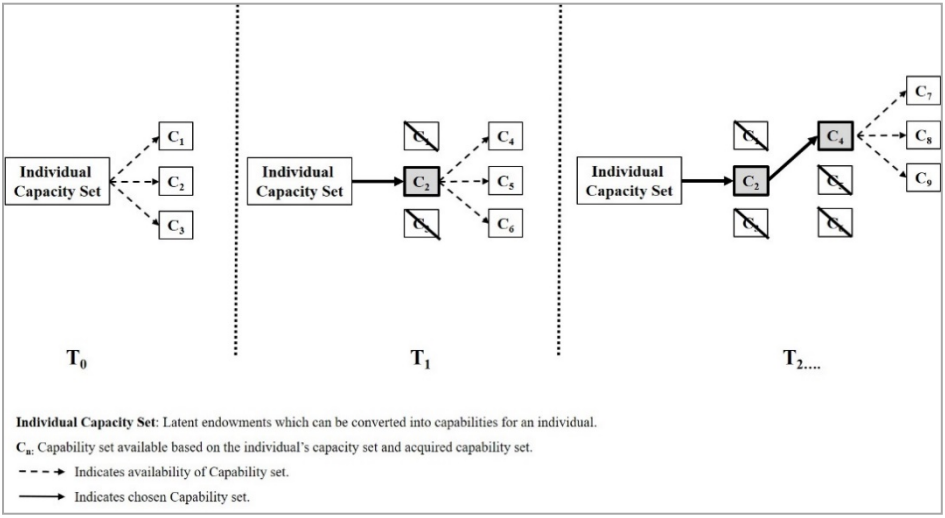

Figure 8. Change in Capability Sets through Time

This means that, even if the acquisition of a competence A implies the elimination of all restrictions of freedoms conditioned by the acquisition of competence A, this does not mean that there are no justified restrictions on the freedoms conditioned by the acquisition of

competence B. This is because, first, different freedoms require different competences to be effectively exercised; and, second, because the existence of certain capabilities is conditioned by the prior acquisition of other capabilities (and functions) (Sen 1992: Ch. 4; Crocker 2008: 167). The process of capability-formation, and the whole of the child's development process stand on a plural and dynamic relationship between various interdependent capabilities and functionings that precondition the existence of other capabilities and possible functionings.

Capability theorists have tried to emphasise this structural feature for an appropriate understanding of the dynamic relation between different capabilities (especially when applied to child development).[105] Many capabilities and achievements are pre-requirements for the acquisition of other capabilities, and the achievement of other functionings. As mentioned above, certain basic achievements (such as being alive, nourished and healthy, for example) are necessary functions that precondition the exercise of any other freedom. Therefore, in order for almost any freedom to exist, certain achievements must be in place. This applies at other levels as well; many capabilities and achievements become competences, which are required for the appropriate development of larger capability sets. Let us take 'reading', again, as an example. First, 'reading' can be understood as an achievement: 'to read' is clearly an achieved doing of a person. When I read, I exercise my capabilities for understanding a written language. However, 'reading' can also be understood as a competence required, for example, to acquire independent and plural information from newspapers or other written press (for the right to freedom of information). But this is not a capability just yet; for my reading competence to turn into a capability for reading independent press, I require the conversion factors ensured by a political system that actually promotes freedom of press, and which ensures to me the conditions and permissions to read. This competence can also be a precondition for driving, for being a lawyer or a doctor; my possession of reading competences grants me one of the required functions needed to exercise any of these roles, but other various competences must be acquired as well in order for me to be free (to have the capability) to drive, to operate on a brain or to become a judge.

The acquisition of competences thus opens various doors in our understanding of the process of capability-formation. On the simple model, it leads to one's fundamental interests in having the legal, social and institutional conditions required to exercise the acquired competences as capabilities; and, on the dynamic model, it paves the way to a plurality of new potential capabilities with their own ZPDs and their own interests which should be protected as rights.

[105] See Clark (2005: 1361); Lessmann (2009); Ballet et al. (2011); Comim et al. (2011); Wolff and de-Shalit (2013).

I explored the conflict and trade-offs between freedoms and achievements during childhood, and the role that 'inabilities' play for our intuitions regarding the balancing of these two fundamental interests. I introduced the process of capability-formation, intending to clarify the types of ability (capacity, competence and capability) that an individual may have, whereby being able to exercise a certain freedom, and the particular dynamism that a theory of rights requires in order to understand the way in which the particular interest of an individual (based on her particular condition) frames the normative content of a right, transforming it depending on the particular form of ability she possesses. I argued that two fundamental elements ground the possibility of an individual to expand her capability sets: first, the existence of appropriate conversion factors and social conditions; and the promotion of scaffolding freedoms which are instrumentally required for "unable" individuals in the zones of proximal development to exercise their agency.

This chapter explored the particular ways in which we may relate the Harm principle (as the legitimising force for restricting freedom) with an individual's inabilities. It argued that the legitimate restriction of freedom is framed by our evaluation of particular actions through the Pentagon model, that depending on the particular abilities of an individual, different freedoms may be legitimately restricted, and various protections and provisions may be in order. The next chapter intends to deal with the particular interests that individuals may have to be protected from harm caused by others. The relevance of the debate on children's rights does not only come from our fear of children being potential agents of harm, but also due to their particular susceptibility of being harmed *by others*. Their vulnerability, dependence and malleability makes children especially prone to various forms of harm which demand particular protections and rights which are not granted to less vulnerable, dependent and malleable humans. I will explore certain fundamental concerns in the way we should conceptualise the harm imposed on children by others (namely through the concepts of oppression and domination), and will look at the particular claims of justice that derive from the particularly vulnerable status of children in our socio-political world.

IX. Faces of Harm: Child Agency, Oppression and Domination

"We are victims of political, economic, cultural, religious and environmental discrimination. We are children whose voices are not being heard."
The Children's Declaration at the Children's Forum 2002

The previous chapter explored the dynamism inherent in the content of rights, especially how it relates to the legitimacy of restricting freedom and conditioned by harm and the process of capability-formation. This chapter focuses on harm, but looks at it from a different angle: namely, it explores the ways in which third parties may harm individuals ascribed to the 'childhood' social group, and evaluates the legitimate restrictions *to others* in order to protect the rights of children from having their fundamental interests wrongfully setback by others.

The process of capability-formation is structural to understanding the fundamental interests of individuals in general, and is of particular importance for the assessment of the potential harms that may be inflicted on children, due to their temporal condition as highly malleable beings. Children are, without a doubt, one of the human groups most susceptible to harm caused by others (if not the most). Their particularly vulnerable and dependent condition, plus the long-term impact that their present harms may have on their whole life-course, demands an exploration of the ways in which their social and political system may threaten their fundamental interests. This chapter dwells into the ways in which 'childhood' (as a social group) threatens the fundamental interests of children. As mentioned before (Chapter 3, Section 2; Chapter 4, Section 1), the particular condition of children as highly vulnerable, dependent and malleable beings should not turn into them being more

susceptible to harm merely due to their vulnerabilities inherent to their embodied condition. Understanding vulnerability as a fundamental part of what it means to be human implies the need to enforce a system which reduces the correlation between harm and vulnerability through the abolition of the sources of harm, and the assurance of the conditions which reduce pathogenic vulnerabilities (Chapter 3, Section 3).

When we think about harms to children, the focus tends to be on threats to their fundamental well-being interests. Physical and emotional harms that children may suffer by the hands of the adult population are at the centre of public policy. Violence towards children, and harms that derive from the lack of protection of their fundamental well-being interests (for nourishment, care, shelter, etc.) are clearly wrong, and children must be protected from them. This is the standard for current child-centred jurisprudence, and little controversy comes from advocating for their protection (Appell 2009): when talking about harm to children, we are especially concerned with the ways in which their well-being may be threatened. Their fundamental interests in agency, however, and the recurring harms that may (and tend to) be inflicted on these agency interests, do raise many important questions. How should we frame the harms and injustices that may be inflicted on children's agency interests? How are we to understand what counts as a legitimate and illegitimate restriction of a child's agency based on external threats?

This chapter explore, first, the fundamental ways in which children's agency should be understood, and the most relevant socio-political mechanisms through which it is being harmed. My contention is that a child's agency interests tend to be harmed based on their ascription *as children*. Their dependent legal status, and their passive treatment as political subjects, threatens their interests in self-development and in self-determination. Tied to the process of capability-formation presented in the previous chapter, harms to self-development are reflected on wrongful thwarting of children's capacities and competences (manifested through mechanisms of dehumanisation and oppression); and harms to self-determination act on the illegitimate restriction of children's capability interests (manifested through mechanisms of domination and unfreedom). I will show that the most problematic forms of agency harms during childhood can be framed as harms to self-development or to self-determination, due to the corrosive and incapacitating effects they have over the child's life. The chapter then looks at the mechanisms through which these harms are inflicted on children. It first explores how the concept of *oppression* can be applied to the self-development harms inflicted on children, highlighting the particular way in which it leeches off the child's adaptive condition. It then looks at the concept of *domination* as framing harms to the self-determination interests of children.

