

What We Owe to Our Children

Relationships and Obligations in Public Care

Eirik Christopher Gundersen

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OG AKERSHUS

What We Owe to Our Children
Relationships and Obligations in Public Care

Eirik Christopher Gundersen

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Summary

Public care is part of the child protection system. Public care institutions are childrearing institutions where foster parents or employees in residential institutions assume responsibility for the daily care and upbringing of minors whose parents are unable, unwilling or unfit to care for them. The thesis is an inquiry into the normative foundations of public care arrangements. It is concerned with the obligations of foster parents and staff in residential institutions – the obligations of *substitute carers*.

It is not clear what substitute carers owe the child they care for. First, the *content* of substitute carers obligations is not clear. According to the Child Welfare Act (CWA), the child's best interest shall be a decisive consideration in all measures that affect the child, including placements in public care. However, although the best interest principle is central in both family law and child protection law, the content of the principle is unclear and it is not obvious that it should apply to substitute carers. Among other things, it is difficult to determine what is in the child's interests. There is also a question of whether substitute carers should always promote the child's best interests. For example, one might also ask if expecting carers to promote the child's *best* interests is to expect too much. Is it always wrong not to promote the child's *best* interests?

Second, the *basis* of their obligations is not very clear. Substitute carers occupy a role somewhere between a parental and an occupational role. On the one hand, they are caregivers. They have child-rearing responsibilities that resemble or mirror parental responsibilities. On the other, they are contractors. They are free to exit the contract on the same terms as an employee, and the child is a source of income. Since it is widely accepted that the child needs parents and a family, and public care is regarded as a substitute for the family, one might assume that substitute carers have parental obligations. However, it is not clear that substitute carers satisfy the conditions for parental responsibility. They have neither caused the child's existence nor agreed to become parents: rather, substitute carers enter into a contract where what they consent to is different from full parental responsibility. Also, there is a question of whether it is reasonable to require level of self-sacrifice from substitute carers that we ordinarily expect from parents.

Questions concerning the content and basis of substitute carers' obligations are moral questions, and concern the ethics of public care. There is no systematic philosophical account that specifically target the ethics of public care, and this thesis aims to contribute to fill that gap. The thesis provides a general and abstract account of the content and basis of the obligations of

substitute carers. The focus is on how someone who cares for a child makes judgements of right and wrong with respect to that child. Unlike approaches that see judgements of right and wrong as based on conception of the child's *well-being*, the thesis defends a different view. I argue that, to answer the question of what the caregiver owes to the child, we should base our account on the *relationship* between the child and the caregiver. The nature of the relationship between the child and the carer can explain how the substitute carer as caregiver ought to make judgments of right and wrong.

The approach is developed in dialogue with existing accounts in applied ethics. I develop an account of the content of substitute carers' obligations that is different from some common interpretations of the best interest principle. The approach involves comparing substitute carers with parents, and explain in what sense substitute carers should identify with a parental role. I also explain when substitute carers satisfy the conditions for parental responsibility, even though they are not the child's biological or legal parents. The thesis also contains contributions on how substitute carers and other carers should relate to children as agents. One chapter provides a relationship-based account of what respecting a child means, which explains why the child should participate and have influence. Another chapter gives a relationship-based answer to what it means to hold a child responsible and how substitute carers and other adults should respond to children's actions. Finally, I argue that the ideas of what should be relevant considerations for the carer, and how the carer ought to think about how he or she should treat the child, can be expressed as a conception of *justifiability*. I refer to this conception as *Future Rejectability*. This conception expresses how a caregiver arrives at justifiable conclusions on what he or she owes to the child.

Sammendrag

Offentlig omsorg er tiltak i barnevernet. Det er omsorgstiltak der fosterforeldre eller ansatte i barneverninstitusjoner får ansvar for den daglige omsorgen og oppdragelsen av et barn som ikke har foreldre som er i stand til å ta vare på barnet. Denne avhandlingen undersøker det normative grunnlaget for offentlig omsorg. Den omhandler de moralske pliktene til fosterforeldre og ansatte i barnevernsinstitusjoner – pliktene til omsorgspersoner som er *substitutter* for barnets foreldre.

De moralske forpliktelsene slike 'substituttforeldre' har overfor barna de ivaretar er uklare. For det første er *innholdet* i pliktene uklare. Etter barnevernloven skal barnets beste ha avgjørende betydning ved valg av tiltak, også ved valg av omsorgstiltak. Men selv om prinsippet om barnets beste er sentralt både i familie- og barnevernlovgivning, så er det både uklart hva prinsippet betyr og om det bør gjelde for substituttforeldre. Det er blant annet vanskelig å fastslå hva som er i barnets interesse. Det er heller ikke opplagt at man bør forvente at substituttforeldre alltid skal handle til barnets beste. Man kan for eksempel spørre seg om ikke det å forvente det *beste* er å forvente for mye. Er det virkelig alltid galt å ikke handle til barnets *beste*?

For det andre er *grunnlaget* for pliktene til substituttforeldre uklart. Substituttforeldre har en rolle et sted mellom foreldrerollen og en yrkesrolle. På den ene siden er de omsorgspersoner. De har et ansvar for omsorg og oppdragelse som minner om eller tilsvarende foreldres ansvar. På den annen side er de kontraktører. De kan si opp kontrakten på samme vilkår som vanlige arbeidstakere, og barnet er en inntektskilde. Siden det er en bredt akseptert oppfatning om at barn trenger foreldre og en familie, og offentlig omsorg er ansett som et substitutt for familien, kan man anta at substituttforeldre har foreldreplikter. Det er imidlertid ikke sikkert at substituttforeldre tilfredsstiller vilkårene for foreldreansvar. De har verken forårsaket barnets eksistens eller samtykket til å bli foreldre: Det de samtykker til, er vilkårene i kontrakten, som ikke er det samme som fullt foreldreansvar. Det er også spørsmål om det er rimelig å forvente samme grad av selvoppgivelse for substituttforeldre som man kan forvente av en forelder.

Spørsmål om innholdet i og grunnlaget for substituttforeldres moralske plikter er moralske spørsmål, som omhandler etikk i offentlig omsorg. Det er ingen systematiske filosofiske teorier som spesifikt omhandler offentlig omsorg. Denne avhandlingen har som mål å gi et bidrag til å fylle det tomrommet. Avhandlingen gir en generell og abstrakt forklaring på spørsmål om grunnlaget for og innholdet i substituttforeldres moralske plikter. Fokuset er på hvordan en person med omsorg for et barn vurderer hva som er rett og galt med hensyn til

barnet. Avhandlingen forsvarer et annet syn på slike vurderinger enn enkelte eksisterende tilnærminger. Mens det finnes argumenter for at slike vurderinger bør baseres på en forståelse av barnets *velferd*, argumenterer jeg for at spørsmålet om hva substituttforeldre har en plikt til å gjøre overfor barnet bør baseres på en bestemt forståelse av *relasjonen* mellom barn og omsorgsperson. Ved å forstå hva om kjennetegner denne relasjonen kan man forklare hvordan omsorgspersoner, herunder substituttforeldre, bør gjøre vurderinger og fatte beslutninger om rett og galt.

Tilnærmingen i avhandlingen er utviklet i dialog med eksisterende bidrag innen anvendt etikk. Jeg utvikler en teori om innholdet i substituttforeldres plikter som er annerledes enn enkelte utbredte fortolkninger av prinsippet om barnets beste. Tilnærmingen innebærer å sammenligne substituttforeldre med foreldre, og jeg forklarer på hvilken måte substituttforeldre bør identifisere seg med en foreldrerolle, samt når substituttforeldre tilfredsstillere vilkårene for foreldreansvar selv om de ikke er barnets biologiske eller juridiske foreldre. Avhandlingen inneholder også bidrag om hvordan substituttforeldre og andre omsorgspersoner bør forholde seg til barn som aktører. Et av kapitlene gir en relasjonsbasert forståelse av hva det innebærer å respektere et barn, som har betydning for hvordan man bør forstå barns deltakelse og innflytelse. Et annet kapittel gir en relasjonsbasert forståelse av hva det innebærer å holde barn ansvarlige og hvordan substituttforeldre og andre voksne bør respondere på barns handlinger.

Denne forståelsen kan forklare hvorfor barn bør medvirke i beslutninger som angår dem. Jeg gir også et relasjonsbasert svar på spørsmålet om hvorvidt og hvordan barn bør holdes ansvarlige. Til slutt argumenterer jeg for at ideene om hva som bør telle som relevante hensyn og hvordan omsorgspersonen bør resonnerer seg fram til hvordan han eller hun bør behandle barnet, kan uttrykkes som et begrep om *forsvarlighet*. Jeg omtaler dette begrepet om en forsvarlig handling som *framtidig avvisbarhet*. Dette begrepet uttrykker hvordan en omsorgsperson kommer fram til gyldige konklusjoner om hva han eller hun har plikt til å gjøre overfor barnet.

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Introduction

This thesis is concerned with the ethics of child-rearing in *public care* arrangements. Public care refers to foster homes and residential institutions. Foster homes and residential institutions are child-rearing arrangements where the state or public authorities have assumed the responsibility for the daily care and upbringing of minors whose parents are unable, unwilling, or unfit to care for them. As an inquiry into the ethics of public care, this thesis focuses on the obligations of adults who function as substitutes for the child's original parents – substitute carers. What do people who are not the child's original or biological parent owe the child, and why?

The motivation for this question is that what we ought to expect from substitute carers seems very unclear, for a number of reasons. It is, on the one hand, not clear what caregivers owe the child, whether the carer is a parent or a substitute carer. While one might assume that all carers are obligated to protect and promote the child's well-being or the child's 'best interests', it is difficult to determine what is in the child's best interests. Also, one might ask if that is all that matters. For example, should a carer also *respect* the child's opinion, even if it is in conflict with the child's well-being? Moreover, one might also ask if expecting carers to promote the child's *best* interests is to expect too much. Is it always wrong not to promote the child's *best* interests? In short, while 'the best interest principle' is central both in family law and child protection law, it is not in fact clear what this means or that we require parents or other carers to always promote the child's best interests.

Another set of questions arise from the fact that substitute carers both resemble parents and have a different role. On the one hand, substitute carers have custody and are responsible for the daily care of the child. Most people will regard these responsibilities as parental responsibilities. On the other hand, it is not clear that foster parents or employees in residential institutions should be compared with parents. They are *contractors* or *employees* as well as caregivers, and it is not unreasonable to assume that substitute carers' obligations should reflect the fact that they have a different role. In fact, for a substitute carer, the child is not only someone they care for; the child is also a source of income. As contractors or employees, they can terminate the contract at will, and thus terminate their relationship with the child. Moreover, even if they provide daily care, they do not have the *full* burden of parental responsibility. Parental responsibility is divided between substitute carers and the child protection service. Substitute carers are responsible for the daily care of the child, but they are not entitled to make decisions on issues that can have major influence on the child's life, such as which school the child should enrol in, where the child should live, or questions of medical treatment. When a

child is placed in public care, such decisions, which are normally made by the child's parent, are not made by substitute carers, but by the child protection service.

However, even if the roles of substitute carers and parents are in fact different, there are questions concerning how different these roles *should* be. Should not those who care for a child be something more than contractors? After all, when it is decided that a parent is unfit to care for a child, then it is reasonable to assume that the substitute for the family and parents should be *better* – more stable, with more engaged carers, and so on. The problem is that public care seems to be an inferior arrangement in certain crucial respects. For example, the fact that it is legally permitted for foster parents or employees to terminate the relationship at will seems to make public care worse than the family. Or, if one normally expects a parent to represent and make good decisions on behalf of their child weighty issues, why should one not expect the same from substitute carers? Why should the child protection service make such decisions?

That being said, since substitute carers have neither caused the child's existence nor agreed to an arrangement that mirror the parent-child relationship, there is a question of whether substitute carers can satisfy the conditions for being a child's parent. Also, there is a question of whether obligations to care for a child are sufficiently important to impose the full burden of parental responsibility on substitute carers. So even if we could substitute the child's original family with a better arrangement, it might not be reasonable to expect substitute carers to make the sacrifices we expect from parents.

In short, there are strong reasons to seek answers to questions of what substitute carers owe to the children they care for. The questions just raised concern the basis and content of substitute carers' obligations, and this thesis provides a general and abstract account that answers these questions. These are philosophical questions, and the account in this thesis is developed in dialogue with existing philosophical views on what childhood is, what is good for children, and what obligations parents should have.

Currently, there is no philosophical account that specifically addresses what is owed to children in *public care*. This thesis aims to fill that gap. By focusing on public care, my aim is to direct philosophical attention to a field that is interesting and merits philosophical attention in its own right. Moreover, by discussing public care, we can see well-established questions on family ethics, such as the grounds and content of parental obligations, in a new light.

Chapter 1 provides the context and background for the chapters that follow. It starts with a presentation of the Norwegian child protection system and public care. The chapter has two purposes. First, it gives readers more information of the context for this thesis, and explains what kinds of institutions we are dealing with. Second, it aims to show that the basic legal

principles of the Norwegian child protection system, the principles that in the most general way express what the law requires substitute carers to do, raise philosophical problems. By considering the views the principles are based on, we can clarify the basic moral assumptions that are *embedded* in the child protection system, and consider whether these assumptions are plausible. In this way, the first chapter offers explanations of why the particular questions this thesis addresses arise in public care.

The principles presented in chapter 1 are the *best interest principle*, the *biological principle*, and a *participation principle*. The *best interest principle* requires carers to take the child's best interests as the *decisive* consideration in all actions that affect the child. This principle is the topic of chapter 2. In this chapter I question the idea that substitute carers ought to regard the best interest principle as the *decisive* consideration for substitute carers, or as a *fundamental* moral principle. I both question the idea that substitute carers ought to promote the 'best', and the idea that they should be exclusively concerned with the child's well-being. This leads the discussion to other possible accounts of what the carer ought to do for his or her child. I introduce the idea that some contractualist notion of hypothetical consent, for example what someone with the appropriate motivation and standpoint would accept or could not reject, is a plausible way to conceptualise what justifiable or morally permissible treatment of the child consists in.

The question is what form of hypothetical consent would be appropriate when the target of one's decisions, actions or treatment is a child. Simply put, one might ask, what perspective is the appropriate one for these cases? It could be, for example, the child's point of view, or the perspective of some fully informed adult. My suggestion is that the relevant perspective is based on the carer-child relationship or what we ought to expect from an 'ideal' carer. The content and basis of the perspective of the 'ideal' carer is further explored in the coming chapters.

A first step is to clarify why having a carer or a parent is valuable. The second principle – *the biological principle* – raises such questions. This principle rests on a family presumption; that it is in the child's interests to be raised by parents in a family. Therefore, the principle constrains public policies and when the child protection service can permissibly intervene in the family. However, in the context of public care, the biological principle gives rise to different questions of whether substitute carers ought to replace a child's parents. In order to answer this question, we must first explain why the family is so important. Secondly, we should ask whether 'family values' *can* be realised in public care by substitute carers, and whether substitute carers *should* somehow compare themselves with parents.

These questions are addressed in chapters 3, 4 and 5. In chapter 3, I present Harry Brighouse and Adam Swift's recent and influential account of family values. On their account, the child has reasons to want parents and a family because the family promotes 'familial relationship goods', such as strong mutual attachment between child and carer, intimacy, spontaneity, as well as a combination of care and authority.

While this view helps us explain what is special about the parent-child relationship, Brighouse and Swift also argue that the family is *uniquely* valuable, or that *only* a family can provide familial relationship goods in an acceptable degree. Contrary to their claim, I argue that public care can be a morally adequate substitute for the family in certain circumstances.

I defend this view in chapters 4 and 5. Chapter 4 answers the question of whether foster parents or employees in institutions can satisfy the conditions for (moral) parenthood. Established views hold that parental responsibility is grounded either by the fact that a parent causes the child's existence, or grounded in the voluntary choice to become a parent. None of these views would hold a substitute carer responsible to the same standard as a parent: The substitute carer is not responsible for causing the child's existence, and foster parents or institution employees consent to the terms of their contract and not full parental responsibility. In the view I outline and defend, parental responsibility is grounded in the child's personal dependency on the parent. On this view, substitute carers can satisfy the conditions for moral parenthood, even if they have not caused the child's existence or want to assume the burden of full parental responsibility.

Given that substitute carers can consider their relationship with the child as comparable or similar to a family relationship, and that they satisfy the conditions of parental responsibility, a question that arises concerns the importance of obligations to assume parental responsibility. That is, taking on the burden of parental responsibility involves considerable sacrifices, and this raises the question of the relative priority of child-rearing responsibilities for people who are not the child's biological parent.

In addition to guide carers to promote the 'best', the *best interest principle* also expresses the idea that children have 'special priority'. According to the current child protection regulations, the child's best interests should have *decisive* importance. The idea is, in other words, that the child's interests should trump other considerations in cases of conflict. Thus, if the special priority view is correct, it can explain why we sometimes take parental obligations to be particularly important obligations; that our obligations to our children outweigh other obligations. Also, if it is plausible, it can explain how important substitute carers should regard their obligations to rear the child.

The question, however, is how we can explain that the child should have special priority. I address this question in chapter 5. I consider two possible explanations; that children's interests are comparatively more important than adults' interests, or that children have a different and *superior* moral status, compared with adults. I argue that neither of these explanations are plausible. Instead, in the view that I develop, children should not have special priority in general, but they may have it in certain cases. The assumption I explore and defend is that we can explain some cases of special priority by considering the type of relationship adults have with children.

In chapters 6 and 7, I explore how this relationship-based approach can illuminate questions of adult-child interaction, that is, whether a substitute carer (or other adults) ought to respect the child's opinions and hold the child responsible for his or her acts. In other words, these questions concern how to relate to the child as an active member of adult-child relationships. These topics concern adult-child interaction in general and not only substitute carers. That being said, answers to questions of whether and how to respect the child and hold the child responsible affects how substitute should understand their relationship with the child and how they are obligated to interact with and respond to the child.

This leads us to the last of the three principles – *the participation principle*. The participation principle holds that the child has a right to be heard in *all* decisions that affect him or her, given that the child is old enough and mature enough. Also, the principle implies that the child should be given influence in accordance with his or her age and maturity. If this is indeed a moral principle, it is wrong not to include the child or give an appropriate level of influence. This raises questions of *why* the child should be heard and have influence on decisions, and *how much* influence the child should have.

These questions are addressed in chapter 6. Existing philosophical contributions offer different explanations, with different implications for how substitute carers and other adults should understand what they are obligated to. According to one well-being account, advocated by Harry Brighouse, the child should merely have a consultative role, because children are not the best judges of what will promote what is good for them. However, David Archard and Marit Skivenes argue that (some) children are able to form their own views. And as the child's *own* views, these views have inherent value and should be respected.

One the one hand, this leads to questions of whether consulting or including the child *only* concerns the child's well-being or whether there are also other reasons to respect the child's own views. On the other hand, if there is reason to respect the child's views, there is the question of how to make sense of the fact that, as mere participants, children's voices will only be partially

authoritative. In response to these questions, I offer a different explanation for the respect the child is owed and of how much influence the child should have based on the child-carer relationship approach that I have introduced. This account explains, I shall argue, why a child should be included, why a child's claims have authority without being authoritative, and how the fact that a child's view is his or her own matters.

In chapter 7, I turn my attention to whether children should be held responsible for their actions. A natural extension of Archard and Skivenes' claim that children can form their own views, is to ask if children are capable of some level of responsible agency. If they are, then this will have consequences for how they should be treated. If the child can form their own views, should we also *hold* the child responsible for what he or she says or does? To address these questions is of considerable importance for child-rearing and the treatment the child should get from adults. It concerns, among other things, how substitute carers should respond to the child in their efforts to educate and discipline the child.

I develop a distinctive account of moral appraisal, and of the special appropriateness conditions that apply when the target of moral appraisal is a child. The point of departure in this chapter is the view that, since children lack the moral standing of adults, we should not hold them responsible for their actions. We sometimes regard children as 'innocent agents', to refer to Archard's presentation of this view (Archard, 2004, p. 45 ff). While a plausible assumption in the case of children who are yet to develop language and minimal forms of agency, such a view of the separate standing of children is less plausible the older the child gets. The view I develop is based on rejecting the assumption that children are 'innocent'. Instead, I aim to show that there are certain special conditions of moral appraisal that apply when the person is a child.

In chapter 8, I draw on the lessons learned from previous chapters and outline my idea of a conception of justifiable treatment of children, one I think is more plausible than the best interest principle. So in this chapter, I finally arrive at the answer to the problem of how to conceptualise what we owe to children and the answer to some of the problems raised in chapter 2. The answer is indebted to T. M. Scanlon's contractualism.

The basic idea is the following: what the carer owes to the child reflects the carer-child relationship and the 'ideal' carer's specific form of motivation – what he or she is disposed to take as reasons for action, in light of his or her care, respect and special concern for the child. This idea, I argue, can be expressed as a conception of justifiability. The entire thesis builds up to this conception of justifiability, which I refer to as 'future rejectability'. In short, then, the thesis outlines of how parents or substitute carers ought to think to arrive at justifiable conclusions on what they owe to the child.

1. Public Care and Its Principles

What is public care? What makes public care arrangements into morally acceptable child-rearing arrangements, and substitute carers into acceptable caregivers? The purpose of this chapter is to present the context for this thesis, and explain why child protection and public care raise the philosophical questions mentioned in the introduction.

In part 1.1., I address the question of what public care is by briefly outlining the child protection system, and by giving a short description of foster homes and residential institutions and what legal regulations require substitute carers to do.

In the second part of the chapter (part 1.2.) I turn my attention to the legal principles of the child protection system. The aim in part 1.2. is to show that the basic legal principles of the Norwegian child protection system, the principles that in the most general way express what the law requires substitute carers to do, raise philosophical problems. I try to demonstrate that the basic legal principles in child protection have moral content: Among other things, they rest on assumptions of what is good for a child and what a valuable child-rearing arrangement is like. This moral content is not very clear, however. In turn, this leads to questions of what one should expect from public care arrangements and substitute carers. Thus, the purpose of the last part of the chapter is to clarify the moral assumptions that are embedded in the basic principles of child protection, and to raise the questions that subsequent chapters will provide answers to.

1.1. Child Protection and Public Care

Many European and North American welfare states have some form of child protection system. There is considerable variation between these systems, including how centralised they are, the degree in which they not only aim to *protect* children, but also *provide* families with different forms of support, what the threshold of entry is (e.g. only abuse and neglect or also poverty or need of other forms of support) (Burns, Pösö, & Skivenes, 2017; Gilbert, Parton, & Skivenes, 2011). The context of this thesis is the *Norwegian* child protection system and public care arrangements – foster homes and institutions.

That being said, it should be noted that the basic principles of the Norwegian child protection system apply to other countries as well, and the problems discussed in this thesis are not limited to the Norwegian system. Some basic principles are found in the laws of many different countries, and they are reflected in international conventions on human rights, such as the United Nations Convention on the Rights of the Child (UNCRC) and European Convention on Human Rights (ECHR).

The Norwegian child protection services and public care arrangements are regulated in the Child Welfare Act (CWA, 1992). The responsibility of child protection services is to “... ensure that children and youth who live in conditions that may be detrimental to their health and development receive the necessary assistance and care at the right time”, and to “... help ensure that children and youth grow up in a secure environment” (CWA §1-1). Children are all persons aged 0 to 17, although child protection services can prolong services until the person is 23 years old. There is (currently) no *right* to services regulated by the CWA (cf. The Storting, 1992, p. 8).¹

Child protection services have a limited role, often described as a *subsidiary responsibility* for the care of children (NOU 2016: 16; Stang, 1995). The *primary* responsibility lies with the family. The default assumption is that children have an interest in being raised by their parents, so it is only when parents are unfit or unable to care for the child that the child protection service intervenes in the family.

This leads us to the two ways in which child protection services apply measures. Child protection services can *support* or *substitute* the family. In most cases, it supports families. For example, poor families can be supported financially, or get access to leisure activities or kindergartens. Parents can receive training in parenting skills. Children with behavioural challenges can receive treatment. A family’s lack of resources is not considered sufficient to make care orders or coercive replacement of the child permissible, but it may be sufficient reason to implement supportive measures.

In some cases, however, parents are *substituted* with another care arrangement. To assume custody of the child, child protection services must document that the family no longer protects the child’s health and development to the point where there are “... serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development” (CWA § 4-12). Other conditions include abuse, neglect and failing to provide adequate care and treatment for a child who is ill or has disabilities. If these conditions are satisfied, it is permissible to remove the child from the parents' custody.² Although the child is affected by such a decision, the target of this decision is the parent (Ministry of Children and Equality, 2009, p. 36).

¹ The Norwegian Government has recently (Sept. 2017) proposed to introduce a statute in the CWA that gives the child a right to child protection services (Ministry of Children and Equality, 2017). The amendment is pending approval in parliament (the Storting).

² This does not mean that the biological principle and the principle of least intrusive intervention do not apply. They constrain what it is permissible for child protection services to do upon and after intervention, e.g. how the professionals implement the decision to remove the child (such as a duty to avoid unnecessary provocations), how

The child, however, is the primary subject in the decision that follows – on where to place the child and what measures to implement. After child removals from the family, the child is placed in a substitute care arrangement: in *public care*. The term ‘public care’ refers to cases when the state assumes responsibility for the child.³ Daily care takes place in residential institutions and foster homes.

There is a significant number of children in public care. In December 31 2016, 39 260 children received some type of measure from Norwegian child protection services. If one refer to all children placed in some long term or short term custodial arrangement, as well as voluntary and coercive placements, the number of children in public care at the end of 2016 was 15 865.⁴ However, the term ‘public care’ can be interpreted in a wide or a narrow sense. In this thesis, I do not include short-term placements or placements where the purpose is unequivocally to reunite the child with the original parents. I refer to cases where the public care placement is likely to become the child’s home, or where it makes sense to refer to public care as a substitute for the family.

This means, first, that I exclude voluntary placements. Placements in foster homes or institutions can be voluntary or coercive. In the first case, parents have consented to placement. In these cases, public care in many cases can be interpreted as a form of family support. In contrast, many of the coercive or non-consensual placements are more aptly described as *substitutes* for the family.

Around 75 % of public care cases are non-consensual.⁵ If parents do not consent, the child protection service brings the case to the County Social Welfare Board (hereafter referred to as the County Board). This is a court-like institution consisting of a judge (the County Board Leader), a professional (e.g. a psychologist) and a layperson. The County Board works similarly to a normal court, with lawyers representing each party, and so on.⁶ All parties, i.e. the child (if

to regulate contact between child and biological parents, how far from home and network it is permissible to place the child, etc.

³ Adoptions are excluded, for two reasons. First, they are currently relatively rare in child protection cases in Norway. Secondly, adoption is the formation of a new family – where adoptive parents are given full parental rights. So-called ‘open adoptions’ where children are given the right to maintain contact with biological parents before they reach the age of majority, is an interesting case. That issue goes beyond the scope of this thesis, however.

⁴ This includes both voluntary and coercive measures, as well as all types of registered placements, including emergency placements. ([19.08.2017])

⁵https://www.bufdir.no/Statistikk_og_analyse/Barnevern/Barn_og_unge_med_tiltak_fra_barnevernet/#heading18956 [26.10.16].

⁶ If the child is 15 or older the child can claim rights as party to the case. If the child is younger but deemed sufficiently mature the County Board can decide that the child should also be party to the case. If the case concerns the child’s behavioural problems (and not parental abuse or neglect) or it concerns human trafficking, the child is always party to the case (CWA § 6-3). The County Board can also assign a spokesperson to the child (CWA § 7-9).

sufficiently old or mature cf. CWA § 6-3), parents and the municipal child protection service, are represented in the proceedings. Decisions made by the County Board can be appealed to the regular court system. If the County Board decides that the child should be placed in public care, parental responsibilities are transferred to the child protection service and to the foster home or residential institution (CWA § 4-18). Within the conditions decided by the County Board, the child protection service gets the authority to decide where the child should live, go to school, etc.

Second, I also restrict the phrase ‘substitute for the family’ to long lasting placements. These placements are intended as child-rearing arrangements or arrangements of stable and lasting care. In contrast, many placements, including coercive placements, can be for shorter periods. In these cases, the purpose of placement is usually to provide some form of treatment, and the aim is to reunite the child with his or her parents. With this in mind, we can narrow down the types of foster homes and institutions this thesis concerns.

1.1.1. Foster homes

Foster homes are forms of substitute care found in widely different child protection systems (Burns, Pösö, & Skivenes, 2016). Again, the focus here is on the Norwegian system. More than 11700 children and young people were living in various types of Norwegian foster homes at the end of 2016.⁷ This includes all children and young people between the age of 0 and 22 years old, and both voluntary and coercive placements. There has been an increase of 58 % in the last decade (Ministry of Children, Equality and Social Inclusion, 2016), with an average increase of 675 new children in need of foster homes each year (Havik, 2013, p. 109).

A *foster home* is “a private home that accepts children for fostering” (CWA, § 4-22), that is, private homes that enter into a contract with the child protection service. The assignment is to foster the child. Before taking on the assignment, the foster parents are validated in light of the legal conditions for foster parents (Ministry of Children and Equality, 2003, § 3) and offered a training program that can also include any children in the family. The foster home contract itself specifies the conditions for the assignment, including financial compensation, and the foster parents' rights and obligations.

Some foster homes resemble families, but there are some notable differences. To name a few, foster parents lack ordinary parental rights, such as rights to make decisions on behalf of the child in matters like school choice or important questions of medical treatment. They are

⁷ Statistics Norway, <https://www.ssb.no/statbank/table/11600/tableViewLayout1/?rxid=34f65cd9-56e9-4892-8420-d6f234f68526> [18.01.2018]

responsible for the daily care of the child, but the child protection service has the authority to decide in weightier matters. Also, foster homes are supervised and audited, and enjoy less privacy than a normal family. Perhaps most important is the fact that it is a voluntary arrangement: Foster parents are free to enter and exit contracts, and also to negotiate rights to pension and holidays. Thus, foster parents are not only carers, but also contractors.⁸

There are different types of foster homes, with varying degrees of similarity to a normal home. I will distinguish between four main types of foster homes. What we might call ‘regular’ foster homes work, more or less, like any other family, with the exception of supervision and support from the child protection service (e.g. financial support, parental training programmes). Regular foster homes includes both non-kinship and kinship foster homes. The latter is a foster home with relatives (grandparents, uncles and aunts, etc.) or foster parents recruited from the child's network. It should be added that, even if regular foster homes are comparable to families, an increasing proportion of foster homes receive additional support.⁹ This has led researchers to ask whether foster parenting is becoming an occupation (Backe-Hansen et al., 2013, p. 9).

Homes that are called *family homes* are specifically arranged to care for children with special needs, such as disabilities or behavioural problems. In these homes, the foster parent is the full-time carer and cannot have other employment. Family homes will often receive considerable support from other services. In contrast to regular foster homes, foster parents in family homes cannot agree to or refuse the placement of an individual child. The child is assigned to them (Ministry of Children, Equality and Social Inclusion, 2016, p. 21).

Emergency placement homes are a third category. These homes resemble family homes but are usually short-term placements before a more suitable long-term placement can be found.

Finally, there are foster homes that provide therapeutic treatment. One model for this type of foster home is TFCO (Treatment Foster Care Oregon)¹⁰, developed for children and young people aged 12 to 17 with severe behavioural difficulties. These homes are short-term placements with the aim of providing the treatment required to enable the child to return to their original home. Both types of short-term foster homes differ significantly from long-term ones. Such homes are therefore primarily stepping-stones to a permanent placement (original home or public care). It makes little sense to think of such short-term placements as substitutes for

⁸ I return to the difference and similarities between families, foster homes and institutions in chapter 3.

⁹ In 2000 the proportion of foster homes receiving additional support was 25 %. In 2012 it was 44 % (Backe-Hansen, Havik, & Grønningsæter, 2013, pp. 8, 18).

¹⁰ Earlier known as MTFC (Multidimensional treatment foster care). For further descriptions, see <http://www.atferdscenteret.no/treatment-foster-care-oregon-tfco/category157.html>; <http://www.tfcoregon.com/>

the family. For this reason, I limit the use of ‘foster homes’ to placements of the first two types – to planned long-term placements.

1.1.2. Institutions

Around 1200 children were placed in different types of child protection institutions at the end of 2016.¹¹ This includes children and young people aged 0-22, and both coercive and voluntary placements. Children in residential institutions are generally older than those placed in foster homes. There are few children aged 12 or younger who live in institutions, so this group consists mainly of adolescents and young people. Those who are placed in institutions will generally have more severe problems, although family homes, increased support etc. has meant that foster homes also currently accept children with difficult challenges (Backe-Hansen et al., 2013).

Compared with foster parents, employees in institutions are more aptly described as employees than as substitutes for parents. They have employment contracts, and work shifts in the institution. Also, an institution is itself different from a normal home. We can distinguish three main categories of institutions.¹² First, there is what is called a *youth care home*, where the purpose is to provide a home for persons aged 12 to 18 who for some reason cannot stay in a foster home. Sometimes, this is because eligible foster homes cannot be found. Other times it could be because it can be detrimental to the young person to move into another foster home (e.g. after having experienced repeated breakdowns).

The second type is for children with behavioural challenges such as varying degrees of aggression, violence, criminal behaviour, prostitution or substance abuse. Different target groups are usually placed in different institutions in order to reduce the risk of destructive peer influence. These different target groups are children with low risk of destructive behaviour, with high risk, and children with substance abuse problems. Institutions for young people with these difficulties are often short-term placements, sometimes in highly specialised institutions

¹¹ Statistics Norway, <https://www.ssb.no/statbank/table/11600/tableViewLayout1/?rxid=34f65cd9-56e9-4892-8420-d6f234f68526> [18.01.2018]

¹² The Norwegian Directorate for Children, Youth and Family Affairs sort institutions into four main categories (youth care homes, institutions for youth with behaviour problems, emergency and assessment institutions, and institutions for children with substance abuse problems). The category of children with substance abuse problems is both a subcategory of behavioural problems and a category of its own, so I reduced the number of categories for the sake of simplicity. Two additional types of institutions could also be mentioned. First, one category is institutions for asylum seekers aged 15 or younger who arrive without their parents. The aim of these placements is to lead to permanent placement in a municipality, where a foster home is the most likely alternative. The other category is institutions for young people subject to human trafficking (CWA § 4-29). These institutions provide short-term emergency placements intended to protect the person from human trafficking. Security measures in these institutions are comprehensive and include a secret address and strong restriction on communication and movement outside the institution. The duration of these placements cannot exceed six months. A discussion of the moral dilemmas raised by these placements most certainly merit closer scrutiny, but that discussion is beyond the limitations of this thesis. I simply note that this is primarily a protective measure and not plausibly understood as substitute care.

offering intensive treatment. Such institutions are therefore radically different from families and are outside of the scope of this thesis.

The third type of institutions are emergency and assessment institutions, designed to house young people while a permanent solution can be found. Like emergency foster homes, part of the purpose of these placements is also to assess and analyse the child's resources and challenges. As with foster homes, the residential institutions I refer to in this thesis are restricted to long-term placements, i.e. where the institution is intended to be the child's home. Of the types of institutions mentioned here, only youth care homes are included.

1.2. The Principles of Child Protection

Are the obligations and responsibilities of substitute carers, as outlined above, consistent with what we *ought* to expect from caregivers in a custodial child-rearing arrangement? One way to answer that question is to look at the principles of child protection. Three of the basic legal principles in the Norwegian child protection system are the best interest principle, the biological principle, and the principle of participation. These are not the only legal principles in Norwegian child protection regulations, but they figure in lists of basic principles in policy documents (e.g. Ministry of Children and Equality, 2009, p. 5). Moreover, these principles are clearly relevant for the question of what substitute carers owe to children.

These three principles are *legal* principles, and concern how the law should be interpreted and applied to individual cases. However, in what follows, I do not treat the principles of child protection as legal principles, but as principles that have *moral* content. That is, I treat them as expressing views about what values public care, as a child-rearing arrangement, ought to respect and promote, and about how substitute carers ought to treat the children they care for.

The principles of child protection rest on certain assumptions of what is valuable for a child and a family. In the sections below, the point I will make is that these value assumptions are unclear: each principle can be interpreted in different ways and be consistent with a variety of different views about how the child should be treated. It is, in other words, not entirely clear what following these principles would imply. They provide different and possibly conflicting answers to the question of what we owe to children in public care. This raises questions about what kind of view we *should* favour. And that is not a question on how to interpret the law, but a philosophical question of what should be the basic values of public care. In section 1.2.1 and onwards I try to show that the basic principles give rise to philosophical questions. In order to grasp what we ought to expect from substitute carers, all of these questions must be addressed. This sets the stage for the discussions in the coming chapters.

1.2.1. The Best Interest Principle

Child protection services are obligated to provide measures that are in the best interest of the child. One central source is the UNCRC, where it is expressed in article 3.1: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” The principle is expressed in various national laws that regulate child protection services.¹³ In Norwegian law, the principle is incorporated in the Constitution (§ 104), in the Children Act, the Adoption Act, and in the CWA. In addition, the entire UNCRC is incorporated in Norwegian law through the Human Rights Act, and the UNCRC is given priority over sector laws.

Here, I am primarily concerned with the best interest principle as it applies to what someone who cares for a child ought to do. To clarify, we can ask the following four questions: To what decisions does it apply? How important should this principle be? What does the principle tell us to do? Does it apply to the carer?

First, the principle guides *all* individual decisions affecting children, as individuals or as a group (cf. CWA § 4-1; United Nations, 2013). Thus, the principle is not merely intended to apply to certain decisions, such as, for example, which foster home to place the child in or whether the child should have a certain medical treatment.

Second, there is the question of the importance of the principle. The child’s best interests are always among the central considerations in actions or decisions affecting a child. That the child’s best interests are ‘a *primary* consideration’ in UNCRC formulation implies that the best interests of the child are among the most important consideration, but not *the* most important one.¹⁴ Thus, as it applies to general policy, the UNCRC formulation suggests that the child’s best interests must be balanced against other considerations (Haugli, 2002, p. 318).¹⁵

In child protection, the child’s best interests are even more important, however. The CWA states that “... *decisive* importance shall be attached to framing measures which are in the child’s best interests” (CWA § 4-1, my emphasis). That it is given *decisive* importance implies

¹³ E.g. the Norwegian *Child Welfare Act* (CWA), § 4-1; The State of Ontario’s *Child and Family Services Act*, § 1. UK’s *Children Act* as well as Germany’s *Bundeskinderschutzgesetz* use the concept ‘welfare’, but is written in the same spirit. The UK act stipulates that the welfare of the child shall be a “paramount consideration” (§ 1) and the purpose of the German act is “... das Wohl von Kindern und Jugendlichen zu schützen und ihre körperliche, geistige und seelische Entwicklung zu fördern” (§ 1).

¹⁴ Matters are different when it concerns where the child should live, however. Thus, UNCRC article 21 on adoption states that the child’s best interests should be a paramount consideration.

¹⁵ The wide scope of the UNCRC makes it easy to understand why the Committee did not choose a stronger formulation – that the child’s best interests is the *paramount* consideration – although the choice between the two was debated (United Nations, 2013).

that in cases of conflicts, it should trump other considerations (Ministry of Children and Equality, p. 5). For example, in some public care placements, a parent may have an interest in regular contact with the child, while the child has an interest in stability, which might imply less contact than the parent desires. In these cases, ‘decisive importance’ implies that the child’s interests take priority.¹⁶

Third, regarding what it requires of us, we can distinguish between two issues, the first concerns what level of interest satisfaction the principle requires. The principle states that the child’s *best* interests should be a primary consideration. As such, it points to maximal interest satisfaction, and not merely what might be an acceptable level of interest satisfaction (United Nations, 2013).

The other issue is *what* the child has an interest in. If we consult the UNCRC, the child has an interest in everything he or she has a legal right to. This includes, among other things, the child’s views, the child’s identity, preservation of family environment and maintaining relations, care, protection and the safety of the child, whether and how the child is vulnerable in the situation he or she is in, the child’s health and access to the best available health care, and the child’s right to education (cf. United Nations, 2013, Ch. V, sec. A). Thus, at first glance, virtually anything can be a relevant consideration.

A complicating factor is that what is relevant depends on context. The principle does not have a single universal content applicable to all different circumstances or decisions. As the General Committee writes, the content must be determined on a case-by-case basis (United Nations, 2013, p. 9). This means that decisions concern either an individual child or a group of children, and when deciding, the circumstances of those affected, their needs, etc. are what gives content to the decision. If the target group is children in general, then the context is the jurisdiction or area of policy. Thus, applying the best interest principle to an area like public care may give different outcomes in Norway and Poland.

The final question is to whom the best interest principle applies. There can be no doubt that, as incorporated in laws that regulate state action affecting children and child protection services, decisions made by public authorities and the child protection services ought to be guided by the principle. A question, however, is whether it applies to parents and other carers, including substitute carers. Public care is regulated in the CWA, and as persons who implement measures on behalf of the child protection service, it is not unnatural to regard substitute carers as falling within the scope of people who should make decisions based on the best interest

¹⁶ For an example, see a ruling by the Supreme Court of Norway (2012).

principle. Regarding residential institutions, this is even mentioned explicitly in the regulations of the rights of the child or young person (Ministry of Children, Equality and Social Inclusion, 2011a, § 1).

In sum, these characteristics support the idea that the best interest principle is the *fundamental* standard for how child protection professionals ought to think and act on behalf of the child. What about substitute carers? Should substitute carers promote the child's best interests, as the principle requires? There are at least two reasons to give the matter more consideration before one assumes that the best interest principle should also guide the actions and reasoning of substitute carers.

First, the idea that one should promote the child's *best* interests seems overly demanding. One thing that seems strange about this is that it suggests that caring for a child might involve a level of self-sacrifice that exceeds what we normally expect from parents. For example, the Norwegian Children Act, which regulates parental responsibility, mentions only 'best' interests in relation to custody disputes, and not in the context where the content of parental responsibility is described: "Parental responsibility shall be exercised on the basis of the child's interests and needs" (The Children Act, § 30). Thus, the child's interests and needs are what matters, but it is not clear that a parent is obligated to promote the 'best'.¹⁷ Moreover, from a legal standpoint, a parent or carer is *permitted* to not promote the child's best interests.¹⁸ A parent's right to rear is not withdrawn unless the threshold of neglect is crossed.

Of course, from a moral point of view, a carer or parent who merely ensures that the child is not neglected is not an acceptable caregiver. The threshold of neglect regulates when state agencies are permitted to remove the child from the parent's custody, but it might be possible for a parent to wrong the child long before the threshold of neglect is crossed. However, if the best interest principle is what ought to guide the carer's considerations of how he or she should treat the child, then we might expect that it is *wrong* to not do what is in the child's best interest.

¹⁷ In contrast, in the General Comments to the UNCRC, the UN Committee wrote, with reference to parents, guardians or carers, that "... decisions made in everyday life must also respect and reflect the child's best interests" (United Nations, 2013, Sh. V, sec. B). Carers are not expected to follow the same strict application procedure as state agencies or courts, but must nevertheless treat children according to what is in the child's best interests. In summary, these statements support the idea that the best interest principle is what ought to guide a parent or carer, but compared with public services or authorities, there should be fewer guidelines on *how* they ought to promote the child's best interests.

¹⁸ Compare Archard: "We do not, it seems, require parents to promote their children's best interests. Nor should we. Indeed the standard principles of child welfare policy, even when they include a version of the best-interests maxim, do not stipulate that a child's parents shall do more than ensure that the child receives a threshold of care. Beyond that parents are not normally required maximally to promote their child's interests, and indeed they have considerable discretion as to how they raise the child." (Archard, 2016a, sec. 7)

But to regard anything that falls short of the best or maximal as wrong seems strange and somewhat utopian. Surely, we regard many average parents as ‘good’ parents? And if we do, then should we require more from substitute carers?

In addition, Norwegian legal regulations also include another standard – referred to as a standard of *justifiability*. This standard is different from the best interest principle.¹⁹ Such a standard identifies wrong acts or wrong treatment as requiring more than avoiding neglect, but it is not clear that it is always wrong not to maximise the child’s interests. Thus, even if a standard of justifiability is unclear, it seems to require less than the best. It is therefore less than clear whether one should expect the ‘best’ from public care, or from substitute carers.

Second, the idea of ‘interests’ outlined above is hopelessly inclusive. There are clearly several items on the list that cannot be achieved simultaneously by the individual parent. Also, as many have pointed out, the wide scope of what may be in the child’s best interests makes it virtually impossible to include all relevant factors (Veatch, 2012). Thus, a problem with the best interest principle as it is presented in regulations and legal theory is how to limit the scope of morally relevant considerations. We need a much more precise idea of what interests are in order to know what we ought to expect from substitute carers.

To summarise, we might say that legal regulations give us a confusing and possibly incoherent set of expectations. The confusion lies in part in the fact that ‘interests’ seem to be something distinct and especially important – something that should have ‘decisive’ importance. This is confusing, because ‘interests’ seem to include almost anything. Thus, we need a clearer grasp of what counts as the child’s interests in order to make sense of this idea – in order to know what to expect from a parent or carer. What seems incoherent is that the legal regulations express two different standards of treatment from parents or carers. On the one hand, parents *ought to* promote the child’s best interests. On the other, they *ought to* do what is justifiable. These standards, however, do not seem to amount to the same level of treatment. And unless the standard of justifiable treatment is identical to the best interest standard, these two standards express different standards of *wrong* treatment.

The question that follows is whether there are ways to interpret these claims and standards that give us a plausible idea of what the carer owes to his or her child, in a coherent account. To establish a plausible and coherent account, we need to know how the ideas expressed above

¹⁹ We find a model of such a view of justifiability in a white paper that was presented for the Norwegian parliament in 2013. The Ministry of Children, Equality and Social Inclusion distinguished between three levels of care and quality of services: ‘Best practice’, ‘justifiable practice’ (no: ‘forsvarlig praksis’) and ‘unjustifiable’ practice (Ministry of Children, Equality and Social Inclusion, 2013, pp. 50-51).

should be understood and how they fit together. We should, in other words, address the following two questions.

1. What, among the things a child has an interest in, are morally relevant considerations for the carer?
2. Should the carer promote the best alternative or *justifiable* treatment of a child?

By addressing these two questions, we can clarify what we ought to expect from substitute carers. I address these two questions in chapter 2.

1.2.2. The Biological Principle

A general presumption is that it is in the child's best interests to grow up with its biological parents. One of the basic legal principles in child protection – *the biological principle* – rests on the same assumption (Ministry of Children and Equality, 2009, p. 5; NOU 2012: 5). The biological principle protects the relationship between (birth) parents and child, and the principle, or the idea that the family is especially important for the child, is expressed in a number of legal documents, including UNCRC (preamble, articles 7, 8, 9, 16), the ECHR (article 8) and the Norwegian Constitution (§§ 102, 104).

For example, UNCRC article 9 states that “State parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine (...) that such separation is necessary for the best interests of the child” (UNCRC art. 9.1.). This article implies that, unless it is determinable that the family is *not* in the child's best interests, then the family is in the child's best interest. Thus, the biological principle restricts the permissibility of intervening in the family to cases where it is necessary in order to protect the child's health and development. This reflects the idea of child protection merely as a *subsidiary* responsibility for the child, and that the primary task of the child protection service (in Norway) is to support the family.

However, the principle is also relevant in order to understand what obligations the child protection service and substitute carers have *after* a child is placed in public care. The principle instructs the child protection service to secure the child the right to maintain a relationship with his or her biological parent after placement (Brynildsrud, 2016). Children placed in public care will usually have the right to contact with their biological parents. Moreover, the value of maintaining contact with the (biological) parent is also associated with the idea that reunification of the original family is desirable (Skivenes & Thoburn, 2016). One central

implication of this is that such a presumption makes the use of adoption unlikely, unless reunification with biological parents is clearly not in the child's interest.²⁰

Unlike the best interest principle, the biological principle is not based on a wide and indeterminate concept like 'interests', but is based on the comparatively more precise idea that the original or biological family is immensely valuable, and the best arena for a child to be raised in. Still, there are many reasons to value the family. Therefore, the biological principle leads to the question of what makes the family so important.

A possible answer – referring to the term 'biological' – attaches importance to the relationship between the child and his or her *birth* parents. Some of the legal rights seem to imply that children have a right to know and to be raised by their *birth* family, and to have *this* relationship protected. We can therefore question whether this right merely implies a right to the birth family, or if it also is a right to have *any* family protected and supported. Since our task is to find out what we owe to the child placed in public care or what considerations should matter for the carer, this distinction has important consequences. If the family presumption refers to birth family, then public care can never fully substitute the family. Instead, there may be reason to think that it, as a main rule, should work to preserve the relationship between a child and its birth parents.

Some articles suggest that the family presumption should be understood as an interest in having birth parents. UNCRC article 7.1, for example, states that the child "... as far as possible, [has] the right to know and be cared for by his or her parents". Article 8 expresses the State's obligation to respect and protect the child's identity. Family relations are explicitly mentioned as part of this conception of identity (Article 8.1; 8.2).

At the same time, however, the UNCRC and Norwegian law permit adoption, foster care and residential institutions (UNCRC art. 20; CWA § 4-14; 4-14a; The Adoption Act § 2). The condition, in all cases, is that it is in the child's best interests to be placed outside of the original home, and that the placement alternative is in the child's best interest. There are, in other words, goods other than biological ties that the family should provide, and that are also sufficiently important to trump biological ties.

In this respect, one important good is the special emotional bond between a child and its parents.

The [biological] principle is primarily a standard [no: verdinorm] that expresses that growing up with and receiving care from its parents is intrinsically valuable for a child, because,

²⁰ Adoption is very rarely used as measure in the Norwegian child protection system (NOU, 2012: 5, p. 128).

among other things, there will normally be a strong attachment and emotional bond between the parties. (Brynildsrud, 2016, pp. 271-272, my translation)

Other possible reasons to think that the child should not be separated from birth parents could be that the parents know the child best, and are therefore best positioned to know what the child has an interest in, or that the parent is the person who cares most for the child or is able to love the child, and who therefore is most motivated to care for the child's interests.²¹ In addition, the UNCRC article 20 states that family replacement alternatives should be assessed in light of "...the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (UNCRC, art. 20.3). These are all good-making features of the family, goods one can plausibly assume that the child has reasons to want.

Legal theory tells us that the goods mentioned in the UNCRC are to be seen as constraints on alternative placements like foster homes or institutions, or as considerations one should aim to satisfy when selecting a placement alternative, or where we need good reasons to set them aside (Cf. Stang, 2016, p. 188). In other words, considerations on what the family is good for matter when we consider different placement alternatives.

But there is also reason to assume that such considerations matter *after* placement; that they count among the morally relevant considerations that child protection professionals, foster parents, and staff in residential institutions should consider when they reflect on what they owe to the child. That is, that substitute carers have moral reasons to promote or ensure attachment, love, continuity and protection of the various features of the child's identity, including biological ties, ethnicity, culture, religion and language.

One problem with this idea is that realisation of all items on the list may not be co-possible. At the very least, real cases may force us to balance different considerations, such as continuity with and attachment to substitute carers on the one hand, and protection of biological ties and the attachment to birth parents on the other. On the one hand, this raises the question as to whether the provision of *all* these goods is plausibly described as a parental responsibility, or whether only *some* of the goods constitute what we may refer to as proper *family values*.

