

5 Becoming Versus Being: A Critical Analysis of the Child in Liberal Theory

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The excessive faith liberal theorists have had in the power of rights and rights discourse can have deleterious consequences for children. As vulnerable and dependent beings, children need to be nurtured with love and affection in a setting in which intimate relationships between parents and children can flourish. A rights-based discourse is conceptually ill-equipped to accommodate the importance of establishing and supporting caring relationships. An ethic of care, emphasizing responsibilities over rights, provides a better way of conceptualizing and responding to the interests of children than thinking of children as proto-adults with rights especially that to autonomy.

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5 Becoming Versus Being: A Critical Analysis of the Child in Liberal Theory Barbara Arneil

Liberal theory's main concern at its inception was to create citizens of a state rather than subjects of a king. The change of status is critical, and within such a theoretical context, children play an important role. If one is subject to the king, based on patriarchal authority, there is little distinction to be drawn between adult and child in political theory, for both are equally subject to the arbitrary and absolute rule of the monarch. As seventeenth-century theorists began to challenge this notion of absolute rule in favour of the citizen who consents to authority as the basis of political power, it became necessary to distinguish between those who have the rational capacity to consent to political authority and those who do not. One important distinction to be drawn was between the rational adult citizen and the non-rational child. Unlike other groups who lacked the reason to be citizens (servants, slaves, and wives), children of citizens ultimately have the potential to *become* citizens, as they develop their rational capacities, and ultimately enjoy the rights of citizenship. In this regard they are unique amongst those individuals barred from citizenship. Moreover they constitute a central challenge to patriarchy, because if children of citizens eventually grow up and enjoy the rights of citizenship, the authority of the father must, by definition, be limited. The subject child, *becomes* the adult citizen. Thus, the role children play in early liberal theory is one of citizens in waiting, human beings who do not yet possess the necessary attributes of citizenship, namely reason, autonomy, and the capacity for having authority over oneself, but will possess them in the future. As such, children are potential bearers of rights, which they may exercise only when they have reached the age of reason. They are not ends in themselves but rather creatures in the process of development. If there is one word that might summarize the role of children in early liberal theory, it is that of 'becomings' rather than 'beings'.

Conceiving of children as 'becomings' with the potential rights of citizenship has enormous implications for the ways in which liberal theory has developed in relation to children, up to and including the introduction of children's rights theories. We shall begin by examining the very foundations of liberal theory in John Locke's *Two Treatises of Government*.^[1] In his challenge to patriarchal authority we find the origins of both the child as 'becoming' and *subject* to the authority of his/her parents and an embryonic notion, through the doctrine of natural rights, of the child as *citizen*, or 'being'.

The Child as 'Becoming' In Liberal Theory

Becoming, as G.W.F. Hegel first noted, encompasses the contradictory notions of 'being' and the negation of 'being' simultaneously (Hegel 1967). Children in early liberal theory, as becomings, exhibit both of these characteristics. To the extent that they are *potential* rights-bearing citizens, with a kernel of rationality, they are beings; to the extent that they are irrational creatures they are the negation of their future adult forms. These contradictory states exist simultaneously within the developing child, as he/she progresses from the latter to the former. There are three aspects to the idea of 'becoming' that we shall explore in more depth. Becoming, almost by definition, is defined by the end product, by the particular 'being' that one is to become. Anything described as 'becoming' is being viewed from the perspective not of what it currently is, but what it will be in the future. Thus the first aspect of children in liberal theory which must be examined is the specific end to which they are directed, namely the nature of liberal citizenship. The second aspect of becoming is the process by which one reaches that end goal, a subject largely subsumed under theorizing about education. The third aspect of 'becoming' is the scope of children included and excluded by the process. Each of these aspects, *the end product*, *the process*, and *the scope* of 'becoming' will be analysed in turn.

The End Product of Becoming

For Locke, children are used to undermine the patriarchal theory of authority defended by Sir Robert Filmer, who famously argued, in his defence of an absolute monarchy, that the child is subject to his father for his entire life, as the Englishman is absolutely subject to the monarch. Locke will make the case that both forms of authority are limited, the former is limited by the age of the child, the latter by the natural rights of the governed. For Locke, as the child reaches the age of reason and *becomes* an adult, he is no longer subject to his father.^[2] The *product*, for Locke, is the rational citizen or property owner, who has the reason and knowledge to consent to the authority of the state to pass laws and collect taxes. Locke explicitly states that the objective of child development, under the parent's tutelage, is 'the use of Reason, or a state of

Knowledge wherein they may be suppose capable to understand that rule, whether it be the law of nature or the municipal law of their country they are to govern themselves by: Capable . . . to . . . live, as Free-men under that Law'. Only when one is rational can one exercise the right to liberty and property. Thus, rights are inextricably linked to the capacity for reason, and any interest in the development of the child is consequently focused on their emerging rationality.

An important aspect of viewing children from the perspective of the citizens they are about to become is that they are defined in terms of what they lack. Children, in Locke's *Two Treatises*, are described alternatively as existing 'in the *imperfect* State of Childhood' (as opposed, presumably to the 'perfect' state of adulthood), or in a 'nonage' (ii. 58). Such descriptions are familiar to feminist critics of Western political thought. If male adults are taken as the reference or end point from which to measure women and children, it is not surprising that both groups are found wanting. More importantly, children are not simply defined as *lacking* certain qualities in the descriptions above; they are constructed as the *opposite or negative form* of the adult. Children ultimately function as a mirror in liberal theory within which to reflect a negative image of the positive adult form.

The Process of Becoming

Given the focus on intellect and 'reason', it is not surprising that the main process by which the citizen is created in liberal thought is *education*. Ultimately, education becomes the central focus of Locke's political theory, and much liberal theory (and practice) to follow, with regard to children. Education continues to be the major way in which the liberal state and child intersect, and perhaps the only way in which the liberal state is universally involved in children's lives. The obligations of parents and society to children are often simply reduced to their education. John Eekelaar comments: 'While children are resident with their parents, the law imposes no duty on the parents to fulfill the developmental interests, apart from ensuring their education' (1986: 173). This singular focus on education creates a tendency in contemporary liberal democracies for children's interests, as a whole, to be represented by Ministers and Ministries of Education within the state. The public education system is the foundation around which the public 'care' of children is built. Thus, one can find 'after-school' care for the hours outside of school time, a patchwork of pre-school care for children not yet in school, and 'school preparedness' touted as the most valuable goal of nursery education.^[3]

Locke argues, consistent with the objectives of child development discussed above, that the main duty of parents towards their children is education towards rational autonomy. 'The Power than that Parents have over their Children arises from that Duty which is incumbent on them, to *take care* of their Offspring during the imperfect state of childhood. *To inform the Mind,*

and govern the Actions of their yet ignorant nonage, till Reason shall take its place' (ii. 58; my emphasis).