1. Capability-Formation, Self-Development and Self-Determination

I wish to analyse the harms that affect child agency as harming two fundamental agency interests tied to the capability-formation process: harms to self-development and to self-determination. Each of these is mirrored by one mechanism of harm: oppression, for the harms to self-development; and domination, for the harms to self-determination. In this section, I intend only to highlight some of the most relevant points that will be dealt with in more detail in further sections. First, I justify the use of oppression and domination as applying to harms to children's agency interests, and will briefly introduce the general structure through which we could conceptualise the harms that affect childhood, relating it to the fundamental interests tied to the process of capability-formation. The fact that children are endowed with agential abilities to varied degrees, demands a thorough analysis of the ways in which these may be unjustly restricted. Most of the issues that are dealt with in the rest of this chapter are considered to be systemic harms tied to being a 'child'; that is, they are harms inflicted on children *as a social group*. This does not mean that all individuals ascribed as 'children' suffer from these harms in the same way (inequalities among children are prominent). Children are not ascribed only to the child social group; their particular condition, and the particular harms that they suffer are intensified through a complex matrix of identifications and groupings (such as gender, race, culture and socio-economic status) which can (and do) reinforce the particular vulnerability of many children, increasing their proneness to have their agency interests harmed (Mayall 2002; Lancy 2015). However, I will argue, that there are certain inherent tendencies in the treatment of children *as a group* which facilitate the existence of these threats in general.

While it varies greatly depending on the particular condition of the individual, children tend to be more vulnerable to harms than most other human beings. They tend to be physically, emotionally and mentally weaker, and they tend to depend strongly on others for their survival, their well-being and their development. This non-social vulnerability and dependence of children implies that they are highly likely to suffer great harms if other people do not protect children from them. Not giving food to a child, not ensuring proper nurture, shelter or general care, are some of the most relevant ways in which children may be harmed due to lack of protection to their non-social vulnerabilities and weaknesses. As human beings, children ought to have these interests protected by others due to their inabilities to protect them for themselves. These types of interests to having their non-social vulnerabilities protected, are interests in *achievements* (particularly for their well-being). Because of their inability to protect themselves, the adult population has an obligation to protect them in their place. These achievement interests are usually tied to *capacities,* as mentioned in the previous chapter (Chapter 8, Section 4): the adult population has the responsibility to ensure

that the capacities endowed to humans are not harmed during times in which a being is unable to protect them and foster them for herself. Living a human life requires having certain "basic interests", foundational to being human, protected. Being kept alive is clearly the first; having one's bodily integrity ensured, being nurtured, and having one's physical and mental health protected are all "basic interests" without which one would not have the capacities required to exercise any right or capability (Shapiro 2012: 294).

Beyond these relatively straightforward well-being achievement interests, two other forms of harm can be inflicted on children, and which have a more controversial nature: those that derive from the lack of protection of their competences (and their acquisition), and those tied to their capabilities. As mentioned in the previous chapter, rights have dynamic prescriptions depending on the particular condition of the individual (Raz 1984a; Raz 1984b). Taking literacy as an example, a child (or any other person for that matter) has an interest in having the capacities to read protected, in developing the competences necessary for reading, and in having the freedom and access to resources (capability) required to be able to read. These three separate forms in which the content of a right is framed are all necessary to protect an individual's interest in being literate, and each implies a different form in which this interest is protected. An interest in capacity locates children as *passive recipients* of the protection to exercise this right; the internal endowments needed to exercise this freedom must not be violated or harmed. Interests in competence and capability, on the other hand, require (to a larger extent) the inclusion of children as *active subjects* and agents in its protection and exercise; an interest in competences and in capability requires the active involvement of the child in their formation and exercise by, for example, learning to read in school (competence-acquisition), or having access to books and other reading material. Although it may be that the actions required in order to ensure the protection of these claims originate in agents external to the child, they are there in order for the child to have the opportunities to self-develop and self-determine her options and freedoms.

With this in mind, harms to competence-acquisition are those that restrict a person's development and self-development interests; her abilities to experience, to learn and to adapt according to her life-interests and choices. Harms to capabilities are those that restrict a person's self-determination interests; her freedom to decide over her own life, and to control her own options and choices. While harms to capacities can be understood as harms that derive from lack of provision of positive obligations by others; those tied to competences and capabilities, despite having a positive aspect as well, are basically grounded on negative obligations not to interfere with a person's own development and determination of her life; that is, *with a person's agency*.

2. Agency, Oppression and Domination

A cornerstone of any just society, in the words of Nelson Mandela, is the assurance of every person's "freedom to be free, the right not to be oppressed" (Mandela 1994: 751). If we consider that all individuals in a just society deserve a fair treatment and equal respect, we must ensure that each person is protected from oppression, which inhibits the development of capacities and competences; and if we consider that everyone should be "free to be free," the socio-political forces that restrict a person's decision-making powers over her own life should be abolished (Young 1990: 58). Self-development and self-determination are core characteristics of a human life, and limiting them arbitrarily is a grave injustice reflected in two phenomena: oppression, which wrongfully and adversely affect an individual's interest in self-development; and domination, which wrongfully and adversely affect an individual's interest in self-determination (Young 1990: 37).

Oppression and domination can seem harsh terms to use for portraying the harms that affect the agency interests of the child population. It could be more reasonable to state that *some* children in particular circumstances do indeed suffer from forms of oppression and domination: take the case of children working in exploitative conditions, or of girl children being forced to stay out of school and marry in their tweens. These are clearly extreme cases of oppression and domination that may affect the child population; however, I wish to look at the ways in which these cases allow us to reflect on how these faces of harm are widespread in the childhood social group, and how children positioned in less extreme conditions may be suffering from milder manifestations of the same injustice. Nevertheless, before getting into the particular case of childhood, I wish to distinguish and define the two faces of harm addressed in this chapter.

As mentioned above, the most prominent forms of harm and injustice tend to point to an unjust restriction on a person's freedom (Sen 1999); if I cut your limbs, if I do not allow you to go to school, or if I limit your political rights, I am wrongfully and adversely restricting your ability to exercise fundamental human capabilities. However, the harms that are inflicted on you by me carrying out these actions are of a different type, some harming either your capacities, competences or capabilities. Following Iris Marion Young (1990), I distinguish the faces of harm that affect a person's various fundamental interests by differentiating between oppression and domination. The capacities, competences and capabilities required by a person to exercise a certain freedom can be all inhibited, and each is affected by a different harmful force.

On the one hand, oppression manifests itself mainly as a force that affects *the acquisition of competences* (Young 1990: 40). People who are oppressed are, in principle, *suffering from an external constraint which restricts their ability to acquire and develop the competences*

required for exercising a given freedom. Capacities, as well, can be harmed by mechanisms of oppression but, I argue, in a more extreme way than in the case of harms to competences. The gravity of the harm inflicted by thwarting a person's capacities tends to be more irreversible than in the thwarting of competences; competences can be arrested and retrieved (maybe with some loss to them) but capacities are the fundamental endowments that structure any possible exercisability of a freedom. If a person has her lower limbs cut-off, it is her basic capacity to walk that is being irreversibly harmed. Obviously, the competences and capabilities that require legs would be restricted as well, but the harm is inflicted directly on a person's core potential to walk; on her capacity. It is a dehumanising mechanism of harm in that it blocks at its root a person's ability to exercise fundamental human functions. Domination, on the other hand, does not necessarily entail a restriction on a person's capacities or competences; its force does not necessarily inflict a change or restriction of a person's internal endowments (Young 1990: 38). Its core characteristic is *the inhibition of capabilities through the restriction of a person's freedom to self-determine her choices, actions and decisions*.

3. Oppression during Childhood

From the 1960s onwards, the meaning of oppression has expanded from one that typically pointed at forms of coercion and restriction imposed on a group of people by a tyrannical political power, usually personified by a few individuals' actions, to refer to a wider set of coercive mechanisms exercised through the "unquestioned norms, habits, and symbols" of well-intentioned socio-political systems such as those of liberal societies (Young 1990: 41). Iris Marion Young, following Foucault, argued that in order to understand the full breadth of injustice that affects our present societies, we must go beyond the standard understanding of oppression as deriving from absolute sovereign powers who coerce the population, and explore a more systemic understanding of the ways in which oppression may arise.