²¹ Love is not mentioned in any UNCRC articles. It is mentioned in the preface, however, as a condition for the child's development: "... the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding, ...". Similarly, principle 6 of the 1959 UN Declaration on the Rights of the Child states that the child "... for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support."

Another problem is that this raises the question of whether placing a child in public care ought to aim at *preserving* the original bond or *substituting* it. That is, the account of *why* the family is valuable affects *which* relationship one ought to protect – the relationship with birth parents or the relationship to the substitute carers. For example, one might suspect that, if emotional bonds and attachment are what matters, then a foster parent or an employee in an institution to whom the child is strongly attached would have an equally strong claim to have the relationship protected as the original parent has. Thus, Skivenes and Thoburn note that

Child welfare policy makers and practitioners in most high income countries increasingly share the view that an important aim for children who need out-of-home care and are unable to return to their birth parent/s is for them to become members of alternative families (Skivenes & Thoburn, 2016, p. 152).

Similar views are also expressed in policy documents. Many documents express the view that children have an interest in safety and stability (see esp. CWA § 4-1), and that one should work to reduce breakdowns in foster homes (Ministry of Children, Equality and Social Inclusion, 2016; The Storting, 2016). Also, the standard contracts for family and emergency foster homes specify that foster parents should provide a safe, good home and provide the daily care for the child (Ministry of Children, Equality and Social Inclusion, 2010, section 5.1). Legally speaking, a foster home is not a full substitute for the family. However, there is evidence that supports the assumption that both policy makers and children in fact expect foster homes to (ideally) realise the same family values that we would expect a normal family to realise. Moreover, this is not only an ambition we find in policy documents. To be raised in homes by loving carers is also something that former and current child protection clients have expressed an interest in (Neumann, 2012; Ministry of Children, Equality and Social Inclusion, 2013; Thrana, 2015).

This places both the child protection service and substitute carers in a dilemma. Should substitute carers primarily aim at reuniting the child with its birth parents, or should they aim at substituting the parent and provide the child with a new family? The default assumption in legal regulations is that public care placements should be temporary. The child should be reunited with its parents if the conditions for a care order are no longer satisfied (cf. CWA § 4-21; cf. UNCRC art. 9). This follows from the idea that the biological principle protects the biological family.

However, the child may have developed a strong attachment to the substitute carers, and severing this bond could involve risk of harm and also lead to discontinuity (CWA § 4-21).

Additionally, we may have cases where risk of harm is less imminent, but where reuniting the child with its biological parents will leave the child worse off than he or she would be in the foster home. There are examples of real cases where relocation with birth parents has failed since a parent who has sobered up may still not be a good enough parent (Stang, 2016, p. 174).

This case illustrates the ambiguity of the biological principle. On the one hand, it clearly identifies the child's birth parents as his or her family. On the other, the question of what makes the family good for the child leads us to consider other properties that people, other than birth parents, can satisfy to a degree that makes us question whether the child should be relocated with its birth parents, or if public care should fully substitute the family. Without a clearer grasp of why the family matters, we cannot hope to address this dilemma.

This leads to two questions:

1. Why does the child have reasons to want to be raised by parents in a family?
2. Under what conditions should public care be a substitute for the family?

At heart, these are normative questions. They lead to answers about what public care *ought* to provide; about what we ought to expect substitute carers to provide or what kind of relationship we think their relationship with the child is, and answers on when, if ever, they can be more than mere 'contractors' but also really *substitute* the parent. These two questions form the background for the discussions in chapters 3 and 4, where I ask what makes the family valuable and whether these values ought to be realised in public care (chapter 3), and on whether foster parents or employees in institutions satisfy the basic conditions for having parental responsibilities (chapters 4).

1.2.3. Special Priority

The best interest principle may be taken to imply a *priority* view of children. As it is formulated in the CWA, the best interest principle holds that the best interests of the child should be of *decisive* importance (CWA § 4-1).²² The idea that the best interest principle should be *decisive* may, as illustrated in section 1.2.1, refer to the relative priority of the child's interests as opposed to other considerations, such as the child's views. However, it may also mean that the child is the most important party in child protection cases (cf. Haugli, 2002, p. 319). If this is true, then the child's interests trump the interests of other affected parties in cases of conflict. I refer to this as the *special priority* of the child.

²² The UNCRC only accords the child special priority in this sense in cases of adoption (cf. UNCRC art. 21). Since public care placements may be equally strong interventions in the child's life, and since public care are custodial arrangements, there is reason to treat the child's standing in these types of cases in the same way.

There are several ways to explain why the child should be a special priority, but child protection legislation does not explicitly clarify in what sense the child's interests should be 'decisive'. Special priority might mean several things: It might be a general view that the child's interest trumps other interests, such as what is beneficial for the collective, because *the child* is more important than the adult. According to this view, what makes the child's interests more important are not the child's *interests* as such, for example that the child has more to lose than the adult. The child is a more important *person*. A strong version of this view would hold that even if the child's interests are only moderately important and the adult's interests are very important, the child's interests should take priority. A more moderate version would be that, all else being equal, the child's interests take priority. Thus, if the child's and adult's interests are equally strong, then the child's interests take priority. Finally, the special priority view can be defended if the child's *interests* give us comparatively stronger reasons to prioritise the child than the adult. This latter possibility is compatible with the view that the child and adult are equally important.

Special priority has potentially serious consequences for public care, although how serious depends on how we understand why the child should have special priority in child protection. If, for example, the strongest of the three views above is the most plausible one, then one might hold that the adult might be obligated to sacrifice a number of his own interests for the sake of the child, even in cases when what matters to the adult are quite important and the child's interests are less weighty. If, in contrast, what matters is the weight of the child's interests compared with the interests of others, then we cannot, on a general basis, hold that the child's interests should take priority. Instead, we must compare the stakes on a case-by-case basis.

From an egalitarian moral viewpoint, the idea that some human beings are more important than others clashes with the idea that human beings are moral equals. However, the appeal of special priority is evident in cases where there is a conflict of interests and it is difficult to determine whose interests are more important. In this thesis, a relevant question is whether substitute carers should have the prerogative to exit an employment contract. Taking special priority seriously might imply that a carer who wishes to terminate the foster contract or quit his or her job in an institution wrongs the child, if the child has an interest in having the relationship protected (depending on how strong the child's interest is). In cases where the stakes are comparable, there is no clear answer, but there are surely some that would argue that the child should take priority.

This illustrates the importance of clarifying what the special priority view implies, and whether any of the two stronger versions are defensible. If any of the stronger versions are defensible, we have strong reasons to place children first, even when this might involve considerable sacrifice and self-sacrifice. Moreover, if it is plausible, the special priority view can explain why some might hold that obligations of care are particularly strong. This is surely not the only possible explanation for the strength or importance of such obligations, but if plausible, it increases the support for the idea that what we owe to our children are some of the strongest obligations we have.

Thus, the central question to address is whether any of the stronger versions of the special priority view is defensible, and why. I address this question in chapter 5.

1.2.4. Participation

The child's right to participate in decisions that affect it is incorporated in the Norwegian Constitution (§ 104), UNCRC article 12, and in the CWA, § 4-1. The right to express one's views and have influence is one of the general principles of the UNCRC. This means that the right matters across life areas, or sectors (Sandberg, 2016, pp. 92-93). According to UNCRC article 12.1 states "... shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".

Relatively recent policy documents refer to the child's participation as one of the basic principles of child protection, together with the best interest principle (which is regarded as fundamental), the biological principle and the least intrusive intervention principle (Ministry of Children, Equality and Social Inclusion, 2013, pp. 82-83). To take this seriously implies that no legitimate decision can be made without having consulted the child, heard the child's views and given these views due weight and influence on the decision (United Nations, 2009, § 74). The CWA states that the child

"... shall be given the opportunity to participate and steps shall be taken to facilitate interviews with the child. Children who have been taken into care by the child welfare service may be given the opportunity to be accompanied by a person whom the child particularly trusts" (CWA, §4-1.2).

The nether limit of children who are permitted to participate is the child "... who has reached the age of 7, and a younger child who is capable of forming his or her own opinions" (CWA § 6-3.1). Thus, participation rights include *at least* all children aged 7-18.

These children "... shall receive information and be given an opportunity to state his or her opinion before a decision is made in a case affecting him or her. Importance shall be

attached to the opinion of the child in accordance with his or her age and maturity” (CWA, § 6-3.1). The latter refers to the child’s rights during proceedings, whereas the formulation in § 4-1 states the child’s right to participate and have influence in accordance with age and/or maturity in *all* the measures regulated in the CWA. This illustrates that the child’s participation should be seen as one of the bases for all decisions affecting the child, including all forms of family support and placement alternatives as well as decisions affecting the child during placement.

Moreover, the child does not only have a right to participate in clearly defined decision-making situations, such as during proceedings in the County Board. Participation should also be understood as a 'process' (Ministry of Children, Equality and Social Inclusion, 2013, p. 131), where the child participates through all parts of proceedings and is also entitled to take initiatives, and also, given sufficient age and maturity, entitled to influence his or her daily life. Thus, regarding what decisions the child should participate in, the law is indiscriminate. It concerns both the child’s access to the courtroom and the child’s inclusion and influence on his or her daily life in the foster home or residential institution.

From this, one can draw the conclusion that children who have reached a certain age and level of maturity should be *included* in decisions regarding his or her life. Also, the principle of participation requires that the child should have a certain *influence*. This raises questions of how much weight one should accord the child’s preferences or wishes, and when one should reject the child’s claims. In the UNCRC as well as in the CWA, the general idea is that “... Importance shall be attached to the opinion of the child in accordance with his or her age and maturity” (CWA § 6-3; cf. UNCRC art. 12.1). There are, in other words, two different criteria that both determine whether or not one should allow the child to influence a decision or practice that affects him or her. The first is how old the child is, the second how competent the child is. One might presume, then, that the closer a child is to an adult, in both age and competence or maturity, the more influence the child should have.

If participation is a moral principle, then violating it is *prima facie* wrong. The question, however, is why. Why should the child be included and be allowed to influence decisions? Legal theory informs us that the child’s right to participate is in part grounded in the child’s human dignity (Sandberg, 2016, p. 95, sec. 5.2). However, it also informs us that, unless the adult decision maker hears what the child has to say, the decision maker is not likely to get access to all the relevant facts.

These are two very different justifications for including children in participation processes. The idea that children have human dignity is a non-instrumental reason for inclusion,

while to inform a decision is an instrumental reason. Somewhat simplified, one could say that the child is both entitled to participate in decisions that affect him or her because it is valuable in itself, and because it is instrumental in discovering what is in the child's interests.

According to the UN General Committee, there is no tension between the best interest principle and participation (United Nations, 2013). Correspondingly, one might assume that there is no conflict between these two ways of justifying the participation principle. However, if there are weighty non-instrumental reasons to not only include children, but also to give the child influence, there can be considerable tension between the child's participation and what is in the child's best interests. At the least, there will be a conflict if the child disagrees with the adult. If we, for example, coercively place a child in a residential institution the child refuses to live in, or we forbid the child to maintain relationships with peers we dislike, then what the child wants is overruled for the sake of what is (allegedly) good for him or her.

Of course, to overrule a child's wish is not necessarily objectionable. However, if we think there are reasons to respect the child's claims even when the child wants something that may compromise her well-being, there is potentially considerable tension between the child's interests and the child's views. We care for the child as a being for whom life can be better or worse, but respect him or her as a somewhat responsible being. This tension is almost non-existent in the case of infants and toddlers, but it increases as the child matures. This will inevitably lead to conflicts of the kind illustrated above, which raises the question of whether the child's participation is best seen as a way to respect the child or as a means to promote the child's best interests. That is, it raises the question of whether the child's dignity matters at all in decisions or areas of treatment where the child's well-being is at stake. Of course, how we answer the question of why the child should be included is also connected to how to explain how the child should influence decisions, as well as how important it is for the child to have his or her own views reflected. Accordingly, one way to clarify and answer why children should participate is to consider the possible justifications for including children and giving them influence. We can do this by considering the following questions, which I address in chapter 6:

1. Are there non-instrumental reasons for allowing the child to participate in decisions that affect him or her?
2. How do we explain the degree of influence the child's views should have on decisions that affect him or her or the treatment the child is subjected to?

By addressing these questions, we clarify whether and to what extent the child should be regarded as a *responsible agent*. This leads the way to further questions about responsibility. If we indeed think that children are to some extent responsible for what they want or say, then we

might also ask whether and to what extent they should be *held* responsible for what they say and do. That is, if children are entitled to a certain level of respect, then we might also suppose that it can be appropriate to criticise them for how they act. In other words, to question the sense in which children can be responsible raises questions of whether they can be appropriate targets of moral appraisal. I address this question in chapter 7.

1.3. Conclusion

The aim of this chapter has been to give a brief outline of the child protection system and explain what public care is, and how I use the term in this thesis. In addition, the discussion of the basic principles of child protection reveals that the questions noted in the introduction are not merely questions that have philosophical interests, but that also affect how we ought to understand the basic principles of public care. In the next chapter and the chapters that follow, I follow up some of the questions raised here, starting with whether the decisions made and care given by substitute carers should promote the child's best interests.

2. The Child's Best Interests

According to Norwegian child protection law, the child's best interests should be the *decisive* consideration in *all* measures that affect the child. Interpreted as a moral doctrine, this amounts to the view that the child's best interests is the *fundamental* standard for any measure or treatment the child is subjected to. The best interest principle expresses a positive obligation to act in ways that ensures the highest level of interest satisfaction for the child. This applies to substitute carers as well as professionals in the child protection service.

The best interest principle rests on two central assumptions. The first is that a carer is obligated to promote the best, in which case it is (*prima facie*) wrong not to promote the best. The question is whether this is a plausible idea of what substitute carers are obligated to do. In this chapter, I question this idea, and argue that it is sometimes permissible for a substitute carer not to promote the *best*. The second assumption is that the child's 'interests' should be understood as what constitutes or contributes to the child's *well-being*. I will also question the idea that substitute carers should not be exclusively concerned with promoting the child's good or well-being. Thus, substitute carers are not mere benefactors. What they owe to the child, I shall argue, is to act *justifiably*.

Exactly what 'acting justifiably' is, will not be fully explained in this chapter. I merely suggest a hypothesis, namely that the appropriate idea of justifiability can be conceptualised in terms of what an 'ideal' carer could not reject. The content and basis of this idea is explored in the coming chapters. The purpose of this chapter is to motivate the idea that this is an appropriate way to grasp what substitute carers owe to the children they care for. In order to do that, I will first have to consider the strengths and weaknesses of the best interest principle, or to be precise, the two assumptions the principle incorporates.

The outline of the chapter is as follows. In section 2.1. I present two central interpretations of the best interest principle and argue that they have a common core. In section 2.1.1. I address the assumption that carers ought to promote the best, and argue that this is not a plausible idea. In section 2.1.2., I turn to the idea that well-being is the only thing that matters, or welfarism, and present some objections against welfarism in section 2.1.3. In section 2.2. I turn to alternative ways to explain what a justifiable or right act is. I reject the idea that 'substitute judgement', or what the child could accept if he or she was an adult, is an appropriate idea of justifiability. Instead, I suggest that an alternative idea of hypothetical acceptance is a promising alternative. The central assumption is that we can conceptualise what we owe to children in terms of what an 'ideal' carer would regard as reasons for action.

2.1. The Best Interest Principle

Do we owe our children the best? On a literal reading of the Norwegian child protection law, this seems to be the case. As we saw in chapter 1, in the Norwegian child protection law the best interest principle is not only one among many principles but the *fundamental* one.

This idea is strongly appealing. It may seem to be a natural extension of the notion of care: Care involves concern with the well-being of the cared-for (cf. Darwall, 2002, p. 7). If caring about one's child involves wanting a good life for one's child, then it may also seem natural to want the child's life to be as good as possible. Phrased differently, one might say that the idea that one ought to act in the child's best interests fits well with commonly held expectations of carers, and ideas of how a carers should be motivated.

In addition, it fits well with the idea that children are in a predicament (Hannan, 2017). Children are vulnerable in a number of ways. Small children, and to some extent older children are dependent on adults to make good decisions on their behalf. They are also relatively powerless, and dependent on the good will and efforts of adults for enjoyment of their childhood as well as their development. Thus, they need a paternalistic relationship with (some) adults, where responsible adults make decisions that ensure that the child has a happy and safe childhood that also promotes the child's development (Brighouse & Swift, 2014).

These characteristics of childhood support the idea that carers should be concerned with the child's well-being, including the child's development. It does not imply that they are always obligated to promote the best, however. For some, such as the child's parent or perhaps also for substitute carers, to always be obligated to promote the best might be overly demanding. As some have pointed out, most national laws do not impose such an obligation on parents, but usually refer to some threshold of care (Archard, 2016a, sec. 7). If this is true, then the obligations of parents or substitute carers should perhaps be explained in terms of some harm principle rather than the best interest principle. If there is a threshold of care, and provision below the threshold constitutes harm, then parents or other carers should ensure a certain level of well-being, but not necessarily a maximal level of well-being.

The latter view might be characterised as a 'sufficiency account' or an account of the 'good enough' carer. The problem with this view is that it seems in tension with the motivation one often expects carers to have. If carers should be motivated to do good, then there seems to be something objectionable about only avoiding harm or only ensuring the child's well-being up to some threshold (depending, of course, on what satisfying the threshold requires). Moreover, someone who is motivated to promote the child's well-being will not, one might assume, decide to act in a way that makes the child less well-off than he or she otherwise would have been,

unless there are other strong reasons that count against the best option. Thus, one might conclude that parents and substitute carers owe children more than what is merely good enough.

What we can plausibly require or expect from substitute carers depends on how we understand the obligation to promote the best. The clearest statements of the best interest principle is found within the applied ethics literature. There, the best interest principle is usually used as a standard for surrogate decision-making for incompetent patients within medical ethics, or as a standard for judges in custody disputes between parents (Archard 2016a). The fact that the best interest standard applies to such specific decisions does not necessarily mean that it applies to *all* decisions affecting children, or to how children should be treated in general. However, as we have seen, this is the assumption embedded in the Norwegian child protection law. Thus, in what follows, I treat the best interest principle as *the* fundamental moral standard of public care – the standard that explains what a carer or benefactor ought to do on behalf of the child.²³

Let me start by outlining what is perhaps the standard formulation of the best interest principle. According to Buchanan and Brock, the principle “... expresses a *positive obligation*, a duty to do what best promotes someone’s interests or is most conducive to his or her good” (Buchanan & Brock, 1989, p. 128, italics in original). Beauchamp and Childress specify the principle in the following way: Decision makers should act “... beneficently by maximizing benefit through a comparative assessment that locates the highest probable net benefit” (Beauchamp & Childress, 2013, p. 228; cf. Buchanan & Brock, 1989, p. 123). Thus, it is a consequentialist principle where the benefactor's obligations concern promoting a desirable outcome. On this view, the child's 'interests' are understood as some idea of well-being (cf. the formulations ‘her good’, ‘benefit’). I will call this the *maximising* view.

Assuming that we can determine what the content of the child’s well-being is, the maximising view gives a straightforward answer to what the carer is obligated to do. The way to proceed is to assign “... different weights to interests [the child] has in each option balanced against their inherent risks, burdens, or costs” (Beauchamp & Childress, 2013, p. 228).

How would this work in practice? Let us assume, for example, that one is faced with a choice of whether to place a girl in a foster home. Such a choice affects a number of interests, such as the girl's interest in having a loving and stable family, her interest in having close contact with parents and friends, her interest in getting a good education, and so on. Each of these interests must be counted in and given a certain value. Moreover, to apply the principle in the

²³ Therefore, the objections raised against treating the principle as *a fundamental* standard do not undermine the possibility that the principle should be used in surrogate decision making in *some* areas of decision-making.

way suggested above, we would need to convert different interests into a single currency. For example, having a stable, loving family is very important. School achievements or grades matter as well, but perhaps not as much as having a good family. Thus, assuming that these judgements are correct, one might, for example, give a good family the value 1 and school achievements a value close to 1 but slightly less. To have siblings could be either a blessing or a curse, so one could perhaps give this the value of 0,5 and so on. Then, we would examine whether and to what degree each alternative (foster home vs. remaining with the original family) is likely to satisfy each interest. This would give us a probability of interest along several dimensions. The assessment of probability can then be compared with risk of harm or setback of interests. At this point, one could express best interests as a "... ratio between probability and magnitude of (...) anticipated benefit and the probability and magnitude of (...) anticipated harm" (Beauchamp & Childress, 2013, p. 230).

According to the maximising view, the best available alternative is the *right* alternative, and choosing a less beneficial alternative is wrong. This requires a lot from the carer, and it is therefore no surprise that the view has received a lot of criticism. Among other things, critics have pointed out that such a requirement is unfeasibly high (Archard, 2016a), that it is too individualistic²⁴ (Salter, 2012) and that it conflicts with the interests of others (Elster, 1987; Veatch, 2012). In short, these objections support the claim that it is permissible to not promote the best in many circumstances. Therefore, critics argue that the best interest principle is an implausible standard of morally right actions.

In response to such objections, Loretta Kopelman has argued that we should differentiate between different interpretations of the principle, corresponding to how the principle is actually used. Her point is that the principle applies in different ways in different contexts, and distinguishes between the best interest principle as a threshold concept, an ideal, and a standard of reasonableness (Kopelman, 1997; 2007). For the purpose of clarifying what a carer or parent is obligated to do, Kopelman regards the reasonableness standard as the relevant one, so I will only present that one.

The *reasonableness* standard guides the carer to choose "... the most acceptable of the available choices" (Kopelman, 1997, p. 279). Used this way, the carer tries to select the option

²⁴ Salter writes that Buchanan and Brock understand the best interest principle to be "... *exclusively* patient-centered", and that they therefore "... would not include the interests of the family or the potential recipient in the assessment" (Salter, 2012, p. 185). This seems incorrect. Buchanan and Brock seem to acknowledge that considerations of distributive justice can override the best interest principle in some cases (p. 131). The version of the best interest principle that I characterize as 'the maximising principle' is what Salter would label a 'restricted relational' model, or a model that includes others but give precedence to the interests of the child (Salter, 2012, pp. 185-186).

that "... most informed, rational people of good will would regard as maximizing the child's net benefits and minimizing the net harms to the child without ignoring the rights, needs, and interests of others" (Kopelman, 1997, p. 279). Phrased differently, the reasonableness standard expresses a restricted maximising view.

Kopelman's 'reasonableness' interpretation and the maximising view lead to different conclusions and have different content. Since these interpretations of the principle are different, one might be tempted to conclude that they are in fact different and competing standards. Nevertheless, I shall claim that there is a common core in these two different versions of the principle. And if we reject this common core, we may reject both versions of the principle.

So how do we establish that there is a common core in these two different principles? My suggestion is that we simply take third parties out of the equation. The idea is that we can distinguish between how a parent or carer deliberates with respect to what he or she owes to the child, as opposed to what the carer, all things considered, ought to do.²⁵ If we do this, then the difference between Kopelman's view and the maximising view is insignificant. Both versions conceive of the best as the maximal available outcome (although Kopelman's version includes the constraint that the interests of others should also be taken into consideration). Also, both versions refer to well-being, or benefit, as that which should be promoted (or minimal harm). Well-being is, in other words, what matters. With this in mind, we can consider whether these assumptions are plausible.

2.1.1. Promoting the Best

Should substitute carers promote the best or maximal outcome? Several objections have been raised against this view. First, as we have seen, the principle is sometimes criticised for being too individualistic. Second, the idea faces some practical objections – that one cannot identify the 'best', or that it is overly demanding on parents as well as public agencies charged with the care of children (Archard, 2016a). Third, one can argue that the principle is self-defeating (cf. Parker, 2010). Finally, the child's interests may also consist of things, goods, etc. that have little to do with promoting a good outcome, in which case it makes little sense to think that adults have an obligation to promote the best. I will briefly present these objections in turn.

²⁵ It is not unreasonable to assume that a carer would first focus on his or her child, and then consider how some at might affect third parties. Indeed, if a carer's attention was equally focused on the interests of others, one might also argue that there is something objectionable about the relative importance the carer attaches to the child. This raises a question of whether the parent-child relationship is a moral relationship. This is sometimes clarified as a question of whether the motivation of the parent should include impartial considerations, or whether the carer should prioritise the child. My position on this, which I try to outline in this thesis, is that the moral relationship between carer and child is different from the moral relationship in certain respects, but continuous with it. On this, I agree with Scanlon, who makes the same claim regarding friendships (see, e.g. Scanlon, 1998, pp. 164-165).

Regarding the first, Kopelman has addressed this issue, as we have seen. If one adopts her reasonableness interpretation, then there is no obligation to apply the principle in ways that might harm others. Instead, carers should maximise the child's interests within the constraints set by the interests of others. Of course, Kopelman's reasonableness view does not address the fact that the child's interests may be linked to the well-being of others, such as siblings, parents or other persons the child cares about. Depending on what one thinks the child's well-being consists in, there may be reasons to act in ways that are not strictly speaking the most beneficial for the child if the well-being of another person is sufficiently important for the child. For example, a girl living in a foster home might want to meet her biological father (who has lost custody) regularly, not because it makes her feel better or it is beneficial for her, but because the child believes it makes the parent's life better. It is, of course, not evident that the child's desire is constitutive of her well-being, but I will return to this issue in section 2.1.2.

The second type of objection is practical, and concerns whether carers in fact *can* promote the best. One objection says we cannot, because we cannot accurately predict the outcome of decisions (Mnookin, 1975, p. 264). As Jon Elster has argued, we are even unable to predict which option will promote the best result in cases where there is only a few available options, for example in child custody cases (Elster, 1987). However, this objection has been criticised for being too strong (Archard, 2004; Archard & Skivenes, 2009a; Elster, 1987). Since there is no obligation to do more than one can do, the obligation can only be to maximise *probable* outcomes. This condition is also an important component in Beauchamp and Childress account (sec. 2.1.), where probabilities enter into consideration. Thus, a carer is only obligated to do is what he or she has *reason to believe* will promote the best outcome, not the best outcome itself.

Defenders of the best interest principle have also argued that if one took human beings' inability to predict outcomes to undermine the best interest principle, then it affects consequentialist reasoning in general. This is not a problem that is unique for the best interest principle, but it applies to all decisions that aim to promote someone's well-being (Archard, 2013; Archard & Skivenes, 2009a). It is not plausible to disregard consequences. Instead, one might argue, the appropriate response to such practical objections is to improve the basis for making predictions.

A more serious objection to the idea that one ought to promote the best for one's children is that it is self-defeating. Michael Parker makes this argument in the case of parents who have access to reproductive technology. His question is whether they are obligated to produce the 'best possible child' (Parker, 2010). This question is different from the one I am pursuing here,

where I am concerned with our obligations for children who already exist. Nevertheless, Parker's observations also apply here.

Parker points out that the 'best possible' is a paradoxical notion (Parker, 2010, p. 70). By this, he refers to the idea that the best possible life is not always one where all goes well. A good life is usually one where one endures a certain amount of pain, sorrow, and obstacles of various kinds.²⁶ As Parker claims, "... both strengths and weaknesses of character, and of our lives more broadly, are essential and interdependent elements of the good life" (Parker, 2010, p. 70). For our purposes, Parker's point would be that to promote the best does not necessarily entail a good life. Further, Parker claims that

If we take seriously (...) the breadth, depth, and paradoxical complexity of what it means to live a good life and also the inevitability of genuine uncertainty, the pursuit of the 'best possible' will always be in important respects quixotic and unlikely therefore in practice to be conducive to the good (Parker, 2010, p. 71).

In other words, this is a version of the well-known idea that "...relentless pursuit of the best possible can be the enemy of the good" (Parker, 2010, p. 73). This can happen, Parker explains, because pursuit of the best possible (as opposed to pursuit of the good) "... would be bound to lead to a life of dissatisfaction with any life as lived and to a constant drive for self-improvement" (Parker, 2010, p. 73).

Parker here has the parent's perspective in mind, and it is not immediately apparent that a parent's dissatisfaction with him- or herself matters for the child's well-being. However, since a parent is, among other things, a role model for his or her children, one can easily imagine that a parent who always strives to provide the best possible might be a poor example to learn from for the child. To always pursue something better is a mode of valuing, and this idea of what is valuable is not always desirable. A mode of valuing that can lead to dissatisfaction for the parent can also lead to the same dissatisfaction for the child, and therefore defeat the purpose of promoting the child's well-being.

On Parker's view, maximisation is not always an appropriate form of valuing. His view seems to be that some things that contribute to a child's well-being may in fact lose some of its value if one aspires to maximise it. Other things might be relevant for the child's well-being but not things a parent or other adults should maximise in the literal sense of the term. Friendships, for example, seems to be one such thing. It is not clear that a parent can promote a child's

²⁶ For an example, see Kuflik (2010), who refers to the holocaust survivor Viktor Frankl, who had no regrets about the horrible treatment he was subjected to as prisoner in a concentration camp. See also the discussion of 'Substitute Judgement' later in this chapter.

friendships, except in an indirect way, for example by encouragement, and teaching the child norms of conduct. On the other hand, if a parent tried to select other children the child could befriend, with the aim of promoting valuable friendships, it is likely to be counterproductive, even though it might occasionally work. The reasons why it would be counterproductive is related to Parker's argument: It does not seem to rest on an appropriate understanding of why friendships are valuable, but on an instrumental idea of friendships. Of course, this does not preclude the fact that a parent can certainly facilitate friendships in a number of ways. A parent can teach the child to behave and interact in ways others are likely to respond well to, to enrol the child in leisure activities and to respect the friendships the child develops. But many aspects of this process is beyond the parent's control. Moreover, it seems that the adult's duty in these matters is to respect the child's friendships and allow them to grow on their own, as well as monitor them sufficiently to ensure that the children do not harm one another. Thus, a parent or carer's obligations in this area has little to do with maximisation.

If Parker is correct, then parents or substitute carers are under no *general* obligation to promote the best. This does not mean that carers are not obligated to promote the child's well-being. On the contrary, Parker's argument is that promoting the good is not always compatible with promoting the best. Additionally, there may be goods or values that are important for the child's well-being that we cannot maximise, cf. the example of friendships.

Another argument against promoting the best is that it seems to play a smaller role in moral reasoning than sometimes assumed, or at least in the case of child protection and public care. Child protection workers and substitute carers are, arguably, often concerned with the best in an indirect sense – where what is doing work is harm avoidance. There are different conceptions of harm, but what I have in mind are cases where all alternatives are below some threshold.²⁷ In the case of child protection, children are often in circumstances where there are few or no good options, and where most options are associated with considerable risks. Nevertheless, it might be possible to range option in light of the harm they might produce. In such cases, promoting the good is no real option, even though one might attempt to do what is best in the circumstances.

One point we can make by comparing the relative importance of harm avoidance and promoting the best is that harm avoidance or not acting wrongly may often seem more important than promoting the best. Part of what explains the difficulty of a number of hard cases, where

²⁷ Another conception of harm is one where the child is harmed if he or she is worse off than they otherwise could have been (cf. Kumar, 2003). On this 'counterfactual' conception of harm, anything short of the best available harms the child.

one is typically confronted with two or more undesirable options, is the importance of not making the wrong choice. Cases where the child will benefit from either option are not equally important. Moreover, it also seems permissible not to promote the best, at least in some cases. For example, a mother who enrolls her child in the second best local school simply because she herself went there, will arguably not *wrong* the child. That is, the child is not wronged by getting the second best option if it is also a good school. That is not to say that there is nothing objectionable about not promoting the best in such cases, but I find it difficult to point out what the problem is. The point here, however, is that the parent would most likely think very differently about school choice if she were to decide between two options associated with some serious risks. It would seem like a much more significant choice, one she had strong reasons to take seriously. Arguably, the seriousness of it explains why she is obligated to try to minimise harm, whereas there is no (equally strong) obligation to promote the best if there is no comparable risk associated with the choice. Of course, this does not mean that there are no cases where a parent or carer is obligated to maximise benefit. That depends on the circumstances, however.

To this, one might reply that the harm principle and the best principle are equivalent in cases where the best option is the one that minimises harm. To act in accordance with the harm principle, however, is not equivalent to promote the child's best interests. This is because well-being and ill-being are distinct things. For example, on a hedonistic conception of well-being where all that matters is pleasure and pain, to maximise pleasure is not equivalent to minimise pain. One does not necessarily promote well-being by minimising pain even if that is the best one can do in the circumstances.²⁸

Does this undermine the idea of promoting 'the best'? That depends on how one understands the term 'best' in this context. It is certainly possible to distinguish between different alternatives and make qualitative judgements about what one ought to do even if there is no basis for quantitative comparisons (cf. Taylor, 1985). But then it is not clear that one makes a judgement where one option is better than another in terms of a clear criterion, such as the level of pleasure satisfaction or some other criterion. Thus, if there is no basis for comparisons in light of one common 'currency', then it is not clear that one in fact promotes the best. If one still insists that one is doing the best by choosing between incommensurable options,

²⁸ Moreover, just like well-being, it is not clear that things that are bad should always be minimised. For example, it is not clear that a child who has lost a parent has reason to want to avoid experiencing sorrow, even if it is bad (cf. Kagan, 2014). Therefore, it is not clear that the idea of minimising 'ill-being' works any better than maximising well-being.

then the notion of what is 'best' is different from the one incorporated in the maximising version of the best interest principle.

However, a liberal use of the term best opens up the possibility that one can make 'best interests' decisions that are not strictly speaking beneficial but nonetheless valuable for other reasons. Examples could be activities or relationship the child cares about but that are not necessarily beneficial or that requires the child to sacrifice other interests. One example might be a girl placed in a foster home foster home who wants to have regular meetings with her biological father who has lost custody. Such meetings may not be particularly beneficial, but the child may think that it is worth it, because she cares about the father and because she believes it will benefit *him*.

It is certainly not obvious that one ought to permit this girl to meet her father regularly.²⁹ But it is hard to deny, I think, that the girl's reason for seeing the father is a weighty consideration, and likely one that should be respected unless there are stronger reasons that count against it, such as whether it is safe. The point is the considerations that count in favour of allowing the girl to see her father are not exclusively about *her* well-being. The judgement is an all things considered –judgement that includes heterogeneous considerations, some of which concern values other than the girl's well-being, such as the value of caring about the well-being of another. By using the term 'best' to describe the conclusion of such judgements, one refers to the option that is supported by the strongest reasons, where what one has reasons to do includes considerations other than what will benefit the child. That is not a judgement about the *child's* best interests. Rather, it is more precise to refer to it as the 'right' judgement.

Also, it seems that if one insists on using the phrase 'to act in the child's best interests', and appreciates Parker's point that relentless pursuit of the best can be self-defeating, then one would have to employ a more liberal conception of 'the best' for those kinds of decisions than the one incorporated in the maximising view. This notion of 'the best' would include the consideration that promoting the child's good sometimes means not to pursue the best. Again, it seems better to avoid the term 'the best' and instead regard adults' obligations as concerning promoting the good or doing what is right. Both of these alternative ideas of what one owes to

²⁹ For a number of examples of such cases, where the child shows limited understanding of a decision or his prospects, see Thomas and O'Kane. For example, they quote social workers and carers who say things like this: "You have to base your decisions on what is realistically in the child's interests as well. Particularly with the little boy that I have got, I mean if he had his way as he feels it he would want to see his mum every week. Yet each visit he has he is just totally destructive after it. So that would be the point at which we would have to say 'No, that is not in your interests'." (Thomas & O'Kane, 1998, p. 144).

the child will involve a different way of reasoning about what one ought to do than the best interest principle.

2.1.2. Welfarism

Even if one rejects the idea that parents or other carers are obligated to promote the best, and thereby reject the maximising view, one might still accept a weaker view. Even if substitute carers should not be obligated to promote the 'best', their obligations are still based on the child's interests. And, the child's interests should be understood exclusively in terms of his or her well-being.

This view is sometimes referred to as 'welfarism'. Welfarists hold that the "... only thing that one ought morally to promote for its own sake" (Skelton, 2015a, p. 86). Welfarism seems to be a common view in writings on children.³⁰ Archard and Benatar write, for example, that the "... fundamental moral feature of the parent-child relationship is that parents care for, protect and promote the well-being of their children" (Benatar & Archard, 2010, p. 23).³¹

Welfarism requires a clear idea of what well-being is. If well-being is all that matters, the notion of well-being must enable us (or parents and substitute carers) to distinguish between what is good for the child and what is not good the relevant sense but valuable for other reasons. Phrased differently, the notion of well-being must have clear boundaries (cf. Scanlon, 1998, ch. 3). Additionally, if well-being is all that matters, the notion of well-being must be comprehensive – or take into account the essentials of what matters for the child.

This leads us to the question of what children's well-being is. A theory of well-being (or welfare)³² provides an account of "... what characteristic(s) something must possess in order to make someone fundamentally better or worse off" (Skelton, 2015a, p. 86). A standard distinction between different theories of well-being is between *hedonism*, *desire-fulfilment theories* and *objective list theories*. Hedonism refers to what promotes the child's happiness, pleasure, or other mental states. A *desire-fulfilment theory* conceptualises well-being in terms of fulfilment of what the child desires or prefers. An *objective list approach* conceptualises what is good for the child from a third person perspective (Parfit, 1984, p. 493ff; Skelton,

³⁰ It is also possible to hold a weaker view, where the child's well-being is a central component of what matters, perhaps even the dominant group of considerations for the carer or parent. On this weaker view, things other than well-being can matter as well, or ground the adult's obligations. I will not have any objections to the weaker view.

³¹ A similar view is found in Brighouse and Swift's recent book, where they aim at justifying the family. They write: "... the basic question is this: what arrangements for the raising of children tend to make people's life go well?" (Brighouse & Swift, 2014, p. xi).

³² I use 'well-being' and 'welfare' interchangeably (cf. Bagattini & Macleod, 2015, p. ix). Skelton uses 'welfare' whereas others use 'well-being' (e.g. Scanlon, 1998). These two concepts are sometimes distinguished and thought to have different content (cf. Alexandrova, 2013, p. 313).

2015a).³³ Common items in objective lists include mental and physical health, love and care (or affiliations or attachments), respect, etc. (Powers & Faden, 2006; Nussbaum, 2011; Schweiger & Graf, 2015, pp. 48-49). All of the various goods children have a right to according to the UNCRC, mentioned in chapter 1, are also possible items on a list of objective goods.

One of these distinct ideas of well-being or some combination may be the appropriate way to understand what is in the child's interests. The way to determine whether one or a combination of these theories gives us a plausible account of children's well-being, is to try to work out how different theories of well-being fits with a notion of childhood and with plausible convictions of how children should be treated. For now, I shall simply assume that we possess a workable conception of childhood and enough shared considered judgements on how to treat children,³⁴ and go straight on to examine possible notions of well-being, starting with the desire-based model.

Anthony Skelton has recently discussed how to understand children's well-being (Skelton 2015a). Regarding the desire based model, Skelton argues that the problem with younger children is that there is reason to believe that their desires (or preferences) are likely to change from one circumstance to the next, and they have yet to evolve the capacity to critically reflect on their desires (Skelton, 2015a). Therefore, it is doubtful that their desires reflect what is good for them. One way to address this problem is to move from the child's actual desires to an informed desire model, where what is good for the child is what the child would choose if fully informed. Yet a problem with this account is that it represents the good for someone who is very different from the child. If we make this move, we lose grip of the child's own perspective on what matters for him or her.

Hedonism, broadly understood, is a more plausible approach. Hedonism is often associated with the view that only pleasure is good in itself. However, Skelton argues for a broader understanding, one that includes a number of different mental states such as satisfaction, contentment, pleasure and enjoyment. These are different ways in which the child can experience 'happiness', which is the term Skelton prefers. Skelton notes that one strength of hedonism is that it fits with the intuition that the child's happiness is relevant to his or her well-being. Also, it can account for the relevance of the child's viewpoint. Finally, since the

³³ Hedonistic well-being is, as Scanlon has observed, just a specific type of 'objective' value or as an objectively good state of being (Scanlon, 1998, p. 113). Thus, the difference between this idea of well-being and 'objective list' theories is that the latter have a pluralistic idea of what goods well-being consists of, whereas hedonists are reductionists.

³⁴ A more explicit connection between a conception of childhood and children's interests is found in chapter 3, where I give a short presentation of how Brighouse and Swift approach the issue.

child is not necessarily the authority on what will promote the most overall happiness, this view is compatible with the idea that the child needs guidance and have an interest in paternalistic treatment.

While Skelton believes the broad understanding of hedonism is plausible, he also argues that hedonism has its problems. It is vulnerable to the *base pleasures* objection. For example, if a child is happier watching TV than being out playing with friends, parents are not thereby obligated to endorse watching TV, even if it brings more happiness (cf. Skelton, 2015a, pp. 90-91). Even more troubling are *malicious* pleasures, such as a child's delight in tormenting animals or other children (cf. Fletcher, 2009, p. 24). More broadly, while experiencing happiness, pleasure or satisfaction can be valuable, it is not always the case. In many cases, pleasure is only valuable if it is associated with a worthwhile activity.

The notion of 'worthy' activities leads to the objective list approach, which is sometimes associated with Aristotelian ideas of human flourishing (Nussbaum, 2000; Tiberius, 2006, p. 494). Such lists often refer to what people need to flourish, develop or realise one's potential, although the selection of goods is not always explained by some such underlying rationale. In all cases, however, items on objective lists refer to activities, things or states of being that is good for a person even if the person does not experience them as good or desires them. This is an attractive way of thinking about the good for a child. Also, like the hedonist approach it is clearly compatible with the idea that children need guidance and paternalistic treatment. Unlike hedonism, it is not subject to objections like base or malicious pleasures.

Objective lists also have problems, however. Few objective lists are developed with children in mind (cf. Macleod, 2010). And although work is being done to address this (cf. Biggeri et.al 2006; Schweiger & Graf, 2015), even a child-specific list would have problems. Rather than measuring what makes the individual child's life better it measures how *well off* the child is (cf. Scanlon, 1998). Like an informed desire-model, it is not clear that items in an objective list matter at the individual level. Skelton is aware of this problem and notes that such a theory allows that one can fare well without experiencing any happiness (Skelton, 2015a, p. 95).

Skelton's own suggestion is therefore a hybrid theory, that combines elements of hedonism and objective lists, and where both happiness and the pursuit of things which is good for the child are individually necessary and jointly sufficient (Skelton, 2015b, section III). A

child is better off, he claims, "... when she is both happy and her happiness is taken in something that is worthy of it" (Skelton, 2015a, p. 98).³⁵

Skelton provides short list of what is 'worthy'. It includes "... intellectual activity, loving and valuable relationships, and play" (Skelton, 2015a, p. 99). The first of these goods concerns development, or "...intellectual striving and growth" (Skelton, 2015a, p. 100), and includes a broad range of things and activities like learning, reasoning, artistic activity, etc. The second includes relationships with adults to whom the child is bonded, that is, to parents and grandparents (and possibly others), and to friends. The third item includes free, purposeless activity – or activity that is distinct from that "... which connects with success in one's future goals or aims" (Skelton, 2015a, p. 100).

2.1.3. Two Problems with Welfarism

Skelton's idea of well-being is, I think, quite plausible. My objections do not target his conception of well-being, but I will argue that welfarism should be rejected. It should be rejected because a plausible conception of children's well-being like Skelton's lacks clear boundaries. Also, there are considerations other than the child's well-being that have impact on our obligations. This does not mean that we need to abandon the notion of well-being, but what we owe to a child is not always explained with reference to a notion of the child's well-being. Moreover, it suggests that the notion of the child's 'interests' is wider than well-being.

Let me start with the first objection. Skelton's view is, as we have seen, that well-being consists in experiencing happiness pursuing worthy activities or relationships. The problem with this idea is that the notion is too inclusive. I do not think that is a problem with Skelton's notion in itself. But welfarism rests on the idea that *only* well-being matters. And if the conception of well-being is to play the role it often does in welfarist (usually utilitarian) approaches to moral thinking, where it is the only thing worth pursuing for its own sake, then we need to clarify what that is. In other words, the concept of what is 'worthy' needs specification.

To see why, one can imagine all the different forms of value and activities compatible with Skelton's notion of 'worthy' things – intellectual growth, playing and relationships. If we are to distinguish between what matters and what is valuable for some other reason, these goods should be further specified. For example, it seems difficult to argue that play is not a component in most activities children do. Some even argue that playing is children's primary mode of agency (cf. Schapiro, 1999). If this is true, then where does one draw the line? What instances

³⁵ Kagan explores a similar idea – of well-being as enjoying the good (Kagan, 2009). See also Raz (2004).

of playing are something one ought to respect or promote? Skelton's answer is perhaps that it might be the one that is the most important or worthy and the one that brings the child most happiness. But this raises further questions of why *some* playing activities, such as unorganised play – which Skelton emphasises – are more important than others. These claims, while certainly not conclusive, illustrate that the boundaries of this conception of well-being should be clearer. Thus, what constitutes the child's well-being, and thus what a carer is obligated to promote may be difficult to determine.

An additional point that supports this conclusion is that, if we ought to value the individual child's viewpoint, as Skelton and many others seem to believe we should, then we should not only be concerned with the fact *that* the child values something, but *why*. And to explain why the child likes or enjoys something (or not), we must find out what reasons the child has for valuing something (Scanlon, 1998, p. 129). However, the concept of well-being plays very little role in explaining why the *child* would want to play, wants to go to school, and so on, even if such activities contributes to her well-being.

It seems important to find out why the child takes pleasure in some activity even if it is not included in some pre-defined list of worthwhile activities. Moreover, a carer or a parent will engage with the child and try to grasp why such activities matter to the child. And if the reasons why the child enjoys some activity has little to do with well-being, it is difficult to see that the reasons a benefactor has to encourage such activities *only* concerns their contribution to the child's well-being. It seems like an unnaturally instrumental way to engage with the child, or a wrong way to characterise the motivation of someone who cares about a child.

This leads us to the second objection, or set of objections – that it is not clear that well-being is *all* that matters. Specifically, to regard the carer as someone who should only be motivated to promote the child's well-being, is a misleading picture of the carer's motivation. In particular, it does not fully cover the importance of *caring about* the child has or the importance of *respect*.

Starting with care, a possible interpretation of care is that it is closely connected to well-being. To care about someone, one might think, is simply to be motivated to promote someone's good. If this is true, then care is nothing other than a sensitivity to the person's good. It seems plausible, then, that by promoting the good one also expresses care. If this is true, then a theory of well-being captures all that a carer should consider, in which case welfarism and caring about someone fits nicely together.

This view does not grasp all the relevant aspects of care, however. On some accounts, for example Stephen Darwall's account, care has *two* objects: a person's well-being and the person him- or herself. In Darwall's own words,

The object of care is the person *herself*, not some state or property involving her. In caring for her, we, of course, want certain states and properties involving her to be realized. But when they derive from care, such desires also have an "indirect object" in addition to these direct objects. In caring for her, we want these things *for her* (Darwall, 2002, p. 47, emphasis in original).

Darwall's project is to explain what well-being (or welfare, what is good for someone) is, though not what particular goods welfare consists in. His contribution is therefore different from the theories of well-being Skelton discusses. For my purposes here, the importance of Darwall's point lies in what he has to say about care, namely the idea that caring involves promoting someone's good for the person's own sake. This is clearly distinct from bringing about something good for the sake of the good itself. One can clearly do good things that involve the child without caring about the child. For example, it is quite possible to provide a child with education because it is a way to facilitate intellectual growth, without doing this for the sake of the child. If one provides education simply because it is valuable in this sense, what one values is not the person, but intellectual striving and growth.³⁶ Therefore, it is not caring about the person, but rather a case of valuing intellectual growth.

Neither Skelton's account of well-being nor any of the other theories he discusses, include the motivational basis for promoting someone's good, *as seen from the perspective of the carer*. This does not mean that he regards attitudes like care unimportant, but such attitudes have no part to play in this theory, since the theory only concerns the outcome of one's actions. That being said, one might ask if this is a problem for welfarist accounts. One might argue, for example, that unless the attitude of the parent or carer affects what he or she decides to do, it is difficult to see the importance or relevance of an attitude like care.

One way in which attitudes matter is how they are reflected in the *meaning* of an act. The notion of 'meaning' is borrowed from Scanlon. For Scanlon, an act's meaning concerns an act's *significance* for the agent doing it and for others (Scanlon, 2008, p. 52). The notion of meaning is not the same as *why* an agent in fact acted in a certain way – it is not what others believe the agent's reasons for action was (Scanlon, 2008, p. 53). An act's meaning includes the agent's intentions, but it is a broader conception. As Scanlon explains, "... [if] someone acts with no

³⁶ For a similar claim, see Raz (2004).

regard whatsoever for the interests of another person, then this has a certain meaning – it indicates something significant about his *attitude to that person* and *about their relationship with each other* – whether or not it was his intention to convey this” (Scanlon, 2008, p. 53, my emphasis).

With this notion in hand, we can explain the difference between promoting someone's well-being for the person's own sake or as an act of care, and for the sake of doing something good. These acts will have different meaning. Whether this is morally relevant depends, at least in part, on the relationship between the parties. There is nothing objectionable about a physician who is only concerned with providing high quality treatment to her patients. If the patient happens to be the physician's own son, on the other hand, and the physician's actions reveal that he or she treats the son like he was just another patient, it makes a difference. It makes a difference, even if the boy, in all other respects, is given perfectly adequate treatment. If the patient is the physician's own son, treating him like any other patient seems cold and 'professional' in a way that is inappropriate in the context of the parent-child relationship. That being said, it is not clear that the physician/mother violates any obligation in this last case, but if the act is not plausibly described as an act of care – that it has this special meaning – this can be regarded as a moral deficiency, and be something the child could blame the parent for.³⁷

Another example is that of a boy who lived in a Norwegian residential institution, was depressed and did not want to go to school.³⁸ Employees in the institution had repeatedly tried to encourage him to go to school, stressing the importance of education and the possible rewards and enjoyment it would result in. One day, however, a teacher from the school called the institution and talked to the boy. The teacher told him that the other pupils and the teachers missed him, and wanted him to come back. For the boy, this was a surprise. He was surprised that they missed *him*, that they cared about *him* and wanted to spend time with him. In other words, the meaning of this call, this act, was very different from what the employees had said. It had no reference to the boy's well-being, but expressed that his teacher's and peers valued him. As one might expect, the boy returned to school after that call. But the meaning of the call did clearly matter independently of the consequences.

Another attitude is respect. Respect is sometimes distinguished from care. As Darwall explains it, both care and respect involves taking the person him- or herself as object. But, he

³⁷ Scanlon makes a similar point with regard to the motivational basis of parents' or friends' special concern for those they care about. As Scanlon writes, "... we expect a good friend or parent to be moved by special concern, not just by a general sense of obligation" (Scanlon, 1998, p. 172).