It is critical to recognize in this quotation that Locke transforms 'taking care' of children to 'informing the mind'. Locke believes that education of the mind is the *key* responsibility of the father, although it may be delegated to others. 'The first part then of Paternal Power, or rather duty . . . is Education . . . [but] a Man may put the Tuition of his Son in other hands' (ii. 69). Thus, at the very foundation of liberal theory, the *care of children* is translated, by Locke, to mean the *education of sons*. This seemingly simple and obvious translation (at least to Locke) has profound implications for all subsequent liberal theory. The question of how to care for children (beyond educational needs) is lost to liberal theory from this point onwards. The development of children beyond the intellectual dimension (namely physical, social, or emotional development), or the extent to which the state might be concerned with their care, is simply written out of liberal theory at its inception. It is not that Locke is unaware of the broader caring and development needs of children. Rather, given that the singular objective is to produce 'rational citizens', the process of producing such creatures makes such questions simply, but utterly, irrelevant to liberal political theory.

Other forms of care are excluded from liberal analysis on three grounds, all linked to the original foundations of liberal citizenship. First, the broad care of children was of no concern to early liberal thinkers because it belonged to the private, as opposed to public sphere. Thus while education had a public interest element, caring for children (especially pre-school age children) was a domestic matter. Secondly, the care of children was an organic or 'natural' phenomenon, the result of instinct, and therefore of little political interest. In other words, politics and education are worlds constructed through reason and language, cultural phenomena that need to be theorized in order to be properly constituted. Childcare, on the other hand, is a natural phenomenon that just happens according to instinct (in particular maternal instinct). Finally, the care of children fell outside of political theory because it was a largely female occupation. While men and boys need to be concerned with politics and education respectively, women's main concern was with domestic care. It is assumed, therefore, that girls, as future care-givers (as opposed to citizens) do not need to be educated or trained. The extent to which the public world of autonomous citizens engaged in pursuit of their own personal projects is dependent upon this invisible world of dependents and care-givers is simply left aside. All of these aspects of caring have, to a greater or lesser degree, survived through to the present day.

The separation between a public world of rights-bearing citizens and a domestic sphere of non-rights-bearing care-givers and their dependants is a critical distinction which has been analysed at length by feminist commentators (Pateman, [1988](#); Arneil, [2000](#)). While early liberal thinkers initially

ignored the domestic sphere, more recently, attempts have been made to break down this divide. Liberal feminists have used rights to empower women, arguing that the public sphere must be expanded to include women as citizens. More recently, children's rights theorists have made the same claims on behalf of children. Both of these schools of thought attempt to transcend the organic, domestic, and mainly female sphere of care-giving by expanding the scope of citizenship and autonomy to include those previously excluded. The problem, as we shall see, is that the private sphere of care and the interdependent relations within it, are fundamentally different from the rights-based ethic of the public world of the male citizen. As the latter transcends the former, the ethic of care and the relations between dependants and their care-givers is simply subsumed within the larger ethic of liberal justice without any consideration of what is lost as a result.

The Scope of Becoming

Finally, given the focus on rationality and autonomy as the goals of development, and education as the process by which to get there, children who are visible in liberal theory are limited to those of a school age. If you are pre-rational (as is the case with infants and pre-school children) you are of little interest to liberal theory and, as we shall see, the theorization of children's rights, particularly as it applies to the right of autonomy. The idea of becoming means that you have begun a process, that you share at least a modicum of what constitutes the full being of adult citizenship. Infants as irrational creatures are thus seen as pre-becomings or the full negation of the adult being. Infants are literally and metaphorically non-existent in liberal theory.

Children as Becomings: Conclusions

At the heart of liberal theory's treatment of children as 'becomings' are three central problems. The first is that, from Locke onwards, liberal theory has never looked at the political world from the perspective of the child, as beings in his/her own right from the point of birth. Instead, children have been used as tools through which the specific end products of particular liberal theories of politics may be explored. Thus, children are defined as future citizens, and are of increasing interest to the liberal theorist the closer they are to the age of reason. The specific goals of citizenship shape the way in which children are constructed, and the care of children begins and ends with their education to these ends. Ultimately, the individual child is largely a tool to illuminate the nature of the autonomous adult citizen by providing the perfect mirror within which to reflect the negative image of the positive adult form.

The second problem is the underlying view of society. Children are excluded as 'beings' from the larger community exactly because they do not have the entrance requirements necessary to belong to the political sphere. The liberal political community is actually an association. One must join the

association by consenting to its rules and authority. In this sense the 'becoming' child is literally no part of the community to which he/she is born, until the hypothetical *moment* he/she is considered rational and can consent to its authority. Locke explicitly argues: 'a child is born a subject of no country or government. He is under his father's tuition and authority till he come to the age of discretion, and then he is a free man, *at liberty what government* he will put himself under, what body politic he will unite himself to' (ii. 118). This is a critical point, because political theories built on rights conceptualize the individual as a discrete entity (even in the case of a child) and the relations between people as contracts of mutual consent. Thus not only is the child a distorted image of the adult in liberal theory, but he/she is excluded at birth from belonging to this community until he/she can consent to it.

The third problem is the conception of the state. If individual rights are the basis upon which society is built, then the state's primary obligation is to preserve those rights. The state's role is either non-interference in the private sphere or to be the enforcer of contracts and rights. The state is thus fundamentally an authority to be circumscribed by such rights and contracts, to be engaged only when it is required by conflicts arising between individuals, and to intervene in the private sphere only as a last resort. Such a conception of the state, inherent in a theory based on rights, is problematic when applied to dependants and their care-givers, who will naturally see the state more as a potential resource than threat.

The goal, as stated at the outset, of Locke's political theory and liberal thought as a whole is to change the status of the individual from that of a subject to a citizen through the vehicle of rights. While adults are citizens, and children remain subjects in Locke's theory, the child enjoys the potentiality of citizenship. Children's rights theorists, who wish, in turn, to change the status of children and make them citizens, necessarily build upon this foundation, and the transcendence of the private sphere of care and dependence by the public sphere of autonomy and rights. By choosing the vehicle of rights to express children's needs, such theories ultimately import the conceptualization of the individual, state, and society implicit in liberal theory, as shall be discussed.

The Child as 'Being': Children's Rights Theories

Children's rights theorists have attempted to overcome the status of children as 'becomings', arguing that children, like adults, are 'beings' or in Kantian terms 'ends in themselves'. The underlying goal of these theories is highly laudable: to change the status of children and thereby improve their lives. While there are many different ways of looking at children's rights, most analysts make some kind of distinction between social and economic rights (to nurturance, care-taking, or provision and protection), *and* civil or political rights (to

self-determination, liberation, autonomy, or participation) (Freeman [1983](#); Franklin and Franklin [1996](#); Wald [1979](#); Eekelaar [1986](#); Rogers and Wrightsman [1978](#); Archard [1993](#)). I have broken my analysis of rights into three sets: the rights to provision, protection and autonomy. Taken together the first two sets of rights are the most basic for the child. Unlike the traditional Lockean rights, they *demand* the involvement of authorities in children's lives and consequently do not change the status of the child in relation to these authorities. Autonomy is the key to changing the status of children and consequently their transformation into 'beings'. Through the concept of autonomy, children's rights theorists most fully embrace the conceptualization of the individual, society and state described in early liberal theory. The implications of each of these sets of rights, the degree to which they are good tools for expressing children's needs, and the extent to which they improve children's lives will be explored at the conclusion of this section.