In this line of argument, oppression highlights certain forms of harm perpetuated through physical or mental coercion to one part of the population through formal and informal systemic mechanisms and institutions. Ann Cudd considers four fundamental conditions that ground any act of oppression. First is the Harm principle: some wrongful and illegitimate form of harm must be imposed on a person or group in order for it to be an act of oppression (see Chapter 7). Second, oppression is enacted through collectives on collectives: that is, there are socio-political institutions and practices that perpetrate the harm on social groups (see Chapter 1). Third, a collective of individuals or institution must benefit from the harms imposed. Finally, the harm perpetrated by a systemic mechanism on a social

group is brought about through unjustified acts of physical or mental coercion (Cudd 2006: 25).

To these four conditions, I wish to add a fifth element tacit in Cudd's analysis but not explicitly mentioned as a necessary condition: the *self-perpetuation* of harm. Oppression implies, not only an act of harm by the hands of an oppressive source, but also, very importantly, a specific type of reaction by the victim of harm. The difference between various non-oppressive forms of harm from others that are oppressive lies in the fact that oppression works in a way that limits to a great extent the ability of the oppressed to respond and/or defend herself against the harm and its future iterations. This introduces the elements of voluntariness and ability mentioned before (Chapter 7, Section 3) into the picture: oppressive harms thwart an individual's ability to dissent with the harm being imposed on her. This can happen through material oppression – in which, due to the harms imposed, the oppressed is physically incapable of countering the present threat of harm or similar future threats; or through psychological oppression – in which the oppressed has been made cognitively or affectively unable to respond or react to the harmful act or its iterations (Cudd 2006: 22). The victim of oppression loses the ability to respond to and counter the oppressing forces that harm her because conceding and acquiescing to these forces becomes the most rational (and sometime only) option available to them.

Oppression, thus, implies that the harm caused is self-perpetuated, consciously or not, through the material or psychological incapacitation of the victim to reject the act being imposed on her, or to counter the threat herself. Natalie Stoljar argues that self-perpetuation is one of the most problematic elements of oppression because it demands its *internalisation* by the victim (Stoljar 2014: 227-228). Oppression's main goal is not, thus, the act of harm in itself, but rather the creation of the conditions which thwart the victim's capacities and competence to respond to harm, and which force the victim to perpetuate it. The act of coercive harm that leads to oppression may manifest itself in many different ways (it can be imposed on a person's physical, economic, social or mental conditions), but the structural element that joins them together is their power to coerce its victims into perpetuating the processes that harm them. Beyond the potential harms on a person's well-being that this may generate, it always implies a fundamental restriction on a person's ability to act as an agent or, especially worrisome for the case of children, to develop competences for becoming full agents. Oppression works as an internal bind on a person's agency by limiting, hiding or abolishing the possibilities of action and thought available to the victim.

This is why I have framed oppression as a harm to self-development interests. Oppression works through the destruction of the capacities and/or competences that a person requires in order to act as an agent and make choices. This may affect the victim of oppression either consciously or unconsciously. An example of a conscious victim of oppression, is the case of

restricting the development of competences through external threats (usually through violence): a girl-child living under Boko Haram rule, for example, may have her life and well-being threatened if she tries to go to school. This girl is being threatened to be killed if she goes to school. The threat itself, however, is not the core of oppression: oppression derives from her resignation, inevitable conscious submission and coerced endorsement to being excluded from having an education. In this case, even if the child believes that going to school would be beneficial for her and her life, the most rational choice that she can make due to the physical threats is to concede to reality and not further her development. An example of an unconscious victim of oppression, could be, for example, another girl-child who is made to believe that education is not an option for her. She is told (and ends up believing) that she does not have the intelligence to study, that her role is to take care of her family at home, or that women are meant to learn different tasks than those taught in school because that is what they do best. In this case, the child is not conscious of the force of oppression imposed on her; on the contrary, she fully internalises it and ends up endorsing it, believing it to be a choice she herself made.

Oppression affects an individual's fundamental interests by harming either her capacities or her competence-acquisition. Capacities, as mentioned in the previous chapter, are the inherent endowments that allow humans to exercise fundamental human freedoms and rights. They are the structure upon which the opportunities and capability-sets available to her are grounded. Harm to capacities affects a person's freedoms and agency at their root. If a toddler has her legs cut-off, she loses the necessary endowments that would allow her to exercise all freedoms linked with the use of legs even before she is able to carry them out (all freedoms conditioned by this capacity are lost from her available capability sets). This type of harm is oppressive due to it incapacitating the victim from escaping from it by herself, due to its thwarting of her development possibilities. Kenneth Clatterbaugh's conception of oppression as *dehumanisation* can well be linked with this type of harms to capacity (1996). He considers that "[t]o dehumanize a group is to deny that the members of that group possess the complete range of human abilities, needs, and wants that are valued at that time as important to a human being" (Clatterbaugh 1996: 295). While his concept of dehumanisation encompasses all restrictions to "human abilities, needs and wants", I prefer to narrow the concept to focus on certain *irreversible* restrictions; that is, restrictions to capacities. While harms to competence-acquisition may arrest or delay a person's abilities (the victim could still potentially escape from the oppressive force), harms to capacity, due to their focus on the root of a person's basic endowments, block any path for a person to escape from its force. It literally, takes away a person's capacity to act as a human in a certain sense.

Harms to capacity usually take the form of physical oppression, but they can work through forces on a person's mental or psychological state. The imposition of certain social

constraints can lead to an internalisation of the oppressive forces, restricting a person's capacity even to conceive the existence or exercise of certain freedoms or interests. Through forces of indoctrination, manipulation and the imposition of unfair socio-economic conditions, the victim reshapes her conception of herself, of her options and of her social world in order to adapt and accommodate to the external forces (Stoljar 2014: 229). Take, for example, the social constraints imposed on the child population through their grouping as 'children.' The young are reified as behaving in a certain way (i.e. irresponsible behaviour, lack of control over their actions, incompetent to realise certain actions) and they may come to internalise the prejudices and biases that are used to categorise them, believing them as true, and acting in accordance to their prescriptions (David 2013: 3). It transforms the behaviour of the oppressed victim so that it conforms to how she is perceived by the oppressor, thus, not only restricting the victim's own ability to develop an un-reified conception of herself, but also making her into a consenting volunteer of the oppressive force, thus, perpetuating its existence (Freire 1970: 29; Liebow 2016: 713).

In short, the harms that derive from oppression can affect individuals in different ways while always working through the same mechanism: the coerced incapacitation of a victim's ability (be it through thwarting of capacities or competences) to react to, and sometimes even conceive of, the act of harm that is being imposed on her.

3.1. Oppressive Adaption

As highlighted in Chapter 4, humans in general, and children in particular, are highly adaptive creatures. We adapt our behaviours, our ways of acting and of relating to others depending on the environmental conditions. Adaption is a fundamental element during human development in its first years. Children are endowed with the ability to adjust to the social conditions surrounding them in order to make the best out of the options they have available, and as a way to cope with the disadvantages they encounter. I have introduced the child's adaption to her environment as a fundamental feature for understanding what childhood is (see Chapter 4, Section 2). I highlighted the relevance of this adaptive condition but have not mentioned the potential harms that come with its existence. Children's malleability and adaptability is one of their great instruments of empowerment, but it can also be the source of one of its most problematic harms to their agency interests. The child's high receptivity to external stimuli makes her highly vulnerable to interiorising behaviours, desires and preferences that may thwart rather than enhance her agency interests. The experiences that the child interiorises during her first years can influence and even sculpt who they are, how they develop and how they behave (Adams 2008: 78). When the experience of their social world is framed in a way that does not allow them to take an active role in its

internalisation, it can reorganise and shape how they conceive the world oppressively.

As a rational response to restrictive conditions, a person can adapt her behaviours, preferences and desires in order for them to accord with the options offered by the external world. Jon Elster (1983: Ch. 3) famously portrayed this behaviour through the fox and sour grapes example: a fox, seeing that the grapes that he wants to eat are too far up the tree to reach, argues that they are probably sour and not good, thus, justifying his not attempting to reach them. This is straightforward example of what an adaptive preference is: a person adjusts her preferences and interests so that they coincide with her available options (Adams 2008: 14). Now, there is nothing necessarily oppressive in the adaption exemplified by the fox: there is no necessary harm inflicted on the fox, nor is there any constraint imposed by others on the fox's opportunity to get a hold of the grapes. However, if we include a bird into the picture, who, seeing that the fox wanted the grapes, raised them to a higher branch in order for the fox not to be able to reach them; or if the bird were able to make the fox believe that the grapes are unreachable when they actually are within his reach, then the consequent adaption carried out by the fox would not be so innocent. In these two latter cases, the fox would not be adapting to "objectively" restrictive circumstances; rather, he would be adapting based on the interests of another party. This is when oppression appears. Contrary to the first example of the lone fox, the bird and fox example introduces an external party acting through oppressive coercion in order to force the fox to adapt his preferences to it.