³⁸ A story told me by a person who used to work in the County Governor's office. The County Governor is responsible for auditing child protection institutions and municipal child protection services.

explains, "... whereas caring for someone involves relating to her as a being with a welfare, respecting someone entails relating to her as a being with a dignity" (Darwall, 2002, p. 14). The latter is the attitude we have with respect to other people as capable of free agency. In respecting someone, we take their point of view as what gives us reasons to act. This is distinct from what they might benefit from. Respect, in the sense Darwall uses the term, presupposes that the person one owes respect has a certain level of competence (cf. Darwall, 2006). To illustrate, Darwall uses an example of a parent's relation to his or her child at different stages of life:

A toddler's desires (...) will give normative reasons to a parent just insofar as they indicate or represent what is for the child's good. If the child doesn't want to eat his broccoli, then this fact may have no independent weight, except insofar as it indicates that it will be frustrating, painful, and so on, to the child to do so. When, however, the child matures into a competent agent, then his will and desires do acquire independent weight. For a parent to be regulated only by the child's good at this point is paternalism in the pejorative sense (Darwall, 2002, p. 15).

In claiming that well-being is all that matters, Skelton also implies that adults do not owe children respect. This is a commonly held view, and it is supported by the idea that children are not yet capable of free agency (cf. Schapiro, 1999). Of course, few deny that children's capacity for agency develops throughout childhood, and Skelton's idea of well-being is only intended to refer to the well-being of young children. In the context of this discussion, one might take Skelton to refer to children who have not yet developed the capacity for free agency.

It is possible to understand respect as an attitude we have in relation to other agents that does not presuppose this level of competence, however. A less demanding idea of respect might be that one *expects the child to be capable of understanding and responding to reasons*. This might not apply to toddlers, but it does apply to children who have developed capacity for language. Even if three year-olds and older children have diminished capacities for understanding and responding to reasons compared with adult standards, there is ample evidence that they in fact can understand explanations, and to some extent provide some. In addition, they use their abilities to reason to grasp how the world works (cf. Gopnik, 2009, ch. 3).

Respect, in the sense I am using the term, is a distinct attitude that can be separated from the pursuit of well-being in that it places constraints on how an adult ought to treat the child that is distinct from what is good for it. It would not be respect in this sense if we assume respect to be instrumental to realising well-being, because then our attitude is not a response to the fact that we expect the child to be able to understand and respond to reasons. Accordingly, a

relationship where the carer respects the child is different from a relationship between a benefactor and a recipient – or one where only well-being matters. This idea of respect requires the adult to consider whether the child's views are backed by good reasons, which suggests that it involves taking the child's views seriously even when the views should be overruled.³⁹ Phrased differently, it suggests that the adult-child relationship is one where adults ideally expect the child to be able to understand and respond to reasons, at least to some extent. For this reason, adults are obligated to justify their acts and decisions to the child.

Finally, this idea of respect does not entail that the child's views are authoritative. This idea of respect is compatible with the idea that the adult-child relationship is a paternalistic one. A parent may justifiably overrule a child's wish with reference to the child's well-being (or some other important consideration) without disrespecting the child. But the parent is accountable to the child for such decisions. He or she should justify their decisions to the child, and not simply do what is in the child's interests without explaining why. I will have more to say about this idea of respect in chapter 6 on children's participation, but I hope these brief remarks will suffice for the current discussion.

The question is whether respect is adequately accounted for in available conceptions of well-being. One possibility open to Skelton and other welfarists, is to argue that a notion like respect is incorporated into an account of what constitutes a 'worthy' relationship. Therefore, having and enjoying such a relationship is likely to promote well-being and minimise harm. The child is more likely to enjoy a relationship where the parent or some other adult treats her respectfully in the way just outlined – where the child is expected to be able to understand and respond to reasons. Moreover, such a relationship would also be more likely to stimulate the child's intellectual development, since the child would be exposed to reasoning and justifications regularly. Conversely, the absence of this attention is likely to harm the child in the sense that he or she would be better off if she was respected in this sense.

I do not think such a strategy is plausible. The wrongness of failing to respect the child in the way just outlined concerns *harm avoidance* (cf. Kumar, 2003). But there are cases of wrongness that concerns this idea of respect but involves no harming. Such cases are sometimes referred to as harmless wrongdoings (cf. Ripstein, 2006). One example of this could be foster

³⁹ This is what Darwall refers to as 'recognition respect' (Darwall, 1977) or an attitude that consists in giving appropriate consideration of some feature of its object in deliberating what to do (Darwall, 1977, p. 38). He contrasts this from 'appraisal respect'. The object of the latter is the excellence persons manifest in some specific pursuit (ibid.). Respecting the child refers to the fact that, in virtue of the child's demonstrated capacities or as member in a relationship where one justifies one's acts, the child is recognised (expected to) being able to understand and respond to reasons to some degree. Moreover, it is a fact that places distinctively moral constraints on the adult, so it captures the distinctively *moral* sense of respect.

parents who, for no other reason than to satisfy their curiosity, searches for and discovers the foster child's diary, and then reads it. After having read the secrets contained there, they carefully leave the child's room, arranging it so that the deed cannot be discovered. By so doing, one might hold that they have violated the child's privacy. That is, they would have violated the child's privacy if they had no sufficiently strong reasons to invade the child's privacy, or unless it was clear that the child would have no objection to the act. Since the foster parents could not justify their act in light of any of those conditions, what they did was clearly objectionable. However, objections one might have to cases like this is not based on the harm caused by the act. It reveals a lack of respect for the child's privacy. So the problem is not a problem of well-being, but rather that such an act would be disallowed by some principle that regulates how to maintain a respectful relationship with the child, such as one that instructs others not to invade the child's privacy unless there are good reasons to do so.⁴⁰

These claims do not establish that well-being does not matter, or that Skelton's conception (or any other) is mistaken. On the contrary, it seems plausible to hold that a child who does not enjoy worthy activities or relationships, or who lacks them, is worse off than a child who does enjoy these goods and have access to them. The arguments in this section is simply intended to illustrate that this is not *all* that matters, or that welfarism is implausible.

In any case, the older the child gets, the more the child's own personal aims and projects will matter. At this point, success in the child's aims will play some role in his or her well-being. This makes a heterogeneous conception of well-being even more pluralistic and heterogeneous. Consequently, to claim that the child's interests ought to be understood in terms of his or her well-being will be of little help.

Thus, it is better, I think, to accept the possibility that we cannot clearly distinguish what is in the child's interests and what is not by means of a notion of well-being. Instead, the notion of the child's interests should be understood broadly, referring to *what the child has reasons to want*. This notion includes components we refer to when we use the term well-being, both in a strict and loose sense as well as the concern, respect and care the child has reasons to want from the carer. Of course, this way of defining the child's interests comes with a price. If the child's interests refer broadly to what she has reasons to want, we cannot rely on the conception of well-being to either refer to a set of particularly *important* goods or distinguish what is morally relevant from other valuable things. This leaves us with the question of how to explain what a morally relevant consideration for the carer is, as opposed to other reasons for action.

⁴⁰ Note that the wrongness of this act does not depend on the act's meaning, although this act certainly reveals disregard for the child's privacy. Rather, it depends on principles that regulate this type of relationship.

2.2. Justifiability and the Carer-Child Relationship

By rejecting the maximising view and welfarism, two challenges arise. As we have just seen, one challenge is how to narrow down the scope of the child's interests so as to clearly distinguish between what is an obligation and what is not. The second challenge, presented at the end of the objections against maximising the child's interests, is how else to explain what characterises right act. In this second part of the chapter, I address these two challenges. While neither challenge is fully addressed here, I outline what I think is a plausible way to meet the challenges, starting with the second challenge – on what a possible alternative to the best interest principle might be.

2.2.1. Hypothetical Consent and Substitute Judgement

Hypothetical consent is a way to conceptualise justifiability found in contractualist or contractarian views in moral and political philosophy (e.g. Scanlon, 1998; Rawls, 1999). Different versions of hypothetical consent or agreement is sometimes used to explain what one should do to children or incompetent agents. On one version, a justifiable act is one that the child would have chosen as a competent adult. In Rawls' formulation, we must "... choose for others as we have reason to believe they would choose for themselves if they were at the age of reason and deciding rationally" (Rawls, 1999, p. 183). Another version, known from medical ethics, is what is known as *substitute judgement*. Substitute judgement is sometimes considered an alternative to the best interest principle (Dwyer, 2006; Archard, 2016a), and it involves deciding as the patient (or child) would have done him- or herself.

Unlike the best interest principle, standards involving hypothetical consent do not necessarily identify the best act. A justifiable act is not the best alternative, but merely an *acceptable* one. At least in principle, this might lead to different conclusions than the best interest principle. Even if the consequences of another alternative is better than what the person could have accepted, it will not be justifiable to choose the best unless the person could have chosen it. Hypothetical consent and substituted judgment are based on respect for individual choice, and what the individual accepts is sometimes different from what benefits him or her.

Rawls' idea of hypothetical consent is different from another idea of hypothetical consent – substitute judgement. In Dwyer's version, the carer or guardian is supposed to place themselves in the child's shoes (Dwyer, 2006, p. 207). In contrast to Rawls' view, Dwyer does not refer to what the child *as an adult* would have accepted or chosen, but makes a decision on behalf of another person "... that the other person ordinarily would make for himself or herself; one decision maker *substitutes* for another" (Dwyer, 2006, p. 207, my emphasis). If, as it sounds like, Dwyer argues that the surrogate decision maker should substitute the actual child, then this

version of substitute judgment is more radical than Rawls' version. On this more radical view, what makes an act, option or practice justifiable is based on what matters to the child, from *the child's perspective*, and not from the perspective of a rational or competent adult.⁴¹

To place these different ideas of hypothetical consent in relation to our prior discussions, we might note that while Rawls' view is compatible with the claim I made in section 2.1.3., where I argued that the child, as capable of responding to reasons, should be respected. The claim made above implies that we have reason to take the child's views seriously, but not necessarily regard these claims as conclusive reasons to act or make a decision. Dwyer's view implies that the child's wishes are in fact authoritative. His view seems to be that the child's wishes carry sufficient weight to obligate others. In my view, the child's wishes or preferences are not necessarily authoritative. This depends on what reasons the child has for desiring something (see chapter 6).

Regarding Dwyer's version, one might ask whether this view does not in fact imply that children should have the right to refuse or consent to certain decisions, which would make the idea of substitute judgment superfluous in many cases.⁴² I doubt that Dwyer would think that this is a problem for his view, since he defends the view that children should have the freedom to choose who should be their substitute carers. While there might be some truth in that (depending on the child's maturity), the standard of substitute judgment applies to a wide range of cases. And while the child's wishes may be extremely important in decisions concerning who should care for the child as a parent would, what the child wants may be less important in other questions.

Dwyer's idea of substitute judgment is a very difficult standard to follow. The only way an adult can 'stand in the child's shoes' is by discovering what the child wants *and* by recognising what motivates the child.⁴³ The difficulty is to find out exactly why the child wants something. While it might be possible for an adult to appreciate what motivates the child or the child's personal reasons, it certainly seems difficult. The adult is far more likely, I would presume, to consider what counts in favour of what the child wants *as an adult*. Moreover, if

⁴¹ It should be noted that Dwyer's account also includes formulations where the surrogate decision maker should base their decisions on "... something about the child that can be relied on", which does not necessarily refer to what the child wants or prefers. Moreover, his theory is designed to address decisions about who the child should be in a relationship with, such as who should raise the child. It might be the case that a child's desires have more weight in such matters: "... the child stands in a moral posture equivalent to that of a competent adult with whom some other person wants to have a relationship, a posture that entails having a choice to make and having that choice be decisive as the whether the relationship will exist" (James G Dwyer, 2006, p. 208).

⁴² That is, unless the child is in fact incapable of forming their own view.

⁴³ I borrow Scanlon's distinction between reasons for action (or normative reasons) and 'operative' or motivating (Scanlon, 2003b, pp. 424-425). What matters in substitute judgement seems to be the latter.

the adult could disclose why the child wants something, the question that naturally follows is whether the child has *good reasons* to want what he or she wants. One should not consider the child's reasons authoritative, but assess whether the child's reasons are strong enough to support what the child wants. If one accepts this line of reasoning, then the role of the carer is not to take the child's perspective, but to choose the alternative the child has reason to want (irrespective of whether the child actually wants it). We should therefore reject Dwyer's view.

In contrast, Rawls' formulation of hypothetical choice is more promising. Rawls does not place the decision-maker or carer in the child's shoes, so the perspective is clearly different from what the child actually wants. Rawls' view is also compatible with the view that one has reason to take the child's views into consideration, but not necessarily regard them as authoritative. In fact, it seems that in Rawls's version of the standard, what the child would have chosen for himself or herself if they were 'at the age of reason and deciding rationally' is simply another way of saying that one should choose the alternative supported by the strongest reasons, given what we know about the child and the child's circumstances.

This leads us to an objection against hypothetical consent. Judith Jarvis Thomson argued that hypothetical choice is merely an epiphenomenon (Thomson 1999, referred to in Kuflik 2010). The real normative work is not done by the person's choice or consent, but by the reasons why the person would have consented. In other words, the fact that someone would have consented is not what matters, but "... what it is about him in virtue of which he would consent" (Thomson, 1999, p. 188, quoted from Kuflik, 2010, p. 145). And what it is about the person, turns out to be what is good for him or her. According to Thomson, to claim that the person would consent is simply a superfluous way of stating that would be the best outcome for the person – it would be in the person's best interests.

Arthur Kuflik has defended hypothetical consent against Thomson's objection. Kuflik aims to show that substitute judgment is a better alternative for surrogate decision making than the best interest principle. His claim is that what we owe children is not fully explained by the greater benefit produced by a given course of action (Kuflik, 2010). Kuflik's point is that acts can be wrong even if they have good consequences⁴⁴, and hypothetical consent (or rejection) can explain even the wrongness of actions that have good consequences, which is something Kuflik argues that the best interest principle cannot do.

⁴⁴ To illustrate the point, Kuflik uses the example of Viktor Frankl, a holocaust concentration camp survivor. Frankl was profoundly changed by the experience, and ended up having gained understanding and insight in the human condition. When asked if he regretted his time in concentration camps, his reply was that he did not. But as Kuflik points out, that is another issue than the question of whether it was *right* to place him there (Kuflik, 2010, p. 150 ff).

How can substitute judgement do that? First, we should note that the assumption of what a person has a reason to do is not limited to what it is rational to do, at least not on the narrow sense of being the best means to the end of promoting a desirable or good outcome. If a person only has reason to maximise his or her well-being, then hypothetical consent is indeed superfluous. But, as we have seen earlier in this chapter, it is not clear that the aim of promoting the good is as clearly defined as one might suppose. One cannot simply assume that a person will always have strongest reasons to do what promotes his or her well-being. There might be things other than well-being that matter. If so, then the notion of 'acceptance' may capture this variation. For example, it leaves open the possibility that what the person wants for him- or herself could be importantly different from what others regard as good for him or her.

Second, the notion of 'acceptance' hints at the type of relationship that (ought to) persists between the surrogate decision-maker and the subject. Theorists who employ a notion of hypothetical consent will sometimes also associate the notion of consent or acceptance with the fact that both the surrogate decision-maker and the subject ordinarily are parties in a relationship of mutual respect or recognition. To make a decision based on what is good for the person without considering what the person could accept is to disregard this relationship. This can explain why it is wrong to act in ways that are disrespectful yet have good (unintended) consequences. It also seems to fit well with what Kuflik claims is doing the moral work in hypothetical consent. It is "... what rightly preserves and protects *his eventual right to decide for himself what is good and what is not*" (Kuflik, 2010, p. 158, italics in original). As I understand Kuflik, the point is that the relationship between a child and an adult is also a relationship of mutual respect. More precisely, the child will at some point become capable of autonomous agency, at which point the relationship will be one of mutual respect. How one makes decisions on behalf of the child should reflect this. Arguably, the notion of hypothetical consent reflects this rather well.

Kuflik's point seems to be that what the child could accept is not just *any* reason for action. It must be a reason of the right kind – that is, a reason that, at least, reflects who the child is, what circumstance the child is in, and what relationship the child has to the decision-maker.⁴⁵ These facts, and the relation between them, determine what the right kind of reason is. The fact that an act has good consequences is not necessarily the right kind of reason, because good consequences that occur as a result of actions that involved disrespect for the child or in other

⁴⁵ For an account of normative reasons that fits well with this idea, i.e. that reasons is a consideration that counts in favour of an act or attitude, a consideration that can be expressed as a relation between an agent, a fact, some set of conditions and an action, see Scanlon's recent account (Scanlon, 2014).

ways involved not having proper regard for the child, will be wrong or unacceptable even if the results are good. In cases of this kind, the wrongness of the act is explained with reference to the relationship between the child and the agent.

This raises the question of whether Kuflik himself describes the 'facts' correctly. I have no objection to Kuflik's idea that competent adults should be respected. The question is if the same holds for adult-child relationship. In Kuflik's view, it seems that the morally relevant features of the adult-child relationship is derivative of the adult-child relationship. Hypothetical consent, as Kuflik describes it, is derivative of the respect owed to full members of the moral community (cf. Kuflik, 2010, p. 149 ff). But our relationships with children are to persons who have a different standing, so this idea of respect does not reflect the relationship we have with them *as children*. Moreover, what one might have reason to believe an adult would have consented to is not comparable to what a child, changed into a fully grown adult, would consent to. Unlike with an adult, where one refers to who person is and what he or she was likely to accept, the hypothetical consent of a child turned into an adult does not refer to the child at all. It refers to some hypothetical, idealised person - or what *any* rational individual could have accepted in that circumstance, but it does not identify what matters for the individual child. Moreover, since the idea here makes no reference to who the child is, it neglects what value the child's own opinion currently has. This is an odd way of taking the child seriously.

If the Rawlsian standard of hypothetical consent is intended as a standard that is in part based on respect for the individual child, it fails. What the standard does, is to express a general standard of justifiable judgements, but not one that we can use to secure the influence of the child's point of view unless we can reliably establish that the decision reflects what the individual *would* have wanted for themselves.

This does not necessarily mean that we should abandon the idea of hypothetical agreement - or contractualist notions of justifiability. In fact, there are several reasons that support this idea. First, as argued both in this and prior sections, compared with the best interest principle, it can better capture the fact that the pluralistic nature of the child's interests. Second, even if we reject the two versions of hypothetical consent as general standards for the regulation of how to treat a child, this does not mean than no other version could work. Both Dwyer's version of substitute judgement and the Rawlsian idea of hypothetical consent are based on a wrong description of the adult-child relationship. Therefore, *those* particular ideas of hypothetical consent do not work – either because the child's viewpoint is given too much authority or none at all. But this does not mean that no other version is more plausible.

This leads to a second point, namely that there are reasons to believe that some notion of justifiability, and hypothetical consent or some similar contractualist notion in particular, fits well with how the adult-child relationship has been characterised earlier in the chapter. The notion of respect as treating the child as capable of understanding and responding to reasons suggests that the adult-child relationship is one where adults ought to justify their acts to the child. Given what we have said about the merits of the notion of hypothetical consent, a hypothesis is that some contractualist notion plays a role in a notion of justifiability appropriate in adult-child relationships.

Exactly how to determine what a justifiable act is, remains to be seen. I address that question in chapter 8. For now, I hope to have at least motivated the idea that justifiability is a possibly fruitful way to approach the issue of how to determine what adults owe to children, as opposed to the best interest principle or some other welfarist idea of promoting the good. In addition, I hope to have motivated the idea that a good way to proceed to find out how to characterise what is owed to children is to take a closer look at the relationship between children and those who care for them.

2.2.2. The Carer-Child Relationship

The carer-child relationship plays two important roles in the argument I try to make in this thesis. One is what I just outlined: that it explains what idea of justifiability that is appropriate. At this point, this is merely a hypothesis, one I hope to strengthen in the coming chapters. The second idea is that the carer-child relationship works like the conception of well-being was supposed to work in a welfarist account: that it clarifies what is a morally relevant consideration for the carer. In this section, I outline this idea.

Following Scanlon's notion of relationships, a relationship is constituted by the members' expectations and attitudes with respect to each other. These expectations and attitudes explain how the person regard one another, how they are disposed to feel, and what they are disposed to regard as reasons for action with respect to one another (Scanlon, 2008). This idea of relationships, then, highlights the motivational disposition and expectations of the members of a relationship. That being said, the conception of relationships is in part an ideal one⁴⁶ – it does not only refer to how members are actually motivated, but also to what members *should* be disposed to see as reasons, feel, and expect from one another (Scanlon, 2008, p. 139). To

⁴⁶ It is *in part* ideal because some relationships like friendships depend on the actual existence of such attitudes and disposition. If someone stops thinking about me as a friend, then he or she will not be my friend anymore. Something similar is true about the parent-child relationship, but like the moral relationship, this relationship is also *given*, and not an ideal that should be ignored – even if one in fact lacks the motivation to act as an 'ideal' carer or parent ought to act.

illustrate, when someone is not being a good friend or parent, we criticise the person in light of what we ought to expect from a friend or parent – and thereby refer to an ideal conception of friendships or parent-child relationship of the sort Scanlon has in mind.

A similar idea seems to be doing important work in different accounts, all of which claim that the indeterminacy of the child's interests is less troubling than one might suppose. Kopelman, for example, refers to what "... *most informed, rational people of good will would regard* as maximizing the child's net benefits and minimizing the net harms to the child (Kopelman, 1997, p. 297, emphasis added). On this account, what explains what is a morally relevant consideration is the motivational disposition of the agent making the decision – who defines what is relevant to the decision in terms of 'what most informed, rational people *of good will*' would regard as the best. In other words, the idea seems to be that people with this motivation will be disposed to take other things into considerations than people who lack a 'good will' would.

Similarly, others also rely on expectations and motivational disposition, even if it is not clearly stated. For example, David Archard argues that the best interest principle is less indeterminate than one might think because a judge is capable of making 'best interests' decisions. A judge is trained to make decisions where he or she must exercise judicial discretion, and this use of discretion is often transparent (Archard, 2013, p. 58). The role of a judge, the legal rules and principles that apply to the case, other rulings in similar cases, and the child's circumstances are what limits the scope of morally relevant considerations. Thus, Archard's point may be taken to be that it is the *role* of the judge, or *what we expect* from a judge, and what counts as a relevant consideration *from that perspective* that explain what matters. In other words, the motivational disposition we (ideally) expect judges to have explains what counts as a relevant consideration, in addition to contextual factors such as the child's circumstances, the legal regulations that apply, and so on.

The example of the judge fits nicely with the modified version of Kopelman's reasonableness view. One might wonder, however, whether such a notion of motivational disposition reflects what we ought to expect from the *carer*. One might hold that the carer or parent ought to take other things than what the judge or some other impartial decision maker would take into consideration. It seems permissible for one parent to fight for child custody, even if it would be better for the child to stay with the other parent. The parent is, and should be, motivated to act in accordance with the value of the relationship with the child, whereas the judge should be motivated to make an impartial, and well-informed decision, consistent with relevant legal regulations. Moreover, in a case like this, the judge's ruling will, be a decision

about whether a parent has lived up to what one ought to expect from a parent. Thus, the judge's ruling refers to a different standard for justifiable treatment of the child than the one the judge him- or herself employ in their reasoning.

We should therefore investigate what a *carer* should be disposed to regard as reasons for action. The claim is, in other words, that we find out what count as morally relevant reasons by considering the motivation or attitudes and dispositions of an 'ideal' carer. In light of what has been noted in previous sections in this chapter, the motivation of the 'ideal' carer consists of at least three elements: care, respect, and a regard for the child and the relationship with the child as special.

As *carers*, child's interests matter *because* they value the child. Care has a valuable target – a target who is *valuable for his or her own sake*, and valuable irrespective of how well they fare. Second, to engage with the child in a carer-child relationship involves a form of *respect*. When the carer wants to find out what matters to the child, he or she does not only include third person considerations about what is good for *any* child, but also asks what matters for *this* child, from their viewpoint. That is, the carer does not merely care about the child as someone who is valuable for their own sake, but also as a person who is capable, at least to some extent, to *understand and respond to reasons*. Finally, we care for a number of people in the sense just described, and the idea of respect outlined is something we owe to all others. To at least provide a minimal understanding of what is *special* about the carer's relationship to the child, we might say that the carer does not merely consider the child as valuable for his or her own sake, but that the child also has *special value for the carer*, which gives the carer *agent-relative* reasons⁴⁷ to want to prioritise the child or to want to know how he or she feels. For example, one such idea of agent-relative value is that the carer (if they are the parent) regards the child as their own.

These three abstract characteristics of the 'ideal' carer outline of the form of motivation that characterises such a person, and that leads the ideal carer to be engaged in finding out what matters to the child. Very simply put, the ideal carer represents a motivational standpoint from where a parent or substitute carer determines what matters. That being said, the content of this notion will be further elaborated in some of the coming chapters, where I connect it to an

⁴⁷ Cf. Nagel, "If a reason can be given a general form which does not include an essential reference to the person who has it, it is an *agent-neutral* reason. For example, if it is a reason for anyone to do or want something that it would reduce the amount of wretchedness in the world, then that is a neutral reason. If on the other hand the general form of a reason does include an essential reference to the person who has it, it is an *agent-relative* reason" (Nagel, 1986, pp. 152-153).

account of the value of a relationship of special care for the child (ch. 3), of respect (ch. 6), of holding the child responsible (ch. 7), and finally, to a conception of justifiability (ch. 8).

This leads to the following conclusion of this section. By understanding the normative ideal of the carer-child relationship, we can also uncover what the carer owes to the child he or she cares for. Thus, the normative ideal of the 'ideal' carer could, if stated explicitly, tell us what to expect from the carer and what a carer should understand as reasons for action.

There is no readily available conception of this ideal. While the three characteristics just outlined give some direction, the notion of the ideal carer must be given substantive content if we are to make more sense of how such an ideal could narrow down the scope of relevant considerations. Therefore, my proposal is to look closer at the relationship that resembles public care most closely, *the parent-child relationship*. Thus, the parent-child relationship, if it is indeed a relevant normative standard for substitute carers, is the 'ground relationship' or standard according to which one can judge that an act has a certain meaning, and determine what the child's interests are, from the point of view of the carer.

Of course, whether this standard is the relevant one, depends on whether certain conditions are fulfilled. According to Scanlon, in the case of the parent-child relationship the criterion is a simple fact: "... normative standards requiring care and consideration for one's children apply simply in virtue of the fact that they are one's children, and depend on one for their care" (Scanlon, 2008, p. 139). Thus, in what follows, I will address two questions. I start with considering why the child has an interest in being raised by parents in a family (ch. 3), with the aim of outlining the carer-child relationship in more detail. Second, I will consider the criteria for considering public care as a substitute for the parent-child relationship (chs. 4 and 5).

2.3. Conclusion

Carers are more than mere benefactors. To care for a child is not the same as promoting the child's best interests. Sometimes, narrow-minded focus on the best can undermine pursuit of the good, and it is not always clear that what one has reason to do is what promotes the child's well-being maximally. Other times, to maximise well-being may seem relatively unimportant. Moreover, it is not clear that *well-being* is all that matters, at least not if the term 'well-being' refers to well-defined concept with clear boundaries. To care about the child involves more than promoting the child's good. It also involves concern for the child, for his or her own sake. In addition, it involves respect for the child. This idea of respect is different than with adults, but it involves an idea common to both, that respects involves treating the person a capable of

understanding and responding to reasons. This affects what adults owe to children, but this has little to do with the child's well-being.

For these reasons, the notion of the child's 'interests' should be interpreted more widely than only as the child's well-being. My suggestion is that it refers to what the child has reasons to want. But to employ such a wide conception of the child's interests leads to challenges. It includes too heterogeneous elements for a conception of 'the best' to make much sense, and we must therefore look for another standard to express what children are owed. I rejected 'substitute judgement', but suggested that hypothetical consent might work, without spelling out what the conception that fits the carer-child relationship looks like.

The second challenge is that, if we cannot exclusively rely on a notion of well-being, we need another conception that can explain what is a morally relevant consideration. My suggestion was to clarify this by examining what one ought to expect from a substitute carer. Since there is no readily available and clearly defined conception of this, the next step is to examine standard of treatment one ought to expect from parents: why the child has reasons to want to be raised by parents in a family. This is what I turn to in the next chapter.

3. Family Values

In the last chapter, I claimed that the obligations of substitute carers should be understood in light of the normative ideal of the parent-child relationship. But why should the child have reason to want to be raised by parents in a family? Are family values relevant to understand what substitute carers owe to the children they care for? And should substitute carers be guided by the same considerations as the parent?

In this chapter, I address these questions. The chapter builds on Harry Brighthouse and Adam Swift's recent account of why the family is valuable, presented in their book, *Family Values*. On their view, the family is important because it promotes what they call 'familial relationship goods'. I present this idea of the value of the family and argue that it is relevant for understanding the content of the normative ideal of the parent-child relationship, and to understand what to expect from public care and substitute carers.

The suggestion that public care ought to promote family values is in tension with a claim by Brighthouse and Swift, however. They argue that the family is *uniquely* valuable. This view implies that public care, insofar as it is understood as a substitute for the family, should be a *full* substitute for a family – like adoption is. This challenge is partly answered in this chapter, where I argue, first, that family values matter for the reasoning and motivation of public carers irrespective of how public care is organised, and second, that public care institutions should not necessarily be full substitutes for the family in certain respects.

The outline of the chapter is as follows. In section 3.1. I present Brighthouse and Swift's account of why children have an interest in being raised by parents in a family, where I also claim that it provides us with an outline of the normative ideal of the parent-child relationship. In section 3.1.2. I argue that Brighthouse and Swift's account is relevant for public care, and in section 3.1.3. I present their arguments for why the family is *uniquely* valuable, and argue that this raises serious difficulties for public care. In 3.2. I address these problems. In section 3.2.1. I argue that family values matter for the reasoning and motivation of substitute carers, and in section 3.2.2., I critically assess the view that a family should be replaced by a family.

3.1. The Family Presumption

With the 'family presumption' I refer to the view that children have an interest in being raised by parents in a family since the family is a better child-rearing arrangement than other available arrangements. As we saw in chapter 1, this is the assumption that is embedded in the 'biological principle' in child protection regulations. If true, the family presumption may potentially ground

a child's right to have their existing family protected. It is also possible that it could ground a general right to a family, although it is more difficult to defend the latter claim.

The question is *why* the child has an interest in being raised by parents in a family, and what implications this answer has for public care and substitute carers. The answer to why the family is a better child-rearing arrangement than other arrangements is bound to have an impact on similar arrangements, including public care arrangements and how we understand the content of substitute carers' obligations. If the family is uniquely valuable, substitute carers may have an obligation to respect and perhaps even support the bond between child and parent, and work towards reunification. If it is possible and even desirable to realise family values in different child-rearing arrangements, then perhaps public care should aim at *providing* the child with a family, which might be incompatible with protecting the existing family.

I will not be concerned with what the child has a 'right' to in this chapter. In the preceding paragraph, it was primarily used as a shorthand for something we may have strong moral reasons to do, something that might indicate that we have an obligation. So, the point is simply that the family presumption matters for our obligations. *Why* it matters and *what* obligations we might have, depends on how we interpret this presumption.

3.1.1. Familial Relationship Goods

Harry Brighouse and Adam Swift have developed an account of family values that explain why it is good for children to be raised by parents in a family. First, let me briefly outline what a family is. Families are no longer only identified as traditional, heterosexual, nuclear families. Nonetheless, Brighouse and Swift hold that the family can be distinguished from other arrangements by the following four features (Brighouse & Swift, 2014): Size, quality of relationship, parental obligations and parental rights. A family consists of no less than one parent and one child and no more than four parents. Second, the parent-child relationship intimate emotional attachment that make the parties un-substitutable for each other.⁴⁸ Thus, the *quality* of the parent-child relationship is part of what constitutes the family. Third, parents have special obligations and rights. A parent is obligated to try to provide this intimate relationship with a child, protect the child, and ensure that the child's general interests is promoted in a somewhat coordinated and predictable way. Parental rights are rights to non-intervention by third parties and rights to make decisions on behalf of the child to the extent that these decisions do not violate the child's interests or violate fair equality of opportunity. This includes rights to

⁴⁸ For Brighouse and Swift, this emotional attachment is not dependent on the existence of genetic ties between child and parent. Genetic ties are therefore not a necessary condition for parenthood.

decide on medical procedures, where to live, what activities to pursue and how the daily care of the child should be undertaken. In short, the family is a small, and legally protected unit of people, characterised by intimate attachment and where the parents have considerable authority over the child.

Why, then, do children have an interest in being raised by parents in a family? Brighthouse and Swift's view is that the family is uniquely equipped to promote the interests of both child and parents. They develop this view over a series of steps, where they first stipulate a conception of childhood. From this, they outline a conception of what the child has an interest in, and then they ask why the family is uniquely valuable.

Brighthouse and Swift define children as persons characterised by the following four features. First, children are profoundly *dependent* on others for their well-being. They are not always the best judges on what will best promote their well-being, and due to biological, psychological, or social reasons, they are dependent on adults to protect them and promote their interests. Second, "... they are profoundly *vulnerable* to other people's decisions. When something goes wrong, this is likely to affect the whole of their lives, not just their childhoods, and its going wrong is normally because the decisions of another have failed" (Brighthouse & Swift, 2014, p. 62, emphasis added). Third, unlike other people who are dependent and vulnerable, children can develop capabilities that enable them to realise their interests – they can *grow up* (cf. O'Neill, 1988). Finally, Brighthouse and Swift claim that children, when young, "... lack a well-developed and stable conception of what is valuable in their life" (Brighthouse & Swift, 2014, p. 62).⁴⁹

By combining this conception of childhood with what the child needs in order to develop into an independent adult, and in order to enjoy his or her childhood, Brighthouse and Swift propose the following notion of the child's interests, consisting of five dimensions.

1. Children need the health care, nutrition, shelter, and clothing adequate to their healthy *physical* development within the society in which they are raised.
2. Children need the education and upbringing that attends to their *cognitive* development sufficiently well that they become capable of the critical reflection necessary for autonomy, and able to operate effectively in the economy of the society in which they are raised.
3. Children need the education and upbringing that enables them to understand their own *emotional* needs and dispositions, regulate their emotional life, and connect emotionally with other people.

⁴⁹ The conception should be understood as an ideal conception, one that people live up to in varying degrees but is generally less stable and well developed in childhood. For that reason, the 'conception' Brighthouse and Swift refers to might be interpreted as a person's conception of what is valuable for the person's life as a whole.

4. Children need the education and upbringing that ensures their development into *moral* persons, who understand the basic demands of morality, and are capable of regulating their behavior according to those demands, and are disposed to do so.⁵⁰
5. Children need the freedom, support, and environmental conditions to enjoy their *childhood*. (Brighouse & Swift, 2014, p. 64, emphasis in original)

This leads us to the question of why the child needs a family. According to Brighouse and Swift,

Only an arrangement in which some small number of adults is charged with continuing responsibility for paternalistic treatment of a child – in which those adults are granted very considerable authority over her, and discretion in carrying out the tasks associated with raising her – will adequately protect and promote her interests (Brighouse & Swift, 2014, p. 67).

In other words, the child needs parents and a family. But why? Two claims are central in Brighouse and Swift's account. First, relationships of close and mutual attachment promote a special type of intrinsically valuable goods, what Brighouse and Swift call *familial relationship goods*. These goods can only be realised in the family. Second, the child has instrumental reasons to want to be raised by parents in a family.

In Brighouse and Swift's view, a well-functioning parent-child relationship is characterised by attachment, mutual affection, the exercise and reception of care, and protection. Children need love or a "... distinctive kind of attentiveness, an emotional availability, an experience of being (experienced as) special, or of unconditional love" (Harry Brighouse & Swift, 2014, p. 20). To put this claim in relation to chapter 2, we can see that Brighouse and Swift make a claim both about what ideally characterises a parent's motivation (loving and wanting to care for the child), that it involves the kind of respect where the parent discovers what the child has an interest in (attentiveness, emotional availability), and what *meaning* we expect the parent's acts to express (which corresponds to the child's experience of being special). Brighouse and Swift do not employ these distinctions themselves, but by characterising an ideal of the parent-child relationship, what Scanlon calls a 'normative ideal', they also make claims about an ideal parent's motivation and reasoning.

The notion of 'needs' that figures in Brighouse and Swift's list illustrates that the child depends on adults, since he or she cannot provide for these needs themselves. None of these

⁵⁰ Brighouse and Swift do not explicitly say what they mean by the term 'moral person', but it is clear that they do not have some perfectly virtuous person in mind. It is closer, I think, to Rawls's conception of the "two moral powers", i.e. a capacity for a sense of justice and for a conception of the good (Rawls, 2005, p. 19), the ability to understand what morality requires and (to be generally disposed to have) a desire to act accordingly. Rather than knowing what the 'Good' is, it is in the child's interests to become a person who is motivated to act permissibly or not wrong others.

dimensions of the child's interests can be adequately realised without some level of adult support. This fact justifies paternalistic treatment for the child, or treatment involving "...manipulating or coercing another person with the purpose of serving her good" (Brighouse & Swift, 2014, p. 67). Thus, the nature of being a child implies having an interest in paternalistic treatment, by a parent or some other authority.

The parent-child relationship combines love with authority. The special nature of the parent-child relationship is that the parent is both the child's 'soul-mate' and his or her disciplinarian. The parent will routinely manipulate or coerce the child in order to protect the child's interests, but he or she does not do this as a disinterested benefactor, but as someone for whom the child has special significance. Parents are, ideally, attentive to how the child reacts and responds. And acts of 'manipulation' get a somewhat different *meaning* than what we usually associate with the term, in part because of the special significance the child has for the parent.⁵¹

While the loving yet authoritative relationship lies at the heart of the concept of familial relationship goods, 'familial relationship goods' is quite an inclusive concept. It includes "...those aspects of well-being that derive from participation in familial, parent-child relationships" (Brighouse & Swift, 2009, p. 51). I take this to mean that the concept includes both what characterises the valuable family, and what the family is good *for*. Thus, in addition to being especially important for the development of some dimensions of the child's interests, the family is good for the coordinated satisfaction of the child's interests. The frequency of close interaction gives the parent unique and considerable knowledge of the child and their needs, which allows the parent to respond intuitively to subtle differences in the child's behaviour. For example, the parent is able to distinguish between when the baby cries because of an empty stomach and when it is upset (Brighouse & Swift, 2014: 73). Thus, having only a few parents enables those who fill this role to know the child better and more intimately than others.

This leads us to some other reasons for why the child has reasons to want to be raised by parents in a family. An aspect of Brighouse and Swift's list of children's interests is that it does not exclusively concern the interests of the adult the child will become. The list also includes things that matter for a good *childhood*. Like other recent writers, Brighouse and Swift hold that there are certain 'special goods of childhood' – goods that may be uniquely valuable for children or more important for children than for people in other age groups (Gheaus, 2015a;

⁵¹ On the notion of *meaning*, see chapter 2, and Scanlon (2008).

Macleod, 2010). Goods of the former type include innocence about sexuality, while goods of the latter sort include the capacity to feel spontaneous joy (Brighouse & Swift, 2014, p. 65). I shall not argue for the importance of these particular types of goods here,⁵² but only point out that their importance can be explained by considering them in light of Brighouse and Swift's definition of childhood and the list of interest dimensions. The importance of spontaneous joy, for example, is no doubt a central component in anyone's life, but for a child one could plausibly argue that it is instrumental in promoting the child's emotional and cognitive development, and that the child depends on adults for stimulation. This requires close interaction and active participation in the child's life. Again, this is something that characterises the child's relationship with their parent.

Yet another aspect of the five dimensions of children's interests are that they are interconnected, even though they can be analytically separated (Brighouse & Swift, 2014, p. 65). They are connected in the sense that realising one (e.g. cognitive development) often depends on another (e.g. emotional development). The fact that the child's interests are connected requires a coordinated approach to child-rearing, as well as continuity. This is something the child gets in the family.

My purpose in presenting Brighouse and Swift's claim in some detail is not only that it illuminates why children have an interest in having parents and a family, but also because it provides substantive content to the normative ideal of the parent-child relationship. This, I suggest, applies to the *carer*-child relationship as well, although I defend that suggestion in chapters 4 and 5. Brighouse and Swift do not discuss the nature of a carer or parent's motivation themselves, except by arguing that promoting familial relationship goods also is in the interests of the parent. Thus, the account I am developing in this thesis differ from theirs in that it is not only concerned with the well-being of child and parent, but also with the attitudes and expectations that characterise the relationship.

Regarding the content of a parent's (or carer's) obligation, Brighouse and Swift's points lead to the view that, simply put, the carer should be concerned with the quality of the relationship with the child and of seeing to it that the child's interests are promoted in a somewhat coordinated fashion. Combined with the three characteristics of the motivation of the 'ideal' carer outlined in chapter 2, the points just mentioned provides additional and helpful answers to questions about what a carer (or to be precise, a parent) should be concerned with.

⁵² For a critical view of why such things as innocence about sexuality is good, see Hannan (Hannan, 2017).

In addition, Brighouse and Swift hold that their views have implications for how demanding one should think the parental role is. This is very helpful for the purpose of narrowing down the scope of considerations that ought to matter for the parent or carer. What is protected, in their account, is the parent-child interaction – which is vital to the quality of the relationship. Other good-making features of the parent-child relationship are not, strictly speaking, part of their conception of the parental role. What is required to secure familial relationship goods is, in other words, ‘good enough’. For example, a parent is not responsible for promoting the child’s ‘best interests’ in the sense of maximal outcome, or even the effort of giving children advantages in sports, music, education or other areas where many parents currently give their children considerable support. In fact, Brighouse and Swift reject the idea that parents have a prerogative to confer competitive advantages (e.g. money or “giving children prospects greater than they would have under fair equality of opportunity” (Brighouse & Swift, 2014, p. 131).

This last point – that parents should not confer unfair advantages – is both supported by the claim that the core parental responsibility is to provide a relationship of a certain quality and ensure that the child's interests are satisfied in a coordinated manner, and by the idea that the interests of *others* also matter. Phrased differently, one might make a similar point by claiming that parents are members of (at least) two relationship ideals – the parent-child relationship and the moral relationship, where the latter constrains what (level of) advantages a parent is permitted to confer to the child. In addition, it is also in the child's interests to become a moral agent, cf. Brighouse and Swift's list of children's interests. Thus, in addition to clarifying what the parental role essentially consists in, Brighouse and Swift's account also helpfully points out that a parent's (or carer's) motivation should be sensitive to the interests of others.

Other good-making features of the family, mentioned in chapter 1, such as the value of genetic ties, the child’s identity, cultural heritage, are therefore not goods that the *family* or parents should necessarily promote. On Brighouse and Swift's idea of family values, the good family is not necessarily the child’s birth family, although it is perfectly compatible with the idea that genetic ties matter. Brighouse and Swift do not think genetic ties have the crucial importance of familial relationship goods. This does not mean that they think genetic ties are unimportant. But, as they say, “... one can know people (...) without being parented by them” (Brighouse & Swift, 2014, p. 80).

In other words, some of the goods children have reason to want from a family and from parents do not necessarily correspond to what parents are obligated to provide. Children have a strong interest in a relationship that promotes familial relationship goods, where the parent is

appropriately motivated. The intimate, loving relationship between child and parent is important for the child's cognitive and emotional development and enjoyment of childhood, and for how adults use authority. In other words, Brighthouse and Swift's account gives content to the normative ideal of the parent-child relationship, and can help us explain what someone who is a parent has reason to do.

3.1.2. The Relevance of Family Values

The question, then, is whether Brighthouse and Swift's account, based on familial relationship goods, is relevant for public care and substitute carers. Whether family values are relevant depends, in part, on whether it is plausible to compare public care arrangements with the family, which in part relies on structural similarities, and in part on whether the different arrangements are expected to substitute the parental role and perform the same or similar tasks.

Several things distinguish a foster home from a family. First, foster parents have no parental rights even though they will have several parental obligations – primarily obligations concerning the daily care for the child. Unlike the family, where a parent has the dual role of carer and authority, public care placements divide the parental role and reallocate responsibility between the original parent, the child protection service and the foster home. The child protection service retains authority but outsources care to the foster home. An important consequence is that foster parents do not have status as parties when the County Board or the courts decide measures on behalf of the child.⁵³

Second, foster homes are supervised and audited, and enjoy less privacy than a family normally does. Third, a foster home is (in most cases, see below) a long-lasting but not necessarily permanent arrangement. Fourth, foster care is a voluntary arrangement. Foster parents voluntarily enter into a contract and are themselves at liberty to terminate it.⁵⁴ In addition to these features, that only establish foster parents as non-parent carers, foster parents enter a contract which gives them monetary compensation for the assignment, that specifies the conditions for when they can terminate the contract, and includes the possibility of negotiating rights to pension and holidays.⁵⁵ Thus, they are not only non-parent carers, but also contractors.

⁵³ However, if the County Board considers the termination of a foster home placement, foster parents have the right to speak in County Boards proceedings (CWA § 4-21). The primary reason is to protect the child from the harm a replacement can cause if the child has developed a strong attachment to the foster home.

⁵⁴ The child protection service can also terminate a contract, e.g. if it is decided that another measure is in the child's best interest or if the child is reunited with her biological parent(s) (Ministry of Children and Equality, 2004, Q-1072-B).

⁵⁵ On these issues there are differences between municipal foster homes and State-financed family homes. The latter have a standard contract guaranteeing rights to pension and 35 vacation days. Insofar as municipal foster homes have the same guarantees it is a result of negotiations between the individual foster home and the municipal

For these reasons, foster parents are not parents in Brighthouse and Swift's use of the term (Brighthouse & Swift, 2015, p. 239).

Regarding residential institutions, the difference between these arrangements and the family is more striking. The arrangement itself is very different. Among the different types of institutions, only youth care homes⁵⁶ somewhat resemble families, and the only resemblance is that youth care homes provide long-lasting placements. Compared with a foster home or a family, the adult-child ratio is usually different. There are sometimes more children per adult than in average families,⁵⁷ and each child relates to a higher number of adults than in most families. Although children sometimes create bonds with members of staff, no one clearly occupies a parental role as a foster parent would. Nor does the creation of bonds imply anything like parental commitment. In contrast to foster parents, who are neither parents nor employees, institution personnel are clearly employees. They have regular work contracts, work shifts at the institution, and answer to the management of the institution. An institution is therefore a home for the child and a workplace for the adults (Backe-Hansen, 2011, p. 249).

In contrast to both the family and foster homes, the child's privacy is regulated in institutions (Ministry of Children, Equality and Social Inclusion, 2011a). Just like in normal families and foster homes, staff must routinely coerce or manipulate children into doing or behaving in certain desirable ways. As employees, staff in institutions lack the special standing of a parent, which might make their presence more intrusive than it would be for a parent, and perhaps even for foster parents. Also, the fact that children in institutions may have different and more serious problems makes coercion a more likely part of everyday life in institutions. This makes it necessary to regulate institutions in order to protect the child's privacy. Examples of coercion include forced confiscation of cell phones, urine samples, curfews or physical restraints. Such acts are restricted by regulations.⁵⁸

child protection service. In this respect, family homes are closer to a normal employment situation than a municipal foster home is.

⁵⁶ See chapter 1, section 1.1.2.

⁵⁷ Such ratios can vary between institutions, and there are differences between how different countries organise residential institutions. Van IJzendoorn et. al give examples of institutions with a 10-1 ratio of children per adult, but this is in a centre that resembles a traditional orphanage, where small children stay until adoption, usually at the age of 2,5 to 3 years old (van IJzendoorn et.al, 2011). In contrast, many residential institutions (youth homes) in the Municipality of Oslo have around a 3-1 or 2-1 ratio. For example, Bakkehaugen youth home in Oslo has six places for youths and at least two staff members present at all times. That being said, the real ratio is different, since employees work shifts.

⁵⁸ These restrictions include that personnel must submit a written protocol of each instance of coercion that includes description of what they did, justification of the act and documentation that the youth was informed of their legal access to complain and appeal the incident. All protocols are assessed by the County Governor, which is the independent institution that audits municipal child protection services and child protection institutions.

However, there is also reason to believe that foster homes and residential institutions are intended as family replacements, and that they should, according to existing regulations, realise familial relationship goods. First, there is reason to introduce some nuance in how the roles are described. The differences between a family, foster parents and institutional staff are clear, but gradual. In fact, one might argue that the clearest difference is not between the family and the foster home, but between these two groups and institutions. Thus, one could argue that the dual role of parent/contractor applies only to foster parents, while institutional staff clearly are employees, with obligations that clearly differ from parental obligations.

Both foster parents and staff in residential institutions function in ways that make them comparable to parents, however. In the case of foster parents, this is easily demonstrated. Foster parents take on a fiduciary role that is very close to parenting. According to the Standard Contract for foster homes, a foster parent is obligated to provide a safe and good home and provide the daily care for the child (Ministry of Children, Equality and Social Inclusion, 2010, § 5-1). Daily care involves supporting the child through kindergarten, school, in leisure activities and health care, and to provide the support required for the child's physical, cognitive, emotional and moral development (cf. Ministry of Children, Equality and Social Inclusion, 2010, § 5-2). These are descriptions of normal parental tasks.

Despite these significant differences between residential institutions and a normal family, aspects of how normal families function influence how institutions are regulated. One example concerns the duration of the responsibility to provide for the child or young person. For most young people, becoming an adult is a gradual and extended transition rather than something that immediately happens once the young person is 18. Many live with their parents well into their twenties (Bakketeig & Backe-Hansen, 2008; Stein, 2006, p. 274) and rely on parental support after they move away from home. In contrast, for many children in public care, there has been an expectation of "instant adulthood" (Stein, 2006, p. 274).

The CWA includes statutes that permit child protection services, foster homes and institutions to extend support until the child is 23.⁵⁹ The realisation that child protection clients were at a considerable disadvantage due to less support than their peers, after-care regulation was amended to improve the child's access to continued support after they reach the age of

⁵⁹ An important modification concerning institutions is the following: The child protection service in Norway is divided into State and Municipal services. The municipality has the parental responsibility for the child even in cases where others, like foster parents and institutions, provide daily care. State services are responsible for running institutions, aiding the municipality in recruiting foster homes, and providing support. The problem with after care in institutions is financial. The state's responsibility for financing a placement in an institution stops when the person is 20 years old. At this point, a prolonged residence must be financed by the municipality. These are very expensive placements and are therefore very rarely prolonged.

majority.⁶⁰ After-care can be given for all child protection clients, and institutions are no exception. Young people residing in these institutions are sometimes gradually transferred into apartments, where a few of them stay until they are 23 years old. Placements are transitions into adulthood, where staff are there to support the young person. In this respect then, institutions are somewhat modelled on how families ordinarily work, and substitute carers' responsibility resemble what we would expect from parents.

Beyond the design or regulations of foster homes and institutions, policy documents and empirical research demonstrate the desirability of a strong emotional attachment between carer and child, a central component in Brighouse and Swift's conception of familial relationship goods. First, to have adults who not only care for the child but care *about* the child, is an expressed wish among current and previous clients of the child protection system. Interest groups consisting of current and former child protection clients have increasingly participated in policy-making processes in recent years. These interest groups have successfully brought the concept of love into the Norwegian political agenda on child protection (Neumann, 2012; Thrana, 2015). For example, in a recent white paper on foster homes, advice from the children's interest groups is printed in the beginning of the policy document. The children's advice include that foster parents should make the child feel wanted, loved and cared for, and that they should never give up on the child (Ministry of Children, 2016). The Ministry of Children and Equality, the Governmental agency responsible for the regulation of the child protection system in Norway, has, in other words, recognised the importance of children being loved and cared about by those who care for them.