The Right to Provision

The first set of 'rights', to the provision of basic needs, such as food, shelter, adequate care and education, is unlike the more traditional liberal rights that serve to constrain or check authorities in individuals' lives. The right to provision *demand*s the involvement of the state in a child's life. This basic distinction between political rights that constrain, and social or economic rights that expand the state has been explored by Isaiah Berlin in his famous article on positive and negative freedoms (Berlin [1969](#)). Put simply, a negative right (consisting of political freedoms) *constrains* the state from interference; a positive right (to social goods) *requires the involvement of the state* to fulfil such rights. The positive nature of such rights has several consequences.

Given that some governments are unable or unwilling to expend resources as required by the right to provision, such social rights claimed on behalf of children are often seen as moral aspirations rather than enforceable entitlements. As Michael Wald comments: 'these claims generally are not for things traditionally thought of as legal "rights" . . . Courts cannot order that the world be free of poverty or that all children have adequate health care' ([1979](#): 261). They are 'ideal' or what some have called manifesto rights, exactly because they cannot be made enforceable in the same way as negative rights. To put it bluntly, it is easier for courts to enforce the obligation for governments *not* to act than to enforce them *to act*, which is the essential difference between a negative and positive right, respectively.

It has been argued, however, that social rights could (and should) be enforced in the same way that political rights are, through a properly constituted court of law (Schabas, [2000](#)). The question immediately arises as to whether or not courts should play the same role in relation to social rights as they do to political rights, and what the implications would be. Let us consider a child's right to basic necessities. A court, faced with the petition of a child

who argued that his/her level of social assistance was a violation of his/her basic social rights, might judge that the state in question should be required to spend a given amount of money on specific welfare programmes for families with children. Enforcement of children's rights to provision could ultimately create a court-enforced legislative agenda for children. At first glance, such an idea seems appealing for it would harness the energy of both the court and the state in fulfilling the most basic requirements of children. However, it raises profound questions for a liberal democratic society that need to be addressed. [4]

First, a court-enforced right of provision would shift the political debate about the best way to care for our children from parliament to the courts, and consequently from citizens and their representatives to lawyers and their clients. Second, it would be impossible for a government to make the (currently popular) argument that the state should *not* be in the business of guaranteeing an income to families or that certain people should be denied welfare in order to force them to work. Such political solutions would be struck down by a court of law that must *require* the state itself to guarantee income, where the family fails to do so. Whether or not one agrees with such political views is not the point. The question is rather whether such views, embraced for example by Clinton's welfare reforms, should be permanently excluded from political debate by a court that must enforce a set of rights? My point here is that the decision as to whether or not social and economic rights entail an increased role of the state in children's lives is largely a political debate; one which should leave all options on the table, and involve all citizens and their representatives in the discussion. Enforcement, through a court of law, has the potential to curtail such possibilities and ultimately may limit our capacity to meet the needs of children and their parents over the long term.

A second consequence of the positive nature of these rights (that governments or parents *must act*, as opposed to refraining from acting) is that they are probably better expressed directly as obligations of these authorities than as derivative obligations from a more fundamental set of rights. Freeman concedes: 'Much talk about rights is really talk about obligations and that perhaps it might be better if the sort of discussion found in the "manifesto literature" were couched in terms of duties rather than by reference to rights' (1983: 37). As Onora O'Neill argues, if obligations are only derivatives of rights, there may be certain kinds of important obligations to children, what O'Neill calls imperfect obligations, which cannot be expressed through a corresponding right. As such, if rights are taken as the starting-point of children's interests, such imperfect obligations will be left unexpressed (1989: 190–1). One crucial example that she gives is the obligation to be 'kind, considerate and involved' in our interactions with children. It is hard for 'rights based approaches to fully account of ways in which children's lives are particularly vulnerable to unkindness, lack of involvement cheerfulness or

good feeling. Their lack may be invisible from the perspective of rights' (p. 192). O'Neill's point is that providing children with the basics of life is a necessary but not sufficient condition of 'caring' for children. They also require a disposition from adults that is caring, attentive and kind: an imperfect obligation that may be absolutely fundamental to the well-being of a child but nearly impossible to express as a positive right.

Finally, *children's* social and economic rights are unique because, unlike autonomous adults, they *must* depend on others for their basic needs. This set of 'rights', it can be argued, takes us in a direction diametrically opposed to traditional liberal rights: underpinning, even expanding the strength of the dual authorities of parents and states in children's lives. Thus, the right to provision not only does not change the status of children or empower them; it actually reinforces the power of adults, exactly because it recognizes children as dependent on their good will. Wald comments:

Providing children with adequate income or health care does not entail giving them more autonomy of self-determination, quite the opposite. Demands for such rights recognize that children cannot provide for themselves and need the care and guidance of adults. Thus, these claims might be better thought of as protections due, rather than rights of, children. (1979: 261)

Indeed, some commentators argue that the emphasis on this set of rights actually *increases* the power of the adult over the child. 'Welfare rights to care and education . . . strengthens the hold that adults have over children' (Wyness, 2000: 5–6) and Wald and Wyness both compare the right to provision with the rights to autonomy, where the former reduces and the latter increases the power of children. Ultimately, therefore, this set of rights, as fundamental as they are to the child's well-being, does not change, from the point of view of a children's rights theorist, the status of the child as a 'becoming' and subject to the dual authorities in his/her life. Another set of rights must be included to overcome their continuing status as subject.

The Right to Protection

The second set of children's rights, to protection from abuse, neglect, exploitation, and danger, *also* supports the authority of the family, and most particularly the state in children's lives. The state takes on the role of monitor to watch whether 'adults, especially parents, are actually harming children' (Wald 1979: 262). So much of the language in reference to the 'protection' rights of children is loaded with policing/state imagery of standards, surveillance, intervention, and intrusion. Freeman's own description of this set of rights concludes: 'All states set some standards for parental conduct. They are usually pitched minimally. The norm is parental autonomy, rather than state intervention. Recent events have, however, led to an increased state monitoring of the adequacy of parental care' (1983: 44).

Children's rights theorists are often the strongest advocates for the state as a monitor, intervening in the private sphere in order to take tough punitive measures against parents who abuse their children. While the idea of constraining an arbitrary or abusive power is consistent with liberal rights, the support for an increasingly powerful state to interfere in private family relations is not. The reconciliation of these two conflicting aims within liberal thought results in a particular relationship between parents and the state. In keeping with the liberal foundation of 'rights', the state steps in only when family relations have broken down, in order to police the family. This has one very important implication: namely, to put the family and the state in an adversarial relationship to each other. The liberal state is reactive and often punitive in its approach to children and their families. Parents, in turn, rather than seeing the state as a supportive agency available before problems arise, tend to see social welfare agencies as the enemy who become involved, by definition, only when they fail. Moreover, these agencies often carry with them the threat of criminal proceedings and courts. Once again children's needs, defined as rights, are ultimately mediated through an adversarial and hostile system of enforcement in a court of law.