This amendment to the old fox and grapes story has been used by critical theorists to elucidate certain problematic forms of oppression prevalent in our present world. Namely, the imposition of material and psychological constraints by a powerful actor on a weaker victim's conception of her available options, in order for the former to sustain her power (Cudd 2006: 178). This phenomenon has been labelled in various forms by different authors (i.e. 'false consciousness,' 'adaptive preferences,' 'infiltrated consciousness' or 'desire deformation') but has maintained a common core as a fundamental oppressive harm to the capability-formation process of vulnerable groups and individuals.

In *Pedagogy of the Oppressed*, seminal work of liberation pedagogy written in 1970, Paulo Freire argued that the fundamental characteristic that defines the harm imposed by an oppressive force is the imposition on the oppressed party of a conception of the world and of social relations to which they must submit and resign; a "fear of freedom" (Freire 1970: 18). Through the material transformation of the external world, or through the psychological transformation of the victim, the oppressor creates and "mythicizes" the options and choices available to the victim, forcing her to adapt to the social conditions built by the oppressor (Freire 1970: 120). The fundamental element that derives from this understanding of adaption is that the victim's transformation of her behaviour and preferences does not originate from her active engagement with the external world, nor from her own experience

of the options and choices available to her (as was argued in Chapter 4); rather, the victim has her behaviour and preferences transformed through the deformation of the victim's *conception* of the external world and of herself by an external agent (be it ignorant or malevolent). This type of harmful adaption has been especially prominent when discussing the oppressive forces that develop from gender and racial injustice. John Stuart Mill, prefiguring these debates, argued that:

> All women are brought up from the very earliest years in the belief that their ideal of character is the very opposite to that of men; not self-will, and government by self-control, but submission, and yielding to the control of others. All the moralities tell them that it is the duty of women, and all the current sentimentalities that it is their nature, to live for others; to make complete abnegation of themselves, and to have no life but in their affections. (Mill 1869: 15-16).

Mill's quote highlights certain fundamental phenomena that are intended to be achieved through oppressive adaption: first, it intends to motivate compliance, endorsement, and submission of the oppressed victim to a certain conception of the external world and social relations (Benson 1991: 389); second, it demands compliance, endorsement, and submission of the oppressed victim to a certain conception of herself imposed by another, one in which she appears to voluntarily accept, consent and endorse her condition, and in which she comes to believe the value of her subordination and constraints (Cudd 2006: 17); and, thirdly, it intends to establish the cooperation of the oppressed victim in the perpetuation of the oppressive forces on others like her (Levey 2005: 129). This is especially prominent in the oppressive adaption suffered by both girl and boy children in order to further gendered discrimination, for example. Since very young age, the social world and options tend to be framed as to make certain ways of life, behaviours and preferences more accessible than others. Boys are enclosed in blue and red spaces and clothes, while girls in pinks and purples. Boys are offered to play with cars, building blocks and action figures, while girls are offered kitchens, dolls to take care of and make-up kits. Boys are taught to be brave, strong, not to cry and not to lose face, while girls are motivated to be kind, sympathetic, sensitive and collaborative. These are all methods of oppressive adaption into traditional gender roles; they establish the conditions in which boys come to adapt and disregard behaviours that could seem too "girly" and weak, while discouraging girls to question their role as home-carers. In a more general line, oppressive adaption intends to keep children "acting like children". Through the constant re-telling them that they are incapable and incompetent, they end up believing this conception of themselves imposed by others, thus adapting their behaviours and preferences in order to accord to how the social environment sees them. There is clearly

something troubling with these forms of adaption that are imposed by a powerful group on a vulnerable one in order to make the latter comply with the former's conception of the world and of themselves, especially if they are as unidirectional as those imposed by the adult population on the child population. Transforming a person's conception of herself in order for it to coincide with that created by another, unjustly restricts an individual's capacity to experience her world for herself, and decide for herself who she is and what she wants.

Nevertheless, it could be argued that, to a certain extent, adaption to external circumstances is not only the most rational response that a person can take in specific circumstances, but it may actually be beneficial for them. Certain authors have criticised taking adaption as harmful to the person who develops it by focusing on the realist and crude impact it can have on her life. Adaption is a human phenomenon required to compromise with the reality one lives (Sen 1985: 191). For the person who is merely trying to survive, rationally adapts her preferences and behaviour to those required in order to get the food she needs to stay alive. The boy from the inner-city forgets about his dream of being an astronaut because there is nothing in his social environment that shows him that it is possible that he will become one. And the girl in an orthodox religious household adapts to her education as a care-taker, and keeps herself attractive because she know this is the only possible way she will have any opportunities of finding a good husband. If we aspire to that which we cannot reasonably reach, we will risk losing any self-esteem required to consider ourselves as agents in our own life (Richardson 2001: 292-293). It has been argued that this may actually enhance a person's agency competences by allowing her to develop full cognizance of the conditions to which she is confronted, to bargain with her situation and, thus enable her to devise the best route to escape from her constraints (Baber 2007).

I agree and concede to the inevitability of the psychological response of adaption carried out by the victim. There is no doubt that if a person responds to a certain constraint through adaption it is because this may be the best way to further her interests and to protect herself from harms that may derive from not adapting. However, this should not bare any normative value when considering *the justifiability or unjustifiability of an act of oppressive adaption in itself*. The act of a powerful agent oppressively forcing a victim to adapt is wrong, and strongly harms the victim's fundamental agency interests. The fact that we see adaption as the least worst response (by the victim to the circumstances) is because we consider the coercive act which led to this situation as inherently harmful. Just because a slave responds with submission to and cooperation with her master due to the fact that this may be the most rational and beneficial way of reacting to an oppressive force, does not imply in any way that the act of oppression carried out by the master on the slave is legitimate (Archard 1993). That would be too much of a concession to make to coercive circumstances, legitimising most acts of oppression.

The example of resilience of street children, or children working in exploitative conditions may show the potential that adaption has for allowing a person to acquire fundamental resources to confront very restrictive or harmful social conditions (Ennew and Milne 1989; Milne 2015; Cook 2018; Gutwald and Bagattini 2019). However, we cannot say that the conditions these kids live in is justified simply because they have shown an enormous ability to react to it, and take something beneficial from it; even in these cases, the fact that external actors have coercively transformed the options accessible to these children in order to force them to live on the streets or to work under exploitative conditions is a harm and an injustice in itself. No positive benefit that these children may gain from these harmful experiences can compensate for their losses.

There is a second challenge to conceiving adaption as necessarily morally problematic, one which, namely, argues that adaption is an all-encompassing phenomenon (all identity and preference formation is context-sensitive and adaptive) (Levey 2005). Ann Levey argues that adaption should be understood more broadly, encompassing "not only the preferences we form in response to what is not available to us, but also the preferences we form in response to what is" (Levey 2005: 133). Adapting our behaviour and preferences to feasible options is an all-encompassing phenomenon which responds to restrictive external circumstances and to conscientious concessions to the limitations of a person's own abilities. Serena Khader, following a similar line of argument, has pressed for the need to distinguish between "inappropriately adaptive preferences" from those consistent with human flourishing (Khader 2011: 51). Individuals always pass through a process of adaption of their identity, behaviours and preferences based on their specific context and social world, and no moral harm is necessarily inflicted on a person's agential capacities due to this adaption; in some cases, it may even enhance them (Khader 2016). I believe that Khader's claim is relevant for the approach taken here; adaption should clearly not have any positive or negative connotations attached to it. A great part of what it means to develop, and to exercise one's agency in one's own life implies being capable of adapting to changing external circumstances (as was claimed in Chapter 4). However, Khader's focus on considering the negative or positive effects of the psychological process of adaption itself may be wrongly construed; as mentioned before, even if adaption is an all-encompassing phenomenon (and I agree with this claim), we must still be cautious in evaluating *the source of adaption* in order to know whether it comes from an oppressive force or not.

We cannot judge the goodness or badness of an act of adaption by looking at its content. For example, it would (and is) almost impossible to distinguish between a woman who, as part of her own active reflection on herself and her options, does not want to work outside the home, from another woman who has been forced by her social environment into staying at home and taking care of the children (Nussbaum 2000: 153). There is nothing necessarily

harmful or unjust in a boy's taste for the colour blue or for playing with cars and action-figures, or a girl's taste for pink and for playing with make-up and kitchen sets. The harmful oppression in a person's adaption is rooted on the circumstances which lead to adaption; it is linked to the *procedure* through which a person develops her identity, her preferences and her behaviours (Christman 2014: 216). If the procedure is coercive, then, adaption is a sign of harmed agency. This externalist understanding of how oppression manifests itself through adaption, first, avoids critiques of perfectionism because it does not say anything about the content of a person's choice; and, second, overpasses the problems of dealing with the subjective experience of an individual and her adaptions. Following an externalist approach to oppression, which focuses its evaluation in understanding the social and systemic mechanisms through which oppressive adaptions are formed, we can better understand how certain harms to child agency can be addressed, and what is problematic about them.