Finally, there is also considerable empirical evidence that suggests that being deprived of relationship goods is harmful. Since Bowlby and studies of Romanian orphanages, there is overwhelming evidence that complete lack of close attachments in early childhood can have a serious negative impact on the child's development (Johnson, Browne, & Hamilton-Giachritsis, 2006, p. 35 ff). Assuming Brighouse and Swift have got it right, it is tempting to conclude that foster homes or institutions ought to promote the same goods that an average family would.

Thus, there is reason to conclude that Brighouse and Swift's account is relevant for public care, that public care arrangements and the family are comparable in important respects.

⁶⁰ In 2009, the CWA regulations on measures for children between the age of 18 to 23 were changed from permitting after-care to giving the child protection service a legal obligation to justify termination of measures. On the purpose of after-care, the Ministry of Children and Equality wrote "Many young people in the care of the child welfare service has a smaller and more vulnerable family network than other children. The purpose of providing measures to children above the age of 18 is that these children should also receive necessary help and support in the transition to independent adulthood" (Ministry of Children, Equality and Social Inclusion, 2011b).

Substitute carers, whether they are foster parents or employees in institutions, inherit parental responsibilities and parental tasks. Moreover, there are growing expectations that they should not merely perform these tasks and fulfil their responsibilities as *contractors* or *employees*, but that they should be motivated and disposed to act as a parent would – and express a similar level of care, special attention, and commitment to the child that one would expect from a parent. Finally, to have a family relationship in Brighouse and Swift's sense is not merely something desirable, but also something the child *needs*.

However, the family and public care arrangements are different. This raises questions of whether a public care arrangement *can* be a substitute for the family. Also, there are questions of whether it is reasonable to expect non-parents to assume the full burdens of parental responsibility. Even if there are reasons that support the view that public care should be a substitute for the family and that substitute carers should guide their actions by the same ideal as a parent would, it is not clear that public care *should* substitute the family or that foster parents and institution employees should substitute the parent.

3.1.3. The Uniqueness of the Family

This leads us to Brighouse and Swift's second claim – that the family is *uniquely* valuable. On their view, no other child-rearing arrangement can adequately promote the child's interests. Therefore, the parent-child relationship is not *substitutable* with any other relationship (Brighouse & Swift, 2006, p. 96), so only a family can and should substitute the family. If this is true, then there is reason to believe that public care placements that aim at substituting the family would be impermissible arrangements. In such placements, only adoption or a similar arrangement would be good enough. This claim is a strong objection to how public care is currently organised in Norway, as well as to the idea that substitute carers ought to act in accordance with the normative ideal of the parent-child relationship. Thus, there is reason to take a closer look at Brighouse and Swift's arguments for this claim.

If Brighouse and Swift are correct, then a family can only be replaced by a family. Therefore, public care arrangements, where parental responsibilities are divided among different adults, are not adequate replacements for a family. When a child is placed in a foster home or an institution, parental responsibilities are distributed among substitute carers, the child protection service and the original parents. And, as we saw above, the child's various interests are interrelated. A carer should be in position to see how the child's development (or lack of development) affects other dimensions of the child's interests. For this purpose, the person who has formed an attachment to the child and who spends a considerable amount of time with the

child is in an epistemically privileged position. Thus, the number of carers should be limited or else there are likely to be problems of coordination and misunderstanding (Brighouse & Swift 2014, p. 73).

In addition to this practical concern, there are limits on how many people very small children can relate to. "... even if several [adults] were present simultaneously, the capacities of the infant are limited – she can focus only on one or two people at a time, and it is possible for her to get to know, intimately, only a few carers" (Brighouse & Swift, 2014, p. 72). Thus, the child's capacities limit the number of persons who can be his or her parents.

Brighouse and Swift also mention the importance of combining care and authority, and allocating these functions to one or very few persons. This is also a problem for public care, because the parental role involves *combining* loving care with authority. In public care, substitute carers have caring responsibilities but not the full authority of the parent. Brighouse and Swift do not address this structural feature of public care, but they are critical to arrangements that are somewhat similar, i.e. to have non-parents such as nannies provide the daily care for the child. On their view, this is a way of "... outsourcing care but not authority" (Brighouse & Swift, 2014, p. 75).⁶¹ Insofar as the child has reason to want the combination of care and authority, he or she has reason to object to an arrangement that divorces these functions. In cases where a parent outsources care but not authority, Brighouse and Swift would probably reply that persons responsible for the daily care of the child, and to whom the child is attached, should in fact be the child's parent, and have the same discretionary authority as the parent. In other words, parental authority flows from the relationship.⁶²

Also, if care and authority are functionally divorced, there is reason to suppose that the relationship dynamics itself could be negatively affected if parental authority is dislocated from the parent-child relationship. One explanation offered by Brighouse and Swift is a reference to the child's interests in a genuine or authentic relationship, one where the parent is allowed to be him or herself, and thus one where the parent is permitted to act *spontaneously*. Parent-child interaction develops into valuable interaction and deep, affectionate attachment when a certain degree of spontaneity is permitted (Brighouse & Swift, 2014, p. 73). To illustrate the point, consider the example of a nanny. In contrast to a parent, a nanny is not as immune to external

⁶¹ Note that this distinction does not apply to people like kindergarten teachers or school teachers, for two reasons. First, they do possess some authority as disciplining models. Even though it is not parental authority, they have authority in virtue of their professional competence and being recognised as such. Second, they have the authority and legal obligation to report suspicions of abuse or neglect to the child protection service.

⁶² These views also raise other questions of how family-centred public policy should be. For example, it raises question of paternity and maternity leave, whether it is permissible to raise children in kindergartens and in two income families where both parents have full-time work.

intervention in his or her relationship with the child, and this is likely to affect the quality of interaction. The nanny will have limited freedom to act as a disciplining model for the child: he or she is subject to the authority of the parent, who ideally combines loving care with authority.

The problems just mentioned apply to the division of responsibilities in public care. These problems are not the only problems with the idea that public care ought to substitute the family, however. Assuming that it is possible to develop a bond to substitute carers, so that they can be a replacement for the parent, there is also a question of whether it will be permissible for substitute carers to terminate the bond. In other words, if familial relationship goods can be adequately realised in public care, it raises serious questions about the freedom of contract for substitute carers.

Brighouse and Swift are aware of the challenges this raises for a public care system. Regarding residential institutions, they make the following observations:

... as a general rule, and if we are right that children need a single person to love them consistently over the course of their childhood, then the restrictions on freedom of contract would be extreme, and the regulatory oversight very complicated. Employees of these institutions would have to sign up for many years, and not only could they not withdraw from the contract; they could not be fired, except for the most egregious breaches of contract. Regulators would be highly constrained by the fact that once the relationship has reached a certain stage, the child has no realistic second chance of establishing an acceptable alternative. (Brighouse & Swift, 2014, p. 74)

In other words, in organising public care, both governments and substitute carers face a dilemma. Children have an interest in being raised by parents in a family. Yet becoming a parent is to undertake a long-term commitment, one it takes exceptionally strong reasons to abandon. In fact, Brighouse and Swift claim that, because of the great potential for harm in terminating an already established relationship, "... the bar a parent has to meet in order to count as "good enough" to continue parenting may not be much higher than the standard "abuse and neglect" condition" (Brighouse & Swift, 2014, p. 97).

Clearly, children in public care can become deeply attached to the adults who care for them, yet these adults do not have the same commitment as the parent. Moreover, it is not clear that they *should* have a similarly interminable commitment. While these adults take on a moral responsibility for the child, they also have an interest in living their own lives. Moreover, they have not *agreed* to become parents, but merely to care for the child.⁶³

⁶³ Another concern that raises doubts about the idea of functionally replacing the family is the rights of biological parents, who already have an existing claim to rear the child. This problem can also be stated in terms of the child's interests. There are many reasons that support a parental claim beside relationship goods, including having caused the child's existence, biological or genetic connection, gestation and the parent's interests in parenting. Even if we

If these claims are true, then public care should be either completely re-organised, or the mandate of public care should be clarified so that it is not conflated with the family, or both. In the latter case, this might mean that public care arrangements should be temporary placements pending a permanent placement in a new family. Moreover, if this is true, then the basis for comparing the obligations of substitute carers with parents is considerably weaker than assumed up to this point. However, before we jump to those conclusions, we should critically assess Brighthouse and Swift's arguments for the uniqueness of the family.

3.2. Family Values and Public Care

Brighthouse and Swift's views raise questions of the permissibility of providing children with an arrangement that (i) the carer is permitted to terminate and where (ii) care and authority is not combined in the same way as in a family. If this is true, then we are in fact concerned with a substantially different role. As a consequence, what counts as morally relevant reasons for a substitute carer will be different from what matters for the parent.

In the sections below, I defend the idea that, even if the relationship between substitute carers and child is different from the parent-child relationship, in that public care and the family are different arrangements, substitute carers should nevertheless be motivated to think and act as a parent ideally would be, cf. the interpretation of Brighthouse and Swift's account in this chapter, and the three characteristics of the 'ideal' carer's motivation in chapter 2. This means that I must first critically assess Brighthouse and Swift's claims that the family is *uniquely* valuable.

To assess Brighthouse and Swift's claims, we can distinguish between two different ideas: that the parent is un-substitutable and that the family is. I will analyse these two different ideas as concerning whether parents are personally un-substitutable and whether the family is functionally un-substitutable. First, the parent is *personally* un-substitutable if the attachment to a parent is irreplaceable, and if that attachment should not be severed. This raises the question of whether Brighthouse and Swift's claim that parents are *personally* un-substitutable are plausible. Second, if the family is *functionally* un-substitutable, then the child should get a new family if the original parent-child relationship is terminated. This raises the question of whether the family be considered functionally un-substitutable. In the sections below, I address these two questions, starting with whether parents are personally un-substitutable.

reject the view that such consideration could trump the child's interests, it is clear that these reasons count against permanently terminating the original parent-child relationship.

3.2.1. Are Parents Personally Un-Substitutable?

That the parent is personally un-substitutable could mean different things. One could hold, trivially, that the parent as an individual has different significance for the child than any other individual. For example, children with more than one parent has a different relationship to each of his or her parents. Each parent will have different personal significance for the child and will be un-substitutable in that sense.

In this weaker idea of being un-substitutable, a new parent-child relationship *can* be formed even if it is different from the first. That being said, having an un-substitutable relationship in this sense implies that the relationship is valuable and should be protected for that reason. For example, if a relationship is un-substitutable in this sense, there is reason to protect the relationship between a child and his or her biological parents after a public care placement.

This first idea does not necessarily support the idea that the person to whom the child is attached should also be the child's parent. If new parent-child relationships can be formed, then there is little reason to hold that unfit parents *must* occupy the parental role or have full parental responsibility. Also, the idea is compatible with the fact that parents who lose custody after a divorce occupy some version of a parental role, but not full parental responsibility.

In another, stronger sense, the parent is personally un-substitutable if he or she is the only person who should fill the parental role. Occasionally, Brighthouse and Swift seem to think that parents are un-substitutable in this sense: Children do not form this intimate attachment to anyone. The close relationship they have in mind, is something the child only forms with a few people, and if the bond to the parent is broken it is unlikely to be replaced. So, on this view, if the parent-child relationship is broken, *no* new relationship can replace the first, and if someone other than the parent assumes the parental role, then this is a relationship of a different quality. In other words, the person to whom the child is attached should also be the child's parent.⁶⁴

Brighthouse and Swift's view seems to be a weaker version of the stronger of these two ideas. As noted in section 3.1.3., they admit that a child can form the requisite attachment to employees in child protection institutions. Moreover, their argument relies upon the idea that the quality of the parent-child relationship is what grounds parental rights and responsibilities. So when a parent-child relationship is formed, then the parental role follows unless there are strong reasons to terminate the relationship. This, however, means that the parent-child

⁶⁴ One reason is that the child must be "... cared for by at least one person who loves her" (Brighthouse & Swift, 2014, p. 72). Since love does not grow on trees, only very few can be the child's parent. Another reason is that "... it is possible for [the child] to get to know, intimately, only a few carers" (Brighthouse & Swift, 2014, p. 72).

relationship is not in fact un-substitutable, but that it is *nearly* un-substitutable, and that replacing the parent has high costs. Transferring parental responsibility is only permissible if the parent is bad and the level of care is unacceptable, but the view does not preclude the possibility that some form of public care arrangement can replace the family in certain cases.

The question, then, is whether substitute carers ought to provide the level of engagement and affection that characterises the parent-child relationship. This cannot be answered independently of the question of whether public care should be a functional substitute for the family. However, there is evidence that substitute carers who are motivated as a parent would be in fact *can* develop valuable relationships with children placed in public care, thereby improving the child's situation. Studies have shown that a change in foster parents' mind-set or commitment and behaviour can positively affect the child's attachment (Dozier et. al., 2001; Fisher & Kim, 2007),⁶⁵ and that warmth and affection matter for the stability of placements in foster homes (e.g. Oosterman et. al., 2007; Sinclair & Wilson, 2003).⁶⁶

Studies like these illustrate the quality of the relationship and the degree in which substitute carers see themselves as carers (as opposed to e.g. contractors) matter. Thus, there is reason to believe that a carer who is appropriately motivated or who cares *about* the child is not only living up to his or her tasks as described by regulations, but is also doing a better job than carers who lack a motivation similar to that of an 'ideal' carer.

Additionally, a central question is whether public care is different from, for example, a professional arrangement where the child receives treatment or one that is a short-term stepping stone to an adoptive family. As argued in this chapter and in chapter 1, public care is a substitute for the family and substitute carers inherit the essentials of the parental role. For this reason, and because it seems that substitute carers who are motivated as a parent would be can in fact realise familial relationship goods, it is hard to argue that their thinking and actions should be guided by a different ideal than the one that ought to guide a parent's reasoning and actions. This does not make substitute carers parents, but it suggests that they *qua* carers, have strong reasons to identify with the normative ideal of the carer-child relationship, and to think and act like an 'ideal' carer would.

⁶⁵ The study of Fisher and Kim reports results from a treatment foster home (see the brief discussion of TFCO foster homes in chapter 1, section 1.1.1.), so it is not directly comparable to foster homes as I use the term here.

⁶⁶ In Sinclair and Wilson's study, three factors were found to significantly reduce the risk of foster home breakdowns: (i) Child characteristics, including whether they wanted to be fostered; (ii) Qualities of foster carer – warm, child-oriented carers did better; (iii) quality of interaction between carer and child. (Sinclair & Wilson, 2003).

3.2.2. Should the Family be Functionally Un-Substitutable?

Of course, by claiming that substitute carers ought to be guided by the same considerations as a parent, I have not thereby established that they should have the same substantive responsibilities. It is one thing to claim that substitute carers ought to think and act in a certain way, and another to claim that substitute carers should have the same substantive responsibilities as a parent. The question is, in other words, if the family should only be replaced by another family, or whether it is sometimes permissible to place the child in an arrangement where parental responsibilities are differently allocated.

Before I turn to that question, let me note that the general question of whether public care arrangements in fact *can* promote familial relationship goods. For the purpose of promoting and protecting familial relationship goods, empirical studies suggest that family resembling arrangements are better than institutions. For example, when comparing how institutions and foster home care for very small children promoted secure attachment, Smyke et. al found that foster homes did well, as well as previous studies of adoption (Smyke et. al., 2010).⁶⁷ While this confirms Brighouse and Swift's claims, this study does not rule out foster homes. That being said, a longitudinal study of the entire Norwegian child protection population revealed that even children placed in foster homes fared far worse than the general population, although the comparison in that study is not between groups in comparable circumstances (Clausen & Kristofersen, 2008).

In another recent study, McSherry et. al compared children's attachment and what they call 'self-concept' (how the child feels about himself or herself), and the child's behavioural and emotional function in adoption, foster care, kinship foster care (with relatives), residential institutions and being reunited with birth parents after a prior care order. After interviewing a sample of children who had lived in long-term placements (n=77) and their parent and carers, they found little difference between these arrangements. Their conclusion was that this challenges the idea of adoption as a gold standard of substitute care (McSherry et. al., 2016). In terms of attachment to carers and the child's self-concept, the researchers also conclude that the longevity of the placement is more important for positive outcome than placement alternative.⁶⁸

⁶⁷ This study is a controlled trial that compares foster homes with institutions and regular families. The researchers did not include adoptions in the sample, but refer to previous studies.

⁶⁸ More precisely, an important qualification of their conclusion is as follows: "So, does placement type matter? The answer is that it would appear to depend on the outcomes being measured and the source of the data. If outcome data is collected from children regarding their parental/carer attachment and self-concept, then it would appear that placement type does not matter. The findings indicate that the children were mostly securely attached with positive self-concept across the different placements. However, if outcome data is collected from parents and carers regarding the children's behaviour and their own parenting stress, then adoption and the use of residence orders do appear to deliver more positive outcomes." (McSherry et al., 2016, p. 64).

Of course, the small sample is one reason to hesitate in embracing their conclusion. Also, the researchers had insufficient control over who was recruited to claim that the study gives an accurate representation of differences between these care arrangements (McSherry et al., 2016, pp. 63-64). For our purposes, we might also note that participating in research itself means that what is presumably closest to normal families (i.e. adoptive families, reuniting with birth parents) might nevertheless be seen as families that experienced more interference than a family normally would. In other words, this is not conclusive evidence that public care arrangements are as good as the family, far from it. It illustrates, however, that with the proper motivation, training and support, some public care arrangements can be valuable and provide familial relationship goods. Thus, the studies referred to here raise questions about the idea that one must *necessarily* replace a family with a functionally equivalent arrangement in order to adequately protect the child's interests.

This leads us to the question of whether there are reasons to reconsider the idea that one should not divide parental responsibilities. In many child protection cases, foster families or institutions need considerable support, training and possibly monitoring in order to keep the relationships intact and ensure that the child gets adequate care. In some cases, adequate child-rearing require monitoring and interventions in the 'family', so adequate child-rearing will not always imply that the child should be raised in a family that satisfies all of Brighthouse and Swift's conditions – in this case, that parents have rights to privacy and a considerable discretionary space. On the contrary, when a child and its carers face the level of challenges one sometimes find in public care, there is reason to hold that parental responsibilities should be shared. At least, there is reason to question some parental discretionary rights and right to non-intervention in the case of many of the children in public care (and perhaps elsewhere).

Another argument in support of the idea of sharing parental responsibilities concerns how families are structured. Anca Gheaus has recently argued that we should avoid what she calls 'monopolies of care' (Gheaus, 2017). Gheaus' point is that the family is a structural problem where monopolies of care permit parents to abuse their power. According to Gheaus, one should rethink how child-rearing is institutionalised. The aim should be to "... minimize dependency as far as it is compatible with ensuring that children's interests are met" (Gheaus, 2017, p. 2). Gheaus targets the aspect of parental rights that give parents the "... power to exclude other adults from forming and maintaining caring relationships with the child" (Gheaus, 2017, p. 4). Of course, this parental authority prevents others, who respect parents' right to non-intervention, from assuming responsibility if the child is neglected. So the problem is not only that parents exclude other concerned parties, but also that others lack the authority to intervene.

Like Brighthouse and Swift, Gheaus holds that the loving relationship between parent and child is uniquely valuable, and that part of what makes the relationship valuable is that parents have some discretion. For such reasons, others cannot be given authority to intervene in the family at will. The problem, however, is that children themselves lack the power to equalise this asymmetry, partly because it is difficult for them to exist the relationship and because doing so has great costs for the child. Thus, some way of equalising the power asymmetry between the child and parent is needed.

Her suggestion, drawing on Goodin, is to “... *forestall* the threat of exploitation (...) by depriving superordinates of discretion in the disposition of needed resources” (Gheaus, 2017, p. 4; Goodin, 1986, p. 195). The ‘resource’ the child needs is the parent’s care. This can be done by securing the presence of *several adults who are independent from one another*. Institutionalisation does not mean abolishing the family in its present form, though. According to Gheaus, “... mandatory attendance of day-care centres, kindergartens and schools is the best way to meet this demand” (Gheaus, 2017). According to Gheaus, this will not only have the benefit of lessening the impact of monopolies of care, but also make more people obligated to protect and promote the child’s interests.⁶⁹

I agree with Gheaus in that attendance in institutions like kindergartens and schools are necessary for the protection of children. Whether it is sufficient to address the problem she identifies is unclear. The reason is simply that around 91 percent of Norwegian children between 1 and 5 years old are enrolled in kindergartens (almost 97 percent of children aged 3 to 5) (Statistics Norway, 2017).⁷⁰ Of course, high coverage is not the same as mandatory attendance, but it does give us an idea of whether such a solution works in the way Gheaus assumes. A quick glance at the numbers from 2016 reveals that kindergartens are the single most important service with responsibility for children in terms of reporting risk cases that also led to investigations in the child protection service for children aged 3 to 5 (followed by the child protection service itself, police, the parents, and hospitals/ physicians/dentists).⁷¹ In terms of reporting objectionable forms of dependency to the child protection service, kindergartens are very important for young children.

⁶⁹ This is not an objection to Brighthouse and Swift, since they too permit monitoring for similar reasons, and since their account implies that other adults also are obligated to protect the child’s interests.

⁷⁰ In 2000, 62 percent of children aged 1 to 5 were enrolled in a kindergarten. In 2005, the same number was 76,2 percent, and 89,3 in 2010. Since then the increase has been smaller, but the coverage has been 90 percent or higher since 2012 (Statistics Norway, 2017, [<https://www.ssb.no/en/utdanning/statistikker/barnehager>], accessed 17.07.2017).

⁷¹ In 2016 the number was 1744, in 2015, 1849, in 2014, 1848, and in 2013 it was 1674 (Statistics Norway, <https://www.ssb.no/statistikkbanken/selectvarval/saveselections.asp>, accessed 17.07.2017). These numbers are not accessible in English translation.

Whether attendance *forestalls* risk of abuse and neglect, is another matter. As far as I know, this has not been documented. Of course, a lot of this depends on how seriously kindergarten staff take their obligation to oversee the child's interests and their duty to report. There has been a worry that too few cases are reported by kindergartens (or by nurses, dentists, hospitals, etc.) (Backe-Hansen, 2009, pp. 13-14). If true, then it is no wonder that it may have limited effect on how parents treat their children (if anything like such an effect can be documented). Part of the reason, I assume, is that even though other adults have *some* obligations to the child, it is not at all clear what this amounts to. The potential burden another adult assumes by taking care of someone else's child is, first, the knowledge that what he or she does may be harmful and that the child will pay the price for it, and second, that he or she does not know what will be required of them. If they are indeed a fiduciary for the child, he or she may themselves get the burden of parental responsibility.

Another, more drastic alternative, where parental responsibility is divided, is found in arrangements like Norwegian foster homes. As we have seen, when a child is placed in a foster home, parental responsibilities are divided between foster parents and the child protection service. One problem with dividing parental responsibilities, however, is Brighouse and Swift's arguments against dividing parental responsibilities seem to apply: cooperation problems are one of the most common reasons for foster home breakdowns (Backe-Hansen et al., 2013). Therefore, one might suppose that to go further than Gheaus suggests is to go too far. But that conclusion should be resisted until one has a clear idea of why cooperation problems cause breakdowns, and can establish that dividing responsibilities is a bad idea. 'Cooperation problems' can be many things: In some cases, substitute carers require *more* support from the child protection services and other non-parents than they receive. Sharing responsibility for the upbringing and care for challenging children does not necessarily undermine the possibility of creating a valuable carer-child relationship, possibly one that can substitute the parent-child relationship. In fact, in some cases, sharing responsibility might be required, so that a carer can

Brighouse and Swift's claim that the family is the best child-rearing arrangement may be right on a general basis. In public care, however, this claim seems less certain. Due to the traumas and treatment some children in public care have been exposed to, some of these children are different from the average child who grows up with their birth parents. More demanding children require somewhat different things from carers; there is little reason to think that familial relationship goods are less important for these children, but as far as discipline and corrections are concerned, these children may be more challenging. This makes Gheaus' point that structural features of the family allow for domination particularly relevant. Thus, even if

we accepted Brighthouse and Swift's idea that the family is functionally un-substitutable as a general recommendation, it is not clear that it applies to all individual public care cases, even if the child is attached to its carers.

In conclusion, there are strong reasons to believe that Brighthouse and Swift correctly place familial relationship goods at the heart of an account of what makes a child-rearing institution valuable. As child-rearing arrangements, public care institutions should also secure familial relationship goods. Yet, as we have seen, it is not entirely clear whether this means that these institutions should be functionally equivalent to a family. There is reason to believe that familial relationship goods can be realised in arrangements other than the family, and other normative reasons that support the idea that other ways to organise childrearing may be better for children who require more than many normal parents can manage without support.

That being said, since substitute carers have strong moral reasons to think and act as an 'ideal' carer would, which involves having special concern for the child, promoting close attachments and securing familial relationship goods, there is an inherent dilemma in public care, one that is not easily solved. There seem to be strong reasons that count against terminating the carer-child relationship, if the child and carer have become attached to one another. This chapter has not provided any solution to this dilemma. Instead, by arguing that what is valuable about the family is relevant for public care, it has deepened the dilemma.

3.3. Conclusion

The family is valuable because, when it is well-functioning, it provides children with an immensely valuable relationship and with parents that can ensure that all dimensions of the child's interests are cared for by someone. Since public care involves providing children with a home, what makes a family valuable is clearly relevant to public care.

Thus, public care should be organised in ways that can promote familial relationship goods, and substitute carers should be motivated to promote a relationship where familial relationship goods are realisable. This does not necessarily mean that public care should fully replace the family or that substitute carers should see themselves as the child's parent.

However, by treating children in this way, substitute carers may find themselves in a catch-22 scenario. By doing what we ought to respect from them as carers, they also risk becoming something they have not agreed to: they risk developing the relationship into a state where there are strong reasons against terminating the relationship. Even though there might be differences between how public care and the family are organised, these carers may in practice become the child's parents.

The problem is that these people are *not* the child's parents. They have never agreed to enter an arrangement they cannot exit at will. They also have their own lives to live, and we usually think we have an obligation to respect their right to live their lives as they want. Under what conditions, if any, could we or the child *require* them to take on the long-term commitment of a parent? This is the question I address in the next chapter.

4. Grounding Parental Responsibility

In chapters 2 and 3 I have claimed that substitute carers should act and deliberate as if they are the child's parents. A possible consequence of this view, however, is that they may be required to become the child's parent, or at least to take on a role that is very similar, one they should not abandon.

In this chapter I defend the view that substitute carers can become a child's *moral* parent if certain conditions are fulfilled. In this chapter, I address the question of the conditions for acquiring parental responsibility by asking what the moral basis of parental responsibility is. In the view I outline, substitute carers can satisfy the conditions for parental responsibility even if they have no genetic connection to the child, did not cause the child's existence, or agreed to become parents.

The outline of the chapter is as follows. In section 4.1. I briefly describe what full parental responsibility amounts to. In section 4.2. I present the three accounts of parental obligation – the genetic account, the causal account and the voluntarist account – and discuss the strengths and merits of each. Rejecting all, both as explanations of parental responsibility and as what could possibly explain substitute carers' responsibility, I propose an alternative account in section 4.3. I refer to this as the dependency account. In section 4.4. I consider two possible objections to the dependency account and finally, in section 4.5. I briefly outline the implications of the dependency account for public care.

4.1. Full Parental Responsibility

What is parental responsibility? Questions of parental responsibility concern parents' positive obligations for a child, their importance, what their content and limits are, and who should be the child's parent. Chapters 2 and 3 concerned the content of these obligations (as they apply to substitute carers). In this chapter I concentrate on the last question – on who should rear the child, and I address this by considering the grounds of parental responsibility.

First, let me make some brief remarks on what we require of a parent. In what follows, I briefly outline what I will refer to as *full parental responsibility*. What I have discussed up to this point is the content of the normative ideal of the parent-child relationship, or the carer-child relationship in the case of public care. That is not an account of full parental responsibility, but of what considerations should move the carer and how the carer should be motivated to act. Having parental responsibility involve having some substantive responsibility. The exact content of this responsibility depends in part on the interests of the child, in part on how a society has organised and regulated the family as an institution, and in part on social

expectations of the parental role (cf. Brake, 2010, p. 152). For example, while the age of majority is 18 in most places (cf. UNCRC), parents routinely continue to care for their children well into adulthood (Stein, 2006, p. 274). Also, in some societies, parents are expected to participate in and finance the child's leisure activities (Brake, 2005). Other monetary expenses include health care, dental care, clothing, equipment, food, and holidays. Such obligations are considerably more demanding than Brighouse and Swift require, and what I take parental responsibility to (ideally) consist of.⁷²

In any case, the exact content of parental obligations is difficult to pinpoint, and they will vary. For this reason, and because it rests on moral reasons as opposed to custom, I will refer to full parental responsibility as the set of basic responsibilities Brighouse and Swift identify, although they are slightly modified in light of the discussion in chapter 3: Parental responsibility involves promoting familial relationship goods by nurturing and caring for the child, by providing intimacy and by being a disciplining model. That being said, parental responsibilities may be shared in some cases, for reasons mentioned in chapter 3. Finally, this is a long-term commitment. It lasts at least as long as the child needs the parent in order to enjoy childhood and develop into an adult.

4.2. Who Should Have Parental Responsibility?

Different accounts of the grounds of parental obligations have implications for who it is that is obligated to care for an individual child. Influential accounts of the grounds of parental obligations include causal accounts, genetic accounts and voluntarist accounts. None of these theories are developed with the case of substitute carers in mind.

In contrast, Brighouse and Swift's account is not intended to explain who should parent a child (Brighouse & Swift, 2014, p. 54), but they do make the claim that when a child develops a loving relationship to a carer who also possesses the requisite discretionary authority, then that person "... would effectively become a parent" (Brighouse & Swift, 2014, p. 74). In what follows, I build on this claim and offer an explanation of the moral grounds of this claim.

Substitute carers may in some cases be a child's 'social' parents – the person that is socially accepted as the child's caregiver. They are not the child's 'legal' parents. The Norwegian law does not recognise them as parents unless they adopt the child. Here, I refer to parenthood in a third sense: 'moral' parenthood. If a person is the child's moral parent, he or

⁷² Also, parents are often considered responsible for the wrongful actions of their children (Narveson, 2007, pp. 35-36). I am not sure what Brighouse and Swift have to say about this, and the extent to which parents are e.g. liable for the harm their children cause is a difficult issue. I do raise the related issue of whether children should be subject to moral appraisal in chapter 7, although I have not considered what implications my views have for this issue.

she satisfies the moral conditions of parenthood and will be morally responsible for the child. The assumption will defend in this chapter is that substitute carers can become a child's *moral* parents.

To defend this assumption, I will, first, reject accounts based on properties that exclusively identify biological parents as parents, or accounts where genetic ties or having caused the child's existence are considered necessary conditions for parenthood. Second, I must also address a problem of voluntariness: If voluntary choice is a necessary condition for parenthood, then how can substitute carers, who have never consented to be parents, have this responsibility? Third, if there are plausible objections against these accounts, another explanation of the basis of parental responsibility must be found.

Before I go on to present the various accounts of the basis of parental responsibility, let me clarify that most accounts of the grounds of parental responsibility are intended to explain how we ought to identify who a child's parent is at the time of childbirth (or perhaps even prior to birth). Here, my main focus is on allocation of parental responsibility for children after birth, in many cases years after birth. That being said, the aim is to provide an account that is as complete as possible – one that can account for the widest number of cases.

4.2.1. The Genetic Account

The genetic account of parental obligations identifies the parent as the person with the strongest genetic ties to the child. Essentially, the account reflects the proverb that 'blood is thicker than water'. Blood ties determine who the child's parent is, and who has parental rights and obligations.

Genetic ties matter because, as David Velleman claims, "...knowing one's relatives and especially one's parents provides a kind of self-knowledge that is of irreplaceable value in the life-task of identity formation" (Velleman, 2005, p. 357). To support this claim, Velleman appeals to familiar stories of adopted children who spend considerable resources and effort in locating and gaining knowledge of their roots, which supports the idea that a person's meaning in life is intimately connected to knowing one's family history.

We can distinguish between two versions of the genetic account. The first, stronger version, takes genetic ties to be a necessary condition for parental responsibility. This account faces challenges with respect to explaining who should parent the child if a child is already born (which would be beyond Velleman's intentions). Considered as a *necessary condition* for

parental responsibility,⁷³ the account rules out the possibility of arrangements like adoption or foster care, even in cases where the original parents are clearly unfit to undertake the task of child-rearing.⁷⁴

Velleman does not present this as a case against adoption, though. Instead, Velleman's point is to address the permissibility of deliberately creating children who will be at a disadvantage. His conclusion is that the importance of genetic ties makes it immoral to procreate with the intention of severing ties between biological parent and offspring, which applies to cases of anonymous donors. In cases of adoption, the child "... needs to be parented by someone, and it cannot and should not be parented by its biological parents, for reasons that outweigh any value inhering in biological ties" (Velleman, 2005, p. 361).

A more plausible proposal is a weaker view, where it is a sufficient but not necessary condition. However, the problem with this view is explaining why we would need a family arrangement and parental rights in order to satisfy it. Knowing one's biological ties and having the opportunity to know one's family history is not incompatible with being raised by non-biological parents. With reference to Brighthouse and Swift's claim in chapter 3, for example, one can endorse the idea that biological ties are important, perhaps even sufficiently important to protect existing relationships, but not sufficiently important to ground parental responsibility.

Nonetheless, there is reason to think that genetic ties matter. The question is *why* these ties matter, and whether the fact that they are genetic ties makes any difference for who we should identify as a child's parent. My suggestion is that biological ties seem to be important because they reflect certain expectations from the relationship.

For example, in a recent study of Norwegian foster homes, foster parents in kinship foster homes reported that feeling obligated was one of their reasons for agreeing to take the child in. This was not the most frequently reported motive, but 43 percent of kinship foster parents reported this as a reason (n=86). Unfortunately, the 'ordinary' foster parents who participated in the study (n=232) were not asked this question. This might be because they did not have a prior relationship to the child. Also, it might confirm that the researchers took family to entail obligations to care.

⁷³ Kolers and Bayne distinguishes between different versions of a genetic account on the basis of the strength of the account (Kolers & Bayne, 2001). As they say, to their knowledge, "... no one has defended – or is best understood as assuming – Necessity Geneticism" (Kolers & Bayne, 2001, p. 274). They also reject the approach where genetic ties is a necessary condition for .

⁷⁴ As Fuscaldo points out, "...genes are not the only determinant of family, as evidenced by the many successful experiences of foster parents, adoptive parents, blended families following divorce, same sex couples raising children, single parent families, shared parenting and other 'non-traditional' family arrangements" (Fuscaldo, 2006, p. 66).

Either way, it seems that the most frequent motives among both kinship carers and ordinary foster parents had to do with the *relationship itself* or expectations concerning the relationship. The most important motive for both groups was to help a child in a difficult situation (92 % of ordinary foster parents had this motive; 73 % of the kinship foster parents). What followed was that kinship foster parents loved/cared about the child (71 %), that ordinary foster parents cared about children in general (63 %), that, for kinship foster parents, the family circumstances permitted it (47 %), and that ordinary foster parents wanted a family or a bigger family (44%) (Havik, 2013, pp. 114-116). Only ordinary foster parents were asked if having good parenting skills was a motive (41 %).

While these numbers report on what actually motivated the carers (if they reported sincerely), and thus only reveals what was important from the perspective of these people as well as what the researchers expected, one could also argue that these reasons reveal something about what is expected to matter for someone about to take on a burdensome responsibility. Even if the difference in the questions asked indicate that *some* at least see kinship relations as importantly different from what could motivate strangers, the answers indicate a common theme; that the relationship, actual or expected, as well as the child's circumstances, are what matters.

4.2.2. The Causal Account

Theorists who defend the genetic account sometimes explain the normative foundations of that account by means of a different theory – the causal account (cf. Nelson, 2000). According to a causal account, parents are those who have caused the existence of another person.

Critics of the causal account claim that causing the child's existence cannot explain why that person should be responsible for raising the child unless it includes an explanation of why such acts are morally relevant, e.g. by an explanation of why causing the child's existence implies a moral responsibility for the child (cf. Narveson, 2007, p. 19).

David Archard gives an example of such an argument. He argues that a person who has caused the existence of another one is liable to answer for the well-being of that person. Since children are harmed if they do not have parents, the causal account explains why people who procreate are obligated to ensure that the child is cared for (Archard, 2010). According to Archard, this does not ground full parental responsibility, but only what he calls 'parental obligation', which is to ensure the child is cared for by someone, but not necessarily oneself.⁷⁵

⁷⁵ In some versions, however, the causal account does more than merely assign minimal parental obligations. For example, in many countries biological fathers are legally obligated to provide child support for a child they have procreated, irrespective of whether they intended it or took reasonable precautions (Brake, 2005, p. 55). Even on

Causing the child's existence is a *necessary* condition for the obligation to ensure that the child is cared for (Archard, 2010, p. 105). It is not an account of the sufficient conditions for parental obligation, nor an account of full parental responsibility.⁷⁶

If the causal account requires more of the procreator than Archard's account implies – if it did not merely required ensuring that the child is cared for, but also parental responsibility – then one could assume that such accounts would be vulnerable to counterexamples of biological parents who have taken every reasonable precaution to avoid pregnancy. Why should we think a man who consented to sex, took every reasonable precaution and who has no interest in becoming a father should be partially responsible for financing the costs of child-rearing until the child is 18? In cases where abortion is inaccessible, why would it be wrong for them to adopt the child to other parents? Since Archard's account does not establish full parental responsibility, it does not face these problems. That being said, it does face another challenge, namely that the conditions for causal liability must be specified. If not, the risk is that the group of persons involved in causing a child's existence becomes implausibly inclusive (Cf. Draper, 2013, p. 312).⁷⁷

More important for my purposes here is the fact that the causal account is unhelpful. It cannot help us explain whether substitute carers can become a child's moral parents, because there is no meaningful way in which these persons have caused the child's existence.⁷⁸ Thus, the causal account will not help us explain whether the foster parents or institutional employees come to have parental obligations.⁷⁹ Of course, since it is a necessary condition for parental obligations, as Archard defines these obligations, it can be compatible with the idea that substitute carers could have parental responsibility.

A more serious problem for the account itself, however, is whether causing the child's existence is, in fact, a *necessary* condition for parental obligations, as Archard defines such

a weak causal account like Archard's, refusing parental responsibility would require good reason (Archard, 2010, p. 104 ff).

⁷⁶ Thus, it potentially satisfies what Bayne calls the 'transfer principle', "... according to which it is permissible to alienate one's parental responsibilities (over neonates) to another individual (or institution) as long as one has good reason to think that they will carry out those responsibilities adequately" (Bayne, 2003, p. 82). As Prusak phrases the obligations that follow from the principle, "... what procreators owe a child is to see to it that he or she is cared for, not necessarily to care for the child themselves" (Prusak, 2013, p. 20).

⁷⁷ For example, in the case of donor children causal liability might include physicians responsible for fertilisation as well as the person who donated sperm or embryo. From here it is easy to see that the list could be extended.

⁷⁸ One might hold, following Prusak's observations on adoption, that the relationship between foster parents and the child is 'given' and thus not voluntary, on account of the fact that they would have to adapt to the child they get and have no choice in that respect (Prusak, 2013, pp. 18-19). This, however, does not imply any causal account. Also, it seems primarily to refer to the idea that parental responsibility is interminable, but not to what, in the case of adoption, can ground parental obligations.

⁷⁹ The inability to explain how to ground parental obligations for adoptive parents is a paradigm counter-example to the causal account (Brake, 2010; Porter, 2014).

obligations. The obligation to prevent harm is not reserved to those who have caused the child's existence, but is a general obligation all adults have. Brighouse and Swift's view, for example, is that children need parents and a family, and absence of parents and a family implies risk of harm to the child. Therefore, their view is that adults have a collective obligation to ensure that the child has parents and a family.⁸⁰ This is a very plausible view, one that explains why establishing a child protection system and public care and adoption arrangements is a matter of obligation. Moreover, it fits with the idea that all adults have a moral relationship to children, one in which the child depends on society and a number of people who are not their parents. All of us would, in other words, neglect a child if we failed to ensure that someone took care of e.g. an orphaned child. Thus, *anyone* in position to do something for the child has strong moral reasons to ensure that the child is cared for, not only the persons who caused the child's existence. There is, in other words, no difference between the obligations of parents and non-parents. Thus, causation is not a necessary condition for this obligation.

If Brighouse and Swift are correct, then what Archard's notion of 'parental obligation' is not a *special* obligation. It is derived from a general moral obligation of preventing harm to the child, or perhaps also a general obligation to care for a child (cf. O'Neill, 1988). Thus, as an obligation that falls on individuals, this obligation is best seen as our collective responsibility (Brighouse & Swift, 2014, p. 83). Thus, Brighouse and Swift's version has more explanatory potential. Since they explain 'parental' obligations without relying on a causal idea of liability, this enables them to extend the obligation to a wider range of plausible cases, such as the state's obligation as *parens patriae*. Instead of relying on causal liability, their account is supported by the intuition that to neglect to aid an orphan is wrong even if one is not liable for having caused the child's existence.⁸¹

The problem with Brighouse and Swift's account, however, is that it cannot answer our question of *who* should have parental obligations. As O'Neill has observed, "... to ground

⁸⁰ As they say, "... we claim that children have [the right to a family] without being able to say who exactly has the duty to parent them (...) In a sense, then, the child's right to a parent could be understood as the right that adults get together and establish an institutional mechanism for assigning the relevant (perfect) duties to adults in such a way that every child gets a parent" (Brighouse & Swift, 2014, p. 83).

⁸¹ It is possible to supply Brighouse and Swift's view with a notion of liability, though a much less discriminate one than Archard's. As Iris Young has argued (in debates on distributive justice), the formation and sustenance of our basic social institutions, like the family, is a product of collective decisions and interaction. The family is protected and regulated by democratically legitimate law. We all bear some responsibility for the consequences of our decisions, even the unintended consequences (Young, 2001, 2011). For example, by allowing and encouraging family privacy we also facilitate an arena in which children can be exploited. Even if we neither intended nor caused child abuse, we bear some responsibility for having institutionalised family privacy and for respecting it as well as for not having prevented it. This idea of responsibility does not attribute blame to anyone but the abuser, but it grounds collective responsibility, either for compensation or for arranging child-rearing in ways that reduce risk.

obligations only in needs and interests will not, by itself, tell us who has an obligation to meet those needs and interests” (O'Neill, 1979, pp. 26-27). Unlike Archard's causal theory, Brighthouse and Swift make no argument to help us identify any particular individual.

The arguments presented here suggest that causing the child's existence can identify persons who are in position to fulfil what Archard calls 'parental obligations'. But it is neither a necessary nor a sufficient condition for having these obligations. Archard's proposal should therefore be substituted by some other identification criterion, but one that also can explain why we think that biological parents usually have a stronger obligation than other adults, and stronger claims to parent the child than other willing adults.

4.2.3. The Voluntarist Account

In contrast to Archard's version of the causal account, the voluntarist account I present here holds that choosing to beget can ground both parental obligations and parental responsibility. There are different versions of the voluntarist account, where weaker versions hold that voluntarily undertaking to procreate is a sufficient but not necessary ground for parental obligations (O'Neill, 1979). Here, however, I concentrate on a recent and stronger version developed by Elizabeth Brake (Brake, 2010). Brake claims that being willing (to raise) a child is a *necessary* but not sufficient condition for parental responsibility. An account of the sufficient conditions for parental responsibility requires more. In addition, the sufficient conditions for parental responsibility includes *ability* to raise the child and that no other adults raise competing claims of parental rights. Thus, one might say that a complete account of parental responsibility includes an account of parental competence and parental jurisdiction (cf. Brake, 2010, p. 152).

In comparison with the causal account, the voluntarist account has some strengths. It is clearly in the child's interest to have a willing parent. To place the child with someone who *wants* a child seems to be better than simply leaving the child with the persons who happened to cause his or her existence. Also, the interests of the father who has taken all reasonable precautions is also better protected by a voluntarist account. In contrast, a problem for the causal account is that women have the power to terminate pregnancy, but men have no similar power. This means that the woman in fact can decide that someone who takes reasonable precautionary measures and who never wanted a child still can have parental obligations (Brake, 2005).

For the purpose of this thesis, an important strength of a voluntarist account is that it can explain the grounds of parental responsibility in the case of adoptive parents (Brake, 2010; Porter, 2014). This gives some hope for the case of substitute carers as well. Like adoptive

parents, substitute carers agree to be assigned a child.⁸² Should they accept, one interpretation of their obligation is that it is based on a promise.

A problem with this approach is how we understand what a person actually agrees to. Brake holds, plausibly, that parental responsibility is based, at least in part, on convention. As she phrases it, "... parental obligations are institutional, not natural" (Brake, 2010, p. 163). Not only, she writes, "... does the assignment of parenthood depend on social and legal conventions, but the content of parental obligations depends on how societies divide up child-care responsibilities" (Brake, 2010, p. 165). What a parent owes the child is therefore crucially dependent on how a society organises parenthood.

Since Brake regards parental responsibility to be grounded by convention (at least to a considerable extent), a question is how parental responsibility can also be *moral* obligations. Brake's answer to this question is that it depends on whether the parent identifies with the parental role, which she interprets as a form of "... tacit voluntary acceptance" (Brake, 2010, p. 170). Voluntariness does not require consent or a clearly communicated declaration that one has assumed parental responsibility. It is sufficient that one, through one's actions, expresses that the role is indeed accepted.

This raises questions of whether it is permissible for people who have caused a child's existence to *refuse* to parent. For example, it has been pointed out that people readily agree to having sex without agreeing to become parents (Prusak, 2013, p. 25). If this is true, and it ends in pregnancy and childbirth, does this make it permissible to refuse to parent the child? If voluntary choice is a necessary condition, then there can be no obligation to assume full parental responsibility that does not depend on a prior volition, promise or 'identifying with the parental role'. If one, for example, consented to sex and did not thereby consent to unintended consequences of the act, it would seem as if one could *refuse* to parent the child. Similarly, if one accepted an orphan into the household but never agreed to provide anything more than a custodial arrangement, could one therefore refuse to be a parent for the child?

If this is permissible, then it is in direct conflict with the child's interest in having a parent. If Brighthouse and Swift are correct in assuming that the child does have a right to parents and a family, and this rests on the contingency that someone is willing to assume the responsibility, then it seems very much like a right without a corresponding obligation.

⁸² In the case of institutions and family homes, substitute carers cannot refuse individual assignments.

Brake is aware of this problem. She asks the question of whether the voluntarist is also committed to the idea that the parent could "... deny she was a parent because, despite her actions, she had never accepted the role?" (Brake, 2010, p. 169). Her answer is that

The publicity of these conventions forestalls the objection that voluntarism would allow someone to take the child home but later deny that she had accepted the role of a parent, or all of the parental role obligations. Even if the person has not voluntarily accepted the role, her actions (assuming she knew of the conventions) have triggered parental obligations (Brake, 2010, p. 171).

Thus, on the voluntarist account, the question of whether it is permissible to refuse parental responsibility depends on what conditions one has explicitly or tacitly accepted. If the conventions that regulate parental responsibilities require full parental responsibility, for example as outlined early in this chapter, and one knows the conventions, then one's actions commit one to this responsibility.

This leads us to the case of public care, where substitute carers agree to a *different* set of conditions than what is conventionally considered full parental responsibility. In the case of substitute carers, their contract permits them to refuse the relationship after having accepted the child. Foster parents and institutional employees consent to a terminable relationship. But as we have seen in chapter 3, there is reason to think that the relationship can become so valuable that there are strong reasons against terminating it. There may, in other words, be cases where the child's interests in the relationship is in conflict with what the substitute carers have consented to. Arguably, in these cases, it seems that the importance of the child's interests outweigh the carer's consent or refusal.

Moreover, even if we accept Brake's view that we tacitly consent to abide by the norms that regulate parental obligations, there is reason to question the idea that we enter into parent-child relationships voluntarily. Some relationships, like the parent-child relationship, are not chosen, but given (Prusak, 2013, p. 16). If seen from the child's point of view this is obviously the case, but even parents do not choose their child. Rather, they *adapt* to the person that happens to be born into their household (Goodin, 1986, p. 71). Although it is conceivable that persons tacitly choose to take on conventional responsibilities, a substantial part of the source of parental obligations is the child itself, and there is no sensible way of claiming that the parent *chooses* to take on the responsibilities that follow from what the individual child needs. Who the child is and what he or she needs cannot be known in advance.

I will outline how I think a parent is bound or obligated to respect and promote the child and the relationship in the next section, but for now it suffices to say that the adaptation process

just described is one way to interpret how a bond between two persons is created. This, as I interpret it, is a matter of discovery and adaptation, and not choice. Once we have formed such a bond and thereby adopted some set of obligations, we cannot easily reject these responsibilities. In the case of the parent-child relationship, neither entry nor exit is a matter of choice for the parent. We are either morally obligated to take on parental responsibilities or we are morally obligated to ensure the child is parented by someone else, and the latter decision is only permissible if there are good reasons that support it.

4.3. The Dependency Account

The previous discussion has left us with the question of how to reconcile two claims. First, Brighthouse and Swift claim that all adults are obligated to ensure that the child has a parent. Second, Brake presupposes that it is impermissible to impose parental responsibility on someone. Both claims are plausible. And while these two claims are not always in conflict, they might be in certain cases. Because, as I have just argued, substitute carers have a general obligation to ensure that the child has parents and a family, and the most obvious candidate to assume the responsibility of parenthood is themselves, they should not be permitted to terminate their relationship with the child. At the same time, their terms of contract permit it.

What we lack an explanation for, is why they, and not any other person, should be identified as the child's parent. We also lack an explanation for why it should be impermissible to refuse to take on this burden, if they have already consented to a contract where they are given the prerogative to terminate the relationship at will.

My proposal is to claim that what identifies them as the child's *moral* parents is that the child is personally dependent on the substitute carer, in a way the child would depend on a parent. In what follows below, I outline this account – the 'dependency account', and consider some of its strengths.

4.3.1. Role Dependency and Personal Dependency

The dependency account relies on two conceptions of dependency, an impersonal form of dependency, perhaps equally well conceived in terms of general vulnerability, and a personal form of dependency. Only the latter gives us an account of *who* we should identify as a child's parent. Thus, both forms of dependency should be understood as necessary (but not sufficient) conditions of some form of parental obligation. The first is only a condition for parental obligations, as Archard uses the term. The second is a necessary condition for full parental responsibility.

Let me start outlining this approach by distinguishing between two bases for ‘parental’ obligations, one corresponding to ‘parental obligations’ in the narrow sense that Archard uses the term, and the other for full parental responsibility – or where it, among other things, is *prima facie* impermissible to terminate the relationship. In my view, these different obligations correspond to two forms of dependency, *role dependency* and *personal dependency*. Role dependency refers to the idea that what the child needs, at least initially, is not the parent but that someone fills the parental role, and to the fact that all adults have a corresponding obligation to ensure that the child is cared for by someone. As such, this is a feature of adult-child relationships in general. In contrast, personal dependency refers to what I called personal un-substitutability in chapter 3, or an actual established relationship where the child depends upon one or a few persons *as parents*, and where terminating this relationship has great costs for the child. This latter form of dependency can ground parental *responsibility*.