Finally, this second set of rights, like the first, does not change the status of the child in relation to the authorities in his/her life. Franklin and Franklin comment: 'Rights to protection do not involve any changes to the status of children or offer them any greater autonomy or independence from parents or other adults; indeed on consequence of protection rights may be in some, but certainly not all cases, be to diminish autonomy rights' (1996: 100. See also Wald 1979: 263). The child's status remains that of a subject or 'becoming'.

Let us turn to explore the set of rights that does seek to change the status of the child, namely autonomy rights, which is therefore essential to children's rights theories. While the first two sets of right may be necessary, by themselves they are not sufficient to a fully developed theory of children's rights. This final set of rights involves both a call for greater autonomy for the child in the public sphere, and greater participation rights in the private sphere of the family. These rights are rooted in the early liberal attack by Locke on patriarchal authority, namely the notion that the child has some kind of potentially equal status to that of the adult (as opposed to the subordinate relationship implied by paternalism). The emphasis in the Hegelian dialectic shifts from the negation of being to being itself. At the heart of this last set of rights, therefore, is the attempt to change the status of children, from that of becoming to being, of subject to citizen.

The Right to Autonomy

Children's rights theorists' primary interest is ultimately in this category of rights, for one central reason. The rights to provision and protection, as already discussed, can all too easily be addressed within a traditional liberal framework, even within a paternalistic

framework. As has been suggested, such rights do nothing to change the status of or empower children. Only through the notion of autonomy is the child given full expression as a 'being' or citizen rather than a 'becoming' or subject. Freeman comments:

To respect a child's autonomy is to treat that child as a person and as a rights-holder . . . it is clear that we can do so to a much greater extent than we have assumed hitherto . . . If we are to make progress we have to recognize the moral integrity of children. We have to treat them as persons entitled to equal concern and respect. ([1992b](#): 65)

Thus, underlying children's rights theories is a sense that progress can be measured to the extent that society has moved from a recognition of the first two sets of rights to this third set of rights, both in the past and in the future. Freeman comments on this historical shift amongst child rights theorists: 'The emphasis shifted from protection to autonomy, from nurturance to self-determination, from welfare to justice' ([1992a](#): 3). The first phase of protection and provision rights, he claims, was embraced by the 1959 UN Declaration of the Rights of Children. Freeman concludes that these 'rights' should not be seen as true 'liberties' at all. 'Although the preamble to the Declaration refers to rights and freedoms, the ten principles set out in it do not embrace children's liberties (or freedoms) at all' ([1992a](#): 4). Other theorists argue that this trajectory also provides future direction to children's rights advocates. 'Hope must surely be that in ten years time there will be a fourth phase in the development of the Children's Rights Movement. In this next phase, children will be the key political actors, seeking to establish . . . their right to participate in a range of settings which extend beyond the social and welfare arenas' (Franklin and Franklin [1996](#): 111).

Michael Freeman defines autonomy as 'the idea that persons as such have a set of capacities that enables them to make independent decisions regarding appropriate life choices' ([1992b](#): 64). Autonomy is the freedom to make choices over one's life, a freedom that is restricted for children by both parents and the state. Children's rights theorists argue that children's autonomy can only be recognized if they are given greater freedom to choose. Child liberationists, like Richard Farson and J.C. Holt, would claim that children should be as free as adults to choose their actions (Farson 1978; Holt [1975](#)). As such, the only constraint on children would be the classical liberal restraint, applied in equal measure to adults, that one's actions cannot harm the rights or freedoms of another. Most children's rights theorists, however, would argue that, while children's freedom to choose and participate in decisions over their own life should be increased, the critical question in defining the level of autonomy for the child is their rational maturity. Unlike the rights of provision and protection, which embrace all of the various needs of children, the right to autonomy embraces a conception of children focused on their rational capacity.

Thus, autonomy rights for children return us to the underlying view of adults and children first articulated by John Locke in early liberal thought. The difference of course, is that children are perceived to be far more like adults than what Locke had originally suggested. By incorporating this model of child development into their theories, however, children's rights theorists import the same problems associated with the end product, process, scope, and view of the *polis* described earlier in Lockean theory. Let us examine these parallels in detail.

The end product for children's rights theorists, like Locke, is rationality. Thus, Freeman argues that intervention in children's decision-making is justified 'only to the extent necessary to obviate immediate harm [the classical liberal criterion], or to develop the capacities of rational choice [of] the individual' (1992b: 67). The 'capacity for rationality' argument is often expressed in terms of 'tacit' consent, namely the parent has tacit consent to intervene, because a fully rational adult would approve of the decision being made on his/her behalf as a child. Freeman summarizes this approach:

The question we should ask ourselves is: what sort of action or conduct would we wish, as children, to be shielded against on the assumption that we would want to mature to a rationally autonomous adulthood and be capable of deciding on our own system of ends as free and rational beings? (1992b: 67; see also Eekelaar 1992: 229)

Consequently, the process, like early liberal theory, is also focused on rational capacity. Competency to make decisions is measured by the extent to which the child can intellectually distinguish between choices. An example of this narrowly intellectual version of maturity would be the outrage of the British National Council of Civil Liberties 'at the fact that the brightest maths student of modern times is not permitted to vote'. As Judith Hughes comments: '[this anger is] comically misplaced. Being good . . . at mathematics is not dependent upon being mature; acting with political authority is' (1989: 46). Thus, the development of the child is often seen in narrow and instrumental terms, dictated by the requirements of adult liberal citizenship. There is no room in these theories for the organic or multifaceted nature of maturation, and the care required beyond education to guide this process.

Thirdly, the emphasis on autonomy by children's rights theorists limits the scope of their interest. Like Locke's 'pre-becomings', the infant or pre-schooler's interests have very little bearing on any discussion of autonomy rights. In both cases, the focus on rationality and adult rights allows a single-sentence dismissal of early childhood, as an area covered under the first two sets of rights. Some more radical theorists take a different tack and attempt to widen the scope of adulthood to include even very young children, but in all of these cases, the underlying premiss remains. Adults (and their autonomy) are the referent points from which children's rights shall be measured. The category of 'children' is expanded or contracted in accordance with the extent to which one sees rational capacity as a precondition for autonomous

choices.

Finally, at the heart of the right to autonomy is a particular associational vision of human relations. In the associational model of politics, as first articulated in early liberal theory, individuals agree to join together for the purposes of mutual benefit. Entry into such an associational society is premised on the notion of consent. Thus, Locke famously argued that children were *not* subject to the government they were born under until they reached the age of maturity and consented to this rule (ii. 18). It is this associational view of society, first introduced by Locke, which continues to underpin children's autonomy rights. The implications for children of an associational view of both the *polis* and family shall be considered in turn.