4. Domination and Unfreedom during Childhood

"*A rat in a maze is free to go anywhere, as long as it stays inside the maze.*"
(Atwood 1986: 174).

This section looks at a second way in which children may have their agency interests harmed: through the illegitimate restriction of their self-determination. Children are regularly restricted in their ability to decide for themselves, and have many of the freedoms allowed to the rest of the population thwarted. I explored in the previous chapter how these freedoms may be legitimately restricted based on the child's particular condition in the process of capability-formation, and on her vulnerability to harms caused by her exercise of freedom; here, I intend to look at how the particular vulnerability and dependence of children put them at risk of having their freedom illegitimately harmed *by others*. I consider how harms to agency interests in self-determination may be caused through mechanisms of *domination* (understood as the asymmetric power relation between children and adults), and of *unfreedom* (which is the result of the exercise of dominating relations).

4.1. Domination

The standard understanding of domination is grounded on the existence of a specific type of power relation between two groups or individuals (McCammon 2015: 1032). Namely, it stands on a relation of *radical asymmetric power* between them, in which A has the power to control and guide B's options and freedoms, while B does not have this power for his own options and freedoms, nor for those of A. For domination to exist, B must be in a *powerless*

position. She must *lack authority* over the exercise of her freedoms, and must *depend* on A's decisions over how (and to what extent) she can make choices (Young 1990: 56).

I begin my description of domination through its comparison and differentiation from oppression. As noted before, these two concepts have tended to be mixed in the literature, and sometimes even equated. It seems appropriate, thus, to understand what distinguishes them in order to lay bare what makes each of them salient for understanding the different faces of harms to agency interests during childhood.

A first difference between forces of domination and oppression is that the latter acts upon a person's capacities and competences, restricting directly the internal abilities a person has to exercise a certain function, while the former acts on a person's capabilities and freedoms. That is, domination does not thwart the ability of a person to acquire capacities and competences, but it imposes a bind on the possibility of a person *exercising* these capacities and competences through the imposition of external restrictions. It implies that A forces his will on the freedoms and choices available to B (Drydyk 2013: 255). A second, and important, difference between oppression and domination is that domination may exist *regardless of whether it is actually exercised*, while oppression requires its exercise (Goodin 1985: 195). Domination is structured on the asymmetric power relation between two parties; where B is powerless, and A has control over B's freedoms and options. It does not matter if A actually exercises his power and restricts the freedoms of B or not; the fact that he has *decision-making control* over B's options and freedoms is sufficient for it to be a dominating relationship (McCammon 2015: 1033; Pettit 2016: 10). What this entails is that the powerful party takes control over the decision-making authority of the dominated party. Take the case presented by Philip Pettit based on Henrik Ibsen's play *A Doll's House*:

> [T]he play features Torvald [...] and his wife, Nora. Within the culture and law of their time, every woman is subject to the will of her husband across a wide range of issues, being required to submit to his judgment in the event of any difference of view... [(Pettit 2016: 5)]. While he allows her to choose as she will, it remains the case that should he change his attitude, ceasing to dote on her as he currently does, then he would presumably interfere in those choices where he did not want her to be guided by her own tastes... It is Torvald's will, not Nora's, that is ultimately in charge of how she is to conduct herself. (Pettit 2016: 9).

Domination does not require Torvald actually to restrict Nora's freedoms; it is conditioned only by the existence of an asymmetric control on Torvald's hands over Nora's freedoms (Dagger 2005: 184). As will be seen later on, the action of exercising domination by A will be assessed through its impact on B's levels of *unfreedom*.

A third element that grounds domination is domination's necessary exclusion of the

victim from the institutions and processes that control her freedoms, and the dominating-party's (relative) unaccountability to the victim regarding the exercise of his power over her; this is what Christopher McCammon labels as "deliberative isolation" (McCammon 2015: 1046-1050). This is a structural feature of domination, and the main reason why its existence does not require its exercise; as long as B does not have control over the processes that decide on her freedoms, and as A's decisions rest unaccountable to B, then A stands in a position of dominating B (McCammon 2015: 1046). Deliberative isolation does not entail that A will never consult B regarding her own opinion about her freedom; it does entail, however, that it is *exclusively* up to A whether he wishes to consult B; A remains unaccountable because he both decides whether to consult B, and determines the final outcome.

Domination can take, and usually takes, a collective dynamic through a group's subjection and subordination to another group with more political or social power (Pettit 2016: 7). That is, not only is a slave dominated by her master (individually), but she (as part of a social group) is dominated by the social and political institutions that enable and perpetuate the domination of all individuals like her (Drydyk 2013: 257). This is especially relevant for understanding the ways in which one may frame the position of children in our society: domination is not exclusively tied to the power asymmetry of particular evil parents who subject their children to their will; it is linked to the socially accepted practices and customs, and to the political and legal mechanisms that allow and enable this asymmetry between adult and child to exist. In other words, it is tied to the particular normative commitments inherent in the characterisation of the social group of 'children'. If it were not for the systemic mechanisms and institutions that grant legitimacy to dominating relationships, there would be little scope of debate as to the legitimate limitations of these power structures. The socially and politically entrenched asymmetric power relationships raise important questions, and understanding the harms that may arise from them is a useful way of reflecting on their justifiability.

The power to restrict another person's freedom in deliberative isolation seems to be a core element of what being in a dominating position is about. I have discussed certain elements that highlight the *power* factor in a dominating relationship; now I wish to introduce how the (lack of) freedom element may take prominence. In the section on oppression, it was highlighted that the harm caused by oppressive forces is inflicted on a person's capacities or competences; that is, oppression short-circuits the lines that allow an individual to develop the internal abilities required to exercise a certain freedom, thus, breaking the process of capability-formation. If Amalia is restricted from learning to read, or if she is thwarted in having the cognitive capacities that would allow her to do so (through a lobotomy, for example), it would be her competence and her capacity to read, respectively, what would be harmed; she would be unable to even have the option of exercising the freedom to read

because the internal abilities required to achieve this would not be in place. This is an oppressive force.

The harms that come from domination, on the other hand, do not necessarily entail a thwarting of a person's capacities or competence; they are inflicted on a person's capabilities; they take away the external conditions that would allow an individual to act as a self-determining agent who can make decisions on her life for herself. This, of course, may lead to oppressive harms. A father who decides for his child that she should not be allowed to go to school is harming her in two ways: first, he is *oppressing* her by harming her competence-acquisition that would be achieved in school; and, second, he is *dominating* her by determining himself which options are available to his daughter. Many cases of oppression derive from a relationship of domination, and many relationships of domination lead to acts of oppression, but not all do. The same father could permit, for example, his daughter to go to school and to develop the required competences to read while limiting and restricting the books and sources from which she is allowed to gain information. This father would be harming the self-determination of his daughter through his power position, but he would not be oppressing her, in the sense that he would be allowing her to develop the necessary capacities and competences required to exercise the freedom. It is fundamental to understand the different effects that oppression and domination have on the same victim, in order to comprehend the particular agency interests that are harmed.

4.2. Unfreedom

As mentioned above, an important characteristic of domination is that it does not have to be exercised in order for it to exist. A person may have the power to control another person's options, choices and freedoms without actually doing so. Moreover, there may be cases in which a restriction of freedom is imposed on a person without it originating from a dominating relationship. It is because of this that a certain reticence exists towards the idea of framing childhood as a social group collectively dominated by adults; if the restrictions on freedom imposed by the adult population on the child population is legitimate (or if the asymmetric power relation does not inflict harm), can we still talk about adults dominating children?

In order to respond to this pressing concern, I wish to distinguish between domination and unfreedom. While domination is a relation of asymmetric power between A and B (which can be exercised or not), unfreedom is the harm inflicted on a victim of domination when this power is effectively exercised; thus, when her agency interests in being self-determining are *de facto* restricted. When an asymmetry of power creates constraints on the freedom that a person, otherwise, would be able to exercise, this dominating relationship

causes an unfreedom (Schmidt 2016: 188-189). This is an externalist understanding of unfreedom and domination: it does not show concern with the possible intentionality of the unfreedom-producing constraint, nor does it judge the action as morally wrong; it simply states the conditions required for a person to have less freedom than they would have due to constraints imposed by a more powerful entity on her fundamental agency interests (Schmidt 2016: 181-184). What this means is that, we can agree that a certain social relationship is one of domination, and that the constraints imposed by this relationship entail a restriction on the freedom of the weaker party, while disagreeing about how harmful the relationship is, and about the justifiability of such a relationship.