Let me start with role dependency. Robert Goodin has developed a view where vulnerability (he does not refer to dependency) grounds obligations to protect vulnerable persons from harm. Vulnerability, Goodin tells us, “... is essentially a matter of being under threat of harm”. Therefore, he continues, “... protecting the vulnerable is primarily a matter of forestalling threatened harms” (Goodin, 1986, p. 110). Small children and infants are unable to care for themselves, and are therefore vulnerable in the sense that they will be harmed if no one cares for them and protects them.

Goodin’s account does similar work as Archard’s causal theory of parental obligation, but implies that all have an obligation irrespective of whether we have caused the child’s existence. On Goodin’s view, parents have this responsibility because

... parents are the *obvious* candidates to bear such responsibilities. Obviousness comes to have moral significance, in turn, by virtue of the reactions of other people. The nearest person is obliged to rescue a swimmer, for example, because other people will regard him as the obvious person to do so and will wait for him to act (Goodin, 1986, p. 82, emphasis in original).⁸³

On Goodin’s account, the general fact that the child is vulnerable in combination with what he calls ‘obviousness’ explains why we have an obligation to care for the child and who should have the responsibility.

⁸³ Immediately before the text quoted here, it becomes clear what Goodin has in mind with the term ‘obviousness’. It refers to parents’ “... crucial causal contribution to producing this vulnerable child” and “... the absence of any further social signposts” (Goodin, 1986, p. 82).

As I see it, the nature of the child's vulnerability, as Goodin explains it, is only a case of role dependency. Why do I use the notion of 'dependency' as opposed to 'vulnerability'? The problem with Goodin's notion of vulnerability is that the fact that someone is vulnerable or at risk of being harmed does not explain why some particular others are obligated to protect the vulnerable person. Unlike vulnerability, the notion of 'dependency' is a relational term, one that involves a dependent party and someone with a corresponding obligation.

In the case of role dependency, all adults have this obligation. This is because this form of dependency does not prevent a carer from transferring the responsibility to another person, what Bayne refers to as 'the transfer principle', "... according to which it is permissible to alienate one's parental responsibilities (...) to another individual (or institution) as long as one has good reason to think that they will carry out those responsibilities adequately" (Bayne, 2003, p. 82). The reason why Goodin's account does not rule out the transfer principle is that custody does not necessarily imply a *personal* parent-child relationship. A child living with one or more adults need not depend on any of those adults as he or she would depend on a parent. For this reason, it might be objectionable for *some* to terminate their relationship with the child, but not others. For teenagers living in residential institutions, it may be permissible for some employees to quit, but not others. And it seems plausible to explain this with reference to the quality of the relationship. Therefore, we should distinguish between those who have, custody, those who have custody and inhabit the parental role, and those who both inhabit the role and are someone on whom the child depended on as their parent. There is a sense in which all of these persons would be included by the condition Goodin refers to as *obviousness*. But it is clear that this condition refers to different things, and the wrongness of abandoning the child varies in each of these cases.

Accordingly, my suggestion is that when we ask questions about whether it is permissible to terminate an existing relationship, however, the central condition is personal dependency. Phrased differently, it is not the fact that someone occupies the parental role and the fact that the child needs someone to occupy that role that matters for the question of who should parent the child; it is what kind of relationship that person has with the child, including how the person matters to the child. In many normal families, custody, the parental role and parental dependency are intertwined. Yet, if the arguments in earlier chapters are correct, personal dependency is what is central to the purpose of identifying a child's parent.⁸⁴ In other words,

⁸⁴ This observation is somewhat similar to Dodds' critique of Goodin (Dodds, 2014). Dodds (following Walker (Walker, 1998)) distinguishes between *vulnerability-in-principle*, which refers to the fact that all persons are vulnerable at some point in their life, from *dependency-in-fact*, where one is actually dependent on another person

what matters is not only the child's vulnerability or who happens to care for it, but the nature of the relationship itself.

4.3.2. Personal Parental Dependency

What I refer to as the dependency account takes the nature of the *existing* relationship between the child and carer as the basis for parental responsibility. My suggestion is that, for the different configurations of custody, parental roles and relationships listed above, there are different permissibility conditions for terminating custody. In the absence of the personal dependency on someone as *the* parent, child custody and the parental role are transferable in principle (although, as we have just seen, there may be strong reasons that count against it). When a relationship is *personal* and the child has formed an attachment to the adult, when the infant is able to recognise the parent by smell, for example, then transferring responsibility requires much stronger reasons.

There are some obvious difficulties with this proposal. The central problem is that it does not enable identification of a parent prior to any existing relationship, which means that standards for allocating parental responsibility in e.g. public care or adoption cases must be based on something else. Voluntariness seems like an obvious candidate, although this account, as we have seen, faces the problem of whether one could agree to become someone's parent in the relevant sense. At most, one can agree to custody and a somewhat specific description of the parental role. If the arguments given here are plausible, however, then this is not sufficient for considering a relationship un-substitutable; we must appeal to other grounds to explain why we should not terminate a relationship involving custody, the parental role, or both. Personal dependency is such a reason.

In any case, if this is a problem for the dependency account it is also a problem for other explanations of who should parent. Insofar as one does not deny that children's interests are of central importance when we decide who should parent an individual child, then gestation, genetic ties or causing the child's existence has no more explanatory potential than the dependency account. Neither of these accounts, it seems, are particularly strong accounts of what reasons the child has to want to have *this* person as his or her parent. To repeat, the fact that some adult has biological ties to the child does not make that person a good parent.

or institution. According to Dodds (and Walker), Goodin bases his account of the grounds for our obligations to the vulnerable on *vulnerability-in-principle*, but what's really doing the normative work is *dependency-in-fact*. This is, after all, what we refer to when we consider *who* is obligated (who we depend on) and how vulnerable we are with respect to that person's actions (how much harm neglect from that person will harm the dependent).

The dependency account seems also able to explain why, in some cases, we think it is worse for some than others to refuse taking on parental responsibility. Why, for example, did the researchers in the study cited above ask if kinship foster parents felt obligated to take responsibility for the child? According to the dependency account, the answer is straightforward – because they had reason to assume that the child depended on their kin in a different way from how it depends on others. Moreover, the dependency account is able to explain cases where other accounts offer plausible explanations. We have seen that, combined with the more general idea of vulnerability, the dependency account can do the same job as the causal account, while also accounting for why we sometimes think it is wrong to terminate a relationship.

Another example is gestation. Gheaus, for example, explains the right to parent one's own biological baby in a way that makes the relationship between mother and foetus central, in what may be described as a relationship of dependency:

If the same process which brings babies into the world also generates their first intimate relationships [with] adults, then relationships between birth parents and their babies need no justification: they are already there from the beginning. Adding the perspective of the baby, who also binds with its mother whose voice, heartbeat and so on it can recognize during the last phase of gestation, gives additional, child-centred justification, to the right to keep one's birth baby (Gheaus, 2012, p. 451).

In the case of parents, the story is rather straightforward, and well described with what one might, following Goodin, refer to as 'obviousness'. Parents inhabit the parental role before the child is born, and have a socially recognised position in relation to the child. In most cases, this is sufficient to reject child transfer. However, in these cases, the child's dependency on the parent is not personal; it is dependency on the role. Thus, although it might be possible to argue that the child is personally dependent on the parent right after birth, it is most likely reasons other than personal dependency that explain why we should not transfer the child to another parent in such cases.

It is clear, then, that the dependency account gives rise to a threshold problem. The account allows that personal dependency and thus parental responsibility is something that can evolve. At the beginning of a relationship, for example right after birth and in the beginning of a foster home placement, dependency is impersonal and thus transferable.⁸⁵ The initial situation

⁸⁵ During pregnancy, however, the child is clearly dependent on the mother. By extension, the child is also clearly dependent on those standing in close relationships with the mother. Thus, gestation grounds obligations (though not necessarily rights). Whether and when abortion is permissible in this account is likely to depend on when there is someone who can be dependent, since dependency concerns actual relationships, which requires that the child is 'someone' (for a similar observation, see Dworkin's arguments for why a foetus is not initially a rights-holder or a person (Dworkin, 1994)). Like other accounts, it faces difficult questions of personhood and when someone

is therefore one where a procreator merely has parental obligations as Archard describes them. It should be clear, however, that having the parental role or most but not all features of the parental role, as e.g. foster parents, will usually imply parental responsibility, even if personal dependency has not evolved. We cannot reject the transfer principle by appealing to personal dependency in such cases however, but must consider other reasons, like the harm one risks imposing on the child by rejecting it, or the permissibility of imposing the burdens of parental responsibility on others.⁸⁶

Once the relationship is personal, however, it requires much stronger reasons to transfer parental obligations. At that point a relationship of personal and parental dependency has evolved.⁸⁷ At exactly what point this occurs is the central threshold challenge. Thus, to know when some level of personal dependency transforms into personal *parental* dependency, and thus when the moral basis for the parental role is established, involves a difficult threshold problem. The solution to that problem, however, cannot be given by philosophical analysis alone, but requires empirical research. Fortunately, the sizable literature on attachment reveals that this issue is central in both developmental psychology and research on public care.

The same is true of Gheaus' suggestion that gestation forms a pre-birth relationship between mother and child. Whether or not this pre-birth relationship is sufficiently important to give a birth parent a 'right' to raise their child, is, as Brighouse and Swift, point out, an issue that requires further thought (Brighouse & Swift, 2014, p. 82). In my opinion, the issue is whether it qualifies as personal dependency, which depends on its importance from the child's

is sufficiently developed for it to make sense to refer to a 'relationship' where someone might wrong the child, or for concept of 'harm' to apply. I do not think embryos are included, and possibly not a foetus until it has developed for some time, but these questions must be pursued somewhere else.

⁸⁶ Thus, on this point I partially agree with Narveson that part of a parent's obligation is to avoid imposing burdens on others (Narveson, 2007). Unlike Narveson, however, I do not regard this as the only source of parental responsibility. The child itself is a source of parental responsibility.

⁸⁷ There is some overlap with this idea and the causal account. Like the causal account, the dependency account holds that a competent procreator *necessarily* has parental obligations, although whether this requires any particular action depends on context, such as proximity to the birth of the child. Like the causal account, the dependency account denies that causing a child's existence is a necessary condition for parental *responsibility*. Also, like the causal account, the dependency account will usually identify those who have caused a child's existence as those who have primary responsibility for ensuring the child is parented. Since the procreators usually will be best positioned to develop a relationship with the child, they will also usually be those who acquire full parental responsibility.

This is not only a matter of physical proximity, of course, but also of normative reasons. Only a few adults can argue that it is beneficial for the child to *begin* the relationship with him or her (Draper, 2013, p. 311). Reasons that count in favour of this include the meaning biological ties have, as exemplified by adoptive children and donor children (Velleman, 2005). But as Velleman says, these reasons are not sufficiently important to disqualify adoption. For the view that it is permissible to *decide* to close the connection a child has to their biological ties and inheritance, the meaning of biological ties raise difficulties (Velleman, 2005, p. 360-361).

Velleman's observation raises an interesting question on whether *deciding* or *deciding to risk* procreating raises other and perhaps more demanding obligations compared with mere custodial parenthood.

viewpoint, whether the carers *wrong* the child by severing the relationship, etc. There are studies that indicate that babies can adapt and become attached to other carers, however (Dozier et. al. 2001; Van den Dries et. al. 2009). Thus, the dependency account can be combined with empirical knowledge of what harm terminating a relationship that has evolved to a certain state could cause.

4.4. Two Objections to the Dependency Account

The dependency account is compatible with the idea, cf. the view presented in chapter 3, that a carer should be guided by the same ideal as the parent, even if he or she has not caused the child's existence, does not have biological ties to it, or has consented to take on the responsibility. To take on the parental role is to provide the child with a relationship that the child has an interest in, and this relationship can only evolve into the valuable relationship the child needs if the parent gives the appropriate level of attention, care and affection. Thus, for someone who appreciates the reasons why a child has an interest in being raised by parents in a family, this entails treating the child as if he or she was their own.

In the two sections below, I address two different objections that might be raised against the dependency account. According to the first, the account does not explain cases where it might be reasonable to impose the burden of parental responsibility on someone if the child is not already dependent on the person. According to the second objection, if we reject the voluntarist account, we also fail to explain the special value of carer-child relationships.

4.4.1. The Lottery Case

The dependency account seems to lead to problems in cases where we think it is unreasonable to abandon the child, even if the child is only role dependent on the carer. The problem is that the dependency account holds that adults have a general obligation to ensure that a child is cared for by parents, but specifies conditions for terminating the relationship that permit a carer to abandon the child if the child is not personally dependent.

The challenge is this: We are all obligated to ensure that these children have a parent, but are also all permitted to refuse to take on the responsibility (unless the individual child is personally dependent on us). To me, this seems wrong. Either there is no obligation to ensure children have a parent and a family, something that seems consistent with the voluntarist account, or we can only be entitled to refuse to be parents under the condition that someone is willing and sufficiently competent to take on the burden. The problem with the latter view is that it illustrates the weakness of the dependency account; the criterion of personal parental

dependency is too demanding, since it gives adults the prerogative to transfer the burden of parental responsibility indefinitely.

To illustrate, imagine a case where all have ‘parental obligations’ in Archard’s sense and no one has parental responsibility, for example, a situation where an orphan is found on the street in a village. No one has seen the child before and no one knows who the parents are. All the villagers know that parental responsibility can only be allocated to a few people. Moreover, all have the prerogative to reject the burden of taking on that responsibility, and as it happens, no one is willing. Thus, in this scenario, either someone accepts the burden, or the child is abandoned. Since the latter option is impermissible, the villagers decide that it is fair to arrange a lottery. Since no one is willing to take on the child, and to ensure a fair procedure, all able villagers are compelled to participate.

Three considerations justify the lottery and specify the procedure - the child’s interests, the fact that all have an obligation, that it is impossible to identify who it is that ought to take on the responsibility, and fair distribution of burdens.⁸⁸ Also, one assumption implicit in the idea that a lottery is legitimate is that the child’s interests takes priority. To soften the blow on the winner, the villagers also make the lottery sensitive to bad luck. They will not only make sure that the selection procedure was fair, but also make sure that all who lost the lottery in some way contributed to lessen the burden of the winner (e.g. by paying taxes to finance a school, ensure they had health services that provided what the child needed, contribute to babysitting now and then, and so on). In other words, the villagers accept Brighthouse and Swift’s claim that the child depends on the parent for familial relationship goods, and that other adults play a part in realising several of the child’s other interests.

Assuming, for the time being, that it is permissible to compel the villagers to participate on these grounds, would it be permissible to refuse the responsibility? Assuming that it is refused, how could the other villagers respond? There seem to be at least two lines of reasoning they could employ. First, they could claim that if the winner rejected the child, it should also be permissible for all later winners to do the same. To permit this to happen systematically is unacceptable, however. Since all of them are in a relationship with the child where they have an obligation to ensure the child has a parent and a family, it would imply that they accepted neglecting the child, which would wrong the child. Additionally, if all had the prerogative to

⁸⁸ Ideally, one should of course allocate parental responsibility with a completely different procedure. To ensure that the child’s needs are met, child and adult should be matched according to interest correspondence and both parties should preferably want to be each other’s family. The lottery case is not an ideal case, however. Nor does it deny that it is desirable that a parent wants to have a child.

refuse the child on the same grounds, then each such rejection places the child at risk of harm (cf. Prusak, 2013, p. 18).

Another response they could make is to appeal to the individual child's circumstances, and argue that it would be unacceptable because the child has come to depend on the winner. Prior to getting a custodial parent, the child was equally dependent on all those adults present, but after a relationship is formed, the child depends on the parent in a way he or she does not depend on any other person. Even if the winner fails to see the value of it, he or she is identified as the one on whom the child depends, and those who lost the lottery are off the hook.

This last claim is implausible. If the villagers claim that the child depends on the winner, the villagers refer to role dependency. But if this role is transferable or impersonal, it is not sufficiently strong to bind the winner to the obligation, unless other reasons apart from the relationship itself count for it. Thus, as noted above, role dependency does not in itself make it impermissible for the person who occupies the role to transfer the responsibility to another.

The first argument is more plausible. But in this case, what is doing the explanatory work has little to do with the nature of the carer-child relationship. The reasons why it is wrong to terminate the relationship depend on the contingent factor that no one else is willing to take on the burden, and the incompatibility of institutionalising the adult's right to refuse parental responsibility with the general obligation to ensure that the child is cared for by a parent. Moreover, it is incompatible with fair distribution of burdens and responsibilities. So rather than being based on the individual relationship, the reasons to refuse transferring the responsibility has to do with the general obligation they all have to care for the child and what they all owe each other as fellow members of the moral relationship.

Before I go on to discuss another possible objection to the dependency account, let me just note that while this case may seem outlandish to some, there are analogies to be found in real life. Each year, a considerable number of children wait long periods before a foster home that is willing and capable to care for them is located (Rasmussen, Ekhaugen & Dyb, 2017). Some wait more than a year – a very long time in the life of a child or young person. A possible explanation for why these children wait as long as they do, is that caring for them is a considerable challenge for potential foster parents and others. Also, few are willing to take care of them. A possible advantage of a case like the one just discussed is that it might raise questions on multiple levels. Most obviously, it raises questions about the permissibility of refusing to care for these children. However, the lottery case also incorporate strong assumptions about the collective responsibilities of childrearing, and the idea that taking on such a demanding burden requires assistance. Thus, it might also raise questions about the level of support those who

assume the burden of parental responsibility should receive from others, including state agencies.

To end this discussion, let me just note that for the voluntarist, it might be impermissible to compel all able villagers to participate in the lottery, even given the circumstances and the fact that it is sensitive to bad luck. But to defend this view, the voluntarist would have to reject the idea of collective responsibility to ensure that children have parents, and they would also have to argue that the person's consent to take on the burden of parental responsibility outweighs compelling people to take on this responsibility, even given the conditions built into the lottery case. It is not obvious how the voluntarist could manage this. One possibility for the voluntarist is to argue that choice makes a significant moral difference. While this strategy will not refute the idea that it might be permissible to compel villagers to participate in the lottery in the rather special circumstances above, it does amount to a general claim that it is better to base parental responsibility on choice. This leads us to the second objection against the dependency account.

4.4.2. The Significance of Volition

As in Archard's account, the dependency account conceptualises a parent's obligation in terms of an obligation to avoid wronging the child. However, the voluntarist could argue that acceptable child-rearing requires more than merely avoiding wronging the child. To a certain extent, it requires *genuine* affection, attention and love. And this particular type of motivation is more closely related to volition than to a duty to avoid wronging the child.

The voluntarist's approach can account for the importance of volition, for both recipient and obligation-holder (child and parent). That eligible carers want to become parents appears to be an independently important reason to take them into consideration as people to whom we could give parental responsibility. To be willing is valuable in itself, and does seem to reflect that the person is appropriately motivated to take on the responsibility. Also, if the focus is not exclusively on child-centred reasons but also include the carer's point of view, the voluntarist could argue that the dependency account, is in tension with important reasons for why we do in fact value self-determination (Scheffler, 1997, p. 203). For most of us, our identities are profoundly shaped by who we willingly associate with or enter into relationships with. Thus, one might say, the dependency account ignores the importance of volition for substitute carer's motivation and the likelihood that they in fact will value the child and the relationship.

This is a potentially major problem for the dependency account. Since the dependency account emphasises the quality of the parent-child relationship, and there are reasons to consider

voluntariness a condition for valuable relationships, focusing on dependency leads our attention away from parts of what matters. Phrased somewhat differently, we risk trading in what characterises a good parent with a parent that merely fulfils his or her duties.

However, even if the dependency account does not base parental responsibility on consent, this is not intended to undermine the significance of voluntariness or choice. The point is simply that, if the arguments above are correct, then there are cases where adult's voluntary acceptance does not have the normative strength to outweigh the importance of the child's dependency.

Still, there are reasons to think more carefully about why self-determination should matter in a parent-child relationship. One observation is that it seems strange to think that our obligations always depend on choice, or that the relationships that ground many of our obligations are based on choice. As Scheffler observes, many moral obligations are not something we voluntarily adopt but something we are still bound by. In virtue of being members of a moral relationship with all other people, other persons are always capable of imposing duties or burdens on us (cf. Scheffler, 1997, p. 202), and membership in the moral community is nothing we can enter or leave at will. Moreover, the fact that we don't choose these relationships or the duties they entail, does not necessarily imply that we fail to *value* non-chosen relationships.⁸⁹

The question, then, is *how* voluntariness matters. My suggestion is that it might matter for the *meaning* of having parental responsibility, both for the parent and for the child. In short, it matters that a person wants or even embraces the burden of parental responsibility, since it affects whether it is experienced as a burden.⁹⁰ In turn, this can affect *how* a person enacts his or her obligations and what attitudes he or she expresses by enacting them in a specific way. In short, voluntariness might matter, just like the voluntarist claims, for the agent's identification with his or her responsibilities.

⁸⁹ In the context of discussing adoption, Prusak notes, following O'Neill, that there is a distinction between *chosen* and *given* relationships, where the latter may have independent or even more importance than chosen relationships. In one respect, this has to do with the fact that chosen relationships can be terminated. As Prusak writes, "... persons can be former friends, but not former siblings" (Prusak, 2013, p. 16). Additionally, O'Neill observes that "Although one often hears of adopted parents who explain to their children that they were *chosen*, this fact clearly does not always expunge the sense of loss, the sense that *from the child's point of view*, it would have been better *not* to have been chosen, but given" (O'Neill, 2000, p. 41, quoted from Prusak, 2013, p. 16). One way to interpret this is that the sense of belonging is not necessarily connected to the fact that one's parents decided to procreate or to raise the child. Why it should be so is another question.

⁹⁰ I draw on similar observations in the work of Scanlon, e.g. his account of the significance of choice (Scanlon, 1998, pp. 251-256), and his idea that our interaction and practice of blame in our relationships is connected to the *meaning* of our actions, rather than their permissibility (Scanlon, 2008).

This does not make voluntariness the basis for parental obligations or parental responsibility, however. What adults owe the child, depends on whether an action is justifiable or not. As we have seen, these obligations can be explained with reference to different *given* relationships, and an adult who is a member of either the moral relationship or the parent-child relationship will have obligations as member of these relationship whether he or she wants these obligations or not. Therefore, the value of choice or voluntariness is not connected to what we owe to children, but choosing someone, embracing the responsibility, etc. expresses or symbolises that a person cares for another. Thus, it is connected to the meaning of the relationship for the carer, and this is also likely to be reflected in how the carer acts.

Clearly, this adds something to an account, if that account only concerns obligations. To restrict a discussion of parental responsibility to questions of right and wrong makes it difficult or impossible to explain how we should act to promote a *good* parent-child relationship.⁹¹ This does not make obligations or a deontic language superfluous. It is simply not exhaustive. We do not want our close affiliations to treat us as they do *merely* out of duty, but rather because they possess certain attitudes toward us, like care. In this particular, valuable sense, care and affection cannot be required. It can only be given.

Thus, my view is that voluntariness is important to the *meaning* of parent-child relationships. Rather than seeing such aspects of parent-child relationships as obligations it should be regarded as part of the normative ideal of carer-child relationships – that refers to the 'ideal' carer's special concern for the child. Such an ideal should guide how anyone caring for a child should approach the assignment.⁹² A good parent does the right thing because he or she care for the child, and the different nuances between acting out of care or love and acting out of duty (or for some other end) are significant. Of course, in many cases, acting out of duty will be as good as it gets, and it is all that can be required. We cannot *require* more than right (or not-wrong) actions. We can *encourage* good parenthood, however. Voluntary recruitment of substitute carers and sufficient support and parental training programs are examples of such encouragement. The intention behind such measures is to provide better care by appealing to people's motivation, by making parental tasks easier and by lessening the burdens of

⁹¹ Here, I have in mind Bernard Williams' observation on the tendency in moral theory to transform everything into obligations (Williams, 1985, ch. 10). Such a tendency ignores central aspects of our motivation to do good and leads to incomplete and possibly misguided accounts of the nature of moral agency. I think Williams is right about this, and that it is especially evident in the case of relationships like family and friendship. Although obligations play a crucial role in such relationships we would deeply misunderstand the nature of the value and meaning of these relationships if our moral theorising about them only contained rights and obligations.

⁹² This idea is similar to and inspired by Loretta Kopelman's distinction between the different functions of the best interest principle in health care and health policy, cf. chapter 2 (Kopelman, 1997).

parenthood. This follows from the normative ideal of the carer-child relationship, and it also opens the way for nuanced ethical criticism of parents or substitute carers who only do what is minimally required, as well as a critique of any public care system that only provides minimal support.

4.5. Parental Responsibility and Public Care

We have now arrived at the point where we can discuss how the dependency account applies to public care and the obligations of substitute carers in foster homes or institutions. In this section, I will consider two questions. The first question refers to the discussion in chapter 3, where the argument was that substitute carers ought to think and act like a parent would. Arguably, this could lead the way to personal parental dependency and thus full parental responsibility. The first question is whether the carer should have such a motivation, something I address by considering some possible objections to this claim. The second question is under what conditions a substitute carer should be required to take on the parental role. Conversely, under what conditions would the substitute carer have a claim to parent the child?

One reason to think that treating the child as a parent would is inappropriate prior to the formation of a relationship, and perhaps even later, is this: Unless there is reason to reject the entire relationship, e.g. in cases of abuse, the dependency account confirms that continued contact with and dependency on the *original parent* is valuable. In these cases, it seems to follow from the dependency account that terminating that relationship is *prima facie* impermissible. From this, one might conclude that substitute carers should actively *avoid* parental dependency, e.g. by drawing firm boundaries between their role as employees or contractors in custodial arrangements and the parental role. If this is true, then there are reasons to suppose that we should not think of the parent-child relationship as the appropriate normative ideal for the reasoning of a substitute carer.

Such dilemmas are an inherent part of the child protection system given its dual role as family support and family substitute. I will not propose to solve that dilemma, but simply acknowledge that it can arise. Instead, I will make a point that I believe gives us reason to reject the view that substitute carers' obligations should be to *only* provide a custodial arrangement.

The problem with merely providing a custodial arrangement and not a relationship that has the potential of realising familial relationship goods, is that it fails to *secure* what the child has reason to want from a family substitute. We do not want the child to have merely the *opportunity* to have parents and a family in which familial relationship goods are realisable. We want the child to *actually* have a valuable relationship with its carers.

To clarify, I will draw on a point made by Jonathan Wolff and Avner de-Shalit. They claim that it matters whether what someone has reason to want is relatively distant or instantly realisable (Wolff & de-Shalit, 2013, pp. 162, 164). In our case, their point would be that what we owe children cannot be the promise of familial relationship goods in the distant future, but rather an arrangement that is likely to realise an actual valuable relationship for the child. Familial relationship goods must be, in other words, *readily available* for the child who needs them. And while it seems difficult to guarantee that all children will get a valuable relationship, it is clearly possible to try.

In the case of public care, it clearly matters for a child that the foster home or institution is the readily available opportunity for having a family. If substitute carers are only obligated to promote reuniting the child with the original family, substitute care will not be a readily available opportunity in the same sense. First, the aim of public care would simply not be to provide a family but to function in a different way. Second, depending on the likelihood that the original parent never will be fully equipped to fill the parental role, there might be no realisable substitute.

From this, it does not follow that substitute carers must always try to develop a family relationships or a family-like relationship with the child. That depends on the child's situation and what the child has reasons to want. Additionally, out of respect for the individual child and what he or she cares about (including existing attachments to biological parents), it might be premature to identify oneself with the parental role if the relationship is properly described as a custodial arrangement. Moreover, from a more pragmatic viewpoint, relationships are not always promoted if a person presumes too much familiarity from the outset.

However, as a general presumption, we might hold that substitute carers have a prima facie obligation to *try* to develop a good care situation, with affection, intimacy, etc., even if such effort might increase the 'risk' of developing a parental dependency. Thus, appropriate treatment of the child requires a person who is moved by the same considerations as the 'ideal' carer would be moved by, since this is what makes familial relationship goods readily available.

This being said, I turn to the second question, on when a substitute carer is morally required to take on the parental role. As we have seen in chapter 3, we can think of the parental role in a more or less demanding sense. In the more demanding sense, corresponding to Brighthouse and Swift's idea that the family is functionally un-substitutable, taking on the parental role means having a claim to full parental responsibility, including the authority and rights of a parent. In the less demanding sense, corresponding to being personally un-substitutable, the parent is simply a person on whom the child is personally dependent as he or

she would be on a parent, and who therefore is not morally permitted to terminate the relationship. Here, I am merely concerned with the latter aspect of the parental role.

The dependency account holds that if the child depends on a substitute carer *as it would depend on a parent*, then terminating the relationship requires very strong reasons. In this way, the dependency account confirms Brighthouse and Swift's observation that freedom of contract in public will be limited and difficult to regulate. As we have seen, the fact that wanting to care for the child has special significance counts in favour of voluntary recruitment of substitute carers. However, voluntary exit of contract is a conditional prerogative that can only be invoked if parental dependency is absent or if strong reasons make it permissible.⁹³ In principle, there is little morally relevant difference between becoming a foster parent and choosing to beget a child. The main difference is the initial limitations of foster parents' authority and the requirement that they must cooperate with other stakeholders.

For institutions and institutional employees, matters will often be different. The main reason is that institutions as a long lasting custodial arrangement are reserved for older children and young people. Insofar as institutions only aim at providing a place of residence and fiduciary support and this corresponds with what young people placed in institutions have reasons to want, the arrangement is justifiable. This implies that, for example, work shift arrangements and normal employment contracts are *prima facie* permissible. However, this does not imply that employees should constrain themselves to prevent close relationships from evolving. And if parental dependency evolves, there is little reason to treat these cases differently from foster care.

4.6. Conclusion

Substitute carers are, *qua* carers, supposed to let considerations that would guide a parent, guide their treatment of the child. On the account offered in this chapter, what grounds parenthood from a moral viewpoint is personal parental dependency. This account does not consider substitute carers or adoptive parents as different from birth parents – people in all these groups can become a child's moral parents if the relationship evolves into one where the child personally depends on the carer. Thus, irrespective of how the relationship started, if the relationship has evolved to such a state, the substitute carers should be considered the child's moral parents. This implies that what should be a reason to act for a parent is also a reason to act for a substitute carer.

⁹³ It is important that changes in the substitute carer-child relationship are foreseeable. If the moral nature of the relationship suddenly changes, and the possibility of such change was unanticipated, foster parents could experience that they have had the rug pulled from under them (cf. Simmons, 2010).

This does not merely apply to the well-established relationship, as in the case of a child who has lived in a foster home for several years. It should also characterise substitute carers' deliberation at the initial stages of the relationship. Thus, neither institutional staff nor foster parents should think of themselves as contractors. As carers, more is required of them.

This implies that the treatment a child should get in public care could lead to a dependency relationship, where the child not only depends on there being an arrangement that works more or less like a family, but where the child is personally dependent on the carers as he or she would be on a parent. And when this condition of parenthood is satisfied, it seems to follow that they are no longer permitted to terminate their contract unless there are strong reasons to do so.

This conclusion rests on an assumption that is left undefended in this chapter, namely that, in cases of conflict of interests, the child's interests take priority. Why, one might ask, should the child's interest in having a parent trump that person's interest in self-determination? What, if anything, can explain this idea of special priority? That is the topic I turn to in the next chapter, where I address the issue of special priority as an issue concerning the moral status of the child.

5. Special Priority

Parental responsibilities are particularly important. They are often considered sufficiently strong to trump other important considerations, and a paradigm case of justifiable moral particularism (Scheffler, 2010). The idea that parental responsibility is particularly important provides support to some of the claims made in chapter 3 and 4, but it has not been explicitly discussed and defended. For example, some of the arguments that support dependency account rests on the claim that, all else being equal, it is more important for the child to have parents than it is for non-parent carers to be able to live their own lives as they please. In this chapter, I refer to this idea as the *special priority* of (our obligations to) children. And in this chapter, I address the question of whether and how this assumption can be defended.

According to the view I outline and defend in this chapter, we can explain children's special priority *in certain cases*, including certain cases where adults should assume parental responsibility. This claim is based on an account of children's moral status. The idea is that children's moral status makes them equally valuable members of the moral community, but that they nevertheless have a lower position or *standing* within this relationship than adults usually have. This asymmetric relationship, I argue, gives adults reason to prioritise the child in *certain circumstances*. However, this does not imply that children should have special priority in general.

To defend this view, I will also have to assess the merits of other possible explanations of special priority. The outline of the chapter is as follows. In section 5.1. I present two ways in which the idea of special priority could be justified. The first of these, priority of interests, is discussed in section 5.1.1, where I offer some arguments against the idea that the child has more important interests in this particular case than the adult has. In section 5.1.2. I turn to moral status, where I present Dwyer's recent defence of children's moral superiority at some length, but ultimately reject his account. In part 5.2. I offer an alternative account of children's moral status, which combines an idea of their equal status with the claim that children, on a general basis, have lower *standing* than adults. This asymmetry, combined with the equal importance of all members of the moral community, leads me to some reasons that count in favour of prioritising children in certain cases.

5.1. Two Explanations of Special Priority

As we recall, a special priority view is embedded in the CWA (cf. chapter 1, section 1.2.3.). Assuming that children should have special priority, what explains it? There are at least two different ways in which to ground the special priority view. First, one way to interpret the idea

that children are in a predicament is to hold that the child's interests are regarded as comparatively stronger reasons for action. For example, we might hold that having a parent may be more important for the child than self-determination is for the adult. On this view, special priority applies in those cases where the child's interests outweigh the adult's interests, but it does not support the idea that children should have special priority on a general basis. In contrast, the second view holds that special priority is explained by different moral status. This would explain why we have both an individual and collective *general* responsibility to prioritise children over others affected, either as individuals or groups. Are either of these views plausible?

5.1.1. Priority of Interests

Theorists engaged in questions of childhood, child policy and children's rights often adopt a 'child-centric view', where decisions or institutions are justified with reference to the child's interests (cf. Brighouse & Swift, 2014, p. 26). Very broadly put, one idea that supports such an approach to an area like child protection or the family is that there is more at stake for the child than for the adult in these contexts. For example, what the child in such circumstances might need from adults is absolutely crucial for the child's health and development. If satisfying this need requires a comparatively small sacrifice from the adult, then the child's interests should be prioritised because they are more important.

Judgements of priority of interests might concern the benefit or harm an option is likely to cause for different persons. Moreover, this might also be connected to the overall value of an option. A utilitarian, for example, might think to solve the problem of priority by considering the overall utility or interest-satisfaction produced by either alternative. There is no prior priority presumption, but different value of outcomes, and some people might end up being prioritised if an option is very valuable for them but of little value for others, if this alternative is also the best available option. Thus, on this approach, the moral obligation concerns promoting the best outcome, and this *might* favour the child, depending on how much the child stands to gain from the best outcome, compared with others. Therefore, this is not really a special priority view. Prioritising children will depend either on case-by-case assessments of how much the child gains compared with others, or a general assessment that children usually will have more to gain (or lose), and should be prioritised for this reason.

The problems with this approach are similar to problems of determining what is in the child's best interests briefly mentioned in chapter 2. Here, I will briefly consider two problems. First, the alternatives may be incommensurable. Regarding the case we are presently concerned

with one might hold that both a child's attachment to a parent and an adult's self-determination are basic values, and also hold that neither securing attachment nor protecting self-determination is more important. Of course, it may be possible to assign a value to each of these options, so that they can be compared. The question, however, is how to assign the appropriate value in a non-arbitrary manner.

Second, even if we could compare the alternatives, it is difficult to demonstrate that one alternative is preferable to the other. Consider the possibility that both having parents and being able to decide for oneself how to lead one's life are what Wolff and De-Shalit call 'fertile functionings', or functionings that are likely to secure other functionings (Wolff & De-Shalit, 2007, p. 10). If this is plausible, then both possession and deprivation of these goods can have a profound positive impact on a person's life as a whole. But is possession of one more important than another? To answer that question, one does not only have to count in family relations and self-determination, but all other goods connected to these goods, and how it might affect a person's life. This makes deciding between the two very difficult indeed.

Here, it is sufficient to note that simply comparing these two goods does not settle the issue in favour of the child. One might argue, for example, that while there is reason to believe that having a parent, as opposed to having a contractor to care for you, with the risk this involves, may be very beneficial to the child, and a good childhood is likely to have beneficial consequences for the child's entire life, a contractor can also be a positive contribution. Clearly, it is much better than nothing (cf. Gheaus, 2015b). Even if the child may be worse off with a contractor than with a parent, it is not obvious that living with a contractor or someone with less than full parental responsibility is intolerable – if we compare the child's benefit with the burden imposed on the adult.

If we consider the possible burden on the carer, it is conceivable that the plans, projects and aspirations must be postponed or perhaps left unrealised if he or she is forced to take on the burdens of parenthood. His or her freedom to move, use one's property, etc. will be drastically constrained and the parent might also be forced to take responsibility for the child's wrongdoings, at least at young age. While I do not consider these reasons conclusive, they certainly count against the idea that we should trade in adults' self-determination for a child's security.

One final problem with a case such as this and assessing the value of the options, i.e. the interests of the affected parties, is that our assessment, to some extent, will be affected by the degree of certainty of the outcome. This is, of course, independent of the issue of the relative interests at stake here, but it does affect what we should do. Thus, if we ask if someone with

the requisite power should compel someone to be the parent of a child, then the answer to that question depends, to some extent, on what the expected outcome of that decision would be. Arguably, it is at best uncertain that the person assigned as the child's parent will be a good parent and realise familial relationship goods. Even if he or she tries their best and fulfils their obligations, the desired result might not occur. In contrast, it seems certain that if the parent would not accept the responsibility, then this would thwart the person's aims and projects. In other words, it is hard to provide conclusive reasons to prioritise the child by comparing the interests at stake.

5.1.2. The Moral Superiority of Children

This leads us to the relative moral status of children and adults. Why should moral status explain priority? Moral status is often referred to in debates whether it is permissible to harm or wrong someone or some entity. Since the conflict of interests above concerns whose interests it is permissible to infringe, then a theory of different moral status of children and adults does seem relevant to our question.

What is moral status? A being has moral status "... if and only if it or its interests morally matter to some degree, for the entity's own sake, such that it can be wronged" (Jaworska & Tannenbaum, 2013, introduction). Phrased more simply, to have moral status is to be "... an entity towards which moral agents have, or can have, moral obligations" (Warren, 1997, p. 3). If, for example, a rock has no moral status and a painting has some, then this fact, by itself, counts against destroying the painting, all else being equal. In addition, no reason concerning the intrinsic value of the rock counts against destroying it, although there may be other reasons not to destroy it. For example, that it is heart-shaped and therefore appreciated or valued by someone, or that it belongs to someone. None of these reasons are reasons that matter for the rock's own sake, but for something else (e.g. other people's appreciation of it, or ownership). In short, not all reasons that count against harming an entity with moral status are grounded in this status, but the moral status is always a reason that counts against such actions.

Theories of moral status concern the scope of morality, or the question of who we should include. These theories approach this question by searching for criteria that grounds moral status. Moral status accounts can be based on a single criterion or they can be multi-criterion accounts. The difference is that there is either one or several grounds of moral status. Examples of the former are accounts that rely on, for example, high cognitive functioning or sentience, where all beings who possess either high cognitive functioning or sentience have some degree of moral status or full moral status. The latter view relies on multiple sources, such as both of

the above and perhaps also innocence, being cared for by someone or relationships, being able to care about someone or something, etc.

Additionally, accounts of moral status can be either threshold-views or gradualist views. The former is an all-or-nothing view where possession of a property or possession beyond a certain threshold is sufficient for moral status. Rawls, for example, held this view when he claimed that potential for a moral personality is a sufficient condition for being entitled to equal justice (Rawls, 1999, p. 442). All beings with this potential are therefore members of the moral community.

Gradualism takes how much one possesses of a status-grounding property to matter to someone or something's moral status, or in the case of multi-criterion accounts, how many properties an entity possesses might determine the that entity's place in the moral hierarchy. For example, one might argue that higher cognitive functioning grounds moral status, and add the view that differences in cognitive functioning matter. Or, if one defends a multi-criterion view, then higher cognitive functioning plus some additional capacity, like being innocent, makes a moral difference. In this way, gradualism implies a moral hierarchy between different beings.

Finally, the reasons that follow from having a given moral status, are impartial or agent-neutral. If some being or entity has a moral status in virtue of some property, then this constitutes a reason for all moral agents. All else being equal, all moral agents would have the same reason to respect or aid the being or entity.

Framing the issue this way leads to questions of why we should bother discussing this abstract and difficult issue within the context of child protection, where it seems obvious that we have to presuppose that children have moral status and it is impermissible to harm them. In the context of and child protection, we do not ask whether it is permissible to kill or harm children. What we ask is whether children are entitled to the *same* treatment as adults; whether they have moral rights, whether there are child-specific rights, whether they should be held responsible for their actions, whether children's voices should be respected, and so on. Thus, unlike the questions above, where we are concerned with questions of whether harming an entity constitutes moral wrongness, we ask whether the children's moral status makes equal or unequal treatment wrong.

In other words, questions of children's moral status, that also matter for child protection and the obligations of substitute carers, do not concern whether children have moral status. It is uncontroversial that they do possess moral status. Rather, the question is whether they have a *separate* moral status (Archard, 2004; Bagattini, 2014), and whether they are the moral *equals* of adults. This leads to two questions: First, there is the question of what morally relevant

property grounds the separate status of children, if they indeed have a separate status. Second, insofar as separateness can be justified, there is the question of whether this also entails a moral hierarchy, the relative importance of children and adults.

It is evident that the child's moral status can only count clearly in favour of a special priority view if the child has superior moral status. If this is the case, then this fact will count in favour of prioritising the child, all else being equal. However, most people nowadays are committed to some version of what Brennan and Noggle call the 'Equal Consideration Thesis', or the view that "... a certain moral status attaches generally to all persons, including children" (Brennan & Noggle, 1997, p. 2), where all persons are owed equal consideration (cf. McMahan, 2008). While this is the default position, from where the idea that children have special priority is sometimes criticised (e.g. Dixon & Nussbaum, 2012; Elster, 1987), the equal consideration thesis is rarely critically assessed. Given the fact that we often end up considering whether there is something special or separate about childhood that might explain why we think our obligations to children are different from our obligations to adults, this might seem strange.

James G. Dwyer's recent book on children's moral status is an exception. Dwyer defends the radical view that children's moral status is superior to the moral status of adults (Dwyer, 2011). On this view, a child is more important than an adult, all else being equal. If this is true, then we should prioritise the child if there are no other stronger reasons that count against it.

Dwyer develops his position by considering and rejecting existing accounts of moral status and replacing them with his own alternative account. Specifically, Dwyer rejects single property approaches that identify moral status with possessing a single property like rationality or consciousness. Also, he rejects threshold views of moral status. Instead, Dwyer defends a multi-property approach that allows wide distribution of moral status, and where moral status refers to a hierarchy and not equal membership in the moral community. Moreover, the properties that explain moral status are, according to Dwyer, properties that children possess to a greater degree than other age groups. Therefore, Dwyer concludes, children have superior moral status compared with adults, and they should be prioritised accordingly. The question is whether this is a plausible view. Dwyer's account consists of several controversial claims, so in order to assess his arguments, his claims must be presented in some detail.

Dwyer starts out by criticising single-criterion accounts of moral status, or theories that hold that one property is necessary and sufficient for moral status. The properties he lists, drawn from existing literature include, among other things, life, relationship with moral agents, sentience, higher cognitive functioning, and what he calls 'being the subject of life', which

roughly corresponds to some conception of self-determining personhood or practical identity.⁹⁴ His point, regarding all of these properties, is that none of them are necessary and sufficient conditions. Instead, he holds that all are sufficient but not necessary. That is, all these properties can ground moral status but none of these properties exclude the possibility that other properties ground moral status: Being alive, having sentience, being the subject of a life and being a rational moral agent are all sources of moral status, but neither is by itself necessary *and* sufficient.

Each of these traits causes us to care about other beings that possess them and so regard as bad destruction of such beings or thwarting their aims or interests. A fundamental problem with each argument for a view that there is only one criterion is that none justifies exclusive focus on the one trait it emphasizes. At bottom, each rely simply on the fact that we adult humans do value a particular characteristic, respond to it in other beings, demand respect for ourselves on the basis of having it, and/or react with awe when we perceive it. But if our valuing and reacting emotionally and intuitively to a trait is what matters ultimately, then why not incorporate into an analysis of any beings' moral status consideration of *all* the traits the we value and to which we react in the relevant ways? (Dwyer, 2011, p. 118, emphasis in original)

An important statement in this passage is the condition that "... our valuing and reacting emotionally and intuitively to a trait is what matters ultimately". This idea reflects Dwyer's methodological approach to the question of moral status. Dwyer's method is, briefly put, to combine intuitions and practice with observations drawn from moral psychology on how human beings value different things and other beings.

... my strategy for reassessing the moral status we accord children relative to adults is, first, to identify the characteristics of beings that trigger in us (a) empathic identification with them, (b) beliefs that we are entitled to respect, (c) awe, or (d) disgust; then to ask whether there are independent reasons to reject any of those characteristics as bases for attributing or denying moral status, and finally to apply whichever characteristics emerge from this process to the case of children relative to adults, taking into account that any given characteristic might be displayed to different degrees in different humans and that degree of moral status can vary accordingly (Dwyer, 2011, p. 52).

According to Dwyer, moral psychology presents us with a picture of man as a being that can identify as valuable properties they themselves possess, and additionally, that inspires awe. We empathise with beings that feel pain, for example, which supports the idea that sentience is a morally relevant quality (Dwyer, 2011, p. 33). Such judgments are not merely personal

⁹⁴ This is not all. After having discussed the criteria listed above, Dwyer also mentions potentiality or a beings *potential* traits, talents and abilities, beauty, venality, virtue and innocence, and species membership.

preferences, but moral judgments that are general or universal by their very nature: "... we sometimes reason morally by generalizing claims we make on our own behalf" (Dwyer, 2011, pp. 35-36), in which case intuitions give rise to belief. Finally, such intuitions are not exclusively self-regarding, but concern beings or entities that are very different from us, such as divinities or nature (assuming they are, in fact, different from us and not sentient). Thus, as Dwyer explains it, moral status is therefore not based on an entity's similarity with humans.

Nevertheless, his account relies on empirical observations of what human beings see as morally relevant, or as properties people in fact regard as reason-giving. Although one might reject some of his observations as too intuitionist, a strength of his account is that he restricts it to what we, being who we are, can perceive as reasons to act. This does not mean that our considered judgment about some entity's moral status is the basis for assigning moral status in itself. We may have much greater difficulties in perceiving that fish have sentience to the same degrees as dogs, but acknowledging that sentience and capacity to feel pain is morally relevant because it is relevant for us can lead us to include beings previously excluded from the moral domain when we find evidence that they possess status-grounding properties.

Dwyer holds that properties that inspire empathy, belief or awe can either *ground* moral status or be *relevant* to moral status. With 'relevance' he refers to properties that enhance or diminish a being's moral status. Thus, sentience or capacity to feel pain *grounds* moral status in many accounts, but few would hold that beauty does. However, it does inspire awe and is a reason for admiration. Dwyer's point is that beauty matters even if it is insufficient to ground moral status by itself (Dwyer, 2011, pp. 124-125). And it matters in the sense that it contributes to or enhances the status of a being that has some sufficient condition for moral status. This can explain why a tiger may have higher moral status than a rat (that has the additional property of, in many cases, provoking disgust in many moral agents). Also, how an agent uses his capacities is relevant to moral status. Dwyer occasionally writes, that "... it is not possessing capacities per se that gives rise to moral status, but rather using capacities to good ends" (Dwyer, 2011, p. 172; 128). Thus, a virtuous moral agent will have higher moral status than a base moral agent.

These observations make Dwyer a gradualist, and he also allows that the degree in which a human being can have moral status can rise and fall, depending on the number of status-grounding and relevant properties he or she possesses and the degree in which one possesses such properties.

This leads us to how Dwyer applies his theory to children. According to him, many of the properties that either ground or are relevant to moral status (life, relationship, sentience, being the subject of a life, higher cognitive functioning, and potential for future life and development),

are properties children possess to a higher degree than adults. For example, regarding the criterion of life, children generally display more vitality than most adults, who become set in their ways, and they certainly develop more rapidly, sometimes to a degree that inspires awe (Dwyer, 2011, p. 152). This concerns both their physical and cognitive development. Other properties, such as reason or autonomy, are things children possess to a lower degree than many adults, but as Dwyer points out, the difference between adults and children may be overrated. In sum, Dwyer holds that there are properties that favour adults, but that for the most part, the criteria he identifies can either not be employed to differentiate between children and adults or they support the idea that higher moral status should be associated with youthfulness. Finally, with ‘children’, Dwyer does not refer to chronological children, but beings who possess what he calls ‘youthfulness’. Youthfulness is typically more present in children but not necessarily so. Adults can also display youthfulness, and those that do will have higher moral status.

As Dwyer sees it, the consequences of this view are that, all else being equal, we have reason to prioritise children over adults. “To say that children are of higher moral status [...] would have to mean that their interests trump equally great interests of adults” (James G. Dwyer, 2011, p. 184). It could also mean that children’s interests “... will sometimes be favoured even if adults have more at stake” (Dwyer, 2011, p. 189). Dwyer gives an example of a divorced couple, where one parent has custody. He claims that even if a custodial parent stands to gain much in terms of career advancement by moving away from the non-custodial parent, and where the cost to the child is modest, “... the child’s greater moral considerability might preclude the relocation; it might be morally worse to cause the child a modest welfare loss than to cause the custodial parent a substantial welfare loss” (Dwyer, 2011, p. 189). In short, Dwyer holds that his claims give support to the idea that children should have special priority, or that beings who possess youthfulness along multiple dimensions and to a significant degree should have special priority.

If plausible, this view gives an answer to the question of whether it is permissible to trade in the respect for an adult’s right to lead an independent life with the child’s interest in depending on a specific person. But is this a plausible account? Many will no doubt think that Dwyer’s conclusion leads to an unacceptable grading of human beings. Dwyer’s reply is that, from historical, anthropological and sociological perspectives, “... the burden of proof lies on the egalitarians” (Dwyer, 2011, p. 133). Moreover, a problem for those who defend the equal status of all human beings is that it is difficult to defend this position if one also holds that humans have higher moral status than nonhuman animals (Dwyer, 2011, p. 134). A threshold view relying on degree of high cognitive function, for example, must either accept that some

human beings such as infants or comatose people have the same status as nonhuman animals or accept equal treatment of nonhuman animals and human beings.

Moreover, Dwyer is not the only one to make this observation. Jeff McMahan has noted that threshold views have problems reconciling the egalitarian nature of our moral beliefs with human nature. McMahan notes that "... we are held to be normatively equal and our moral status is held to supervene upon facts about our nature, yet there are really no relevant aspects in which we are by nature equal" (McMahan, 2008, p. 95). McMahan concludes that it is hard to avoid the sense that our egalitarian commitments rest on "... distressingly insecure foundations" (McMahan, 2008, p. 104).