The associational view of society implies that people must consent in order to join and give authority to the state. Initial consent is the foundation of liberal theories from Locke to John Rawls. In each case the consent must be freely given by rational beings or, in the case of children, beings that have the capacity for rationality. The main problem with this view of society is that it excludes anybody who does not have the requisite skills to join, namely rationality. An alternative view of the *polis* would eliminate any kind of entrance requirements and create a community that incorporated all people, regardless of their capacity to consent. Thus, unlike Locke's associational *polis*, the community would include children from birth, and not wait for their consent to make them full members. Hughes comments: 'we clearly need to drop this obsession with initial consent . . . [and allow for] the beginning of a notion of community rather than association; one which has no need of entry qualifications but within which freedom and autonomy are partly discovered and partly created' (1989: 40–1).

A second implication of the associational view of society is the underlying supposition that it is made up of individuals, each with particular interests that can be analytically separated from those of other individuals. Indeed, society is ultimately no more than the aggregate sum of these interests, expressed as rights. Such a conceptualization of society tends to disaggregate individuals and groups of people from one another. Thus, it is necessary to separate analytically children from both their families and wider society. John Eekelaar comments: '[Children's] interests must be capable of isolation from the interests of others', most particularly parents' interests' (1986: 169). This analytical separation of the child from his/her community, while necessary to a rights theory based on interests, is difficult to reconcile with the dependent nature of children and the symbiotic character of their relationship to their care-givers. Indeed, the child suddenly looks suspiciously like the 'unencumbered individual', which lies at the heart of the communitarian critique of liberal thought (Sandel 1982; MacIntyre 1981; Taylor 1979). Waldron summarizes this general point of view:

The 'unencumbered' individual [is] free to shrug off his communal allegiances whenever he chooses. The relatively unaffectionate and formalistic language of rights and contract theory is said to be an expression of his essential detachability from affective commitments; its formalism expresses the facts deemed most important about his moral status, without reference to any content of community. (1993: 375)

If the 'unencumbered' individual is difficult to sustain when theorizing about adults, it is even more problematic when applied to a child. For children are even less detachable, even more in need of affective commitments, and affected in a more profound way by the context and culture within which they live and mature. Thus Sandel concludes about the unencumbered individual of liberal thought: 'To imagine a person incapable of constitutive attachments is . . . to imagine a person wholly without character, without depth' (1982: 179). Sandel's conclusion may hold true for an adult but for a child the issue goes far beyond character and depth to survival and growth. Exactly because children are dependent and growing beings, they can *only* be viewed as connected, in a constitutive sense, to their families and cultures. Thus, if one wishes to include children in society before they are autonomous, and to the extent that one sees children as particularly *encumbered* individuals, then the vision of the *polis* better suited to children is that of community rather than association, as shall be discussed in the next section.

Let us turn and consider the application of this concept of association to the other kind of 'societies' children find themselves in: families. It is possible to think of the negative rights of autonomy, as constitutive of family relations, producing what might be called the 'associational family'. By making rights constitutive, the family is conceived of as a society of rights-bearing self-interested individuals whose relations with one another are based on a complex series of claimed rights and obligations. The extent to which the family should be seen as an association of individuals as opposed to a community, and the degree to which the liberal democratic ethos of political life should be applied to the private sphere, is an important discussion, with enormous implications for children.

However, I would like to examine a narrower, and more challenging case made for the need for autonomy rights in the family, namely, that rights are nothing more than a fallback position should the ties of affection, care, and kinship fail. In this version, rights need not be constitutive of family life but can serve as an insurance policy should the affectionate bonds break (Waldron 1993; Archard 1993). This is the case Jeremy Waldron makes: 'I will consider how much of that attack would be mitigated or refuted if liberals were to concede that the structure of rights is not constitutive of social life, but is instead to be understood as a position of fallback and security in case other constitutive elements of a social relationship ever come apart' (1993: 374).

At first glance, this view of rights as an insurance policy seems to reconcile the need to retain the primary bonds of affection and care within the family

with the requirements of justice that individuals are treated fairly. Waldron uses the break-up of the family through divorce as his example of when it becomes critical to apply rights to family relations.

Rights serve two purposes at such a juncture. The first is to ensure the provision of care and support. 'The function of matrimonial law, with its contractual formulas and rigid rights and duties . . . is to provide a basis on which ties of love can be converted into legal responsibilities in the unhappy situation where affection can no longer be guaranteed' (Waldron [1993](#): 382). The second purpose is to allow individuals to start new relations without being oppressed by existing bonds of family or community. 'The structure of impersonal rules and rights not only provides a background guarantee; it also furnishes a basis on which people can initiate *new* relations with other people even from a position of alienation from the affective bonds of existing attachments and community. Impersonal rules and rights provide a basis for new beginnings' (Waldron [1993](#): 376).

This view of rights is consistent with its Lockean foundations: leave the private sphere alone, unless there is a fundamental conflict or breakdown that requires intervention by the state. In some ways this version of rights as a fallback to the (assumed) private, harmonious family is even more damaging to children's interests than the constitutive view of rights. By definition, this theory of rights envisions the family being left to itself *unless* there is such a drastic problem that the state must intervene. To put it another way, the issue of 'affection' is considered to be apolitical, either it is there naturally or it is not. Consistent with early liberal theory's demarcation of the domestic, female, natural sphere of care as something beyond the world of politics, no consideration is given to how the state or society might support, in any number of ways, familial affection or care, before the breakdown occurs. The state's purpose is explicitly to *enforce rights*, namely the right to care and support *after* the fact. Thus, the state, and ultimately the court of law, gets involved in families and children's lives only *after* the breakdown occurs, rather than being proactively involved in the care of children prior to that point. A constitutive rights theory of the family could, theoretically at least, involve the state, in the form of the child's representative, in the family prior to the actual breakdown. Such a scenario would introduce other kinds of issues but leaving children in bad family situations until the point of legal proceedings would not be one of them, as is the case with the 'insurance' policy scenario. Secondly, this notion of rights introduces not only the state but also the courts into the lives of children and their parents, as they negotiate their rights in relation to each other during a time of crisis. Family law, as Waldron points out, is based on a set of contractual rights. If you are to enforce rights, you need to have a court of law to back them up. As it stands presently, divorce proceedings often involve two lawyers representing the interests of the