My contention regarding the subject at hand is, thus, that we can disagree about the impact (and existence) of illegitimate unfreedom-producing constraints imposed by the adult population on children (I will argue that unfreedom exists to varied degrees in different cases), but that the position of children in our socio-political world is necessarily one of a dominated population; they are inevitably trapped in a relationship in which adults have asymmetric power (sometimes absolute), and which is grounded upon our consented socio-political institutions and norms. Whether this asymmetric relation generates more benefits than harms is a matter that must be addressed through the evaluation of the legitimate restrictions on freedom (see Chapters 7 and 8), however, whatever results comes out of this discussion should not change the fact that children are dominated by the adult population, even if they are not illegitimately unfree.

Political Unfreedom

The position of children in their relationship to the adult population is clearly one of a lower power position. Framing children as being dominated by adults means that there is a widely asymmetric power relationship between them; one in which adults have full control and deliberative isolation over the freedoms and options that should be granted to children. On a first view, this asymmetry seems to derive from certain inevitable and natural factors of the relationship between children and adults; the particular dependence of children implies that there may be forms of domination that are unavoidable in any conceivable social world. They do not have the physical strength, the mental abilities, nor the experience to overcome this condition. The inevitability of this asymmetry leads to considering that no moral wrong should be attached to the unequal position of children in this respect. We cannot consider that parents putting a fence on their house's stairway is an unfreedom-producing constraint to a toddler's right to free movement, nor can we consider a parent not giving her toddler newspapers to read as an unfreedom-producing constraint to her right to access information: the toddler is unable of either walking down the stairs or reading the newspaper, so the existence or not of a constraint on her access to these freedoms does not affect in any way

their ability to exercise it. As has been claimed throughout this manuscript, the particular condition of the individual affects our assessment of what counts as harms to fundamental interests. Injustice, thus, cannot be linked to the constitutive characteristics (if they do exist) that establish a certain asymmetry, nor to constraints that are not oppressive, in the sense of not thwarting capacities or competence-acquisition; rather, it is the way in which the social and political environment responds to these constitutive frameworks what grounds injustice. The social and political reinforcement of "natural" asymmetries and inabilities creates injustices; the reification of socially constructed asymmetries and inabilities should be considered as harming the dominated group's fundamental interests.

A core source of reinforcement of the inevitable power asymmetries between adults and children comes from the marginalisation and exclusion of the childhood social group from *the political sphere* (Peleg 2013: 530). Most legal systems in our current world exclude the child population *as a group* from any political, legal or economic institution of significant value. They do not have power over the decisions that these institutions take, and, in most cases, their voices are not heard in bodies that determine and condition their own life (such as school boards, government committees on education, child social and health services, or the juvenile judicial system) (Nolan 2011: 7). We were all appalled by the image of an auditorium in Saudi Arabia exclusively comprised by men in which a conference on "women in society" was taking place, or when the *Journal of Political Philosophy* published a special issue on the "Black Lives Matter" movement without any African-American contributing to the issue, but we do not seem to mind when we see every parliament and government committee in the world deliberating and deciding over the lives of children without any child having a voice, or even being present.

The political exclusion of children from any decision-making body that has a direct impact on their own lives does not only inflict very grave harms on a child's self-determination and on their entitlement to be treated as equal members of their polity, but also enables and promotes an epistemic bias on the policies and laws that affect children (Fragoso Pitasse 2019). This is usually justified by the standard claim of children's political "inability". As mentioned in Chapter 8, individuals who do not have the particular abilities required to exercise a certain freedom can be justifiably restricted from it. However, the claim of inability as the source of disqualification from exercising freedoms implies that it is its possession or lack what legitimises its restriction; and this is not how political practice applies it. The conception of children as "politically unable" is a generalisation that does not necessarily apply to all individuals grouped as 'children'. It is clear that many individuals under the age of 18 are fully capable and aware of the political system that surrounds them (even more so than many adults who do have full political rights and liberties), nevertheless, they have their political freedoms restricted due to their grouping as 'children'. Thus, many

children who do have the abilities required to exercise their political freedoms (assuming that such abilities do indeed exist and are needed) have dominating unfreedom-producing constraints on their legitimate interest in having the freedom to exercise their agency in this sphere. This group exclusion seems especially unfair when compared to the case of many elderly individuals who are in fact unable to exercise many of their political freedoms, but who are permitted to do so (Munn 2016: 12). If "inability" is the legitimating reason for restriction, then its evaluation must be implemented to all individuals through an equal standard.

It can be argued, as well, that these dominating practices that constraint children's political freedoms may also have oppressive effects on the young, due to their thwarting of the scaffolding freedoms required to acquire political competences (see Chapter 8, Sections 3 and 4). Much of what it means to be a political agent comes from the experience and active engagement with the responsibility of acting as such. The granting of political freedoms to individuals has the tendency of improving a person's ability to act as a political agent, incentivising the person's motivation to inform herself of the process, her role in it, and the interests she may have in being included (Munn 2016). By excluding certain groups of individuals from the political sphere, the social and political institutions are discouraging the person from acquiring the competences and skills needed for acting as a political agent. This has the effect, mentioned in previous chapters, of institutionalising the conditions that self-fulfil the stereotypes imposed on a group (Chapter 1, Section 4; Chapter 3, Section 1.3). If a child is constantly told that she is not intelligent nor prepared enough to have her voice heard in the political sphere, she may end up believing that she is indeed unable, thus arresting her potential to develop this ability (Cudd 2006: 79-80). This issue goes back to the core element when deliberating over the justifiability of a particular social relation: injustice does not lie on an individual's constitutive condition (as particularly vulnerable, dependent or unable, for example), but on the way that the social and political institutions address and compensate for the potential vulnerabilities or inabilities of the individual. In this case, what happens is that the political exclusion, marginalisation and subordination of the child group in the political sphere ends up reinforcing and normalising the vulnerabilities and dependencies that they have as temporal developing beings by reifying socially constructed customs and regulations as "natural", thus justifying the unequal treatment and the asymmetry of power of children *vis à vis* adults (Freeman 2007: 7; Anderson and Honneth 2005: 132).

Social Unfreedom

The dominating power relationship of adults over children spreads beyond the political sphere, and can have harmful and unjust consequences on the life of children in their social world and at home. Although most of the cases of unfreedom that children suffer in their

social world are not generalised, and come more from particular private relations, depending on the specific condition of each child (through the intersection between, for example, age, gender, culture and socioeconomic status), the dominating power relationship that locates children in a lower status *vis à vis* adults is still generalizable. The life at home, at school on in the neighbourhood differs in substantial ways among children. We would never say that the social constraints imposed on the freedom of David, a boy with wealthy parents going to a Montessori school, is equal to that of Uma, a girl from a low socioeconomic class in a highly orthodox religious environment. There should be no doubt that the unfreedom-producing constraints that are imposed on Uma are not the same as David's; thus, we should judge the gravity of harm inflicted on each child differently.

However, it must be stated that their condition as powerless individuals is similar enough to judge them as being equally dominated, even if unequally unfree. David's power relationship to his parents is similar to that of Nora and Torvald mentioned above: it may be that David lives a life with ample choices, with much space to determine his interests, his present and his future, but he still depends on the will of his parents for this to be so. David is free from unjust constraints, as long as the guardians who have authority over his life deem it so; if David's parents were to change their minds regarding the type of upbringing that he should have, or if they happened to die and he had to live with his overprotective and highly authoritarian uncles, David's freedom would be lost. The freedom that David enjoys at present with his liberal parents and his progressive school is not under his control; David does not have authority over his freedom, but, rather, depends on others granting it to him. This is the core of what being in a dominated position is all about. In this respect, both Uma and David have the same social status.

A relevant concern with the potential harms to children imposed by their asymmetric relation to the adult population comes from what can be framed as the 'infantilisation' of childhood. Through the reification of who a 'child' is and how she should behave, adults may impose constraints on a child's ability to acquire certain fundamental competences for her development (oppressive infantilisation). Dominating infantilisation acts through the imposition of constraints on a child's freedoms rather than on their competence-acquisition. I hinted at this already regarding political unfreedom, with the exclusion of children from playing a part in the public sphere. By limiting the political freedoms of children, the adult population is suppressing and discouraging children from taking an interest in these spheres of life (Munn 2016: 13). This forces children into being trapped in John Holt's "walled garden" of childhood, in which they are allowed to move without constraint, as long as they stay within the protected space (Holt 1974: 5).

The justifiability of such constraints may be open for discussion. It may be that the adult's restriction of a child's freedom to only that which is within the "walled garden" may be

justified in the same grounds as the abovementioned fencing of the staircase in order to prevent the incompetent toddler to fall down the stairs. However, and once again, even if certain restrictions of freedom of children are not necessarily dominating unfreedoms, it is still the case that the condition that controls and defines these restrictions is grounded on an asymmetric power relationship in which it is the adult population who decides in isolation from the child population how far their freedoms may go. An evaluation based on the Harm principle is required in order to assess whether a restriction of freedom is coercive (Chapter 7).