5.1.3. Rejecting Children's Superiority

Is Dwyer right? While I think there are reasons to take the challenges that face the foundations of the equal consideration thesis seriously, this does not mean that we should accept Dwyer's account. One reason to object to Dwyer's approach is that it is too inclusive. Theories of moral status are sometimes accused of including too many entities, but in Dwyer's case the problem is that he includes too many properties. First, some of the properties are not strictly speaking exclusively about the being itself, but about the circumstance of the individual. For example, how virtuous or intelligent a person becomes is a result of complicated interplay between a person's genetic disposition and the environment he or she grows up in and is influenced by. In many cases, we cannot claim that a person's integrity or likeable qualities are solely caused by the person themselves, but that they are in part products of being fortunately placed in the natural lottery (Rawls, 1999). Thus, if we use virtue to ground a person's moral status, we risk referring to reasons that are not strictly speaking about the person, but also about the environment. In other words, it is odd to claim that a person has higher moral status because he or she happened to be raised in a good environment or had good parents, and that we therefore have better reasons to protect them than someone who grew up with poor parents.⁹⁵ For this reason, properties that ground moral status should be restricted to those properties that are unaffected by external influences. Dwyer's account, on the other hand, includes properties that can be affected by external influence.

This point can also be extended to Dwyer's general approach. While Dwyer no doubt is correct to point to properties that can be recognised as valuable by moral agents, we may ask whether what human beings empathise with or what inspires awe in human agents is not equally

⁹⁵ It should be clear that this does not have to do with the fact that something is under an agent's control, since possession of properties that ground moral status are beyond the control of a moral agent. Rather, the question is whether the properties refer to the agent him- or herself or the entity itself, rather than some other source of reasons.

a matter of our moral perception where we confer value on things rather than see things as valuable and thus as having moral status for their own sake. In other words, if things get moral status by having a certain relationship with moral agents, then the account is not strictly speaking one of moral status but of the reasons this relationship gives us (cf. McMahan, 2005, p. 355). Our relationships do not give us an account of moral status, but "... only of particular agents' reasons vis-à-vis the individual at issue. A being's moral status should give every moral agent, whether human or not, reasons to protect that being" (Jaworska & Tannenbaum, 2013, sec. 4.5). It seems, in other words, that Dwyer conflates considerations that are morally relevant but have no basis in an entity's status with status-grounding or status-enhancing properties.

Another related point is that Dwyer seems to conflate questions of moral status with the norms of moral practice. For example, Dwyer refers to "... the widespread intuition that people who are evil should receive less moral consideration than people who are good" (Dwyer, 2011, p. 127). His point is illustrated by a question: "Why, after all, should *possession* of a capacity be status enhancing in and of itself, rather than the exercise of the capacity in a valuable way or an expectation that it will be exercised in a valuable way?" (Dwyer, 2011, p. 127, emphasis in original) It matters that we possess some properties, but Dwyer thinks it is even more important how we use them.

I think there is something amiss with Dwyer's interpretation of this example. When people express sentiments like those Dwyer refers to, they do indeed seem to suggest that evil persons or wrongdoers are less worthy in some sense. However, it is not clear that this implies the type of status-claim Dwyer seems to suggest. To say that wrongdoers should receive less is also plausibly interpreted as the claim that they *deserve* less because they have acted wrongly. If this is true, then they express some notion of desert or perhaps punishment. But judgements of desert and punishment involves holding that person responsible in a strong sense, which implies that he or she has moral status. And, one might add, it makes less (moral) sense to punish someone who has a status lower than that of a morally responsible agent.

If we in fact owe wrongdoers less for reasons that have to do with their moral status, then it seems that our responses would be different from judgements of desert. It seems that we would not respond with moral outrage or resentment. And judgements of resentment presupposes that the agent is morally responsible. Therefore, Dwyer seems to appeal to the wrong kind of reasons to explain such sentiments.

Finally, even if we did think Dwyer was correct, it is not at all certain that his arguments imply special priority for children. The idea that youthfulness enhances moral status does not exclusively refer to children, since adults can also possess youthfulness. Moreover, status-

enhancing traits or high level of status-grounding traits are properties of individuals, not groups. Even though children generally may have higher scores along the dimensions Dwyer identifies, it does not rule out the possibility that individual comparisons may favour an adult. In that case, it could be perfectly permissible, all else being equal, to prioritise the adult. In other words, children are not necessarily accorded special priority in Dwyer's account – it depends on their individual moral status.

If we accept Dwyer's account, then individual children may come out below some adults. Moreover, there is reason to believe that many of the properties that either ground moral status in his account, or are relevant to moral status, are not inherent qualities of individuals, but are broadly speaking qualities that human beings value, such as virtue. If this is true, then what Dwyer identifies as status-grounding or status-relevant dimensions may in fact be dimensions that are morally relevant, but not in fact dimensions or properties that ground moral status. This undermines his account, as well as the assumption that we, on a general basis, should prioritise children over other age groups, all things being equal.

In conclusion, Dwyer's account cannot help us explain what, if anything, explains why we should prioritise children. He conflates considerations concerning moral status with considerations based on different reasons, it is an implausible theory of status-enhancing properties, and it does not necessarily provide support for children's special priority.

In addition, many of the claims made against Dwyer's account give indirect support to the equal consideration thesis. The ideas referred to as inherent in our moral practice, for example the idea that holding someone responsible presupposes that the agent is morally responsible, illustrate that, irrespective of our differences and how we act, there is a level of equality at a basic level of our moral thinking.

This, however, leads us into an uncomfortable position. We are inclined to believe both that children have a somewhat separate standing, that they are inherently different from adults in certain morally relevant respects, *and* the equal consideration thesis. Thus, it seems that we hold two very different views at the same time: that children are separate, but that they should be entitled to equal consideration. This suggests that the claim that children are the moral equals of adults is a challenging theoretical position. In the coming sections, I will try to outline how special priority might be explained by thinking of children as members of the moral community that have a lower *standing* in this community than adults have. Thus, the proposal involves explaining special priority in a way that reconciles the equal consideration thesis with moral gradualism.

5.2. Equal Status, Different Standing

As I see it, the child is always a member of the moral community, possibly also prior to birth (although I shall not examine that possibility). This is a threshold view, where the child has the same moral status as other human beings. Moral status should be distinguished from moral *standing*, however. While the former refers to inherent properties in the individual, standing refers to one's *position* or relationship to other moral agents.⁹⁶ And one's standing is essentially variable. Thus, the solution I have in mind preserves the equal consideration thesis and to permit variability in morally relevant properties is to combine a threshold view with a gradualist account.

Jeff McMahan has developed such a combination view. McMahan's view is a response to a worry of the following kind:

We are committed to certain principles of equality (...). But animals are excluded from the scope of these principles; we do not think that they are our moral equals or that to kill an animal is as seriously wrong as it is to kill another human being, or a person. It is plausible to think that what distinguishes us morally from animals is that we have certain psychological capacities that they lack, or that they possess in only a very rudimentary form. Yet there are some human beings that most of us believe to be in an important sense our moral equals that also lack these capacities, or possess them only in the primitive forms in which they are present in some animals. (McMahan, 2008, p. 93)

McMahan's proposal in an earlier book⁹⁷ was to give a 'two-tiered' account of the morality of killing, "... according to which the killing of individuals below a certain threshold of psychological capacity – which I called the "threshold of respect" – is governed solely by a proper concern for their good, (...), whereas the killing of individuals above the threshold is governed by a requirement of respect for their inherent good" (McMahan, 2008, p. 94). McMahan seems to think that this account ultimately fails, because theories of moral status conceptualise status as something that supervenes on our nature. And, as he says, "... there are really no relevant aspects in which we are by nature equal" (McMahan, 2008, p. 95). As long as we do not exclude variable properties from questions of moral status, it is difficult to avoid the conclusion that some lives matter more than others, even concerning human beings. This brings the uncomfortable implications of Dwyer's theory back with full force.

⁹⁶ In contrast to my use here, these two terms are usually used interchangeably in moral status literature. "Standing" is used as a technical term in the literature on moral appraisal, however, where it refers to a person's position to blame another (Scanlon, 2008). Coates and Tognizzini refer to this position as "jurisdiction" (Coates & Tognazzini, 2013, p. 19)

⁹⁷ *The Ethics of Killing. Problems at the Margins of Life* (McMahan, 2002)

We are not concerned with the ethics of killing, however, or people or entities that, as in McMahan's book, are at the margins of morality. This leads us to an important initial point, one that reflects the earlier criticism of Dwyer's account of moral status as too inclusive. While accounts of moral status are absolutely central in explanations of the permissibility of harming or killing entities, there are limits to what accounts of moral status can explain. Moral status accounts for very little of what we owe to each other. It is clearly relevant for the ethics of killing, harming or helping the being or entity, but I am not sure that it matters for a number of other moral obligations. Many of our obligations to one another rely on other features of our relationships with each other or derive from interaction, for example obligations to speak truthfully, to keep one's promises and so on.

Thus, unlike McMahan's two-tiered approach, my suggestion of a combination of the threshold view and moral gradualism involves a substantive distinction between the type of acts and considerations where the concept of moral status plays a central explanatory role, and cases where *standing* is more important. According to this account, we do owe the same level of equal respect to all members of the moral community, children as well as adults, the disabled, and so on. But when it comes to the question of *how* we should respect someone, gradualism enters as an important part of the explanation. To clarify what is involved in this account, let me explain the concepts of the threshold as well as moral gradualism, starting with an idea of a moral threshold borrowed from S. Matthew Liao.

5.2.1. Liao's Threshold Conception

Although I argued that Dwyer's approach was too inclusive, I do think that multi-criterion approaches to moral status are promising.⁹⁸ Thus, I do not intend to dismiss accounts that explain that animals or ecosystems have inherent value based on properties other than those that constitute the moral person. Here, however, I shall briefly outline a condition for membership in the *moral community*, which I take to be a distinct realm where members are those who have the potential for, possess, or have possessed, the properties of a fully responsible moral agent.

There is nothing novel in this section. I shall merely outline a recent idea of a threshold that seems to identify moral agents in a sufficiently inclusive way, so that people who clearly lack the characteristics of full moral agents can also be our moral equals. As we recall, moral status on properties of our nature are somehow uninfluenced by the environment or sources other than the thing itself.

⁹⁸ For another multi-criterion approach, see Warren's *Moral Status* (Warren, 1997).

S. Matthew Liao has recently suggested that moral status is grounded by the genetic basis for moral agency (Liao, 2015). This is essentially a threshold view that accords moral status to any being, human or nonhuman, who possess the "... set of physical codes that generate moral agency" (Liao, 2015, p. 18). In the case of humans, this code is located in the human genome. Thus, one might say that Liao's account is a single-property account, but a complex one.

Liao's notion refers to the presence of "... a set of physical codes that generate moral agency" (Liao, 2015, p. 18). The capacity for moral agency, he writes, "... is grounded in psychological capacities such as rationality and empathy that uncontroversially have a genetic basis" (Liao, 2015, p. 18). Moreover, to have the genetic basis for moral agency, the relevant genes must be activated: "A being does not have the genetic basis for a certain attribute if a being just possesses somewhere in its genome the genes that could make up the attribute, but these genes are either not activated or scrambled in such a way that they do not coordinate with each other in the appropriate way." (Liao, 2015, pp. 19-20). However, coordination of relevant genes could in principle happen in several ways, so there is not only one basis for moral agency. More than one possible combination of genes could realise moral agency.⁹⁹

Most human beings possess the genetic basis for moral agency. The evidence is that most human beings have exercised moral agency, exercise it to some extent or will come to exercise it. For example, fetuses and infants will develop moral agency and comatose people have exercised it. In this respect, then, human beings are equals. Also, those who fail to develop moral agency may do so for reasons that have little to do with having this genetic basis, but are due to environmental factors (Liao, 2015, p. 20). Thus, having defects that undermine the development of moral agency does not mean that those who fail to develop moral agency are thereby without moral status (Liao, 2015, p. 21). It is therefore possible, in this account, that those who never fully develop moral agency can have moral status as members of the moral community.

Liao does not deny that moral status can be based on other grounds, however. Liao's view is that the genetic basis of moral agency is a sufficient but not necessary condition for moral status (or the status of being a rights-holder). This means that properties like sentience or high cognitive functioning could also ground moral status, but since human beings possess these properties in varying degrees, such properties cannot explain why we owe equal consideration

⁹⁹ Liao's account is explicitly developed to avoid problems of speciesism. Although most human beings have the genetic basis for moral agency, any other being that possess the genetic basis for moral agency will be a moral agent. Even allows that other physical but non-biological realizations may satisfy the demand, so the account is not restricted to biological life as it currently exists. Thus, the account is perhaps equally well described as grounding moral status in the physical basis for moral agency (Liao, 2015, p. 24).

to one another. Liao's theory is therefore a threshold view that also potentially permits multiple sources of moral status, but he makes no claims on the relevance of other properties.

By grounding moral status in the genetic basis for moral agency, Liao's account establishes a threshold that can explain why we generally think human beings have inherent value as actual, potential or former moral agents. In turn, this gives us reasons not to harm human beings. But this idea of moral status does not explain more than that: It grounds a relationship – certain very basic expectations. But, beyond being a relationship of people who should not harm one another, it does not tell us anything about the content of this relationship. As Liao himself notes, claiming that all human beings have equal status, which makes it *prima facie* wrong to hurt or harm them, does not explain why we should have positive obligations to them (cf. Liao, 2015, p. 41).¹⁰⁰ In our case, having a moral reason not to harm a child does not imply an obligation to ensure the child has a family unless we supply the basic moral obligation with a broader substantive conception of what the child has reasons to want (such as familial relationship goods) and some idea of when someone can also have an obligation to provide it. To explain this obligation, my suggestion is that we consider the nature and value of the relationships we have with the child.

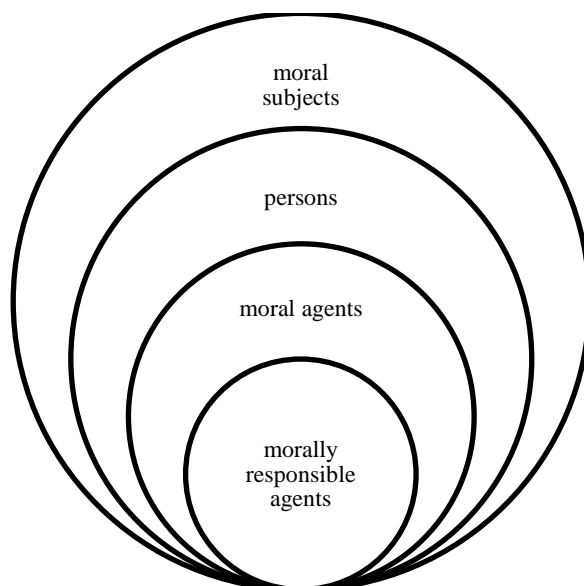
5.2.2. Moral Gradualism

Beyond the fact that individuals become members on the same basis, no member of the moral community is by nature equal in terms of physical, psychological, emotional qualities. It is both implausible to believe that this variation does not make a moral difference, and to believe that these differences should lead us to think that human beings have different moral status. In this section, I turn to how we might understand our differences, not only in terms of individual variations but also as a form of hierarchy within the moral community. The point of this section is to explain why, in certain cases such as the lottery case, special priority might be justifiable from the point of view of the winner of the lottery.

Let me first note that if Liao is correct, then the equal moral status of all people and membership in the moral community are indisputable. This makes intentional harming of any other human being *prima facie* wrong. So unlike what Dwyer claims, a person's acts cannot deprive him or her of moral status. This being said, it is clear that we expect very different things from different individuals or groups within the moral community. That we have different

¹⁰⁰ Thus, Liao proceeds from the basic foundational issue of moral status, via an idea of what a good life is, to consider our obligations concerning providing the conditions for a good life. This, in turn, grounds a right to be loved, he thinks. The point is that this account, too, adds various claims to the moral status account in order to build the more comprehensive moral theory.

expectations to different people follows from the fact that morality requires a lot from us, and not everyone can, do all that morality requires all of the time. This suggests that membership in the moral community comes in degrees. One recent version of such a gradualist view is given by McKenna, who thinks the moral community includes the following groups (McKenna, 2012, p. 12):



As McKenna explains it, all these groups, moral subjects (1), persons (2), moral agents (3) and morally responsible agents (4), are moral subjects (which means that those in group 4 have all the morally relevant characteristics of group 3, 2 and 1). This latter and most inclusive group includes animals, whereas ‘persons’ includes all who fall within Liao’s threshold, such as the “... severely mentally retarded” and therefore “not able even to grasp or apply moral predicates in any way” or “quite young children, toddlers, for instance, just at the burgeoning stages of having a theory of mind” (McKenna, 2012, p. 11). A person in group 3 or a ‘moral agent, in contrast, is someone “... who is capable of action that can be morally evaluated as good or bad, right or wrong, virtuous or vicious” (Ibid.). This is in contrast with those in group 2, whose actions “... cannot be evaluated at all” (Ibid). Also, while acts committed by moral agents can be evaluated and subjected to moral criticism, moral agents cannot be subject to full-scale moral criticism *as agents*. This sets them apart from group 4:

A morally responsible agent (...) is *accountable* for her conduct. She is one who can be *held* morally responsible for what she has done, can be an appropriate target of praise and blame (...). She is able to appreciate others’ moral expectations and demands, is able to understand the fittingness of an excuse, a justification, or an apology, and so on. She has,

or is at least a candidate for, *full* membership in the moral community (McKenna, 2012, pp. 11-12, emphasis in original).

McKenna's way of differentiating the different classes of members in the moral community is not a perfect overlap with the views presented in the chapter. One could, for example, raise difficult issues on where we draw the line between moral subjects and persons, e.g. whether both foetuses and animals are moral subjects, or foetuses are also persons. Since we are dealing with children, I shall ignore that difficulty, and refer to 'the moral community' as comprised of persons.

A person's *standing*, as I use the term, refers to his or her position *relationship with* other members of the moral community. The term also applies to other relationships other than the moral relationships, like friendships and carer-child relationships. Here, however, I am primarily concerned with the moral relationship, or to be precise, the moral relationship between children and adults. I am not, therefore, concerned with the obligations of adults who have a special relationship to the child, like elsewhere in the thesis, but with adult-child relationships in general.

In the case of the adult-child relationship, we would normally see this as a relationship between a morally responsible agent and a moral agent or person, ch. McKenna's taxonomy. The person's standing refers to the fact that he or she is either a morally responsible agent or has a lower standing in this relationship. The expectations and attitude that the adult has toward the child reflects this difference in standing.

In contrast to the concept of moral *status*, a person's standing gives (in part) rise to *agent relative* reasons. That is, it does not only refer to childhood as an inherent property that might give anyone a reason to treat the person in a specific way, but to an individual child's position in relation to another person. Moreover, the concept does not refer to the child's inherent properties but to the relationship she has with others. Specifically, it refers to others' expectations, attitudes and dispositions with respect to her.

A person's standing is variable in several ways. First it is variable within one type of relationship, such as the moral relationship, the carer-child relationships, professional relationships, and so on. In the moral relationship, for example, a person's standing develops from infancy to adulthood. Most people will be a member of all these classes at some point in their life. This development supervenes on our naturally evolving capacities, but since standing reflects people's expectations, it is primarily our actions and behaviour that elevate our standing

– e.g. from person to moral agent, or from agent to morally responsible agent.¹⁰¹ It is by acting and through interaction with others that people become recognised as having standing at some level.

Having said that, the moral relationship is not the only relationship that involves obligations. As we have stressed in earlier chapters, the family certainly does, and friendships do. All these different relationships have somewhat different normative ideals (although I take all of them to overlap with the moral relationship), and as we have seen, the parent-child relationship can also be described as coming in degrees (e.g. custodial relationships, having the parental role, being someone's moral parent). Thus, standing is also variable within these relationships, although it seems to vary in a different way from the moral relationship. In relationships like family or friendship, the persons' importance for one another seems to be what distinguishes a person with higher and lower standing. Moreover, it is clear that a person's standing varies across relationships – a person can be very important as someone's son or daughter, and have high standing in that respect, but be a very bad friend or be regarded as morally responsible but untrustworthy.

Since a person's standing is something that develops, moral development, on this standing-account, is at least in part a matter of being recognised as someone to whom morally responsible agents have increasing expectations. Of course, appropriate expectations of someone depends on people being able to recognise that our abilities and competence match their expectations, and there is always a risk of thinking that a person belongs in the wrong class.

In addition, the fact that a person's standing develops leads to difficult threshold problems: young people, for example, are often at the border of being morally responsible agents. They may have developed the appropriate moral competence before they are recognised as such, or the opposite may be true. Thus, the variability of a person's standing and the problems associated with having correct or fair expectations of a person, leads to difficulties. However, finding out what we *should* expect from someone is clearly also incredibly important for determining how we ought to treat that person.

Thus, the distinction between status and standing reflects the familiar and inherent conflict in morality, where the demands of *equality* essential to the moral relationship is in tension with the undeniable differences between individuals (and the differences between the moral relationship and other relationships). The distinction is helpful, I think, because it clarifies

¹⁰¹ In chapter 7 I shall also claim that one's standing can be impaired, which is what I take to be (following Scanlon) a basic function of moral appraisal.

the intuition that children are members of the moral community, but that they still have a separate standing. Moreover, it explains separate standing as something that varies and that evolves. Therefore, it is also something we can influence by our actions and by how we regard the other person. And since someone's standing concerns that person's relationship with others, we can refer to the normative ideals of those relationship to critically assess whether the person, as a member of some type of relationship, is treated as he or she should be.

5.2.3. Moral Standing and Special Priority

In this chapter, the status/standing distinction helps us address the question we started out with, namely whether children should have special priority in the type of case we are dealing with in the lottery case, or in cases where the child has developed personal dependency on a substitute carer.

If we apply the status/standing distinction to the case, and employ KcKenna's taxonomy, what we have is a situation in which the asymmetry of the adult-child relationship is explained by their different standing, where the child is merely a moral agent (or perhaps even just a person), whereas the adult is a morally responsible agent. This means that we expect the adult to grasp the morally relevant reasons for why someone should assume parental responsibility (if this is indeed a general obligation). We would expect, then, that the adult could be compelled by moral reasons or not be able to reasonably reject taking on the child. What would those reasons be?

First, there are clearly morally relevant reasons that have to do with the child's interests, as noted in prior chapters. Secondly, there are reasons that flow, not from the child, but from the values of the moral relationship between child and adult. While we may grant that morality does not require too much self-sacrifice, it seems to require a level of self-sacrifice needed in order to maintain norms inherent in the moral relationship itself. One such reason was mentioned in the discussion of the lottery case in chapter 4: There, we argued that it would be impermissible to reject the child because doing so implied that others would also have the same prerogative. Thus, by considering this as a prerogative of all morally responsible agents, then morally responsible agents could collectively permit a practice where it could not ensure that the child had a family. Thus, if we allow one to disregard basic obligations of care, then we allow it for all full members of the moral community. That is an intolerable effect. This argument makes no reference to special priority, however, but considers the permissibility of rejecting the child from what equal treatment of all morally responsible agents would imply.

Another, related point is that treating people as equals involves positive obligations to improve the standing of those who are disadvantaged in the moral relationship, i.e. persons and moral agents. A person's standing can evolve with the help of full moral agents. If valuing morality as an egalitarian system gives morally responsible agents reasons to help members with lower standing develop, and they can do so, they have strong reasons to do that. Of course, there is less reason to do so if it involves major sacrifices. Nevertheless, full moral agents who presumably also see the value of morality as system of cooperation among equals, will as moral agents have reasons to do what is required in order to ensure that this valuable relationship among all persists.¹⁰² This will, in many cases, involve giving special priority to members of the moral community who have not yet fully evolved.

Applied to children, this claims grounds special priority in a shared interest that is basic to both child and adult as members of the moral community. It expresses the idea that there are weaker or stronger members of the moral community, and that it is in the interest of the full members of the moral community to help elevate the status of the vulnerable ones – those who may fail to become full moral agents without the help and support of others. However, that others have a reason to do this, or an 'interest' in it, depends on the idea that they have reason to value the moral relationship. Ultimately, then, special priority can be explained with appeal to the value of the moral relationship we have with all other persons, and the special importance moral obligations have in comparison with other obligations.

This is not a general special priority view. It is simply a view where special priority can be given under certain rare and very demanding circumstances. It rests on the idea that morally responsible agents will be convinced by the reasons that count in favour of taking on this responsibility, as well as the reasons that count in favour of arranging a lottery.

What explains special priority in this case is that morally responsible agents appreciate their relationship with the child and value the relationship, i.e. the moral relationship. This gives them reason to want to take on the burden of parental responsibility. The reason suggested in this chapter is simply that all those who are compelled to participate in the lottery are members of the same community, in which one is obligated to help one another and where, if one considers the issue, they will find out that it is also in their own interest to do so. At heart, then, this explanation of special priority is based on a dual interest account.

¹⁰² Schapiro argues, in a similar way, that adults are obligated to help children develop into full moral agents. On her view, children are 'passive citizens' who can become 'active citizens' with the help of adults (Schapiro, 1999).

5.3. Conclusion

Should children have special priority? This chapter has not given reasons in support of a general special priority view. While children may have weightier interests than adults in certain cases, this does not imply that children, as such, have special priority. Also, Dwyer's suggestion that children have a superior moral status is based on unconvincing arguments, and even if we accepted his views, it cannot support the general thesis that *all* children qua children should have special priority.

The chapter responded to a case of conflict of interest, the hypothetical case of the lottery, it is very difficult to claim that the child's interest in having a parent is more important than the adult's interest in living life as he or she wants. The claim is that there are reasons that support the idea that the child should have priority in this case. These reasons rely on the fact that adults, as full members of the moral community, have reasons to make sacrifices in order to respect children as members of the moral community, as developing members of the moral community, and out of respect for the value of the moral relationship.

One implication of this view is that it provides additional support to the idea that adults have a general obligation to care for children – in most cases to ensure that they are cared for. Also, and irrespective of whether they personally care about a child, may in certain circumstances have *moral* reasons to adjust their expectations of themselves with respect to an individual child. Child-rearing can therefore be a moral obligation in certain circumstances – a task that may fall upon any member of the moral community, and not only the parent.

A question the chapter does not address is what implications this version of gradualism should have for how children should be treated. Is it, for example, appropriate to appraise children for their acts if they are not morally responsible agents, and thus by definition not *agents* that we think should be subject to blame? Another issue is whether moral agents or persons (as children might be) should have different, perhaps less influence on their own lives and on the lives of others in light of their standing as not *yet* morally responsible agents. It appears that a fully responsible agent also possesses a different *authority* than someone with lower standing, of whom we have lower expectations. Yet I have also claimed, in chapter 2, that we ought to *respect* children. What this form of respect entails, and how this should be reflected in children's participation in decisions that affect them, is the topic of the next chapter.

Thus, in the next chapter, I pick up the thread from chapter 2 where I held that children are owed respect as people able to understand and respond to reason. This chapter and the next raise questions concerning children's liminal standing as members but not full members of the moral community, and how this standing should affect how we treat them.

6. Participation

In preceding chapters, the focus has been on the basis and importance of substitute carers' responsibilities, and on obligations of care. In this chapter and the next, I turn the attention to adult-child interaction. In this chapter, I discuss children's participation. As noted in chapter 1, children's participation is one of the fundamental principles in the Norwegian child protection law. But it is not clear why the child should be included, and perhaps even less clear when the child should have influence on a decision made on the child's behalf, or be permitted to make the decision himself or herself. The chapter addresses the moral basis for children's participation by providing answers to two questions: First, why should the child be allowed participate in decisions that affect him or her? Second, what explains the degree of influence the child's views should have on decisions or treatment they are subjected to?

There are multiple reasons for allowing the child to participate. On the one hand, decisions made on behalf of a child aim to promote, protect or respect the child's interests. In most cases, this will require consulting the child. Simply put, on this view, there are instrumental reasons to include the child and listen to what he or she has to say. However, as we saw in chapter 1, one of the central reasons for why children should participate is respect for their human dignity. This implies that there are non-instrumental reasons to include the child as well as instrumental ones. But it is not clear exactly why the child should be respected. Moreover, one might add that if there is reason to respect the child, then this is not only a reason to include the child but perhaps also to respect the child's views or claims. However, since the child's wishes may sometimes conflict with his or her interests, it is not clear that one ought to respect the child's wishes. If respect for the child and for the child's views implies regarding the child's views as having a certain authority, there is need to explain why the child's views can be only partially authoritative and how a partially authoritative view should be respected.

In chapter 2, I claimed that respect for the child is a central feature of the 'ideal' carer-child relationship. Respect is an attitude that involves being disposed to regard the child as capable of understanding and responding to reasons. In this chapter, I develop and apply this notion of respect to explain why the child should participate. First, that participation is only a means to promote the child's interests. Second, that there are non-instrumental reasons to include the child, but these reasons are based on a different idea of respect than the one I have proposed.

The outline of the chapter is as follows. In part 6.1. I briefly present the notion of participation, what I refer to with the term and the normative question raised by children's participation. In part 6.2. I discuss alternative explanations for why the child should be included,

starting with Harry Brighouse's well-being account in section 6.2.1., respect in 6.2.2., and my alternative account of respect in section 6.2.3. In part 6.3. I turn the attention to questions of why the child should have influence, and how to explain that a child's views or claims can be 'partially' authoritative.

6.1. Participation and Respect

Philosophical theories concerning children's right to be heard or have influence over decisions affecting him or her often concern how to explain the idea that children's hegemony over themselves should be limited, compared with adults' hegemony over themselves. Thus, these theories help explain why children and adults have a separate standing or why adult-child relationships are different from relationships among adults (see e.g. Brighouse, 2003; Schapiro, 1999). The focus of this chapter is different. I will not attempt to explain the different standing of children and adults, but simply assume that children should not have the same hegemony over themselves as adults have. The focus is on the normative basis for participation. Arguably, participation is important even if it only involves being heard as opposed to having decisive authority.

Consequently, participation is different from adults' rights to consent or refuse certain decisions, such as whether or not to receive medical treatment. That being said, the type of decisions or interaction the child should participate in, are decisions that affect the child or decisions the child will be directly subject to. It is difficult to specify what types of decisions or treatment that amounts to, but it includes the type of decisions where adults usually have the right to decide themselves or have very strong influence on the decision. In any case, the types of decisions or treatment that the discussion below concerns it includes questions such as where to live and with whom, how to organise the home and leisure time, and so on. In such decisions, an adult's choice or wish is authoritative if it satisfies the conditions for informed consent (see, for example, Beauchamp, 2010). Unlike adults, children are not authoritative with respect to decisions that primarily concern themselves (and only a few others), but they are allowed to participate in such decisions.¹⁰³

The term 'participation' can be understood narrowly or more widely. Participation may be taken to only refer to formal decision-making arenas like courts or the County Board or other circumstances where it is obvious that the purpose is to make a decision, for example when the child meets with his or her caseworker. I am concerned with participation in the wide sense. It

¹⁰³ There may be an asymmetry between rejecting and consenting to treatment, though, as Archard observes (Archard, 2016a), and as Manson discusses in a paper on children and informed consent (Manson, 2015).

includes cases such as those just mentioned, as well as cases that have more in common with everyday interaction where decisions are continuously made, but where one is perhaps less aware of the fact that one makes choices. This includes the decision parents or substitute carers make with respect to their child, such as permitting the child (or not) to have a say in what the family should do, or permitting the child to govern himself or herself in certain areas, such as deciding whom to befriend, what leisure activities to pursue, and so on. For all these cases, the questions of whether the child should be included in decision-making and how he or she should be heard, applies.

In answering the question of why the child should participate an important distinction is between instrumental and non-instrumental reasons. The child should participate for instrumental reasons if the child's participation is important for the sake of something else, such as promoting or protecting the child's interests. If there are non-instrumental reasons to involve the child, then there are reasons for allowing the child to participate irrespective of whether it matters for some other end, like promoting the child's interests. For example, it could be something owed to the child as a person that should be respected. Accordingly, the point of this distinction is that it enables us to explain why failing to include the child may be wrong even if inclusion does not benefit the child.

Here, the focus is on one type of non-instrumental reason for inclusion: the assumption that participation is a way to respect the child. Whether this is a plausible assumption or not, depends on what 'respect for the child' is. Respect for the child could mean many things. A common feature of respect is that it is an attitude that involves some form of special attention. That being said, this special attention should reflect some property of the object of respect. In chapter 1, the idea found in legal theory was that participation is a way to respect the child's human dignity. This raises the question of what properties the child's human dignity are based on. It is possible to think of different candidates, differentiated by what level of capacity for agency one presupposes in order to respect someone as a human being or a person. First, the child is clearly someone who has interests, and these interests can be derived from what characterises a child, namely as a vulnerable, dependent person, capable of evolving out of this dependency, and as someone who has yet to develop a stable personality. Respect might involve special attention to the child as such a person. However, respect is, as argued in chapter 2, distinguishable from another attitude that concerns the child's interests – care. While it may be difficult to separate respect from care, it seems that care involves special attention to what the child as a unique person has *reasons* to want, whereas respect involves some form of engagement with what the child in fact claims or does. As Darwall explains it, caring involves

sympathy or engagement in the situation of the cared-for. Respect, in contrast, involves empathy, or engagement with the perspective of the other person, what her or he says or does (cf. Darwall, 2006, pp. 46-48). I will not suggest that this is the only form of respect, but it is respect for a person's actions, claims, and so on, that I will be concerned with in this chapter.

Accordingly, the two other properties of respect concern capacity for agency at different levels. The second idea of respect, already introduced in chapter 2, is the idea of respect for someone capable of understanding and responding to reasons. This capacity should be understood as a relatively undemanding capacity (or at least undemanding for a human), a capacity sufficient for communication and rudimentary forms of mutual deliberation, but not as a capacity to *adequately* understand reasons and justifications, or ability to respond *correctly*. In short, it is a capacity that children who has developed language possess.

This is distinguishable from a third form of respect, where what is respected is the fact that the person is able to form and express his or her *own view*. Unlike simply being able to understand and respond to reasons, an agent who possesses this level of competence can not only respond to a situation, but also *act*. He or she can make decisions that incorporate what the person wants. In other words, respect in this sense is respect for a self-determining agent.¹⁰⁴

In what follows, I examine whether there are non-instrumental reasons for why the child should participate as well instrumental reasons, and how these two forms of respect explains why the child should be included and perhaps also have influence on certain decisions.

6.2. Why Children Should Participate

Participation can be important in different ways. It can be important to be *included* and to have *influence* on a decision. These two notions – inclusions and influence – are related, but including the child may be valuable independent of what is decided. If, for example, inclusion is a way to respect the child or to gather knowledge of the child's circumstance, then it is clearly important irrespective of whether the child has influence. In what follows, the emphasis is on inclusion, although some of the points concern both issues.

¹⁰⁴ Both of these are what Darwall refers to as 'recognition respect', i.e. respect for a person on account of being a person, or as occupying a certain role, such as that of a parent (Darwall, 1977, p. 38). Darwall distinguishes this from what he calls 'appraisal respect', which consists in positive appraisal of someone as a person or on account of that person's deeds or actions. An example could be showing respect for someone's prowess as an athlete. The athlete *deserves* respect on account of his or her achievements. In contrast, 'recognition respect' is respect for the *fact* that someone is a person or a parent.

6.2.1. Well-Being

To explore the connection between participation and respect, it is first helpful to consider an explanation of why the child should participate that involves no reference to respect. Harry Brighouse's view on children's participation is that the child should have a *consultative* but not *authoritative* role in decision-making (Brighouse, 2003, p. 692). On his view, what makes a person's choices authoritative with respect to that person's own life, is whether the choices are instrumental to, or constitutive of, the person's well-being. Generally, the child's choices are neither constitutive of nor instrumental to the child's well-being. Nevertheless, consulting the child can help improve the decisions of those sufficiently competent to make decisions on behalf of the child. Therefore, and because it is beneficial for the child to be exposed to decision-making processes because it helps the child develop to become a competent chooser, the child should be included.

Brighouse's points can be clarified by comparing children with adults. As explained by Brighouse, adults' choices are in part instrumental to their good, in part constitutive of it. In the first sense, an adult is usually best positioned to know how a decision will affect him or her. The adult knows his or her own circumstances, aims and ambitions, and so on. Others will rarely possess knowledge of all that matters for another individual. Therefore, that individual should make the decision himself or herself. Secondly, if making decisions are to be of value, "... we usually need to identify with them from the inside. For this to be the case we usually need to have played some role in the authorship of the decision" (Brighouse, 2003, p. 697). The person's choice is therefore not only important because the person is best positioned to select the means to promote his or her own well-being, but because making the choice makes the person identify with the option or integrates it into his or her own aims.¹⁰⁵ Accordingly, Brighouse's conclusion is that "... on the whole, adult persons are better judges of their own interests and how to advance them than other available agents and, in particular, the sense of identification people have with the actions they have themselves judged to be appropriate contributes importantly to their well-being" (Brighouse, 2003, p. 698).

Brighouse claims that children do not, on a general basis, have the same interests in making choices themselves. Children lack the competence and understanding to make decisions that will advance their well-being. This does not only concern the child's immediate interests, but also their future interests. Also, Brighouse considers the child's development of a personal conception of the good to be important, but not as important as it is for an adult. One reason is

¹⁰⁵ While Brighouse emphasises the importance of well-being, this aspect of the importance of choice is related to the idea of forming one's own views presented in section 6.1.

that what the child values *as a child* may conflict with what is required in order to develop into an autonomous adult. Thus, on this view, the fact that the child's views are the child's own is not necessarily a reason to regard these views as authoritative. For example, a child may value certain friendships that the parents have reason to believe are emotionally destructive. In such cases, the child is dependent on the adult to protect her future interests, "... either to get her out of it, or to help her minimize the damage it is doing" (Brighouse, 2003, p. 705).

At the same time, Brighouse also claims that such friendships "... cannot be forbidden" (Brighouse, 2003, p. 705). It is, he claims, permissible to discourage such relationships "... either through open discussion (if the child is mature enough) or through various manipulative diversionary tactics" (Brighouse, 2003, p. 705). How does he explain that? One suggestion that can be found in Brighouse's paper is that activities like engagement in friendships cannot be forbidden because the child needs latitude to pursue relationships and activities on their own, and discovering what they value is of instrumental value to their overall well-being. As he writes, "... one needs to practice skills in order to develop them, [...] therefore children should be given considerable latitude with respect to particular arenas of agency in order for them to become competent" (Brighouse, 2003, p. 703).

Thus, on Brighouse's view, the reasons why it is wrong not to include the child are instrumental, and concerns the child's current and future well-being. Properly informed choice requires inclusion, and the development of the skills needed to become a competent adult requires some level of exposure to decision-making. This gives the child a *consultative* or a participatory role in decision-making.

Is this a plausible explanation for why the child should be included? One possible objection to Brighouse's view is that there is little reason to include the child unless something good can come out of it. This seems too weak. It does not fully explain why the child ought to have a consultative role in the sense that it would be wrong to exclude the child. To illustrate the point, we might consider Brighouse's own claim regarding the example of a destructive friendship. Brighouse's view is that it is wrong to forbid the child from nurturing a destructive friendship, but permissible to work against the friendship in other ways, for example by manipulating the child.

This is a puzzling claim. Given that there is no good reason to value a friendship, why is it nevertheless wrong to forbid it? One possible answer, of course, is to deny the claim, and argue that allowing children the latitude to explore the world on their own do not prevent us from forbidding a number of activities if engaging in these activities involve considerable risk. Thus, even if we *generally* have strong reasons to give children the freedom to decide whom to

befriend, because it helps prepare them for adulthood or because they value the friendships, destructive friendships might well be exceptions to that general rule. Moreover, if a parent or carer has sufficient knowledge of a friendship to know that it should be forbidden, then there is really no point in consulting the child. The child cannot practice making a choice if he or she cannot possibly influence the outcome. If this is true, then the only reasons to include the child in such decisions concern the need to be sufficiently informed – to make sure that they know all the relevant facts.

On my view, it might be permissible to forbid certain very destructive friendships. However, the example illustrates that it is difficult to make such decisions, that there are reasons that count against it even if it is the best decision. Brighouse himself implies that there are such reasons, namely that the child is able to form his or her own views. He does not deny that these views matter, but denies that the child's own views are as important for the child as they would be for an adult. If this claim is added to Brighouse' account, his views on how adults ought to treat the child who wants to engage in the destructive friendship makes more sense. Also, it explains related ideas. First, the suggestion that it would be permissible to forbid certain friendships, but impermissible to make such a decision without first consulting the child. Second, that the fact that the child values and wants to nurture the friendship gives others a strong *prima facie* reason not to take actions that can undermine the friendship. Either way, the fact that the child is able to form his or her own views seems to explain why there are certain constraints on how an adult ought to proceed to promote or protect the child's interests. And these constraints have little to do with promoting or protecting the child's well-being, but concern how it is permissible to treat a person, even if the person is a minor.

Thus, a plausible assumption is that these constraints reflect a certain level of *respect* for the child – that he or she is a person with her own views, and whose point of view has a certain authority. This does not mean that the child's views or wishes cannot be legitimately overruled. It means, rather, that the child is a person with a certain level of rationality, which is a normatively relevant fact that imposes certain constraints on others. For example, one such constraint is that the child should be included or consulted. Or, as Pettit and Smith suggest (with reference to adult human being), respecting others involve "... not ostracizing them from one's world and not treating them with aggression or coercion and the like" (Pettit & Smith, 2004, p. 172). Such requirements do not imply that the person is authoritative, but that it would be wrong not to consult the person, and wrong not to consult the person in a way that he or she is able to understand and respond to.

If such requirements apply to children, it is possible to explain why there are strong reasons to consult the child even if the cannot hope to influence a decision, as well as why it might be wrong to forbid a friendship but permissible to manipulate the child to give it up, as Brighthouse suggests. Not to consult the child involves not recognising the fact that the child values the relationship, which is a reason to take the child's view seriously even if one disagrees with the child' view. Similarly, forbidding the child from seeing his or her friend ignores the fact that the child could possibly come to understand that the friendship lacks the value a friendship is supposed to have. In contrast, manipulating the child at least appeals to the child's rational and motivational apparatus. Thus, if requirements of respect apply to children, then there is reason to include them even if including them is not explained in terms of the desirable outcomes their involvement might result in. The question, then, is whether and in what sense requirements of respect apply. This leads us back to the two notions of respect identified in section 6.1. I will start with the last and more demanding idea of respect.

6.2.2. Respect for One's Own View

Brighthouse does not reject the idea that children make choices in the relevant sense, but he thinks this is less important for a child than for an adult. In contrast, David Archard and Marit Skivenes attach more importance to this idea. They claim that children *who are able to form their own views* have a right to be heard. Thus, unlike Brighthouse, their view is that respect for children capable of forming their own views is a distinct non-instrumental reason to include the child, and it is a form of respect. On this view, (some) children are owed respect not only because the make good choices, but also when they make bad choices, simply because these choices are *their own*. So, this idea of respect for persons refer to a capacity to make choices in the relevant sense.

This idea of respect refers to a certain competence usually associated with adults. This familiar view of respect is that we respect people who are able to form their own views, act in accordance with them, and be able to justify their views. Adults are what Rawls called "... self-authenticating sources of valid claims" (Rawls, 2005, p. 32). This suggests not only that adults are to be respected as moral agents, but that they are themselves responsible for justifying their claims or views in light of their own conceptions of the good, among other things. Thus, their claims are to be respected as valid expressions of their will. Phrased differently, an adult's views are authoritative, at least with respect to him- or herself.

This presupposes a level of competence that exceeds what one can expect from small children, partly because small children lack a stable conception of what they regard as good.

However, Archard and Skivenes have outlined what might be described as a weaker or less demanding version of such a view. Their view is there are important reasons for giving the child a voice, reasons that are different from both the value of shaping one's own life and from merely consulting the child in order to promote the child's interests. As I understand them, their point is that children capable of making *authentic* claims ought to be respected, and including them in participation procedures is a way to respect them as persons capable of making authentic claims, as well as a recognition of the fact that these claims matter. As they say, the value of including the child derives from "... the fundamental *respect* the child is owed as a distinct individual in that process" (Archard & Skivenes, 2009b, p. 392, my emphasis). The child has "... a basic right of individuals who have their own views (who are capable of forming them) to express those views" (Archard & Skivenes, 2009a, p. 19).

It is difficult to distinguish this idea from the idea that adults should be respected as self-determining agents, but Archard and Skivenes do not claim that children who can form their own views should be treated or respected as an adult, nor that all children are capable of forming their own views. So how do they distinguish between the children whose wishes or claims should be respected and others? A central point is that they distinguish between forming a *view* and making one's own decision. As they say,

Norway legally obliges adults to hear the views of children over seven, an age well below that at which the child might be thought to be sufficiently mature to make her own decisions, but clearly an age deemed to be one at which a child is capable of forming a view (Archard & Skivenes, 2009a, p. 19).

The difference between making decisions and forming a view is of course one that reflects the child's cognitive and emotional maturity. That being said, it seems difficult to deny that persons able to form their own views are unable to make decisions. Thus, I take Archard and Skivenes claim to be a normative claim, one that holds that the young child capable of making choices *should* not make decisions. One reason that possibly supports such a claim is that a difference between making decisions and having views seem to be that the former involves taking on a substantive responsibility for having made the decision, whereas the latter involves no such thing. Making a decision can sometimes be a heavy burden, one children aged seven or older are ill equipped to bear. But if they have a view, this makes a difference regarding whether or not they should be included, and perhaps for the influence the child should have on the decision even if adults should bear the responsibility for it.

If this is correct, then Archard and Skivenes reject Brighouse's claim that the child's choices matter less for a child than for an adult. As I understand them, their point is that there is no reason to suppose that the child's own views are less important *as seen from the child's perspective*, than an adult's views are, as seen from that person's own viewpoint. If this is correct, then their view is, like Brighouse's, based on what the child has an interest in. Unlike Brighouse, however, they attach significant importance to the fact that some children have authentic views. Therefore, the reason why the child should only have a consultative role as opposed to an authoritative role is not because the child's views are comparatively unimportant. Rather, the idea seems to be that, even if it is important to hear what matters for the child, there are reasons that count against treating these views as authoritative. Being able to form one's own views is sufficient to give the child a certain authority with respect to certain decisions, and therefore sufficient to give the child the standing of someone that should be respected. But it is not sufficient for regarding such views or claims as decisive.

This view aligns rather well with existing practice in the Norwegian child protection system, where there is both a threshold for participation and for making one's own decisions. Some children are too young or immature to participate, and these children should be included, if Archard and Skivenes are correct. In Norway, the threshold is set at age seven or younger if the child is mature enough (to form his or her own views). The next threshold is, of course, adulthood. Also, another strength of this view is that the point of participating, one might think, is to have influence. Children who have not yet formed their own view would have little interest in participating, since if they have no opinion to share there is nothing they want to influence.

This, of course, does not mean that Archard and Skivenes think that children below the threshold of participation should not be respected. Rather, a consequence of their claims seems to be that including children that young and immature in participation procedures is an inappropriate way to respect them. That is, there may be reasons to include or consult children who have not formed their own views, but then participation is only instrumentally valuable.

That, however, seems to be too strong. The point of participation is not necessarily to have influence. It is also to partake in a deliberation about what to do, where involvement is valuable irrespective of whether one has formed an opinion prior to taking part in the discussion. The point here is that it makes little sense to claim that inclusion here is contingent on the fact that the child is able to form his or her own view. Rather, what matters is whether the child, to some extent, can contribute in the deliberation. Moreover, if he or she is able to do so, then the child's role is not merely of consultative value – as Brighouse would hold. Rather, he or she is

also a participant, and should be respected as such. But then, what we respect is not the child as someone capable of forming his or her own view, but rather the child as a co-deliberator.

Of course, in the cases Archard and Skivenes consider – i.e. court decisions where the child's views are balanced against the child's best interests – the fact that the child has his or her own views is of considerable importance. However, participation, understood widely, covers arenas other than formal decision making arenas like courts. And while the child's own view matters in the court room since the child has a right to be heard, the purpose of including the child in other contexts might also be to allow the child to *form* an opinion and, I think, to be respected as someone capable of understanding and responding to reasons. Thus, on my view, the salient feature of the child that matters for *inclusion* is not that the child in fact has his or her own views, but that he or she is able to understand and respond to reasons.

This idea of respect is different from respecting someone capable of forming his or her own views. While the former respects someone as capable of (some level) of self-determination, the latter concerns respect for the child as capable of some minimal level of social interaction. Therefore, the idea is related to certain expectations – that the child is someone with whom we can communicate. In this way, the idea implies that respecting the child involves seeing the child as having a certain standing as member of a relationship of deliberators, and, I will propose, someone adults are accountable to.

This does not mean that being able to form one's own views is insignificant, but it means that the threshold of inclusion in participation procedures in the wide sense – e.g. in the family or foster home, in deliberations prior to court proceedings, and so on, is lower than what one might suppose based on Archard and Skivenes' conception. Exactly which arenas the child should be included in, is a further question.

6.2.3. Respect for the Child as a Co-Deliberator

The difference between the idea of respect just referred to and Archard and Skivenes' conception is the kind of *fact* we refer to when we discuss the respect that is owed to a child. On my view, the relevant fact is not a view that can be attributed to the child in the sense required to call it *authentic*. As I suggested in chapter 2, respect is primarily a feature of the relationship between the child and adults. Respect is an attitude that is attributed to the 'ideal' carer that involves considering the child as capable of understanding and responding to reasons. This attitude corresponds to the fact that even if a child's cognitive faculties are under development, children can grasp *some* reasons at an early age, express that they care about certain things (cf. Betzler, 2015), and therefore, to some minimal extent, respond to reasons.

Of course, children's capacity is not comparable to the average adult's competence to understand and respond to reasons. The important point here is that this capacity is present, and this has consequences for how they should be treated. It means, for example, that it is not irrelevant to ask the child why he or she prefers one thing rather than another, or to explain one's decisions to the child. Of course, even though it is impractical to do this at all times, systematic failure to treat the child as someone capable of understanding and responding to reasons is disrespectful. By systematically ignoring a child, one implicitly makes a claim that the child should not be regarded as someone who is capable of understanding and responding to reasons, and such a claim is both in conflict with facts about most children's cognitive capacities and about how adults treat children.

One question is whether this notion of respect can do the same work as Archard and Skivenes' notion. My view is that these views are complementary, and that Archard and Skivenes' idea matters for how we should understand what *influence* the child ought to have on decisions. Before I turn to this point, I will consider how this view explains excluding or ignoring the child as instances of disrespect.

Concerning the example of the destructive friendship, Brighouse claimed that such friendships should not be forbidden, but that parents or carers were permitted to manipulate the child in order to give it up. The idea that failing to treat the child as someone capable of understanding and responding to reasons is wrong explains why it might be permissible, in some cases, to discourage some activity but not forbid it. Both persuading and manipulating involves treating the child as someone who is able to understand and respond to reasons (though if the child was autonomous, this would be debatable). In contrast, forbidding it denies the child the opportunity to understand why it is forbidden. Similarly, to consult the child first, even if the child has no opportunity to influence the decision, allows the child to understand why the decision should be made, and it is therefore clearly different from simply making it without involving the child. Thus, this idea of respect explains why children should be treated respectfully, and included, even when their views can be easily dismissed. In the case that the child feels very strongly about something or some person, this is an additional feature that counts in favour of the child's view.