husband and wife in an adversarial system of adjudication in which each tries to best the other, in order to secure the most favourable splitting of the assets and spousal support. The process becomes even more divisive and emotional when children are involved, especially where they are used to inflict pain on the other party. If one were truly to represent the rights of the child within the court, it would seem to follow that he/she should also have independent counsel. Indeed, Freeman argues that failure to include the child's right to independent representation in the UN Convention is a major failing. ([1992a](#): 5). However, the idea that the provision of a lawyer to a child during his/her parents' divorce proceedings, which follows naturally from the Waldron insurance thesis, is a progressive step in the advocacy of children's interests is indicative of the poverty of this approach to real children's lives in such difficult emotional circumstances. To put children in an adversarial forum (which notoriously exacerbates differences and conflict between family members) is already highly questionable. To then suggest that such a situation would be improved if only the child had his/her own lawyer fails to recognize the dependency of the child within the family, before, during, and most importantly *after* the court hearing is over. The objective, from the child's point of view, is not simply to ensure his/her interests are recognized but, as far as possible, that the caring and affectionate relations between him/herself and other family members are sustained. Institutions must be specifically designed with such ongoing care as an objective if such proceedings are to fulfil this need. This brings us to Waldron's second purpose in asserting the need for rights as an insurance policy for the family, namely, it would allow individuals to 'leave' an oppressive situation. Archard comments on this idea in relation to children: 'It may be important for a child to know that it does rightfully belong to a public realm with its rules, rights and duties and is not just the member of a private, if loving community' ([1993](#): 93). Given the 'insurance policy' thesis, it is important to note that we are explicitly talking about when that loving community fails. In this situation, knowing that there is a public realm 'of rules, rights and duties' would be of little comfort. The point is that unlike adults, children do not have the same capacity to simply 'initiate new relations with other people . . . from a position of alienation' (Waldron [1993](#): 376). It is the very nature of children that they live in relationships with their parents which, barring extreme situations, they cannot leave. Thus, in the case of divorce they do not have the choice to leave both parents. Rather they often must *choose* between the two. To take children's views into consideration is, of course, an important part of the decision-making process in custody cases. However, to put children in the position of choosing between parents, the ultimate act of autonomy within the family (consistent with Locke's notion that children may ultimately choose the authority which governs over them) is unjust for two reasons. To ask children to resolve this issue, when the break-up

of any marriage is the result of decisions made by the adults, is to place the burden of responsibility on the wrong shoulders. Secondly, it fails to recognize once again that the family is not just individuals living together in an association but a set of deep and intimate relations, which the child, as a dependant, must remain within even after he/she has been forced to reject one or other of his/her parents.

The Rights of Children: Conclusion

Children's rights theorists have very good reasons for advocating rights for children. Rights are ultimately moral trump cards (Dworkin [1978](#)). If you want to take children's needs and interests seriously, and make claims on their behalf that will compete with any other moral claims, it is necessary to make such claims in the language of rights. It is clear that any non-rights moral claim simply does not carry the same weight in contemporary moral or political debate. Avigail Eisenberg comments: 'Rights function to protect the most important and basic values. Rights "trump" other non-rights claims that conflict with them. A central characteristic of liberal democracy is that it is committed to protecting rights first before addressing non-rights claims' ([2001](#): 163).

Children's rights theorists' ultimate goal is to improve children's lives. Rights are seen as the moral trump cards or best tools to achieve this end. 'We can and must believe that the state of childhood will be *improved* if we are prepared to take children's rights more seriously' (Freeman [1992b](#): 53). It is this assumption, that rights lead to an improved life for children, that I wish to challenge. Rights have certainly been used by different groups of adults to change their status *and thereby* improve their lives. For example, liberal feminists and civil rights workers in the USA have used rights to empower and improve the lives of women and African Americans, respectively. We should not, however, assume that the same holds true for children, because children are different, their needs are unique to the particular nature of their existence, and the approach of the 'authorities' (namely their care-givers) take to their emerging independence is different. As O'Neill comments: 'The crucial difference between . . . childhood dependence and the dependence of oppressed social groups is that childhood is a stage of life, from which children normally emerge and are helped and urged to emerge by those who have most power over them' (1992: 39). Most importantly, while the concept of 'rights' has been extraordinarily elastic, it cannot escape its origins. Nor can the theorists who use it to anchor their claims. As such, a rights-based argument is ultimately concerned with a change in status for the individual, a state committed to the principles of both non-interference and enforcement (when necessary) of rights and contracts, and a society constituted by associational relationships of mutual self-interest. The nub of the problem is this: while rights theorists, building upon a liberal

framework, ultimately believe that the fight to improve children's lives is progressing the further we move from 'nurturance' to 'self-determination' (or from social and positive rights to political and negative rights), it is clear that if one takes children's need to care seriously, we are moving in the opposite direction, namely from a focus on the right to liberal autonomy (and the conceptualization of the individual, state, and society which accompanies it) to a reconceptualized understanding of the need for (and responsibility to) care. In each of the different sets of rights that we examined, the underlying liberal constructs often proved to be obstacles in meeting this need to care and ultimately, therefore, stood in the way of improving the lives of children and their care-givers. Thus, in the case of the first two sets of rights: expressing children's most fundamental need to care as an indirect obligation of the rights to provision and protection, the care of children is limited to providing for and protecting them, without any reference to the need of children to affection, kindness, and attention (a caring disposition) in fulfilling these obligations. Such imperfect obligations are inexpressible in the language of rights. Secondly, both of these rights are shaped and limited by the liberal foundations upon which they are built. The state either does not 'interfere' at all *or* intervenes in the private sphere of families only after the fact, in order to *enforce* the right to care. Rights necessarily construct the state in this role of fallback position and, ultimately, enforcer through the courts. The family, in turn, is put in a defensive position in relation to the state. Rights also construct the family as an association rather than a community, particularly when the need to support and nurture ongoing relations is needed the most by children, at the point of family breakdown. It is ironic that this most fundamental issue of care would be expressed in an *indirect* fashion focused as much on the *curtailment* of the state in relation to the family and the family in relation to the child's autonomy as in a *direct* fashion which would *enable* these two 'authorities' to work together to best meet children's needs. Rights appear, at least at first glance, to fit more easily with the final concept considered, namely autonomy. But it is within this third set of rights that we were most fully returned to the world of the adult citizen first described by John Locke. With the focus on adolescence over infancy, rationality, and the underlying conceptualization of society and family as associational, this set of rights imports the end product, process, and scope of liberal theory into its own conceptualisation of children. Ultimately, by expanding the scope of autonomy simply to include children within the parameters of adult liberal citizenship, children's rights theorists move children further along the liberal scale of 'becoming'. In Hegelian terms, they are seen as more 'beings' than the negation of beings as first conceptualized by John Locke, but 'becomings' none the less. Thus, where early liberal theory used children to be a mirror within which the negative image of a positive adult form could be reflected,

children's rights theorists use the same mirror to reflect an albeit positive, but smaller and shakier image of those same autonomous adult selves.

An Alternative View: Children and the Ethic of Care

An alternative starting-point would be to leave the mirror aside, and begin instead with the child, and consider what characterizes his/her existence as a 'being' in his/her own right, not in relation to a future self but as he/she exists now. Children and childhood have existed for as long as human beings have been around. Too much has been made of the 'constructed' nature of children in recent theories (Aries [1962](#); Freeman [1983](#); Stephens [1995](#)). There are, of course, different conceptions of childhood based on one's historical, cultural, and geographical location (Archard [1993](#)), but there remain certain universal truths about children which defy time and space. The first is that children, at least initially, are completely dependent on others for survival. This dependency, and the correlating need for care, is a universal characteristic of childhood.