4.3. Benevolent Domination

An immediate response that may be raised to my previous account could be: "Yes, this may be true but, it does not entail that children are actually being harmed through these dominating relations, nor does it imply that these restrictions on their freedom are unjust." The fact that children live in a condition in which other facets of their life are in greater risk of harm and may impose on them corrosive developments in the future, demands from us to give priority to these more urgent interests of children, even if disregarding certain agency interests that they may have in the present (Hannan 2018: 21). In other words, one might say that, even conceding to the existence of domination, overall, it may be that the restriction is legitimated due to its reasonableness, and to the even worse implications it may have if not restricted (following the model of harm in Chapter 7). This would be the position defended by the Standard Liberal models of children's rights presented before (Chapter 6, Section 4). When we think about the interests of a child we must take into account their present well-being and agency, *and* their future well-being and agency. If protecting their agency interests in the present puts at risk their present and future welfare (and agency), then we can justify certain present restrictions to their agency in order to ensure their larger benefits in the long run (Brighouse 2002: 39-46). If we endow young children with the agency freedoms to choose what they want to eat, we may be improving their agency in the present, but, very possibly, would be inflicting a grave harm on their present and future well-being interests by granting them authority to eat McDonalds and ice-creams for every meal. Restricting the child's freedom to choose what to eat may ensure that she will be better able to exercise this right in the future, while protecting her well-being as well.

This is not a new argument and has not been used exclusively in the case of children. It was used by the European colonialist powers regarding the condition of "natives" and "savages" in the newly "discovered" Americas and Africa; it was used by the aristocracy in Europe to justify the restriction of property rights for peasants till the eighteenth century; it was used to justify the restriction of various freedoms and opportunities for African-

Americans till the 1960s; and it was used to justify the restriction of women to the private sphere (even today) (Talbott 2005: 10-11). In the words of John Stuart Mill, speaking more than a hundred and fifty years ago:

> In the present day, power holds a smoother language, and whomsoever it oppresses, always pretends to do so for their own good: accordingly, when anything is forbidden to women, it is thought necessary to say, and desirable to believe, that they are incapable of doing it, and that they depart from their real path of success and happiness when they aspire to it. (Mill 1869: 54).

We could change the term 'women' for natives, blacks, peasants or children, and the social reality of Mill's claim would be the same. The social and political constraints imposed by the grouping of certain collectives through the normalisation and reification of stereotypes to their behaviours and abilities is a widespread practice. There is a commonality in the disposition of powerful groups to express themselves in a manner of superiority and benevolence over the vulnerable individuals and groups which they dominate. Not only is there a power asymmetry *de facto* in social and political practice, but it is enabled and perpetuated through a discourse of the necessity and the altruism inherent in the paternalistic interference with vulnerable social groups.

Ann Cudd has argued that the problem with the imposition of social constraints does not necessarily lie on the restrictions and segregations themselves; rather, the problem lies in the imposition of social constraints *on arbitrarily-constructed social groups* through their assignment of certain stereotypical behaviours and inabilities (Cudd 2006: 51). It may be that some of those labelled as 'child', as 'woman', as 'black' or as 'disabled' are actually unable of exercising certain agency rights and thus could be justifiable to restrict them. However, the claim works as well for 'adult', 'man', 'white' and 'abled'. The fact that social groups are non-voluntarily constructed by external, powerful groups, and that no essential characteristics are necessarily tied to being categorised as part of a social group (Young 2000: 99-102) demands from us to break away from the imposition of agency restrictions through dominating means based on social grouping.

If we cannot take the social grouping as a given, we should not impose generalised restrictions on the grouping based on preconceptions and stereotypes built to categorise the grouping. Feminist novelist Chimamanda Ngozi Adichie (2017: 6-7), presenting the "tools" required to know when in a specific context there is discrimination against women, defended two principles. First, a never-bending assumption that "a woman's life and claims matter *equally*", without 'but' nor 'however.' Second, the X reversal test: if a man in the same position, and with the same conditions, were to behave in the same way as a woman does, would the social response to it change? If it does, discrimination exists. I think that this advice

can work as well when dealing with discrimination and unjust treatment of children. First, a child's life and interests matter equally, without 'but' nor 'however.' Finally, if an adult in the same position and condition were to behave in the same way as a child, the social response to the action should not change. James G. Dwyer (2013) has argued for a similar stance, advocating for a disaggregation of which restrictions on children's agency are justified or unjustified, depending on the specific circumstances:

> one can look at a given legally sanctioned social or governmental practice impacting children and ask: What type of interests do children have at stake? And: When adults have the same interest or a similar or equally weighty interest at stake, what protection does the law give them? And then: Is there any justification for any disparity in treatment that is rational and respects the equal personhood of children? (Dwyer 2013: 1010).

Even if we cannot give a one-size-fits-all solution to the justified and unjustified restrictions of children's freedoms, I believe this works as a fundamental rule of thumb. We must start with an assumption of equality of treatment, and judge a case of restriction based, first, on the actual condition of a person rather than on the stereotypical behaviours assigned through social grouping; and, second, test a restriction imposed on an individual of the vulnerable social group by comparing the social response of the same restriction being imposed on an individual of the powerful group. Only in this manner can we truly judge whether certain freedom-constraining attitudes towards children are actually legitimate, or if they are rather harmful acts of dominating unfreedom.

This chapter presented the most important forms in which children's agency interests may be harmed, especially as they relate to their particular interests in having their process of capability-formation protected and fostered. I considered that harms to agency can be conceptualised as harms to interests in self-development and in self-determination, and are reflected in the illegitimate interference with the process of capability-formation (from capacities to competences to capabilities). I explored how these two forms of harm can be understood through the forces of oppression and domination, and how they affect children both as individuals, and as part of the social group of 'children'. Awareness of these forces when evaluating the legitimate restrictions of individual freedom is fundamental.

CONCLUSION: A World Fit for All

"We want a world fit for children, because a world fit for us is a world fit for everyone."
The Children's Declaration at the Children's Forum 2002

The address made by the delegates of the Children's Forum at the UN General Assembly Special Session on Children (UN 2002) closed their statement arguing that justice for children should not be conceived as a special kind of justice; justice for children is justice for all ('a world fit for us is a world fit for everyone'). Better words cannot be found to summarise the rationale behind the research presented in this manuscript. A theory of justice should not be willing to single-out a section of the human population based on problematic assumptions regarding who they are, and what they are able of doing, and, then, prescribe to them a treatment different from that owed to the rest of the population. When a theory of justice stands on the basic commitment to treat all individuals equally, it should ensure that this is actually happens.

This is what this manuscript has strived to achieve. It was meant as an attempt to accommodate childhood within the basic normative structure upon which liberal theories of justice stand. Justice for children should not imply digressing from the standard; the standard should accommodate to the reality of the humans judged under it, and not on the contrary. Before I close, I wish to recap briefly what this manuscript did, to summarise its main findings, to flag its limitations and its further routes of inquiry.

5. Synopsis

Standing on the grounding assumption that a liberal theory of justice is normatively committed to the dual principles of basic equality and freedom, this manuscript explored the ways in which two main strands of the contemporary philosophy of childhood attempted to accommodate children within this liberal structure. It did so, first, by exploring what is in the concept of 'childhood', what makes it a morally relevant category for theories of justice, and how it has been conceptualised in the literature in order for it to comply with basic liberal

tenants. Second, it did so by looking at how the particular way in which 'childhood' is conceptualised frames the normative treatment which is prescribed to those labelled as 'children'. It looked at how contemporary philosophies of childhood have dealt with the difficulties of including children within liberal theory, and defended an alternative which manages to accommodate the particularities that give moral relevance to childhood while complying with the basic liberal commitments. In this respect, the manuscript attempted to give an answer to two questions:

(3) How should 'childhood' be conceptualised in order for its categorisation to comply with the principle of basic liberal equality? (Addressed in Part I).

(4) What kind of treatment does a liberal theory owe as a matter of justice to those individuals rightfully categorised as 'children'? (Addressed in Part II).

The manuscript confronted two strands of literature in the contemporary philosophy of childhood that attempt to give an answer to these questions, and assessed their successes and limitations in addressing this issue: on one side is the Standard Liberal approach, which frames most of the current debate in political philosophy of childhood; and, on the other, the Liberationist view, which was prominent during the 1970s and 1980s while losing traction during the last decades. I attempted to show that, despite its deficiencies, the Liberationist position offers certain insights into the debate which should not be dismissed. Namely, their critical stance towards the problematic implications which may derive from how we define 'childhood'; and their principled commitment to the use of an equal standard for evaluating the legitimate treatment owed to all individuals. As for the Standard Liberal approach, I agreed with their claim against Liberationists regarding the latter's disregard for certain morally relevant traits present in the first period of life which make individuals particularly susceptible to harm by themselves and others. This, I argued, is the main legitimating justification for treating certain individuals differently as a matter of justice. I considered, however, that, in order for this claim to comply with basic liberal principles, the Standard Liberal position must be amended, especially regarding the way in which it conceptualises what 'childhood' is, and the role that the graded possession of the morally relevant traits play in legitimising differential treatment.