Also, it explains another claim made by Brighouse. He claims, for example, that the adult is not only responsible for making decisions or treating the child in a way that promotes the child's well-being. He also says that the adult's responsibility to find out "... whether what she wants will, in fact, serve her interests well" (Brighouse, 2003, p. 707). Thus, on my interpretation, what Brighouse claims the adult ought to do, is first, to include the child as

someone able to understand and respond to reasons. Then, by treating the child as someone with this capacity, the natural follow up question is to ask whether the child understands the *right* reasons to make the decision, or respond appropriately, but it implies that the child has views for *some* reasons. Treating the child with respect means engaging with the child to find out whether the child *should* have the views he or she has. Accordingly, an important feature of this idea of respect is that respect for the child is easily disentangled from questions of whether or not the child's claims should have influence. If a child makes claims that are disregarded because the reasons that support the child's views are weak, this should not be regarded as lack of respect for the child.

6.3. Influence

This leads us to the question of why and how much influence the child's views should have. As we saw in chapter 1, the UNCRC and the CWA state that the child's views should be given weight according to the child's age and maturity. The suggestion, it seems, is that what matters is whether the view is the child's own, and that whether a view is a child's own is something that vary with the child's maturity. As Archard and Skivenes point out, this is puzzling. It is not easy to understand how a view is the child's own is a matter of degree. As they write,

If the child is being consulted then presumably her views carry greater weight if they are viewed as being a more reliable guide to what is in her best interests; if her views are interpreted as possibly authoritative, by contrast, then they are seen as somehow more or less determinative of what is in her interests. However this second possibility is very puzzling. In the case of a competent adult if his views are authoritative then they wholly define what is in his best interests. If an adult says that A is in his interests then that is enough. If a child's views are authoritative but given 'due weight' then they do not wholly or sufficiently determine what is in her interests (Archard & Skivenes, 2009a, p. 18).

Thus, they ask, "... how can a set of views be authoritative but not completely?" (Archard & Skivenes, 2009a, p. 18). The problem, I take it, is how to explain that the child's own views are in part *constitutive* of his or her interests, because this leads to problems of how to balance or assess the relative importance of the child's views compared with what adults might think is in the child's interests. Moreover, if one thinks that the fact that the child's views are the child's own is what gives these views authority, then overruling the child's views might in fact be disrespectful.

As this illustrates, the question of the child's relative influence on decisions will easily become entangled with the question of when the child should be allowed to decide himself or herself. I will treat these as separate questions, and will primarily be focused on the relative influence of the child. The challenge, then, is to explain how a person can be merely *partially*

authoritative, and to explain how this can be reconciled with respect for that person's claims even when these claims primarily concern the person himself or herself, and these claims are overruled, as in instances of paternalistic treatment. In what follows, I discuss two possible answers to this challenge.

6.3.1. Influence and Authenticity

On the authenticity view of respect, endorsed by Archard and Skivenes, the authority of someone's view depends on whether the view is authentic, or the person's own. If the view is the person's own, then it is also, or at least in the case of an adult, constitutive of the person's interests (with respect to what the person's view is about). Thus, if children can form their own views, this is not only a reason to include the child, but also to respect the child's views and give the child influence on the decision.

The challenge here is to explain the partial influence a child may have as participant. Given that the authenticity view is a plausible idea of what makes a view authoritative (or constitutive of the person's interests) what must be explained is the puzzle of how a child can have views that are *partially* the child's own. One possible explanation can be drawn from Tamar Schapiro's account of childhood. To understand how Schapiro can help answer the question of why and how much influence the child should have, we must first understand what Schapiro think is involved in acting and being able to form one's own views. To be able to form one's own view involves having developed a certain cognitive constitution – a *self-constitution*. This is something adults possess as self-determining agents. The mature agent

“... is already governed by a constitution, so to speak – a unified, regulative perspective which counts as the expression of her will. (...) An adult, in other words, is one who is in a position to speak her own voice, the voice of one who stands in a determinate, authoritative relation to the various motivational forces within her” (Schapiro, 1999, p. 729).

The idea is not that the adult is the ultimate authority of what is best for her. To have a self-conception does not mean that a person has figured out what he or she would endorse in all areas of life. That would be far too demanding. The point is that adults have developed “... the fundamental constituents of the agent’s motivational world” (Schapiro, 1999, p. 730). Adults have a “... determinate ordering of impulses” (Schapiro, 1999, p. 730) or a constitution that can explain why a person routinely chooses, for example, social companionship over solitude and why he or she would happily leave their work unfinished to drink coffee, or to help a friend. Moreover, by having this self-conception, the adult is less susceptible to external influences

insofar as one is aware of the presence of such influences. One has some basic ability to respond critically to reason, and to ensure that when choices are made – these choices reflect the adult person himself.

However, Schapiro's view is that the child, *qua* child, is a person who lacks a fully developed self-constitution. Therefore, persons able to form their own views in the sense just outlined are not children, irrespective of how old they are. Having a developed self-constitution is a necessary condition for making choices, and for forming one's own views in a way that makes these views stable and reflected.¹⁰⁶ For this reason, children's voices or choices are not authoritative, but forms of play or attempts at making choices. Accordingly, children's voices should not be accorded any weight.¹⁰⁷

This, however, leads us to the point relevant for the question raised about why and how much influence the child should have. According to Schapiro, children develop in a piecemeal fashion. A child can develop maturity in one area, but where this maturity or authority is not necessarily developed in another. To use social roles as an example, we could think that a child develops into fully managing the role as a pupil before he or she is equipped to be a citizen. As Schapiro notes, many minors "... have adult status with respect to some domains of discretion, but not others. Accordingly, children at different stages of development differ from one another in the extent of their hegemony over themselves" (Schapiro, 1999, p. 734). Thus, Schapiro can account of the idea that children with different levels of maturity should be treated differently. Children who are capable of forming their own views in certain domains should both be included and perhaps even be authoritative with respect to decisions that concern this domain. Regarding decisions that could influence their life as a whole, children who has developed some maturity should only have a consultative role.

One problem with this view is that Schapiro in certain cases will have difficulty explaining why children should *merely* participate and not have the same rights to make decisions as adults. If we allow the fact that minors *can* in fact develop a self-constitution that makes them adults, then Schapiro seems forced to admit that these minors are not in fact children. As a consequence, they should not merely be included but also have the same authority as adults. As Anderson and Claassen note, nine-year olds "... who precociously develop mature decision-making skills and a distinctive point of view would no longer be children" (Anderson

¹⁰⁶ Making *choices*, in Schapiro's vocabulary, is different from making *decisions* in Archard and Skivenes' terms. The former refers to a person who satisfies the personal requirements for making decisions, and who therefore *ought* to make his or her own decisions.

¹⁰⁷ For critical discussions of Schapiro's view, see Ben-Porath (2003) and Anderson and Claassen (2012).

& Claassen, 2012, p. 508). Thus, for the purpose of this chapter, there would be no morally legitimate reason not to regard the child's views as *completely* authoritative. That is, it would no longer be permissible to treat them as children.

One response to this objection is point out that very few children will have this level of cognitive and emotional maturity. However, while this may seem strange and is possibly quite rare, it might be possible to 'grow up quick' (See e.g. Macleod, 2015). Moreover, even if a child *can* act as an adult, this does not mean that the child should. Even if the child is an adult in Schapiro's sense, he or she will still be vulnerable, dependent, and deprived of childhood if we started treating him or her as an adult. As many have recently observed, childhood has independent value (e.g. Brennan, 2014).

For example, Emery gives an example of a six-year-old boy whose parents were divorcing. The example in this case is a decision that affects the boy, but not where he is the only person affected. The boy had been hurt, and his parents asked him who should take him to the ER. The background context was that the parents were negotiating custody, and were giving their son influence on this decision. However, the parents were also implicitly negotiating custody by asking the boy who should be responsible for bringing the boy to the ER and supporting him there. The boy answered that both should accompany him. But later, as a response, the boy said, in tears, "No, I was *not* glad you both took me. Why did you have to ask *me* what to do? I was there *bleeding*. Why couldn't you decide?" (Emery, 2003, p. 625, emphasis in original). There is a lot going on in this context, but it seems to me that the boy understands a great deal of what is going on, understands to some degree what responsibility he is being given, appreciates the burden of it, and understands the inappropriateness of giving him the burden. His response seems, in other words, perfectly adequate, well founded and informed, all of which are characteristics of a competent (i.e. adult) response. But having this competence in this situation does not imply that he should be treated as an adult. Of course, the fact that the boy did not want to make the decision is important in this case, but equally important, I think, is the fact that there are good reasons that support the boy's claim/accusation. Irrespective of whether or not he wanted to make the choice, there are reasons that count against the parents' outsourcing such a decision. This would also be the case if the boy understood the situation correctly, wanted to make the decision, and intended to make a choice that could affect who gained custody.

These observations, I think, reveals that whether or not a claim is authentic cannot be the *only* thing that matters for the authority of the claim. This means that Schapiro's all-or-nothing or threshold account of the source of someone's hegemony over him- or herself in a certain

domain cannot be correct. Her claim seems to be that if one has developed hegemony over oneself, either partially or completely, then the child should have *decisive* authority in the relevant domain. Therefore, it seems that her view is that the child's view should always be regarded as authoritative if the child has hegemony over herself, either with respect to a given domain or generally. However, the fact that the child *can* make decisions within a certain domain or generally does not mean that the child *should* do it. There are clearly reasons other than the fact that a person is mature that matter for whether or not the child should make the decision him- or herself, as well as for how much influence the child should have. In the example above, for example, the point was not that the boy was too immature to understand and appreciate the decision he was facing, but rather that making the decision also makes him responsible, which can be a considerable burden.

Moreover, by focusing on the issue of whether or not the child is sufficiently mature to make a decision, we miss the point of participation. The point of participation is co-deliberation about what the child has reasons to want (or if others also are affected, what they have reason to want and how to reconcile or balance these interests). Others have also pointed out that, even if children have a strong desire to participate, this is seldom based on a desire to make one's own decisions (Thomas & O'Kane, 1998). For the children they interviewed, to be respected as individuals and to be heard was what mattered.

Finally, if authenticity is the *only* source of authority for a claim, it is, again, difficult to see why we should respect the claims of children who have yet to form their own view about something. But, as I have argued earlier, adults are obligated to respect children as persons we expect to be capable of understanding and responding to reasons. Of course, this must have implications for how we respond to the child's claims and actions, even if the child is too immature to have formed a 'self-conception'. In what follows, I will suggest a different understanding of why and when children's voices or claims should have influence.

6.3.2. The Authority of Children's Claims

A conclusion that can be drawn from the previous discussion is that, even if a child is able to form his or her own views, the child's views or claims are not necessarily authoritative. That is, even if a child's view is the child's own, there is a further question of whether the child's claim is justifiable. Having dismissed the possible solution that Schapiro's account could provide, this leads to the question of what makes a child's claim authoritative, and what gives the child's claim a 'partial' authority.

I take the authority to the child's claims to be based on the reasons that count in favour of them. The fact that the view can be attributed to the child is one reason that count in favour of the child's view, but rarely the only reason. This view is based on a distinction between two senses of 'claims', where it is possible to make claims that are not authentic. In the first, wide sense, a child's claims include those that do not have immediately clear propositional content, nor a clear addressee. Some of their claims are even non-verbal. With 'claims' I include actions, statements or behaviour we can understand as attempts to give other people reasons to act in a certain way or have certain attitudes. It includes, for example, what the sulking child who was refused candy expresses. Or, what is expressed by an enraged teen girl in a residential institution who is forbidden from seeing her friends because when she meets them it often involves self-destructive behaviour. Thus, mere behaviour or expression of distress express claims, as I use the term. On this view, children are quite capable of expressing their needs, distress, desires etc.¹⁰⁸ They can do this because it requires very little of them. It is sufficient that the 'claim' expresses some evaluative state, that is attributable to the child, and that therefore reveals something about the child's perspective on his or her situation.

In the more narrow and familiar sense, a claim expresses the child's personal reasons to want something, reasons that derive from some personal aim, project, or relationship the child cares about. Following Archard and Skivenes, I refer to such claims as expressing the child's 'authentic' views. These views are the child's own in the sense that they are not only attributable to the child as expressing evaluative states coming from the child's perspective, but opinions the child has given some consideration or that have become part of the child's evolving self-constitution', to borrow Schapiro's term.

Both of these senses of 'claims' are relevant to participation, if participation is understood in the wide sense of being a process and not only restricted to formal decision-making arenas. However, claims in these two senses have different authority, all else being equal. Claims in the narrow sense give us an independent reason to accord them authority – because they represent the child. And the reason these claims have additional force or authority is that respect, like care, has two 'objects' – the claim itself and the person making the claim. This leads us to the answer to what gives the child's claims, in either sense, authority.

The normative weight of a child's claims depend on the reasons that count in favour of it. Children's claims, in both senses above, give us reasons. Following Scanlon, a reason is a consideration that counts in favour of some action or attitude. The expressions of the sulking

¹⁰⁸ They are also sometimes quite adept at hiding distress, which is a complicating factor and a huge problem for both the legal system and those who provide treatment to traumatised children.

boy or the enraged teen incorporate or imply things that count in favour of some action or attitude. So 'claims' in this wide sense can give us reasons to act. That something 'counts in favour of' an action or attitude is a weak normative relation. The fact that something counts in favour of some action or attitude does not mean that we ought to act on these reasons. However, it does mean that a claim can have different degrees of normative force, depending on the reasons that count in favour of it. In this way, a child's claims can have different degrees of authority.

This leads us to the difference between claims in the wide and narrow sense. Claims in the wide sense must often be justified 'externally', in the sense that we must consider whether the claim incorporates a reason to act. This is not the case with claims in the narrow or authentic sense since, *as the child's own claims*, these claims always incorporate a reason to act or respect the claim. Phrased differently, that the child has a view of his or her own, and is willing to express it, implies a claim to be heard in addition to the reasons that count in favour of what he or she expresses or says.¹⁰⁹ Other things being equal, an authentic claim is a stronger claim than claims in the wide sense.

What, then, makes a claim *authoritative*? That is, what could give someone a decisive or non-optional reason to act – or where it is wrong not to give the child's 'claim' decisive weight? According to Scanlon, the relative strength of reasons is determinable only by comparison with other reasons (Scanlon, 2014, p. 111).¹¹⁰ In some cases, this is easily determinable. In other cases, however, it can be very difficult to determine whether the claim made by the child or adult is right. When a child and adult's claims are in conflict, and both are supported by what seems like equally strong reasons, we face real dilemmas, and it might be difficult to determine whether the child's or the adults' claims are authoritative.

Scanlon's solution involves an idea of multi-level justification. Scanlon's point is that one's reason to act in a certain way must be compared with general principles for the regulation of actions of the kind that one believes one has a reason to do. Thus, if an adult, for example, thinks there are reasons to reject the child's claims in a certain case, the reasons that count in favour of rejecting the child's claim must also be sufficient to reject the general practice that the

¹⁰⁹ From a practical viewpoint, there are many difficulties with establishing that some claims are authentic, such as separating these claims from whatever else the child might say or do. To determine whether a child's claims represent him or her, see Archard and Skivenes' list of recommended questions in their conclusion, as well as the suggestion to have different and independent people assess the child's maturity (Archard & Skivenes, 2009a, p. 20).

¹¹⁰ This is similar to Raz' idea of the 'normal justification thesis' of authority (cf. Raz, 1986, p. 53 ff).

child's claim could be based on. Phrased differently, if one cannot reject the child's claim at multiple levels, then the claim is authoritative (cf. Scanlon, 1998, pp. 160-168).

With this in mind, we can apply these ideas to hard cases. To apply the ideas above, the question one asks oneself is what a given claim is about, and what reasons count in favour of it. Let me use a well-known example. A familiar case is that of a Jehovah's Witness boy who refuses a life-saving blood transfusion on religious grounds. The boy appeals to reasons that would have been accepted if he was an adult, and his parents support his choice. There is nothing in what he says or does that suggest that he does not fully understand the consequences of his decision. Thus, it is a clear example of a conflict between the boy's wishes and what will benefit him, which leads to the question of who should have the final word.

The challenge, in such cases, is to explain why the child should be treated differently than an adult, if the only thing that sets the child apart from an adult is age. The boy's claim is not merely that he refuses a transfusion, but that he rejects (at least implicitly) that he ought to be treated as a minor. Therefore, his claim does not merely concern himself, but he questions the entire practice.¹¹¹ This leads us to consider the importance it might have for how we should practice such cases more generally, and for the impact it has on adult-child relationships. In other words, the case leads to the idea of multi-level justification proposed by Scanlon.

Anderson and Claassen have proposed a multi-level argument to explain such cases. On their view, cases like the Jehovah's Witness case are not only difficult because the situation is a dilemma, but it also raises questions about our entire conception of childhood, including the standing we attribute to children, our assumptions about their needs and vulnerability, and how we institutionalise childhood. In their terminology, such cases challenge the currently existing 'regime of childhood' (Anderson & Claassen, 2012). A regime "... comprises the set of norms, practices, institutional arrangements, guiding ideals, criteria regarding thresholds, etc. on the basis of which a particular status is ascribed to individuals – in our case, the status of 'being a child'." (Anderson & Claassen, 2012, p. 508) A regime is constituted by culturally and institutionally backed understandings of what childhood "... licenses bearers of the status to do, what others are obligated or forbidden to do, and so on" (Anderson & Claassen, 2012, p. 508). In the case of childhood, a regime should also be explicit about how it deals with children's gradual acquisition of competencies, and thus how children's emancipation is institutionalised (Anderson & Claassen, 2012, p. 512).

¹¹¹ Alternatively, he could be making the claim that he should be treated as an exception, in which case the claim does not challenge the regime of childhood, but concerns whether the boy satisfies the conditions for being an exception to the general practice.

Anderson and Claassen's view is that a regime is identified and justified as a package (Anderson & Claassen, 2012, pp. 508-509). This idea – that a 'regime of childhood' is a package – implies that there are reasons other than those that only concern the individual child that matter, and that sometimes outweigh the child's reasons for wanting to decide him- or herself. The question a child raises in cases like the Jehovah's Witness case is not only whether it is permissible to deny *one individual* minor the right to refuse treatment, but whether it is generally permissible to arrange adult-child relations in a way that permits minors to make such decisions themselves. In other words, in cases that raise questions about the regime of childhood, such as the Jehovah's Witness case, what we ask is not only whether it is permissible to treat the child in a certain way, but also how we should organise childhood.

In cases like this, things other than properties such as how mature or old the child is determines how it is permissible to treat the child. If childhood is a 'regime' there are considerations other than the maturity of the individual person that explain whether there are morally relevant reasons to deny the child or young person such influence over him- or herself. Even if the decision in question concerns the life of one child, it might also have an impact on the entire regime. In other words, the interests of other children, of the burdens we impose on others, the way a decision affects other practices, etc., matters for how to treat the individual child or young person. And when a decision or action has such implications, there might be reasons to overrule the child's wish even if the child or young person seems just as mature and reasonable as what one would expect from an adult.

In sum, children's claims have authority depending on the reasons that count in favour of them, and authentic claims are, other things being equal, stronger than claims in the wide sense. This means that when the child is capable of forming his or her own views and is willing to express them, then rejecting the child's views requires a stronger justification of the alternative judgment than a mere claim does, all else being equal. Finally, the question of when a claim is authoritative depends on comparative assessments of claims, where the authoritative claim is the one supported by the strongest reasons. In many cases, or at least when the child's claims or views challenge the existing practice, deciding whose view is authoritative may require considering not only how a decision might affect the individual child. To consider whether there are decisive reasons in support of the child's claims involves considering whether these claims are supported by sufficiently strong reasons to regulate adult-child relationships in general.

6.3.2. Tracing Influence

In the previous sections, I have outlined the idea that to treat children as persons who are capable of understanding and responding to reasons is a form of respect. Clearly, this leads to the idea that one should take their claims seriously. And to take their claims seriously involves considering what reasons count in favour of those claims. Moreover, it seems clear that, as long as those responsible for making the decision consider the reasons the child express, willingly or unwittingly, then the child has influence on the procedure in the sense that they provide part of the substance for what is being considered.

In order to act respectfully in the sense just outlined, one must also make one's interpretation and assessment of the child's views explicit, and thereby allow the child to trace the influence his or her views have had on the outcome. My suggestion is that this idea of respect supports a description of the adult-child relationship as one where the adult is accountable to the child. That is, we owe the child respect as someone who can to some degree understand and respond to reasons, which makes us accountable to the child. That is, children cannot always *hold* us accountable – that requires a certain minimal competence – but if our relationship with the child (i.e. the normative ideal) is partly constituted by the expectation that the child is capable of understanding and responding to reasons, then we are accountable *to* him or her.

Moreover, if the child makes a claim in the narrow sense, then carers are obligated to take these claims into account, find out what counts in favour of this claim – including the fact that the view is the child's own – and support or reject it on the basis of how strong the claim is. That means to engage with what the child claims and discovering what would be a plausible interpretation by communicating with the child, and considering what counts in favour of *this* claim. In this way, the child should recognise influence on the process by the fact that part of the decisions revolves around a view or claim that is recognisably *the child's own*.

Consider the possibility that the child recognises his or her influence on the procedure, but that the child's view is rejected, as in the case above. How would the child be able to trace their influence? There are, after all, many cases where there are parts of the procedure that the child will not have access to, sometimes for good reasons. How will the child be able to trace his or her influence in such cases? The answer is to be found in the questions raised by Archard and Skivenes, where they raise two questions that aim at making the child's contribution explicit when one has arrived at a decision. Their idea was to make explicit "... how the judgement of best interests [is] balanced against the child's own views when they do not coincide" and how "... the child's own views [are] weighed when they do coincide with the

judgment of best interests” (Archard & Skivenes, 2009a, p. 20). According to the account offered here, this is simply what they owe to the child out respect for him or her. They ought to treat the child as someone able to understand and respond to reasons, and the only way to in fact treat the child this way is to make explicit the reasons why they have made some decision on his or her behalf. In other words, it involves justifying the act or decision to the child.

6.4. Conclusion

To summarise, let me place this conception of participation as respect and care for a child as a person capable of understanding and responding to reasons in connection with existing regulations. On the view presented here, it is clear that participation must be widely interpreted, from giving information and explaining decisions to those who are incapable or unwilling to express their views, to those who have formed their own views and are willing to express them. It implies, in other words, a very inclusive practice, in two senses. It means, on the one hand, that parts of our communication that are not usually considered as participation in fact should count as such.¹¹² On the other hand, it includes children who for some reason are unable to participate in the ordinary sense of the term. It includes, for example, very small children or children who have their own views but are unable or unwilling to express them in public.¹¹³ Also, it includes the claims of a child who has no desire to be heard.

Children’s influence is based on the strength of the reasons that count in favour of their claims. The child’s authentic claims are, all else being equal, stronger claims than claims in the wide sense, since these claims incorporate the reason that they are the child’s own. As claims that are supported by reasons, and out of respect for the child, we owe the child to just consider what counts in favour of their claims and if there are comparatively stronger reasons to ignore their claims, to make both our reasons for rejecting them and what counted in favour of their claims explicit.

To argue that the child should participate, and that we should respect their claims, means that they require things from us. But what should we expect from them? Is it appropriate, for example, to subject them to moral criticism? This is the topic of the next chapter, where I address this question and propose a set of conditions for appropriate moral appraisal of the child.

¹¹² Which supports the idea of providing children with spokespersons, as is done in e.g. England and Norway.

¹¹³ What I have in mind here, is what is known as ‘selective mutism’. Children diagnosed with this condition have a “... persistent failure to speak in select social settings despite possessing the ability to speak and to speak comfortably in more familiar settings” (Wong, 2010, p. 23). The children are clearly able to understand or respond to reasons; their behaviour reveals as much. Therefore, we owe these children respect. On a different approach, where respect is owed only to children capable of having and expressing one's own view, it is not clear how one should explain what respect for these children involves.

7. Children's Standing and Moral Appraisal

One of the reasons why child protection professionals sometimes disregard children's claims is that they believe that children should not be held responsible for their choices. Responsibility can sometimes be a burden, perhaps even be harmful. Adults should therefore make decisions on behalf of the child (Archard & Skivenes, 2009b, p. 396; Bijleveld, Dedding, & Bunders-Aelen, 2015, p. 135; Emery, 2003). The last chapter on children's participation is based on a similar assumption: children should be included and listened to, but the *justification* of a decision is ultimately a responsibility of full moral agents, i.e. of adults. Being a child, I have assumed, is to be in a state of diminished responsibility.

This idea of responsibility is closely related to having obligations (Scanlon, 1998, p. 248). Children are often mere participants and not decision-makers because there are reasons for imposing the burdens of making the decision on the adult. The child participates, but the adult sees to that it is effectuated, that it was procedurally correct, that relevant reasons were accounted for, and so on.

There is another sense of 'responsibility', however. By making a choice, the decision-maker connects the choice to him- or herself in a way that makes the person a target for moral criticism, or blame. And if children are able to form *their own* views and make choices, then they seem to qualify for being held responsible for what they say and do. In this chapter, I address the question of whether children should be regarded as appropriate targets for moral appraisal – or blame and praise – and if so, what conditions of appropriateness apply when the target is a child. Thus, I am merely concerned with 'responsibility' in this second sense.

The outline of the chapter is as follows. The chapter has four parts. In part 7.1. I explain some of the reasons to raise this question. Part 7.2. is a brief outline of the view that children are innocent agents, the main claims that support it, and the reasons I have for abandoning this point of view. Part 7.3. concerns the nature of moral appraisal, where I defend and develop Scanlon's account of blame. This section gives us a clearer understanding of exactly what practice we should include children in, and why it matters. In section 7.4 I apply my conception of blame to address the conditions for appropriately blaming children. At the end of 7.4 I turn my attention to praise, and show how my conception of moral appraisal explains how moral appraisal is associated with moral development and how children gradually acquire full moral standing. Hopefully, the account will show how we can better understand how we ought to respond to children's wrongdoings in a way that also facilitates their moral development.

7.1. Why Does Blame Matter?

One might think that, if we believe children are in fact capable of forming their own views, and these views carry sufficient weight to be taken seriously, then children can also be criticised for their views. After all, the child's view is *attributable* to him or her in a sense that would have made the child a target of moral criticism if he or she was an adult.

In contrast, a standard view has been that while children can in fact perform wrongdoings, and their acts can be criticised, we do not *blame* them. Even if they do wrong things, they are *innocent agents*, not liable, guilty or responsible (Archard, 2004, p. 46).¹¹⁴ Additionally, we expect children to have a *childhood*. To be held responsible for one's actions is to be treated as an adult, so if we treat children as targets of moral appraisal, we deprive children of their childhood. Or, less dramatically, we deprive children of a valuable component of childhood.

Moreover, the idea that children should be targets of moral appraisal seems to be in conflict with how we normally relate to children. Children, or at least very young children, are suspended from the practice of moral appraisal. Of course, this does not mean that we do not respond to children's wrongdoings. But if we do in fact suspend them from practices of moral appraisal, these responses should be understood differently. Our responses to children should be regarded as corrections, education, treatment or discipline, rather than blame.

Call this the *innocence view* of children's moral standing – where our expectations of children are that they can be educated or disciplined, but that they are without guilt or should not be blamed. According to the innocence view, the point of our responses is primarily to protect some valuable state (childhood innocence) or promote a certain outcome (the child's interests in behaving in accordance with social and moral standards). In this respect, the innocence view fits well with approaches that focus on the child's well-being as the fundamental moral feature of adult-child relationships. Also, children are, at least until they reach a certain age, suspended from criminal responsibility, and in this sense guiltless. If a child has committed a crime, then young age extenuates the offense or, in the case of adolescents, leads to milder sanctions.¹¹⁵ Also, if a child does something wrong, the target is often thought to be someone else – usually the parent. It is the parent's responsibility to ensure that their children do not

¹¹⁴ While this may be read as a claim about the child's psychological capacities, it is not used in that sense here. It is a value claim in the sense that being innocent is valuable. Of course the view is usually also backed up by claims of children's inferior mental capacities, but such arguments are not all that counts in favour of the innocence view. For critical arguments against the value of innocence, see e.g. Archard and Hannan (Archard, 2004; Hannan, 2017).

¹¹⁵ See NOU 2008: 15. Whether this supports the further claim that blaming children is appropriate depends, of course, on our conception of blame and how responses of blame fits with our idea of children as vulnerable creatures and with their wrongdoings. For example, some hold that to blame is to sanction. To sanction someone who does not deserve it is unjustifiable.

harm or place burdens on others (Narveson, 2007). Thus, a child's wrongness is not attributable to the child, but rather to the parent's shortcomings.

The innocence view is neither developed as a coherent theory, nor is it defended in a pure form. Instead, a commonly held view is that children are in a state of what Scanlon calls 'diminished responsibility' (Scanlon, 1998, p. 280; Strawson, 2008, p. 20). In this chapter, I argue that to see children as having diminished responsibility is, in fact, different from an innocence view in that it refers to the idea that the child should be subject to the practice of moral appraisal, or be blamed for what he or she does, but not in the same way we blame adults. While there are some who at least suggest that this might be a plausible view, it has not to my knowledge been worked out systematically.¹¹⁶ This chapter is therefore an attempt to outline such a view. This requires both an account of what blame is, and an account of the ethics of blame when the target of blame is a child or young person.

Given that this might be of philosophical interest, why does this question (or the conclusion we come to) matter for child protection and public care? To try to address this question, I will present a case that I think enables us to make better sense of it, by seeing moral appraisal as part of the range of responses the young person in the case was subjected to. The case that follows is presented at some length, although much information is omitted. Also, there are many aspects of this case that are troubling in ways that have little to do with moral appraisal. My claim, though, is that focusing on moral appraisal can give us valuable information on the dynamics of this case – on parts of the adult-child communication and interaction that are easily overlooked if we are only concerned with the 'typical' questions in child protection, such as whether the child should participate or how to avoid wronging or harming the child, and so on. So, the point of focusing on this case, in all its complexity, is to use it as an illustration of the relevance of moral appraisal in child protection.

Early in 2016, the Norwegian public was presented with the longest and most detailed story on coercive foster care ever featured in Norwegian media (Ergo, 2016). In well over 60 pages, the reporter Thomas Ergo told the story of 'Ida'. The child protection service had been in contact with Ida's mother since Ida was 3 years old. At the time, those who reported to the child protection service were worried about her care-situation and the mental health of her mother. When Ida was 11 years old, the school and child protection service lost contact with Ida and her mother. They had moved to an African country. During their time there, Ida endured abandonment and abuse. She was away from her mother for seven months during their stay in

¹¹⁶ Suissa, who discusses the relevance of Strawson's account of blame in relation to children, is one exception (Suissa, 2013).

Africa, and lived with other families. She had been raped several times, had been hit by her mother's boyfriend, and had started taking pills.

After Ida and her mother returned to Norway, things were not easy. Ida was struggling in school. Eventually, it was discovered that she had been raped and had serious personal problems. Her teacher interpreted Ida as having suicidal tendencies. As a consequence of this, the child protection service was notified. They decided that Ida would be in danger if she continued to stay with her mother, and she was first placed in an emergency foster home and then in a local foster home. Since the foster home was local, Ida was able to stay in contact with her mother and continue in the same school.

There is evidence that Ida to some extent adapted to the foster home. At least, she confided in her new foster mother. Nevertheless, Ida's problems were increasing. The foster mother had to lie next to Ida at nights when Ida was remembering traumas, she had to abandon other commitments to rush to Ida's school to pick her up after she had left the classroom and was spending time in the lavatories, listening to music and surfing on the internet. In addition, Ida was harming herself and abused tranquilisers. The way the story is told, it appears that the foster mother had requested assistance and relief support, at least for being able to respond to Ida's traumas, but to no avail. Ida's problems were more than a mother of three other children who ran a business could handle, and she had not foreseen what caring for Ida would entail.

The foster home broke down about two months after the child protection service had assumed responsibility for Ida. Ida had been notified of this by the foster mother, who had told her that she could not manage the role of foster mother unless Ida would cooperate with her and concentrate on her education and her future. Earlier, the foster mother had also repeatedly warned Ida that if she did not improve, she could not care for her anymore.

Ida was placed in an open institution after the breakdown. The road to the institution was a difficult one; Ida dreaded the idea of living in an institution, and knew little other than that she would be placed in an institution. Also, the only information she received prior to the placement was that she would be placed in an institution; not where, what type of institution it was, or other relevant information. So, when she was supposed to be transported to the institution, she tried to escape. They found her in the house of Ida's mother. There, Ida refused to cooperate, and was handcuffed by the police, dragged out into a police vehicle, driven to an emergency medical centre, and then on the hospital. Ida was still unwilling to cooperate the morning after, and was driven to her new home in Bergen, wearing handcuffs. She started crying when she first saw her new home.

In this institution, the regime was based on trust. She would be permitted to move outside the institution unsupervised. Ida escaped the institution on the first day and found her way to an open drug scene in Bergen, where she allegedly had her first experience with amphetamine and used other drugs and alcohol. When the police found her, still intoxicated, she drew out a knife. The police forced her to the ground, handcuffed her, and drove her to the emergency child protection service. As a result, it was decided that Ida must be placed in a treatment institution, where she would be closely supervised, where they could take urine samples, place limits on her movement, and accompany her outside the institution. When Ida's case came up in court later, her caseworker said that Ida had "misused the trust she had been given" and "chose a destructive environment".

The story of Ida's life after being placed in the new institution is a story of self-abuse, several suicide attempts, drug abuse, rage, violence and arson.¹¹⁷ As might be expected, Ida endured repeated and strong coercive measures, was abandoned by many adults, was trusted and listened to by very few, and rarely by those who had the power to do something. She burned down the treatment institution she was first placed in, and was later sent far away, to Northern Norway, where she set her room on fire, smashed two car windows and stabbed an employee with a glass shard on her day of arrival.

The story paints a picture of a girl who desperately wanted to live with her mother, who was increasingly hostile to the child protection system in general, and particularly to employees at the institutions where she resided. It is a story of incredible pain, of fear and hopelessness. In some ways, it is not a story about a girl at all, but of a caged animal – hostile, angry, afraid and unpredictable. From the standpoint of many of Ida's fiduciaries, it is a story about an overly demanding youth, about emotional exhaustion and fear for their own and others' safety, and for Ida's safety and well-being.

So how does this story illustrate the relevance of moral appraisal – of adults blaming children for their wrongdoings and misbehaviour? The answer depends very much on what we think moral appraisal is. This being said, there are some responses that clearly seem to qualify as blame of Ida: First, there is the response from the foster mother, whose abandonment of Ida is clearly a response to Ida's behaviour, something she also said to Ida. While there is little

¹¹⁷ In the last chapter of the story, Ergo lists some central numbers in Ida's case. She had been subjected to coercive interventions at least 87 times, 36 of which were use of physical power. 94 different employees were involved. The police had 49 different assignments related to Ida. She was assigned to medical treatment at least 79 times. She had 40 suicide attempts. During the time she was in the care of the child protection service, she had been placed in seven different homes and institutions, had been in seven proceedings in the County Board and three court trials (Ergo, 2016, ch. 10).

reason to doubt that the foster mother had conflicting emotions – that she in part did not want to abandon Ida, the fact that she tried, repeatedly, to hold Ida responsible. The fact that she told Ida what the consequences of Ida's behaviour would be, and that she at one point screamed this out to Ida reveals as much. Second, there is the response from the caseworker, who seemed to imply that Ida deserved being placed in the second, more heavily regulated institution. There is no way of knowing whether the caseworker was as emotionally affected as the foster mother, but her statement in court reveals a moral criticism of Ida's behaviour.

In addition to these two clear examples of the relevance of moral appraisal to this case, there is another way this case illustrates this. To see this, we must say something more about what blame is, beyond that it is a form of moral criticism where we hold another person responsible, and where our attitude is often emotional. To blame someone is related to our expectations (Scanlon, 2008; Wallace, 1994). As Wallace writes, "... episodes of guilt, resentment, and indignation are caused by the belief that an expectation to which one holds a person has been breached" (Wallace, 1994, p. 12). Scanlon goes further, arguing that to blame someone is to modify one's relationship, and thus one's expectations, to that person (Scanlon, 2008).

The treatment of Ida does reveal something about the expectations of many of her carers. It reveals that her behaviour led them to think that their ordinary expectations of a young person did not apply in the case of Ida. One assumption is that Ida's behaviour led them to think that she was different and considerably more demanding than other children – so that what they expected from Ida, or what relationship they had with her, was importantly different from what they normally would expect from a child or young person. Moreover, I would claim that if this assumption is plausible, and Ida's carers expected very different things from her than from an average young person, then this is likely to affect what her carers believed appropriate treatment of Ida consisted in; that her behaviour made extensive use of coercion necessary, that they had reasons to fear her and perhaps act out of fear. These revised expectations can be interpreted as instances of blame.

That being said, it is not clear that Ida's carers attributed the actions to Ida in a sense that makes revised expectations appropriately interpreted as instances of blame. For example, Ida is sometimes described as a person who could become consumed by rage, something that indicates that she had no control over what she did on those occasions. If a carer thought Ida had little or no control over what she did, it seems misleading to interpret this as an instance of blame. However, my claim is simply that *some* adults may have attributed the actions to her in the relevant sense. I take this to be sufficient to establish that moral appraisal is present. Moreover,

if blaming someone is to modify one's expectations of that person, then this may lead to the blamer thinking that he or she has reasons – justifiable or not – for thinking that the person should be treated differently. Thus, to study blame is to study *one way* in which people may come to adopt revised and possibly inappropriate standards of what they owe to another person.¹¹⁸ If this is true, then to study the *extent* to which it is appropriate to modify our expectations when the person is a child, is extremely important, and clearly relevant to understand and critically assess how Ida was treated.

Before I go on to offer some critical remarks on the innocence view, I will make one final comment on the relevance of moral appraisal in child-rearing and in public care. Blaming responses lead to apologies, and possibly to forgiveness and redemption. This dynamic is a very central part of human interaction, in how we maintain and improve our relationships, and it is certainly no less frequent in childhood than in adulthood. Also, one might argue that this dynamic is particularly important in child protection and public care: Many children in public care have lived in unusual relationships, sometimes with unusual standards of treatment, neglect and abandonment, and a lack of trust in adults or in relationships more generally that make some of them likely to respond very differently to carers' responses. While some might argue that this fact counts in favour of suspending blame for these children and young people, I would argue that we cannot suspend this practice. Instead, we should question how to appropriately include children as persons with 'diminished responsibility'.

7.2. Against Innocence

The innocence view, in the sense I use the term, holds that it is inappropriate to blame children. Two claims support the view. First, it is inappropriate to blame children because they are not *blameworthy*: We cannot attribute the act to the child in the sense required for the child to be subject to moral criticism, because the child does not control what he or she does. The child can perform a wrong act, but it is inappropriate to blame the child for it. Second, to offer an alternative explanation of what might otherwise be interpreted as moral appraisal, the innocence

¹¹⁸ The County Governor, the institution that audits child protection services in Norway, raise a challenge to themselves and the child protection services in their report on Ida's case. In their report, they write that they "... have [...] tried to understand Ida and the way she tried to express her needs, though she was never understood. Therefore, we have chosen another approach to the use of coercion than simply to analyse each episode separately. In our view, to reduce the use of coercive measures, both child protection services, health services and the County Governor must increase the effort to understand the children's needs, their modes of expression and their language" (The County Governors in Hordaland, Rogaland and Troms, 2016, p. 8, my translation). This chapter can be read as an attempt to meet this challenge, although the perspective here is on the standards adults employ, on adults' attitudes and adults' responses. It concerns the meanings we express as part of how we treat the child. It concerns *our* language and expressions in relation to children.

view holds that appropriate responses are not, in fact, instances of blame, but educative or disciplining responses. In the sections that follow I argue that, while this might be true in some cases, it is certainly not true in all cases of adults' responses to children.

7.2.1. Control

Very small children are a frequently mentioned example of persons we suspend from practices of moral appraisal (Scanlon, 1998; Strawson, 2008). There are many things that could explain this, such as the fact that these children are vulnerable and that blame therefore might harm a child more than it would harm an adult. But that would only explain why our responses ought to be milder, not that they are different. The innocence view relies upon a stronger claim – that children do not *deserve* blame. The reason why we treat children differently and suspend them from moral appraisal is that children cannot be blameworthy.

We can only appropriately blame those who are responsible for their actions. A person is morally responsible for an act if it can be "... attributed to her in the way that is required in order for it to be a basis for (moral) appraisal" (Smith 2007: 467; cf. Scanlon 1998: 248). To attribute actions to a person in the relevant sense, it is commonly thought that the person must have the capacity for voluntary action. If not, then their actions are things that just happen, and not something that the person is in *control* of.¹¹⁹

Normally, we take the difference between children and adults to consist of children's vulnerability and dependency. That children lack developed cognitive and emotional capacities, that their knowledge of the world is limited and that their own goals and preferences are yet to fully develop are part of their vulnerability, and what makes them dependent upon adults (Ben-Porath, 2003). As Scanlon has noted, very small children are incapable of assessing reasons and governing their actions accordingly (Scanlon, 1998, p. 280). In addition, children do not fully understand the consequences of their actions. They understand neither the physical impact they can have on their environment nor the significance their actions have for others (Scanlon, 1998, p. 280). In short, we commonly assume that children (or at least very small children) lack the capacities required for voluntary choice. Thus, they cannot be blameworthy, since "... agents are only blameworthy for that over which they have (...) control" (Carlsson, 2015, p. 11).

Such a view is in some tension with the idea that children are capable of forming their own views, which is central to Archard and Skivenes' view that children should participate. If the child's views are the child's own, in the sense relevant for giving the child sufficient

¹¹⁹ To explain how voluntary action is possible is a deep philosophical challenge, but in this chapter I am merely concerned with how this criterion applies to children and young people. Thus, we are primarily interested in comparing what separates children from adults, not in the metaphysical question of whether free will is possible.

authority to participate, why should they only be included in such practices, and not others? Similarly, if we expect children to be capable of understanding and responding to reasons, as I have claimed, then do we not think that they are at least *in principle* able to understand moral reasons to an extent that makes it appropriate to criticise their actions in light of moral standards?

To answer this question, we need some grasp of the idea of control. We may define control as what Ronald Dworkin calls the ‘capacity’ sense of control:

..., an agent is in control when he is conscious of facing and making a decision, when no one else is making that decision through and for him, and when he has the capacities to form true beliefs about the world and to match his decisions to his normative personality – his settled desires, ambitions, and convictions (Dworkin, 2011, p. 228).¹²⁰

What this criterion does is simply to enable us to attribute the action to the agent *in the right way*, as something that is *his* or *hers*, something he or she does out of understanding the situation and not out of confusion, and something that reflects their plans or intentions. There are four main components of capacity control as defined by Dworkin. First, there is the idea of being conscious of making a choice. Second, there is the idea of having liberty to choose. Third, there is the epistemic or knowledge condition, and finally, there is the identification condition.

Concerning the first, we may ask whether people in general are conscious of making choices unless they are faced with a dilemma. Still, adults are held responsible even though they weren’t aware that they made a choice – it is sufficient to consider an action to belong to someone. For example, many emergencies are handled swiftly, not because the agent was aware of making a decision, but because he or she believed that there only was one option – the right one.¹²¹ It makes little sense to say that such an agent does not control their actions. Thus, this condition is not a necessary requirement for control.

The condition that one must have liberty to choose, on the other hand, seems more difficult to reject.¹²² It is difficult to see how this sets children apart from adults, though.

¹²⁰ This definition is contrasted to ‘causal’ control, where an agent has control if he or she causes an action (Dworkin, 2011, p. 228). The easiest way to grasp that idea is probably to conceive of actions as a way to spontaneously start a new chain of event, which would mean that the agent was the cause of this new chain of events and not simply a link in the progression of causal events determined by deterministic or probabilistic laws. So conceived, Dworkin uses this definition to avoid the pessimistic conclusion that determinism and free will – and thus responsibility – is incompatible. I do not address this issue here. See Dworkin 2011, ch. 10. Compare also Dworkin’s understanding with Beauchamp’s definition of voluntary action (Beauchamp, 2010).

¹²¹ How expert chess players can move, at least when playing multiple games simultaneously, is one such example (Benner, 1984).

¹²² That is, it is realistically satisfied if a person has two options, where at least one is morally permissible, and if we include forms of nudging or ‘libertarian paternalism’. These forms of manipulation interfere with a person’s exit options.

Although children lack the number of liberties adults are entitled to, they do have options, and can act and make decisions within the relationships they are part of, even if they are not recognised as self-determining agents as adults are. In addition, their range of liberties will gradually increase as they mature. This increases their opportunities to be responsible, although their opportunities to act responsibly will be on fewer and less important matters.

This leaves the identification and epistemic conditions. Identification concerns an agent's ability to conform his or her actions to what they hold valuable. This condition is what Schapiro argued that children *qua* developing agents do not satisfy. Dworkin writes that adults "... make decisions that give effect to their beliefs, desires and preferences" (Dworkin, 2011, p. 238). There is little reason to distinguish adults from children on these grounds, unless we believe that children do not make choices at all.¹²³ Even if we think that children lack a relatively *stable* self-conception, and thus lack a coherent set of goals and values they reflectively endorse, this is a matter of degree and not of essence. For example, children can show remarkable consistency in who and what they care about, and what they want and do reveal as much (Jaworska, 2007). Similarly, Dworkin claims that we have "...no reason to think that young children, who certainly make decisions, make them in any other way. We therefore have no basis for ascribing a different internal agency or cause of decision to them" (Dworkin, 2011, p. 238). If this is correct, then children can form their own views.

Dworkin concludes that the relevant difference between children and adult is that children have a defective capacity, judged by normal adult standards, to "... form correct beliefs about what the world is like and about the consequences, prudence and morality of their doing and having what they want" (*ibid.*). In other words, the problem is not that we cannot attribute decisions to children in the same way we attribute decisions to adults. The problem is that we believe children do not govern themselves *well*, that they are bad decision-makers.

This leads us to the epistemic condition. Dworkin is no doubt correct to point out that children are generally less knowledgeable about the world, inexperienced and more easily manipulated. The question, however, is what standard we hold them to. Dworkin's argument leads to the conclusion that children cannot be full moral agents because they lack the knowledge and understanding of the world we assume adults possess. But *being* responsible, as a matter of an agent's epistemic qualifications for action, is a relative quality, and it depends not only on general knowledge, but also specific knowledge and understanding. With respect to behaviour in the family, the foster home, the institution or the classroom, we do not generally

¹²³ Which is Tamar Schapiro's position (Schapiro, 1999).

assume that children are unfamiliar with the rules that apply unless they are new arrivals. In this respect, we can compare the child to a foreigner coming to a new country (cf. Ben-Porath, 2003). In other words, the fact that we do not hold children responsible as full moral agents does not exclude the possibility that they can be responsible within other contexts, and be *held* responsible within that context.

7.2.2. Moral Appraisal in Childhood

The second claim that supports the innocence view is that our responses to children are not blame at all, but educative or disciplining responses (e.g. Scanlon, 2008, pp. 156-157). The aim of telling a child that he or she did something wrong is to teach them values, to install the right habits and to prevent the child from making future mistakes.

One strength of this view is that it draws our attention to the question of how our responses to children affect the child's behaviour and development. Moreover, it connects very well with the idea that we, as carers, have an obligation help children to conform to social and moral standards, to learn how to control their emotions, and so on. There is extensive literature devoted to this, which has also had considerable impact on child protection interventions and measures in Norway (Ogden et. al., 2005). To prevent future behavioural problems, interventions focus on changes in parent-child interaction, where positive support, consistency in discipline, and avoiding harsh responses are central means to improve parent-child interplay. The interventions aim, in short, to teach parents or carers to improve the child's behaviour by targeting parent-child interaction and teaching parents to respond more appropriately to the child's behaviour (see e.g. Kazdin, 2005).

The point of discipline or educational responses is to promote a certain outcome. They are, in that respect, forward-looking responses. One central difference between such responses and blame is that blame is widely regarded as a backward-looking response.¹²⁴ Blame involves responding to past actions, so it is not a response that aims at another outcome than criticising the act itself. Another thing that sets educational responses apart from blame is that educational responses lack the characteristic force of blame. This force "... seems to reside not in the outward conduct itself but rather in the negative attitude that is expressed by this outward conduct" (Coates & Tognazzini, 2013, p. 30). In contrast, education or treatment (when effective) are often comparatively unemotional, or at least not usually accompanied by hostile emotions, as blame often is.

¹²⁴ Indeed, this is a common objection to utilitarian conceptions of blame. For a classic utilitarian forward-looking argument, see Smart (Smart, 1961). The claim directed against such views is that they do not account for all we do when we hold each other responsible (Wallace, 1994, p. 4).

The point here is not to undermine or object to the importance of seeing our responses to children as having a certain outcome, or that our responses ought to be assessed in light of their consequences. The point I wish to make concerns whether this is *all there is* to our responses to children.

A central idea in parental management training interventions gives us a way into discussing the appropriateness of blame in a way that is not exclusively concerned with promoting a certain outcome, but with backward-looking assessments of actions and behaviour. A principle in parental management training programmes or interventions is that a parent's or carer's responses to the child (or their way of disciplining the child) ought to be 'consistent'. There are, of course, many ways to understand 'consistency'. One way is to think of it as concerning the strength of responses, e.g. that responses are predictable, or that one does not overlook or ignore responding to some wrongdoings. Another way is to understand it as 'coordination' – that different carers respond similarly.

Another sense of 'consistent' is that it fits the nature of the wrongdoing; that we respond to the (dis)value of the action. That is, we do not always assess the merit of an act in light of whether doing it will promote good or bad consequences, but also because the action, in itself, seems wrong to us. If this is true, then it opens up the possibility that what we are doing when we respond to children is not only educational or disciplinary, but we are also responding with backward-looking value judgments.¹²⁵

If this is true, then our responses to children's wrong actions satisfy at least one aspect of blame – that they are evaluative. By extension, the same responses also positively affirm our valuing of moral standards of action or behaviour. Like blame, these responses involve valuing moral values (cf. Franklin, 2013). Combine these aspects of our responses with the idea defended above – that we can in fact attribute actions to the child, and we have support for the idea that does, in fact, often blame children. That is, if we in fact, make both moral judgments about their acts *and* attribute these acts to *them*, then it becomes increasingly difficult to see the difference between our responses to a child's and an adult's wrongdoings. This being said, it seems fair to assume that our responses to children are often motivated by educative aims.

¹²⁵ Irrespective of how we ultimately ground moral judgments of rightness or wrongness (for example, whether actions can be intrinsically right or right if they contribute to some desirable outcome), our responses to the moral quality of actions tend, in practice, to be immediate (Haidt, 2001). Of course, this raises questions of whether we *ought to* make such value judgments. It might be, for example, that we should do this if it has desirable consequences. But while we might argue that this is what, ultimately, explains why we have moral reasons to make backwards-looking judgments, it does not explain the nature of these judgments, especially not if the justification for the judgments we in fact make are post-hoc, as Haidt claims.

Conversely, if we look at the importance of praise in childhood, it seems likely that these responses also are more than mere educative ‘enforcements’, aimed at rewarding good behaviour and thus promoting desirable habits. While it seems problematic to blame a child, a parent is encouraged to be proud of his or her child, and is usually capable of clearly distinguishing between genuine pride and forms of support that have the aim of promoting desirable behaviour or rewarding the child. Positive appraisal is clearly important for how adults and carers respond to children.