A second universal characteristic of children is that they grow to maturity. The difference between the concept of 'growth' and 'becoming' is the more open, organic, and multifaceted nature of the former. Growing is an organic process, involving social, emotional, and intellectual development that does not easily submit to the liberal language of individualism, rights, autonomy, and association, to the either/or questions required by an associational view of either society or the family: is one rational or irrational, can one consent or not consent? Children are dependent and independent, rational and irrational at the very same time, to varying degrees, at different points in the day as well as throughout their young lives. In turn, caring for children does not fit neatly into categories of liberal thought. Where rights advocates see the world through a filter of power and authority (either one is a subject or a rights-bearing citizen), and authority figures treat those under their authority as one or the other, the care-giver's role fits uneasily into such a dichotomous world-view. For unlike the authority figures (who were the targets of early liberal theory) that wanted adults to remain as perpetual subjects in their kingdom, care-givers, in principle, are committed to supporting a child's emerging independence.

If we begin with children, as children, and not constructed reflections of an adult citizen, the central issue that we are faced with, therefore, is not authority, status, and rights (as we find in liberal theory), but 'care'. How do we best care for our children, who should do it, and what are the theoretical principles that should guide us? By asking this question, we reintroduce the domestic, female, and natural sphere first demarcated to be outside the concerns of political theory in Locke's *Two Treatises of Government* into our analysis. Incorporating this sphere back into liberal theory will necessarily challenge

both the dichotomous foundations upon which it has been built, and the vision of a world constituted by self-seeking autonomous actors to which it aspires.

In an article which otherwise argues that the questions posed by considerations of liberal justice and care are not as dramatically different as some would have us believe, Will Kymlicka concludes that in the case of dependants, liberal theories of justice and rights are profoundly inadequate: 'Justice theorists have constructed impressive edifices by refining traditional notions of fairness and responsibility. However, by continuing the centuries old neglect of the basic issues of child rearing and care for dependants, these intellectual achievements are resting on unexamined and perilously shaky ground' (1990: 285).

Kymlicka provides a simple suggestion at the end of his analysis on the application of liberal theories of rights and the ethic of care: 'Should we say that care applies to relations with dependents, while justice applies to relations with autonomous adults?' (1990: 284). Let us use this as a starting-point for our alternative view. What would an ethic of care applied to children look like? What would the implications be for the role of the family and state in children's lives in a liberal democracy? Ultimately, would this model help to improve children's lives in ways that rights doctrines cannot?

Carol Gilligan first articulated an ethic of care in opposition to a liberal-based ethic of justice based on rights:

In this conception, the moral problem arises from conflicting responsibilities rather than from competing rights and requires for its resolution a mode of thinking that is contextual and narrative rather than formal and abstract. This conception of morality as concerned with the activity of care centres moral development around the understanding of responsibility and relationships, just as the conception of morality as fairness ties moral development to the understanding of rights and rules. (Gilligan 1982: 19)

Since Gilligan's initial definition, there has emerged considerable literature expanding upon the care/justice divide (Tronto 1993; Larrabee 1993; Clement 1996; Kymlicka 1990).

Exactly how these two principles of morality relate to each other is a difficult but important discussion. My argument, as applied to children, is nicely summarized by the title of Annette Baier's article on care theory: 'The Need for More than Justice' (1987b). Baier argues that while justice is a social value of great importance, she takes issue with the claim, made by John Rawls, that justice is the *first* virtue of social institutions. Similarly, I am arguing that, while rights are valuable, particularly in adult relations, they are not sufficient as moral principles underpinning our relations to children. As Tronto comments: 'I do not mean to destroy or undermine current moral premises, but simply to show that they are incomplete' (1993: 157).

The first element in an ethic of care as applied to children would be the primacy of responsibilities and obligations over rights and rules. Even children's

rights theorists agree that the basic rights to provision are the most important to children (Eekelaar [1986](#): 171) and these rights are best expressed as obligations (Freeman [1983](#): 37). Beyond the simple obligations to provide and protect, such an approach to dependent children would better express the need for provision and protection to be done with 'kindness and consideration' (O'Neill 1992: 26–8) or 'attentiveness' (Tronto [1993](#): 127–31) towards children. In the first instance, expressing children's needs as obligations would allow us to articulate this 'imperfect' obligation, but as well an ethic of care would focus the relationship between parents and states on this goal through a mutually supportive rather than adversarial relationship. For example, an ethic of care would not divide the care of children between the parents to *fulfil*, and the state to *enforce*, as liberal rights theory does. Rather the orientation of an ethic of care is a proactive, problem-solving one in which the activity of care is fundamental (Gilligan [1982](#): 19; Tronto [1993](#): 242) and the relationship of care-givers is worked out with each of the parties looking to what aspects of care it might best provide. While parents may be best suited for both the intimate day-to-day care based on affection and the overarching guardianship of the child as a full human being, the state could complement these activities with more instrumental forms of care. States focused not simply on the need to provide and protect, but also the need for care and consideration, would necessarily support parents, as necessary, from the outset. Some have argued that such an approach to children is an idyllic view of the family and children, and ignores the possibility of abuse or neglect (Archard [1993](#); Waldron [1993](#)). On the contrary, by taking care as the fundamental objective of both families and states, this model would attempt to help parents, through a myriad of different kinds of support, who might be likely either to abuse or neglect their children before it gets to that point. Put concretely, an adequately funded day-care system, parent resource centres, and in-home care services could provide as useful a set of tools in solving the problem of child abuse or neglect as child-welfare officers.

The critical difference is the scope and orientation of the state. The state's notion of obligation to children would not begin and end with the ministries of education and social welfare. Rather it might entail a Ministry of Children, which would encompass all children and their families from birth onwards, with their full range of developmental needs. The state's care of children, from the point of view an ethic of care, would not be a fall-back position, but a proactive integrated set of services available to parents and their children, even before the need arises. As a result, the distinction now made between school-aged and pre-school children would be redrawn. All children, *especially* young ones, require care. Parents often feel more burdened the younger the child is. Policy proposals like the 'comprehensive, integrated and coherent early childhood service' suggested by Peter Moss and Helen Penn ([1996](#)) would fit very nicely into such a model of a state based on care.

The second element in an ethic of care would be to reconceptualize both families and society as communities rather than associations. The unencumbered 'self' of liberal thought is particularly hard to sustain for a child. Liberals argue, as discussed, that it is critical for the individual, including the child, to have the autonomy to separate (at least analytically if not physically) from his/her community. 'It is a good thing that modern men and women feel able to distance themselves from, reflect on, and consciously embrace or repudiate any or all of the relations that constitute their history' (Waldron, [1993](#): 389). As communitarians have argued, the unencumbered self of liberal thought fails to account fully for the communal attachments that are constitutive of the individual. (Sandel [1984](#)). The child even more than the adult is dependent on these attachments, and his/her context for the expression and development of the 'self'. Recognizing this constitutive self makes it not only possible but also necessary to take more seriously the ongoing relations between individuals, both within the family and society at large.