The research carried out here has argued that neither the Liberationist nor the Standard Liberal approaches to childhood and justice for children are in full compliance with a commitment to equality and freedom. The Liberationists fail to do justice to children due to their lack of consideration for the role that the particular inabilities and vulnerabilities of children may demand differential treatment; and the Standard Liberals cannot comply with

the principles of equality and freedom due to their adherence to the normative need for a strict distinction between 'adults' and 'children'. I argued that an equal standard must be used to evaluate the legitimate treatment of all individuals, and that individual variations (based on inabilities, vulnerabilities and the potential harm they may incur to an individual's fundamental interests) can justify the need to offer exclusive privileges, protections and restrictions of freedom to some and not others.

I presented an in-depth analysis of the way in which the evaluation of this differential treatment must be carried out. A unique standard must be applied to judge the legitimate treatment of all, and it must be the assessment of harm to an individual's fundamental interests what grounds this evaluation. Depending on the particular vulnerabilities of the individual, and her particular inabilities, it is legitimate to restrict the exercise of certain freedoms and to provide the individual with differential protections to her interests.

6. Contribution

This manuscript has aimed to embed the Standard Liberal argument for the normative necessity of variation in the treatment of individuals based on their particular vulnerabilities and inabilities into the principled groundwork of justice for children defended by Liberationist theories. While Standard Liberals stand on an asymmetric standard to judge the legitimate differential treatment of children, Liberationist argue for a symmetric standard which ensures equal treatment for adults and children. I have claimed that a liberal theory of justice for children must use one and the same standard (following the Liberationists) to account for potential legitimate variations in the treatment of certain individuals as a matter of justice (close to the Standard Liberal rationale). I intended to contribute to both liberal theories of justice and the contemporary philosophy of childhood by offering an account of the moral legitimacy of differential treatment which accommodates the particular condition of 'childhood', while relying and complying fully with the principle of basic liberal equality. I have showed that a theory of justice can maintain its commitment to equality and freedom to all, while accommodating legitimate variations from strict equality based on an evaluation of the particular constitutive condition of the individual, her inabilities and her susceptibility to harm. The basic claim has been that we do not require separate principles of justice to account for the particularities of childhood; by clarifying the particular elements that legitimise differential treatment, a liberal theory can justify particular protections and restrictions to certain individuals while complying with the principle of basic liberal equality.

What is this research useful for? What can be done with it? Why is it original, valuable and

urgent? I wish to highlight, what this manuscript has achieved, and what it has intended to achieve. I see four important elements in this respect.

First and foremost, this manuscript intend to break with certain assumptions and stereotypes tied to our intuitive understandings of what 'childhood' is, and what we owe to individuals labelled as 'children'. In this respect, it intends to press the readers to test their intuitions, urging them to consider certain problematic inconsistencies between what one believes justice requires (in general), and how it should reflect on the particular normative prescriptions it raises in particular cases, in order to account for the variations inherent in the human condition.

Second, the manuscript argued for the principled and unbendable need to apply an equal standard when evaluating the legitimate interests and treatment owed to all individuals as a matter of justice. This implies both a demand to revise our intuitive moral evaluation of the position of children in our social world, and a revision of the procedures used in politics and law to define how individuals should be treated. This centre role for an equal standard in the evaluation does not imply an outcome of strict equality (in which all receive one and the same treatment), nor does it imply a disregard for differences: this research relies on the fundamental idea that equality demands accounting for the morally relevant differences which affect our condition as human beings. Only by thoroughly understanding what differences are morally relevant, can we understand what equality demands.

Third, the manuscript showed scepticism towards proxy-valuations in the legitimation of differential treatment. Although I must concede that there will certainly be pragmatic constraints which may force certain proxies to be used in political and legal practice (as a guideline), this research recommends that, if they must be used (meaning that there is no less problematic alternative due to feasibility limitations), proxy-valuations must be permeable to change depending on the particular circumstances of differently-positioned individuals. I have given examples of how proxies have been used as guidelines in political and legal practice, while maintaining the principled commitment not to assume a direct correlation between the treatment owed to an individual as a proxy, and what she is entitled to as a matter of justice.

Finally, this manuscript works as a nagging recommendation for consistency between the principles of justice to which we are committed, and the way they ought to be applied in particular cases. The manuscripts asks for a critical reflection of our intuitive assumptions regarding how we categorise individuals, and how this affects the way we treat them in practice. It asks from the reader to be willing to reflect on the potential wrongs that derive from our intuitive judgments about 'childhood', in order to open new routes for a truly liberal theory of justice which includes all.

7. Disclaimers and Limitations

It seems appropriate to clearly mention what this manuscript has not intended to do, what its theory cannot achieve, and to clarify certain potential misunderstandings which may arise from its reading. The manuscript does not intend to be read as applied or directly applicable political theory. While it provides certain rules of thumb and guidelines for potential applicability, its core objective is to work as a groundwork structure for liberal theories of childhood. In this respect, it is meant as a framing devise which delimits the bounds that a liberal theory of justice cannot surpass if it intends to maintain its commitment to freedom and equality while doing justice to all.

In this sense, the manuscript does not prescribe the particulars regarding the just treatment of children, nor does it normatively define the specific rights that ought to be guaranteed, restricted nor how they ought to be allocated across the population. It provides a guiding structure for understanding the basic elements that ground a theory of rights which intends to accommodate children within its prescriptions. The model that evaluates the legitimacy of differential treatment and the restriction of individual freedom (the Pentagon model) is meant exclusively as a framing procedural mechanism. Different strands of liberal theory may interpret particular cases and particular restrictions differently, and this account intends to stay agnostic as to the particulars in its implementation. In this sense, I have tried to avoid detailed analyses of particular legislation and complex cases, only using them as examples when it has been absolutely necessary for the exemplification of the groundwork theory that the manuscript intends to offer.

Finally, the manuscript has remained silent, as well, regarding non-liberal theories of justice for children. Although it could be taken as an ideal theory for how childhood ought to be conceptualised, and for the framing normative guidelines which could evaluate the legitimate differential treatment of children across political ideologies; its focus has been exclusively to present an understanding of 'childhood' and of legitimate differential treatment that is in compliance with basic liberal equality. Whether it applies (or should apply) to political theories beyond the liberal realm is open to discussion. This agnosticism towards its compliance with non-liberal theories is due to two reasons: first, their commitment to other principles of justice (which may be in conflict with basic equality and basic liberty) could imply variations in the standards through which justice is evaluated and met; and second, that the question of 'how to conceptualise 'childhood'?' may probably change depending on the variation in the spatial socio-political frameworks in which the lives of children are embedded.

8. Roads Ahead

I want to close by mentioning some potential research paths that arise from the work carried out in this manuscript. Regarding the Pentagon model presented in Chapter 7, I consider that further research can be done both in its particulars, and in its applicability. The fact that it was presented as a first attempt to devise a universal method for the evaluation of the legitimate restrictions of individual freedom, implies that further work is still required in order for it to operate as a functional mechanism for assessing differential treatment. The version of the model presented in this manuscript is tentative at best, and I believe it may benefit from a more in-depth exploration of the elements that comprise it, the trade-offs among them, and the weight which must be given to each. Regarding its role in more applied research, the model would highly benefit from it being tested in particularly problematic scenarios, and in controversial real-life cases, in order to assess its worth and its limitations.

A nagging element that remains from this research, is a more meticulous analysis of the elements within the evaluative space of fundamental interests presented in Chapter 5. The manuscript provided a very general overview for how fundamental interests should be framed through the concepts of well-being and agency freedoms and achievements. The particular weights, trade-offs and interdependencies among the four spaces of valuation is a very complex one, and an applied analysis of the ways in which particular interests may fit into the evaluative space, how they may come into conflict, and how they may scaffold each other, would greatly advance our principled analyses of justice.

Third, an exploration of how the equal standard used to evaluate the legitimacy of differential treatment would apply to particular political and legal issues would be of great value. For example, what would an equal standard for the evaluation of political and civic freedoms entail? Depending on how we understand the role that certain abilities should play in grounding our political and civic rights, we may be forced to revise who should be entitled to exercise these rights. This would also have important effects on how we understand various agency freedoms of children both as legal actors and in the private realm, as they relate to their interest in self-determination. The legitimate treatment of children's sexual agency, choice of medical treatment, school choice, or the potential restrictions of minor interests related to agency (i.e. tattoos, piercings), are some examples of applied research which could derive from this groundwork.

Finally, it would be of great value to carry out wider comparative analyses of the way 'childhood' is conceptualised in non-liberal theories, and how the account of 'childhood' presented in this manuscript may fare in relation to them. This could be carried out both at the level of conceptual analysis, and at the level of political practice.

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