The third element in an ethic of care, which grows out of a recognition of community, is the emphasis on connectedness or relations between people. Children's relationships to others, particularly adult care-givers, are critical to their well-being. The state should do everything it can to support and nurture these relationships. This is particularly true when there is a breakdown in the family, by reason of divorce. By approaching the question of separation and custody from the point of view of an ethic of care, rather than children's rights, the connections between people and their dependence on one another is emphasized. Like Gilligan's Amy, the solution that one searches for takes into consideration not only the interests of all the parties (particularly children) but also how to minimize the damage done to the relationships of all involved (particularly the one between parents and child). This orientation would push us away from the adversarial system of family law as it is currently practised to a more mediation and counselling oriented approach. The alternatives to a system of rigidly defined individual rights and adversarial courts could be numerous, from forms of mediation and conciliation to a Family Court. ^[5]

The fourth element of an ethic of care as applied to children would be to take seriously the activity of care-giving of children within both the public and private spheres, and the reconceptualization of autonomy that would entail. As feminist commentators and care theorists have argued, it is problematic to apply the notion of autonomy not only to children, *but equally to* those who are looking after them. Kymlicka comments: 'For [liberal] justice not only presupposes that we are autonomous adults, it seems to presuppose that we are adults *who are not care-givers for dependents*. Once people are responsible for attending to the (unpredictable) demands of dependents, they are no longer capable of guaranteeing their own predictability' ([1990](#): 285). The traditional picture of autonomy is the free pursuit of one's projects. Baier argues that an ethic of care, 'makes autonomy not even an ideal . . . a certain

sort of freedom is an ideal . . . but to “live one's own life in one's own way” is not likely to be among the aims of persons’ (Baier [1987a](#): 46). Thus autonomy for adults must be tempered by this recognition of the need for and responsibility to care on all of society's members.

Traditionally, the responsibility for the care-giving of children (beyond that of education) is assumed to rest on people (largely women) ‘choosing’ to do so in the private sphere. As more women have entered the public sphere, the responsibility for care-giving has shifted onto the welfare state. Both of these assumptions are problematic. As Baier comments on the former: ‘A moral theory . . . cannot regard concern for new and future persons as an option charity left for those with a taste for it. If the morality the theory endorses is to sustain itself, it must provide for its own continuers, not just take out a loan on a carefully encouraged maternal instinct’ ([1987a](#): 53). As for the latter, both Jeremy Waldron and Michael Ignatieff assume that in a fully developed liberal welfare state, care will somehow be managed by the state, while autonomous individuals continue to pursue their projects. Waldron comments: ‘Although we may not care for [dependants] on a face to face basis, we both provide impersonal structures to enable them to take care of themselves and respond collectively and impersonally as a society to the rights that they have to our support’ ([1993](#): 381).

Ignatieff concurs: ‘It is this solidarity amongst strangers, this transformation through the division of labour of needs into rights and rights into care [mediated through the state] that gives us whatever fragile basis we have for saying that we live in a moral community’ ([1984](#): 9–10). This conceptualization of ‘care’, based on the liberal primacy of autonomy and rights, simply sets aside care-giving as something done outside of the realm of autonomous actors. If we take care-giving seriously, it will necessarily change the concept of autonomy which lies, as has been discussed, at the heart of liberal theory and children's rights doctrines. Kymlicka concludes:

The whole picture of autonomy as the free pursuit of projects formed in the light of abstract standards presupposes that care for dependent others can be delegated to someone else, or to the state. . . . [Under an ethic of care] the commitment to autonomy is not a commitment to staking out ground for the pursuit of personal projects, free from the shifting needs of particular others, but is rather a commitment to meeting those needs in a courageous and imaginative way . . . Any more expansive notion of autonomy can only come at the price of abandoning our responsibilities. ([1990](#): 285)

Thus, in the same way that rights are seen to be fundamental constraints on everyone's actions in an associational model of adults, so to the need for care, likewise, should be a fundamental moral constraint on all adults within a community, and not just one choice amongst many that a particular autonomous individual adult may make, nor left as the responsibility of the welfare state.

Conclusion:

Ultimately, liberal thought, including children's rights theories, is concerned with a change in status for the individual. Locke wished to make adult subjects into citizens; children's rights theorists similarly wish to transform children from 'becomings' into 'beings'. The language of rights suits this purpose perfectly. For rights are ultimately a means to express a particular view of the individual and his/her relationship to the family, state, and society as a whole. The heart of liberal and rights theory is the rational autonomous individual with society as an association, and the state as the enforcer of the rights of the individual to guarantee their equal status as citizens. In applying this model to children, children's rights theorists use a tool devised for a different kind of being with a different set of interests and needs. Thus, while the rights theorists hoped to overcome the early liberal theorists' construction of children as 'becomings', by adopting the same model of autonomous adult citizens with which to measure children, such theories simply move children further along the same scale of becoming. While rights have evolved and adapted over time they are still the products of their historical origins. In using them for new groups of people, including children, rights theorists cannot escape this legacy. As a result, rights theories do not see children as children. They are still not 'beings' in their own right but small adults who can be measured by the extent to which they are autonomous, and others in their lives can ultimately be judged by the degree to which they do not interfere in their freely chosen ends. This vision, of course is tempered by a commitment to the rights of provision and protection, but these rights (to care) are always seen as a stepping stone, a necessary foundation to the more highly developed rights to autonomy and self-determination.

Within the critique of such a vision of children's rights is an alternative view of moral and political theory, which was sketched out at the end of this chapter. Beginning with the child as a dependent creature that grows to maturity, an ethic of care overcomes some of the difficulties associated with the liberal/children's rights approaches. It views the child's development in holistic terms, going beyond the capacity for rationality. Each child is included, from infancy to adolescence, and the state's role goes beyond both education and social welfare to a fully integrated set of services focused on the child's need for care and the parent's responsibility for care-giving. The rights to provision and protection would be expressed more directly as the obligation to care, with the state acting as a proactive, enabling, and supportive force in parents' lives, rather than as either an insurance policy or enforcer. And the child's growth towards an independent adulthood would be seen as an organic process that unfolds within the context of a multitude of interdependent relationships within both the family and society at large. Such a vision would truly embrace children as full beings.

Notes

1. All future references will include the treatise and paragraph source from John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1989).
2. I use the masculine pronoun because Locke is explicitly referring to sons of citizens when he discusses children in his political theory.
3. In Feb. 1999, the British Education Minister Margaret Hodge introduced a curriculum for nurseries and playgroups, including guides for children as young as 3. The explicit purpose of the curriculum was to make children more 'school ready'. In other words, it is the Education Ministry that is reaching further and further down into early childhood. These guidelines were devised by the British Qualifications and Curriculum Authority. Nick Tate, chief executive of the QCA, comments on the new guidelines: 'High quality early years education is firmly established as one of the conerstones of the Government's determination to raise standards in education'. *The Express* 20 Feb. 1999), 2.
4. I expand on this in more detail in Arneil (2000), my reply to William Schabas.
5. Not surprisingly, children's rights theorists are sceptical of such alternative systems of 'justice'. See Freeman (1983: 229–33).