In addition, moral appraisal is an integrated part of childhood. This is perhaps most noticeable if we look at how children treat each other. Children learn to assess their own actions and the actions and character of others early on. Ostracism, accusations of guilt, slander and gossip, as well as outburst of anger, hostility and bullying are frequent among school-age children (Graham & Juvonen, 1998). Both the disregard of others’ well-being that we find among children and the intensity of children’s emotional responses and sanctions suggest that there is a high frequency of blaming activity. Also, many responses of these kinds are backed up by moral criticism of peers. Thus, at the very least, we have reason to believe that moral appraisal is a very important part of children’s lives, at least from a certain age. This leads us to what moral appraisal is.

7.3. The Nature of Moral Appraisal

A number of philosophers have presented accounts of the nature and norms of moral appraisal (or blame, to be specific) in recent years. This being said, none of these accounts are authoritative, and all are somewhat controversial. Moreover, most accounts are, compared with how we ordinarily understand blame and praise, at least slightly revisionary (Scanlon, 2013, pp. 84-85).

Even if there is no authoritative interpretation of the nature of blame, recent contributions are usually heavily indebted to Peter Strawson’s account of blame as reactive attitudes, i.e. as feelings of e.g. guilt, resentment or indignation. The account I develop in this part is a modification of Scanlon’s theory of blame, an account that is, broadly speaking, Strawsonian. My account replies to some of the criticism that Scanlon has received. The result is an interpretation of blame that is compatible with the idea that children can be targets of blame and praise and that explains why we tend to think that our responses to children should be different.

This part of the chapter concerns *blame* and not *blameworthiness*. We have already made ourselves familiar with the notion of blameworthiness in section 7.2.1, where a blameworthy

person is understood as someone who has done something morally wrong, and where the wrong action can be attributed to the person in a way that makes him or her an appropriate target for moral criticism (cf. Smith, 2007, p. 476). Blame and blameworthiness can be separately analysed. In this part of the chapter, my primary interest is to describe what type of *response* blame is, and what *function* this response has.¹²⁶ Let me briefly mention some conditions a plausible interpretation of blame should satisfy.

A plausible interpretation of blame should incorporate or account for criteria that concern the phenomenology of blame (cf. Scanlon, 2008, 2013). First, blame is a form of negative evaluation of a person's action or character, or both (Kelly, 2013). In other words, it is a form of moral criticism. Second, this evaluative aspect implies that blame is a response to a violation of norms that govern interaction. This includes moral norms as well as norms that govern a particular relationship, like friendship (Scanlon, 2008; A. Smith, 2013). That being said, a third feature of blame is that it can be held in private – we do not need to express blame to the culprit in order to blame him or her (Coates & Tognazzini, 2013). A fourth point is that blame has a certain force or authority, so it is often painful to be the target of blame and it is often something neither the culprit nor the blamer can easily ignore. A fifth and related point is that blaming someone is very often an emotional experience. In some accounts blame is primarily associated with hostile emotions, such as indignation or resentment (Bell, 2013; Wallace, 1994), but others include sadness and disappointment (Kelly, 2013) or indifference (Strawson, 2008). Finally, even if blame can be held in private, it has communicative elements. Blame is associated with an expectation or requirement that the target of blame makes amends or apologises (Bell, 2013; A. Smith, 2013). In what follows, I will argue that a modified version of Scanlon's interpretation of blame can account for these characteristics.

7.3.1. Scanlon's Relationship-Based Account

Scanlon's account of blame builds on Strawson's idea of grounding blame in relationships of mutual recognition and reactive attitudes (Scanlon, 2008, 2013). Strawson introduced reactive attitudes as descriptions of the emotional responses we have to each other's morally good or bad conduct in our everyday relationships (Strawson, 2008). Our relationships are the basis for such sentiments. These sentiments express

...how much we actually mind, how much it matters to us, whether the actions of other people – and particularly *some* other people – reflect attitudes towards us of good will,

¹²⁶ Cf. Coates and Tognazzini's distinction between conative and functional explanations of blame (Coates & Tognazzini, 2013). The standing account below combines these types of explanations.

affection, or esteem on the one hand or contempt, indifference, or malevolence on the other (Strawson, 2008, p. 5, emphasis in original).

Thus, our responses to each other's conduct reveal how much these relationships and other people's intentions matter to us. In other words, these sentiments – the reactive attitudes – express, on the one hand, that we place high value on our relationships with others and that, on the other hand, this makes the *intentions and attitudes* of others very important to us. The reactive attitudes of guilt, indignation, resentment, and so on, are responses to other's *intentions* as this is expressed by their actions. To illustrate, Strawson uses the example of someone accidentally stepping on his hand compared with someone who steps on his hand with the malevolent intent of causing him an injury (Strawson, 2008, p. 6). Both of these events may cause him the same pain, but as he says, "... I shall generally feel in the second case a kind of degree of resentment that I shall not feel in the first" (Strawson, 2008, p. 6).

On this account blame is an *emotional* response to another person's *intentions and attitudes*. Since we expect different people to hold different attitudes towards us (cf. Wallace, 1994), our emotional responses to different people will vary in accordance with the nature of the relationship and how important we think the relationship is. Blame and praise are thus essential features of human interaction and relationships.

Like Strawson, Scanlon's account of blame involves responding to people's actions and the intentions and attitudes other people's actions (or one's own) express. Unlike Strawson, he does not emphasise the emotional aspect of blame (Scanlon, 2013, p. 89), which means that his idea of blame may seem 'dispassionate' to some (Wallace, 2011). Instead, his emphasis is on the "... expectations, intentions, and other attitudes that constitutes [our] relationships" (Scanlon, 2008, p. 128). In Scanlon's own words,

... to claim that a person is *blameworthy* for an action is to claim that the action shows something about the agent's attitudes toward others that impairs the relations that others can have with him or her. To *blame* a person is to judge him or her to be blameworthy and to take your relationship with him or her to be modified in a way that this judgment of impaired relations holds to be appropriate. (Scanlon, 2008, pp. 128-129, italics in original)

Before I continue to outline Scanlon's idea of blame, one might ask, why does Scanlon seem to downplay the significance of emotions? Are not the emotions Strawson identify always present when we blame someone, and therefore essential to explaining the nature of blame? Scanlon's response to this is that emotions vary, and while he does not discount emotions altogether, his view can explain blame in cases where a person has little or no emotional response, but still changes his intentions about the relationship. For our purposes here, this

change of emphasis is significant: It allows us to think that a parent or carer's change in attitudes in relation to the child might be instances of blame, even if the emotions that we ordinarily take to constitute blame, are not present.¹²⁷

Instead of considering our emotional responses, such considerations lead Scanlon to examine how blame affects our relationships. Attitudes, expectations and dispositions are constitutive of our relationships and how we relate to each other, and blame involves a modification of these attitudes and expectations (sometimes without feeling anger or resentment). Our relationships with others are not only constituted by intentions and attitudes about *behaviour*. They also include "... intentions and expectations about the *feelings* that the parties have for one another, and the *considerations they are disposed to respond to and see as reasons*" (Scanlon, 2008, pp. 131-132, my emphases).

To blame someone is to modify these attitudes, expectations and dispositions. For example, in the case of Ida mentioned in section 7.1., Ida's caseworker's claim that Ida had "misused the trust she had been given", reveals that she did expect Ida to adapt to the first institution she was placed in, but had modified that expectation. In that way, her relationship to Ida had changed.

Exactly how a person's attitudes, dispositions and expectations are modified, depends on the relationship and the act performed. Scanlon has all kinds of relationships in mind, ranging from intimate relationships like families and friendships to the moral relationships we have with all other moral agents (Scanlon, 2008, pp. 131-139; 139-152).¹²⁸ These relationships are constituted by different expectations. His account can therefore explain how blaming responses can vary in accordance with the nature of an act, and the nature of the ground relationship. Again, the example with the caseworker and Ida might be used to illustrate the point. For someone who had just met Ida, her escaping from the institution and finding her way to the drug scene in Bergen might not really change any expectations at all. If it did, the modifications would likely have been small. With the caseworker, however, the relationship with Ida might have been more significant, she may have been personally insulted by the fact that Ida used what she expected to be a somewhat trusting relationship to escape.¹²⁹

¹²⁷ From Scanlon's viewpoint, a more important reason for modifying Strawson's account is that Strawson narrows down blaming responses to responses to intentions. This fails to account for the fact that we tend to blame people both for their intentions and for the outcome of their actions. Bad luck, such as when a negligent driver runs over a kid, adds to our blaming responses, even if there is no difference between the attitudes of this driver and someone who did not injure someone (Scanlon, 2008, p. 126).

¹²⁸ His paradigm example is friendship, however.

¹²⁹ There is nothing that suggests that the caseworker had such attitudes, so this way of using the example is merely meant to explain the point of how a relationship might matter to the blaming response.

According to Scanlon, the content of blame depends on the *meaning* an act has for the person who was (or felt) wronged (Scanlon, 2008, p. 145).¹³⁰ Scanlon introduces this distinction to explain how blame relies on the meaning of an act in a way that the justifiability of an act does not. Doing something permissible with a malevolent intent does not, in general, make that action impermissible, but it gives us reason to blame the person. The former concerns the significance of an act for someone, and is explained by the type of expectations, attitudes and dispositions a person has towards another, while the justifiability of an act concerns the reasons that count in favour of acting in a certain way. In chapter 2, this distinction was employed to explain that promoting the child's well-being is different from expressing care. We also encountered this distinction when we discussed the significance of choice and why foster parents should be able to voluntarily enter a contract. In contrast to being forced into it, as in the Lottery Case, to freely enter a relationship transforms the meaning of the relationship even if it has no impact on the question of whether it would be impermissible to terminate the relationship.

According to Scanlon, blame concerns the meaning of a person's actions. To illustrate his point, consider the following example: Think of a friend you hold dear, call him the Dutiful Friend. One day this friend reveals that all the kind acts he has done on your behalf, all sympathy he showed when you faced difficulties, etc., was something he *only* did out of duty. In other words, his observance of the obligations of friendship was impeccable, but there was little or no affection. Scanlon would argue that there is something wrong with this person's notion of friendship, and it is appropriate to blame him for how he acted even if it is hard to say that his actions were wrong. The reason is that his confession makes our own affection seem unwarranted, insofar as we had the expectation of a reciprocal relationship. In contrast, if our relationship with the person was merely with another member of the moral relationship, and where we only had reason to expect him to honour his ordinary moral obligations, we would not have reason to blame him.

The modification of our expectations that occur when we blame someone, or see an action as having a certain meaning, affects the meaning the relationship itself has for us. Thus, while I, who do not know the Dutiful Friend, might think that he lived up to my expectations and his disposition toward us did nothing to the relationship, a friend would modify his expectations of

¹³⁰ Scanlon is not the only one to note that blame is not only about whether we have violated our obligations. Moral appraisal is, as many observe, only fully intelligible on an account of morality that includes more than deontic norms. It includes what Wallace calls the "expressive" dimension of morality as well – or the attitudes our conduct reveals (Wallace, 2011, p. 357).

him. The relationship and the Dutiful Friend's actions would come to have a different meaning for the friend. This may be something the friend keeps to himself, but it might also affect the friend's actions. For example, it might lead the friend to consider the Dutiful Friend's sympathetic words or expressions with some suspicion, or lead the friend to not confide in him in the same way.

If we extend this idea to the carer-child relationship, the significance of this interpretation of blame is clear. A child who had reason to believe that a carer only 'acted out of duty' and never actually acted from the motivations that characterise the 'ideal' carer could have reason to blame that person, even if the carer did nothing wrong. It reveals something about the significance the relationship has for the carer, and this fact, if it is noticed by the child, will be likely to impair the relationship.

In this way, we can see that the dimension of *meaning* is incredibly important in public care and in relationships more generally. Moreover, we can see the potentially destructive force that blaming can have on the, often fragile, relationships in public care. Irrespective of whether the target of blame is the adult or the child, these relationships face a considerable obstacle when someone blames the other for something. Moreover, it seems that these responses are, to the extent that the relationship is significant, unavoidable. That is, if an adult does not try to promote a caring relationship and thereby develop expectations that characterise the carer, then the child will have reasons to blame them if the child values the relationship. Additionally, if the adult develops the attitudes, expectations and dispositions of the carer, then it is difficult to see how he or she could not occasionally blame the child for wrongdoings or disappointments (that are arguably more frequent in child protection than elsewhere). This illustrates how central moral appraisal is to relationship dynamics, and how important it is to respond appropriately.

7.3.2. Objections to Scanlon's Account

Does Scanlon's account provide us with an understanding of blame that satisfies the aspects of blame outlined in the introduction to this part of the chapter? The account clearly satisfies the first three elements. Blame, on this account is a form of negative evaluation; it varies in accordance with our expectations – which are based on what we expect from the individual relationship, and as modification of our expectations, it is clearly possible to keep one's blaming attitudes to oneself. This is true even if modifying one's attitudes is likely to affect one's behaviour.

Whether Scanlon's theory is a good description of the characteristic force of blame is debatable. Wallace, for example, claims Scanlon leaves "... the blame out of blame" (Wallace,

2011, p. 355). Similarly, Wolf claims that Scanlon reduces blame to mere affectless adjustments of expectations, and thus leaves out the essential connection to anger, which is central in everyday blaming responses (Wolf, 2011). We may note two points in Scanlon's favour. First, the fact that it is possible to dispassionately modify one's attitudes with respect to another does not necessarily rob blame of any force, it simply introduces more variability. Second, Scanlon's account is similar to Strawsonian reactive attitudes in that the normative force of blame comes from the reasons we have to be interested in reciprocal relationships. These reasons, to seek affection, trust, comfort or acknowledgement, are very strong reasons. It because such reasons are strong that we have strong emotional responses to acts that express disregard for the value of our relationships. In some cases, we might even have sufficient reason to terminate a friendship. That is a very harsh response. And even in the odd case that this is done and the blamer does not feel any particularly strong emotional responses, it still seems appropriate to describe the response as blame.

So, to modify one's expectations of another person can be very forceful. My worry is that it is too strong. Consider intimate relationships like families. In many families blaming occurs frequently, yet it does not always seem to be accompanied by a conscious judgment of modified attitudes or expectations (Wolf, 2011). It seems that if we always modified our expectations in our relations to our children or spouses, and that this impaired our relationships, then these relationships would be more fragile than they usually are.¹³¹

Susan Wolf suggests that a Scanlonian could reply that such outbursts are *temporary* impairments, indicating that something must be done, habits changed, etc. (Wolf, 2011, p. 336). However, Wolf does not find this modification of Scanlon's account convincing. She thinks that it is odd to think that we assess our relationships in such a moment-to-moment way. I believe, in contrast, that Wolf's own suggestion has merits. Like Wolf, I do not think we assess our relationships in a moment-to-moment way. However, the fact that we calm down does not always mean that we have stopped blaming. We often forget what we think when we are angry, for example, but we are likely to revisit such thoughts in later outbursts unless the culprit has changed or tried to change his or her behaviour, asked forgiveness or made some other

¹³¹ Scanlon is aware of this problem in the case of parent-child relationships. This relation is "quite robust and unconditional" and "less easily undermined than friendship and some other relations" (Scanlon, 2008, p. 172). This does not exclude milder forms of impairments on the relationship that are relevant to the parties' attitudes and expectations. A parent may lose trust in his son if the son recklessly bumps the family's car, but still be obligated to lend the car to his son if the son needs it to get to work. In such a case parental obligations are intact but the relationship is impaired (Scanlon, 2008, p. 173). While I believe that Scanlon is correct about this, *carer-child* relationships are not *necessarily* as robust as parent-child relationships usually are, even if the grounds of the carer's obligations are the same as for a parent.

appropriate effort. Thus, it is possible for a Scanlonian to explain such temporary outbursts as being based on more permanent modifications of one's attitudes with respect to another person.

Angela Smith has also raised important objections to Scanlon's account. First, she points out that Scanlon's criterion of appropriateness is too indeterminate (Smith, 2013, pp. 38-39). According to Smith, to interpret blame as impairments or modifications on relationships leaves out exactly what type of modification we are talking about. Smith gives the example of a mother whose son is justly convicted of murder. The mother's modification is one of expecting her son to need more affection and care, as other people are likely to see him as a monster (Smith, 2013, p. 38). She is likely to be very sorry that her son did something so horrible, and is likely to feel profound sadness. Thus, she modifies her expectations and emotions toward him, but this is not an instance of blaming.¹³² Therefore, Smith argues that we need an account that can help us separate blame from attitudes like pity or disappointment (Smith, 2013, p. 39).

Another objection Smith puts forward is that Scanlon's account of blaming overlooks the communicative element in blame (cf. the fourth criterion above). As we have seen, the basis for blame in both Strawson's and Scanlon's versions is intersubjective relationships. Smith, however, claims that Scanlonian blaming itself is a wholly private affair. While she agrees that blame can be held in private and is not necessarily communicated, there is a central communicative element in it (Smith, 2013, p. 39). On her view, blame should be seen as a sort of protest that seeks a certain response, for example in the form of an apology or an admission of fault.

Smith is not committed to the view that blame is always expressed, and that it is communicative in the sense of speech acts. Her view is rather that blameworthy actions imply a claim, a claim that the act and that type of behaviour is acceptable. To blame someone is to *protest* to that claim (A. Smith, 2013, pp. 42-43), and to invite "... the other party of the relationship to take steps to repair (or, more hopefully, to heed off) that damage" (A. Smith, 2013, p. 40). For Scanlon, she claims, blame comes without an RSVP, or is a "...wholly one-

¹³² I am not so sure that Smith's example is the best to illustrate her point, although I believe her objection is important: Every modification of a relationship cannot be an instance of blaming, even though the reason for the modification is based in moral blameworthiness. In this case, however, it does not seem that the mother responds to the son's blameworthy action. She is carrying out paternal obligations. Her sadness is more akin to blaming than the modification Smith describes is, and this is a modification that could lead to a different relationship – one characterised by disappointment instead of pride, for example. This, I believe, should lead us to hesitate in accepting the *protest* theory Smith advances. There is blame involved here, but where the sanctioning is significantly reduced because of the conditions of appropriate blame. The mother's standing – the fact that she is mother of a son in need – and procedural issues concerning the obligations of parenthood – make disgust or deep resentment, as well as ending the relationship inappropriate.

sided affair” (Ibid.).¹³³ Drawing on that point, Smith also claims that an adequate account of blame must explain how it is related to a response by the offended, or how to account for the relation between one’s conception of blame and apology. It seems that “...apology is the uniquely appropriate response to justified blame, and an adequate account on blame should explain why that is” (A. Smith, 2013, p. 46).¹³⁴

To conceive of blame as a protest to a claim explains both of these aspects of blame. Therefore, Smith proposes to modify Scanlon’s interpretation, and add protest as an essential component of blame. Thus, to blame someone is to judge that he or she is blameworthy and to “... modify one’s own attitudes, intentions and expectations toward that person as a way of *protesting* (i.e., registering and challenging) the moral claim implicit in her conduct ...” (A. Smith, 2013, p. 43). Such protest implicitly seeks “... some kind of moral acknowledgement on the part of the blameworthy agent and/or on the part of others in the moral community” (Ibid.).

Perhaps most serious is her charge that Scanlonian blame has an unclear connection to responsibility. Seeing blame as a response to a claim – as a protest – connects blame *only* to “... those individuals we regard as morally responsible for their conduct” (Smith, 2013: 46). By interpreting blame only as modified attitudes that impair a relationship, Scanlon severs the connection between blame and responsibility (cf. Scanlon, 2008, pp. 165-166; A. Smith, 2013, p. 47n9).¹³⁵ He offers, as others have also remarked, an account of blame where moral capacity is not required. This is done to explain the variability of blaming responses in cases where factors outside a person’s control can affect blame, such as when a child’s behaviour affects the relationship in a way that leads the adult to modify his or her expectations of the child. For example, if a kindergarten teacher discovers that a boy bullies other children, and decides to

¹³³ I have some doubts about the fairness of this objection, although I think Scanlon is difficult to understand on this issue. He might be distinguishing being in a relationship with someone, which cannot be fully one-sided, from the idea that *blaming* is inherently communicative: To *in fact* modify one’s expectations of a relationship, it seems, cannot *not* imply the relationship, so it seems strange to see it as wholly one-sided. This is true even if blaming in private is a coherent idea. A judgment on blameworthiness, in contrast, is something Scanlon thinks lacks a second-person component. It does not imply me and you, so to speak, but is possible from a completely detached view. That is not possible in the case of blame (Scanlon, 2008, p. 145; 227n118). But as Smith points out, Scanlon rejects the idea that blaming is a form of communication: “... blame itself, (...), is not, even incipiently, a form of communication” (Scanlon, 2008, pp. 233-234n254). In this, I take Scanlon to reject the view that blame, as a form of communication, also raises questions of justifiability. This would be appropriate if to blame someone was a matter of obligation, which it is not. Blaming is no sanction, or does not interfere in another person’s life in ways that raises a requirement of justification – even though it may be painful to be blamed. In short, I am not sure that Scanlon thinks blame is one-sided, although he rejects the view that it is communicative.

¹³⁴ Smith is therefore closer to Scanlon’s account in *What We Owe to Each Other* (Scanlon, 1998). There, Scanlon described moral criticism as attitudes we “... can in principle be called on to defend (...) and to modify them if an appropriate defence cannot be provided” (Scanlon, 1998, p. 272).

¹³⁵ Scanlon explicitly writes that if you find that you can no longer trust your dog, then it is a form of blame (Scanlon, 2008, p. 166).

monitor the boy so that the teacher can intervene when the boy starts misbehaving. This might be interesting news for those of us who, like me, are interested in the place of children or other less competent agents in an account of blame. The price, however, may be that we give an account of blame that is unrelated to blameworthiness (Carlsson, 2015; Watson, 2011).¹³⁶ In contrast, Smith takes her modified Scanlonian view to presuppose that the transgressor *qua* claimant possesses moral capacity. Without presupposing moral capacity, it is implausible to interpret the person's action as a claim, which in turn makes a protest an appropriate response.

If Smith is correct, then perhaps Scanlon's idea of blame should be modified in the way she suggests. But if Scanlon is correct, then it is possible to make sense of blame without relying on moral competence (Watson, 2011, p. 308). It is a judgment about the relationship and it does not necessarily imply responsibility. In my view, there are several problems with Smith's account. While I agree that not all modifications of attitudes in response to blameworthy actions constitute blame¹³⁷ and that an account of blame should explain the appropriateness of apology, I do not think that her protest-account of blame is the best solution.

First, although I do agree that some level of responsibility or control matter for appropriate blame, I believe there are reasons to be sceptical of Smith's notion of claims and the connection to responsibility. One might consider it a strength that Scanlon's account can help us explain why we might consider it appropriate to appraise children without presupposing that children have the moral capacities of (ideally well-functioning) adults.¹³⁸ More importantly, as I argued in the last chapter, the fact that someone's act or expression implies a claim does not necessarily imply that the claimant has full moral standing. In this way, Smith's own connection to moral responsibility may be less clear than she assumes.

¹³⁶ Since blameworthiness relies upon the condition of 'control' outlined in section 7.2.1., I do not think this is a problem for my account below. Blaming responses themselves are not necessarily backed up by a judgment that the person was responsible, though. It is a condition for appropriate blame, but blame is clearly possible even if the target of blame is not blameworthy.

¹³⁷ Typical examples could be cases where the victim responds to other reasons than what is blameworthy about the person's conduct. If I am secretly in love with a friend and have deceived her by pretending that I had no ulterior motive, and I reveal this sometime after she had recovered after a bad breakup, she may blame me for not being a friend to her on 'proper terms' – but she may also come to hold other, more positive attitudes (if I am lucky). Sadness combined with increased sympathy, like in Smith's example of the mother of the murderer is another example.

¹³⁸ Those eager to defend the control condition of blameworthiness will no doubt protest against this suggestion: "Scanlon's account of blame and blameworthiness ... seems unable to make it intelligible why the problem of free will has struck and continues to strike philosophers and lay people alike as a deep and important philosophical problem" (Carlsson, 2015, p. 31). To this one might respond, as Scanlon himself does, that our notions of responsibility and blame form an inconsistent set. As illustrated above, Utilitarians who endorse a sanction model of blame are also likely to believe that privately held reactive attitudes are part of the same phenomenon, without thereby necessarily having a coherent account of how these aspects of blame fit together. Thus, any account, Scanlon says, will be revisionary to some degree (Scanlon, 2013, p. 84). A revisionary account might plausibly lessen the demands of control if it is a reasonable fit with other aspects of moral appraisal.

Additionally, it appears that to protest presupposes a level of self-respect that blamers lack in many cases. The example I have in mind is self-blame. For example, victims of child abuse are prone to feel self-blame. Self-blame involves the victim feeling responsible for the abuse happening and (or) not ending sooner because of a flaw in their character or behaviour (Coffey, Leitenberg, Henning, Turner, & Bennett, 1996). In Scanlon's theory, when self-blame "... is about one's own relations with others, specifically about the attitudes they have reason to hold towards one, this gives rise to special concern, regret, and a desire to change things" (Scanlon, 2008: 154). Instead of accusing another of misconduct and changing one's attitudes or dispositions to that person, one must instead "... endorse the criticism and accusations made against oneself by others" (Ibid.). Scanlon's account is a reasonable interpretation of self-blame, including those cases where the agent is not blameworthy. The question is how Smith's notion of protest works.

According to Smith's protest-based account we can possibly interpret regret as a type of self-protest. The type of self-blame we sometimes find in abuse victims is different, however. If what one blames oneself for is repeated or habitual victimisation, then there is no single act one can be redeemed for. Rather than having done something wrong, the child *is* bad. This 'characterological' self-blame is also associated with social anxiety, loneliness and passivity – in short, low self-esteem (Graham & Juvonen, 1998). Unlike protest and the desire to change things, these features of victimisation point to withdrawal or a low sense of self-worth. Rather than being protests against unacceptable behaviour, victims who blame themselves may be convinced that their standing is nearly permanently impaired. Thus, both the meaning of such characterological self-blame and the experiential impact it has on victims suggests that it has little to do with protesting.

7.3.3. Blame as Impaired Standing

My suggestion is that Scanlon has got it right and that blame in general as well as self-blame of this characterological kind are instances of impaired relationships. I agree with Smith in holding that Scanlon's account downplays the communicative functions of blame. This function should somehow be related to the particular type of response blame is.

What should be made more explicit in Scanlon's story is, I think, how blame is a response that impairs the *standing* of the target. As I will illustrate below, this addresses Smith's concerns about the indeterminacy of Scanlon's account of blame, about the communicative nature of blame and how apology is an appropriate response. Moreover, I believe increased emphasis on standing is an improvement compared with Smith's protest

based account. As noted, I take the concept of blame to be wider than Smith's notion of protest admits. Being disposed to care about one's standing is compatible with both hostile responses like anger or Smithian protest and sadness and disappointment, so blame can be attitudes of either kind. Also, standing is a normatively more basic notion than protest.

As we recall from chapter 5, standing refers to one's social position, as a member of a society, community, profession, or as a friend and family member.¹³⁹ Membership of all of these relationships entails obligations. There is nothing odd about thinking that we have a standing with strangers, although it can be considered misleading to claim that we have relationships with them.

Standing is akin to moral status, but not the same.¹⁴⁰ A person's status cannot be affected by what the person does, or by what others do to the person. No one can alter your moral status by doing something impermissible to you. Thus, blaming cannot affect the target's status either. The reason is simple: Blame does not target a person's inherent properties, but his or her actions and character. While these certainly supervene on the person's inherent properties, they are also variable, affected by the person's environment and a product of past actions and choices. While blame cannot affect the target's moral status, it does change the target's standing. Standing is socially conditioned and contextual, status is not.

Standing is, as we have seen, related to obligations or what it is permissible to do to someone. It also concerns the expressive dimension or *meaning* of one's position in relation to others. And the meaning of someone's actions is revisable. We can come to think of each other as less dependable, as irresponsible or untrustworthy. Or in the case of positive appraisal, we can come to think that a person has become more trustworthy, and so on. Thus, many of our efforts to gain recognition are struggles for improved standing.¹⁴¹ We can interpret the struggle

¹³⁹ This differs from the usage that is common in literature on blame. Generally, the idea of having a 'standing' (or jurisdiction, as I will call it) to blame is that the blamer is in position to hold the other person accountable. A tennis umpire, for example, has standing (or more precisely, authority) to make the calls in a tennis match. The audience have no jurisdiction to make calls, so if a spectator interferes in a match by shouting "out" during a serve, the point would have to be played again. Similarly, blame is subject to conditions of position or standing. Thus, some argue that you cannot blame someone who is dead, or that being a hypocrite disqualifies you from blaming (Cohen, 2006; T. Scanlon, 2008). Similarly, it would seem that if I did not care about my standing in the relationship with my parents, I would not be in position to blame them if they did the same.

¹⁴⁰ Scanlon uses the term 'standing' to refer to "... someone to whom justification is owed in his or her own right" (Scanlon, 1998: 164). This is connected to Scanlon's idea of morality of right and wrong as a domain encompassing those our principles for action must be justifiable *to* (pp. 179-180). In other words, it is a distinctively social or relational way of seeing morality.

¹⁴¹ Compare what Pettit refers to as the 'eyeball test': "... people should securely enjoy resources and protections to the point where they satisfy what we might call the eyeball test. They can look others in the eye without reason for the fear or deference that a power of interference might inspire; they can walk tall and assume the public status, objective and subjective, of being equal in this regard with the best" (Pettit, 2012, p. 84). Part of the suggestive force of Pettit's test (as well as his conception of non-domination), I think, is that it goes beyond what we are owed as a matter of individual rights, and also hints at what this means to us in our relations with others. While resources

for children's emancipation as an attempt to make children's general standing on a par with their status (or women's liberation, for that matter), for example.¹⁴²

On my view, to blame someone is to modify one's judgment of the target's standing based on the following three considerations:

- (1) *That one has a desire to at least preserve (or not lessen) one's standing in relation to others,*
- (2) *that the target has done something that impairs one's (or another person's) standing in the relationship, and*
- (3) *to modify one's attitudes, intentions and expectations of the target's standing with respect to that person in a way that one's judgment of the target's action holds to be appropriate*

Just as in Scanlon's and Strawsonian accounts, the basis for this idea of moral appraisal is interpersonal relationships, where these relationships are constituted by certain attitudes and expectations. The desire to at least preserve one's standing (1) is a general disposition, and not an attitude that concerns only moral appraisal. It is based on the idea that the person values some ground relationship, such as the moral relationship or a parent-child relationship. These are relationships where human beings have reasons to expect to be regarded, respectively, as an equal, or as being someone who matters in a special way (in the case of special relationships). Having a desire is stronger than having a reason, though. It refers to the idea that the relationship *actually* matters to some degree for the person, in the sense that he or she has a desire or operative reason to want to preserve or not lessen his or her standing. In other words, my claim is that we actually care about our standing in relation to others. I will not defend this assumption, but simply note that it is difficult to see how we can blame someone unless we have such a desire. However, it is possible to regard someone as blameworthy without having such a desire, although it seems plausible to assume that a judgment of blameworthiness rests upon the idea that people are generally disposed to care about their standing.

and protections are something we owe to all people in virtue of their status, this matters to people who are concerned about their standing.

¹⁴² Those who reject this comparison, like Onora O'Neill, reject it because the moral status of women and children are different (O'Neill, 1988). My claim is simply that they can be seen as the same type of struggles.

(2) is an alternative description of blameworthiness. It refers to the function some action has on the relationship; morally wrong actions or actions that violate the expectations of a relationship makes the victim 'smaller' in the moral relationship or another relationship (in part) governed by different expectations.¹⁴³ The idea of the victim's standing used in (2) combines Smith's idea that behaviour or actions express claims, and Scanlon's idea that blame impairs a relationship.

If we hold that someone is blameworthy, we make a judgement that where we believe it is appropriate to hold that the standing of the target is impaired. Blame itself is the *actual* modification of attitudes consistent with a judgment of blameworthiness. Thus, (3) is a judgment that is very similar to Scanlon's idea of impaired relationships, only highlighting the standing of the target of blame.

How is this modification of Scanlon's account an improvement? Smith's objection to Scanlon was that his idea of blame as impaired relationships was too indeterminate, insufficiently communicative, and incapable of explaining how blame is related to the target's responsibility and what it is that makes apology uniquely appropriate.

Regarding Smith's question of the relationship between blame and the target's responsibility, I have already addressed the conditions for *control* in section 7.2.1. A child (or a person) has control and can be the target of blame if his or her act satisfies Dworkin's conditions; that is, if the child satisfy the liberty condition, intentionality condition and epistemic condition. These conditions must be satisfied in order to attribute the act to the person. That being noted, I will leave appropriateness conditions and I return to those that apply to blaming children in part 7.4.

What about Smith's indeterminacy objection? Consider Smith's example with the mother whose son is justly convicted of murder. The mother considers him blameworthy, but also recognises that he will be vulnerable, possibly ostracised and thus in need of care, sympathy and attention. Smith's critique of Scanlon is that the mother believes her son is blameworthy and modifies her attitudes in a way appropriate to the relationship. But even if the mother's responses satisfy Scanlon's criteria for blame, it is still not plausible to claim that the mother blames her son for what he did. This is her argument for indeterminacy in Scanlon's account.

¹⁴³ It is only a defensible conception of blameworthiness if we include the idea that the act is also a violation of the normative ideal of a certain relationship. If, for example, my friend trusts me, and tells me that he plans to import a ton of cannabis, and I violate his trust by telling the police, I perform an act where I lower my friends standing in our relationship. Moreover, he may blame me for this violation of trust. However, I am not blameworthy for it, because to keep criminal secrets of this magnitude is not something we can reasonably require of friends. So immoral relationship standards do not set the standards to which impaired standing is measured.

According to Smith, Scanlon's criteria cannot help us determine when modified attitudes are instances of blame and when they are not. In contrast, in my account, if the mother does not modify her expectations of her son's standing – or come to expect less of him, it is not an instance of blame even if it is a modification of the relationship. That being said, I think Smith's example is unclear. It is plausible to believe that the mother blames her son, but that her parental obligations curtail her attitudes about his standing.

What about the communicative aspect of blame? If Smith is correct about her own case, then the son will only have reason to feel gratitude to his mother, but not ask for her forgiveness. Since I believe that she could also blame him in a curtailed way, it would appear to follow that it would be appropriate for the son to apologise to her.¹⁴⁴ How could the emphasis on standing explain this communicative aspect of blame?

The normative work here is provided by two claims. The first is the idea that one has a *desire* to care about one's standing. This disposition is social, and implies that satisfying this desire is dependent on others' responses. The second is the claim that blame impairs one's standing. Since blame involves modifying one's attitudes with respect to the offender's standing, such a judgment is communicative in Smith's sense. Together, these two features of blame provide a person with reasons (insofar as one has reason to care about the relationship) and motivation (insofar as one has a desire or takes the reasons to move one) to apologise, and thus redeem his or her standing.¹⁴⁵ Thus, if the offender cares about his or her own standing in the relationship, the offender can appropriately respond to blame either by disputing his or her blameworthiness or by apologising. Thus, blame is not a wholly one-sided affair on this account. It also explains the sense in which one seems to be redeemed by forgiveness, since to forgive is to acknowledge that the other person has standing after all.¹⁴⁶

This brings us to the problem of self-blame. The problem with Smith's protest-based account was that, in some cases of self-blame, it is implausible to interpret this as a protest to oneself. According to the modified Scanlonian account I have suggested, how would we explain

¹⁴⁴ Based on the fact that we often frame the need to apologise as a matter of obligations, one might object to framing the issue as a matter of appropriateness. We often claim that we *owe* someone an apology, and this is stronger than saying that I should apologise or that an apology would be appropriate. I do not think we are always obligated to apologise, however. There can be very strong reasons to do so, but I believe it is conditional upon the relationship. It is strongest in the cases where standing and status overlap, or when a wrongdoing can terminate a relationship or when one has clearly violated one's moral obligations.

¹⁴⁵ One could object that this reduces an apology to a matter of selfish desire satisfaction. I believe that is incorrect, however. The desire is contingent upon the fact that one values the relationship with the other person.

¹⁴⁶ Although it is clear that this account allows partial forgiveness, in which a person's standing is less than completely redeemed.

it?¹⁴⁷ Some studies reveal that abuse victims may experience considerable confusion about their own standing in relation to the abuser, and possibly to other people. It is usually very difficult for victims to understand why they were abused,¹⁴⁸ even though studies report that most of the participants expressed that they knew that what the perpetrator was doing was wrong (Foster & Hagedorn, 2014; Mossige, Jensen, Gulbrandsen, Reichelt, & Tjersland, 2005). Mossige et.al. note that, for the purposes of understanding what had happened and why they were abused, the children in most cases had little help from the perpetrator. What the children learned about the abuser's motives were concerns about secrecy. As they explain, "... This limits the children's possibilities for making moral evaluations and positioning themselves in relation to what is good or bad in a dialogue with the person who involved them in the sexual activity" (Mossige et.al., 2005: 398).

One possible explanation is that the child is not in a position to direct blame on the appropriate target, because the child is uncertain. Most philosophical theories discuss our moral behaviour from the point of view of those who fully possess moral capacities, and from this point of view it is not easy to grasp why someone should find it difficult to blame a guilty person or even blame oneself for what is clearly another's wrongdoing. For some, however, to blame someone is also an effort: it can require courage and a firm belief in the conviction that one's reason to blame is justifiable. I suspect that this is often true for children and others who feel smaller or believe they have a lower standing than others. Thus, abuse victims do not lack moral capacities, but in terms of courage, self-confidence or other virtues, they are temporarily impaired. Having this standing does not make one blind to moral facts, but it does make one feel worthless and prone to direct blame inward rather than towards its appropriate target.

Second, the idea that self-blame involves a judgment of modified standing can in part explain why victims hesitate to disclose the abuse to others. The studies cited here reveal that it took a long time for several of the victims to disclose what occurred. Part of the reasons for this concern fear of consequences for themselves as well as for the offender. But delayed disclosure was in part also based on reactive emotions like guilt or shame (Foster & Hagedorn, 2014: 546). One possible answer to this question, that has to do with a judgment of impaired standing, is that they see themselves as being complicit, and thus appropriate targets of blame.

¹⁴⁷ The empirical literature offers several explanations. Not all shed light on whether these are instances of blame or some other phenomenon, however. Some characterise this more as a case of confusion than illustrate why children blame themselves, as opposed to having some other attitude. For example, it has been noted that child sexual abuse can affect the victim's belief system, about what is appropriate and inappropriate behaviour (Filipas & Ullman, 2006).

¹⁴⁸ Consequently, it is difficult to know the exact reason for self-blame or what it means for the victim to blame himself or herself.

After all, abuse victims sometimes blame themselves for allowing abuse to go on (Coffey et al., 1996; Foster & Hagedorn, 2014). In philosophical literature on blame, the idea is that if you are complicit to a wrongdoing you cannot blame the other wrongdoer (Bell, 2013, pp. 276-277). This interpretation fits badly with the fact that some children feel self-blame *and* attribute the wrong act to the offender. However, it is not unreasonable to think that ‘collaborating’ in the sense of not disclosing abuse immediately reveals something bad about one’s character. If one’s judgment concerns one’s standing, then that would explain why one hesitates to report the abuse, because there might be a risk of confirmation (as well as a number of other painful consequences).

Finally, there is a supplying interpretation available, one that also tells us more about the nature of blame. Although victims who blame the wrongdoer blame the right target and impair that person's standing, this does not elevate *the victim's own* standing. The reason is simple: blame reduces one’s standing in a particular relationship, and one’s standing cannot immediately be improved by an additional impairment of the relationship. One’s standing can only be improved by an admission or an apology from the wrongdoer (in addition, as I will argue at the end of the chapter – through praise). This is, after all, the only firm confirmation one can get about what the violation *meant* – what significance the act and the relationship had *for the perpetrator*. This suggests that, without an apology, the wrongdoer can have a lasting influence on the moral meaning of abuse or other wrongdoings. In turn, this explains why some children are confused about the meaning of the act and about who they should blame. It also illustrates the possible negative aspects of intimate relationships on a person’s standing. The more intimate the ground relationship was, the more devastating is the impact of abuse.

7.4. Children and the Ethics of Blame

If being blamed could be as devastating for the child’s standing as I have suggested, we must know the conditions for appropriate blame. Should children be subject to moral appraisal? Will we not subject children to harmful impairments of relationships or self-esteem by blaming them? To address these worries, we must be clear on what the conditions for appropriate blame are. In the two sections below, I identify five conditions for how one can respond appropriately to a child. First, I concentrate on responses to unacceptable behaviour. Second, on responses to a child's praiseworthy actions.

7.4.1. Five Conditions of Appropriate Blame

In this section, I identify five conditions for appropriate blame. It is difficult to see how one can develop a normal relationship with someone without if moral appraisal is not part of how

members of the relationship relate to one another. However, when we subject a child to negative appraisal, we face several challenges. If blame has the function I have suggested, it could make the situation worse, for the following reasons. First, it is difficult to know how their blaming response will affect the target. Depending on the child's background, he or she may interpret it as completely unfair and thus revolt, the child may lose self-confidence and trust in the possibility of lasting relationships, or the child may not interpret the interaction as instances of moral appraisal at all. For example, he or she may misbehave to get attention, and see blaming responses as confirmation of success in their efforts. Should this happen, it could create a very unfortunate pattern of interaction.

Second, if blame is based on expectations connected to certain relationship *ideals* rather than actual relationships¹⁴⁹, there is the possibility that foster parents or staff *impose* an ideal on the child that the child is unequipped to live up to. The child may be neither familiar with the ideals of the fiduciary relationship nor want it. Moreover, it seems unreasonable, one might think, if staff or foster parents, who can exit a relationship whenever they want, can impose a fiduciary relationship on someone and then blame the other person for not living up to the expectations of this relationship. For reasons like these, a substitute carer may, on occasion, face the 'who are you to blame me?' –question. This question concerns whether a substitute carer is in an appropriate position to blame the child.

Third, there is also a question whether the positive features of blame will function properly when the relationship is unstable or insecure. If a relationship is unstable, the connection between blame, regret, apology and redemption may be difficult to achieve. The child (and substitute carers) may lack the trust required to apologise, for example. For these reasons, we may have reasonable doubts that the parties are in position to blame (or praise) each other.

In what follows below, I identify and briefly explain the basis for the following conditions for appropriate blaming responses. First, blame is only appropriate when the child is (1) *blameworthy* – or when blame is a response to a wrongness attributable to the child. The additional conditions concern the position of the blamer and the strength of the response. Accordingly, blame is only appropriate when the form and strength of the blaming response is (2) *consistent* with one's general and special obligations to care for and protect the child; when

¹⁴⁹ "The concept of a relationship is a normative concept specifying the conditions under which a particular relationship of this kind exists and the attitudes and intentions that parties to such a relationship ought, ideally, to have toward each other" (Scanlon, 2013, p. 86).

the response fits with the nature of an (3) *actual relationship*; when it is genuine or (4) *authentic*; and when it reflects the (5) *meaning* of the wrongdoing attributed to the target of blame.

Coates and Tognazzini distinguish between three types of appropriate conditions for blaming someone. These are blameworthiness, jurisdiction and procedure (Coates & Tognazzini, 2013, pp. 17-23). The first condition, *blameworthiness*, concerns whether the wrong act can be attributed to the wrongdoer. I discussed this in section 7.2.1. so I will not repeat it here, but simply note that appropriate blame depends on the condition that the act must be attributable to the child in the sense that he or she is either in control or should have understood that the act he or she did was wrong. *Jurisdiction* concerns whether the blamers have the standing or position required to blame the target, and *procedure* concerns the appropriateness of particular blaming responses.

To start with conditions that concern who has the standing to blame, I follow Macalester Bell in distinguishing four conditions (Bell, 2013). The conditions are *jurisdiction*, *contemporariness*, *non-hypocrisy* and *non-complicity*.¹⁵⁰ In contrast to Bell, however, I will argue that some of these conditions bears on the strength and type of blaming response rather than who is in position to blame. In other words, even if Bell discusses who has standing to blame, some of these conditions concern what Coates and Tognazzini refer to as *procedure*.

To exemplify Bell's conditions, I use the case of Ida. Bell's four conditions are the following. First, if Ida wrongs an employee at the institution, call him Peter, it is only appropriate for Peter to blame Ida if Peter has an identifiable stake in Ida's wrongdoing. A second criterion is that Ida and Peter must be contemporaries and inhabit the same moral community. A third criterion is that Peter has not engaged in similar wrongdoings in the past, or is a hypocrite. Finally, Peter must not be responsible for or complicit in Ida's wrongdoing (Bell, 2013, p. 264).

To start with the first condition, it seems evident that both parties will have an identifiable stake in the type of situations we are discussing (what Bell calls "jurisdiction"), so it clearly applies. The problem is, rather, that the child and carers will have unequal or asymmetric interests. The stakes are different. The child will in many cases have a strong interest in having a reciprocal relationship of mutual affection. The child *needs* attachment, and this need is not protected if one or several placements break down. In contrast, adults do not necessarily need

¹⁵⁰ Bell argues against what she calls the 'Standard view', which is that jurisdiction (she refers to it as 'standing') is a necessary condition for appropriately blaming someone. Her view is, in other words, that *anyone* can blame another in principle, since we are all members of the moral community.¹⁵⁰ Bell's objections do not target what we might call a weaker or *fittingness* view, where jurisdiction is a condition that bears on the strength and type of response of blame (cf. Bell, 2013, p. 267n8). I take this weaker view as a point of departure.

the child in the same way. Therefore, the asymmetry of the relationship makes expressions of impaired standing much worse for the child than for the adult. To protect the child, one could therefore consider suspending blame.

The appropriate response to a child or a young person like Ida, is not to suspend blaming attitudes, however. Instead, the appropriate response can be found by clarifying the standing from which blame is cast. First, we inhabit various roles in our dealings with children, and these roles are in part defined by obligations. For example, a foster parent is an authority and a caregiver, and someone the child risks losing. These features of the role or position a person has can sometimes make a blaming response stronger than intended. For this reason, the adult should ask how well his or her blaming responses fit with his or her obligations. This concerns the procedural conditions on blame. The obligations to care for the child and respect the child limits the strength of the adult's responses. In other words, the response must be *consistent* with the adult's obligations.

Secondly, the adult should clarify what relationship-standards he or she employs when the adult assesses the child's behaviour. The adult's expectations of the child can be unreasonable in at least two senses, and lead to inappropriate responses to the child. The adult can expect too much from *ideals*, or from the *person*. To expect too much from the child, for example by assuming that the child understands a situation like an adult would, is in conflict with the condition of blameworthiness, cf. section 7.2.1. What about unreasonable ideals?

In my view, violations of ideal expectations qualify as blame. That, however, does not make all such instances of blame appropriate. We may, for example, risk blaming the person from an unreasonable or unjustifiable standard. This leads us to the condition of *contemporariness*. This condition requires that both the blamer and the target inhabit the same moral community. In other words, the adult must be in an *actual* relationship with the child for blame to be appropriate.¹⁵¹ But, are a child and an adult both members of the same moral community?

This question can be broken down into two issues. First, we can ask the general question as to whether it is plausible to consider children as contemporaries in the moral community. After all, children are creatures who, by definition, lack full moral standing. However, a child's relationships to parents and peers are *moral* relationships, so the child and adults are contemporaries in that sense. Moreover, children are also members of the moral relationship, even though they are not members with full standing. Thus, children can be held responsible

¹⁵¹ For example, this condition prevents us from blaming people from ancient history, at least insofar as their conception of morality was different from ours.

according to their standing in these relationships. Also, a child can clearly blame an adult. For example, a child could blame the parent for neglect, which is clearly both a violation of moral and parental obligations. The fact that the child is not a full participant in the moral relationship does not imply that they are not a member.

This leads to the second issue, on whether the contemporariness condition is applicable in cases like Ida's, where those who blame her haven't yet formed a relationship with her, or where the relationship is almost purely professional.¹⁵² These questions concern whether an ideal relationship standard could apply to children in general, as well as to an individual child protection case where the parties do not yet know one another. In other words, is it appropriate to blame a child or young person like Ida for failing to live up to ideals that they are unfamiliar with?

As noted in the section 7.2.1. on control (and blameworthiness), we hold a child to expectations that reflect the *actual* relationships he or she is a member of. But children are not full members of the moral relationship, what one normally expects from full members of the moral relationship does not apply. Moreover, many children in public care have been brought up in relationships that are significantly different from what we expect from parent-child relationships. Children in foster care often come from homes where parents have failed to live up to moral requirements, and one can therefore expect that the child may have a distorted view on how normal relationships should function. If this is true, it seems odd to consider the child as a moral contemporary or a participant in a relationship. It would also seem that when the child does something wrong, then the proper response is to endure it and push the child in the right direction. This is education or guidance and not appraisal, however. In other words, the condition that the blaming response must reflect or be consistent with an *actual* relationship would seem to rule out blame.

A possible response to this problem is to claim that our relationship *ideals* govern praise and blame.¹⁵³ We can argue that even if individual relationships rarely mirror the ideal, we can still appraise each other in light of reasonable conceptions of relationships like friendship, marriage or parent and child. To illustrate we can return to the example of the Dutiful Friend, who is blamed for not being a good friend. But the Dutiful Friend is not blamed for not living

¹⁵² A related question on contemporariness concerns whether children of different ethnic or cultural origin inhabit the same moral community as professionals in the child protection system. As Berg and Paulsen point out, children and parents of different ethnic or cultural origin may have a different "frame of reference" than the professionals, which is considered a challenge (Berg & Paulsen, 2015, p. 154). The challenge in these cases is to communicate why interventions are justified and to convince parents and child to cooperate.

¹⁵³ This creates the problem that it is ideals and not the actual relationships that carry normative weight.

up to the actual relationship. Rather, he is blamed for not living up to the ideal of friendship, for failing to be disposed to feel what a friend *should* feel.¹⁵⁴

This seems to leave us with a stand-off between two reasonable possibilities: On the one hand, it is inappropriate to impose an ideal standard on someone and then blame them for not living up to this standard. On the other, it is also reasonable to think ideal characteristics of certain relationships also apply to the individual cases. Moreover, the possibility that one can assess the quality of a relationship in this way is important both for the parties of the relationship and for others. For example, it enables us to think of a foster family as better or worse compared with how a foster family ideally should be, and that some foster parents do not live up to what they should.

In practice, this is not a dilemma but a problem of thresholds, and the solution depends on facts. It requires us to simply address normal questions we regularly ask about our relationships. We ask, for example, whether a relationship is a friendship or that of a mere acquaintance. In the case of the Dutiful Friend, let us say he and I had known each other several years, had close contact and that he was a person I confided in. These facts would be reasons for me to consider him a proper friend, and thus blame him when it turned out that he wasn't. In the case of Ida and the institutional staff, the important question to ask is whether the relationship is a professional relationship or a fiduciary relationship. Since most of the staff had a professional relationship with Ida, it would be inappropriate for them to judge her by the standard of the carer-child relationship. This is true even if it is formally and legally the case that they are her carers. In conclusion, blame can be appropriate, but the blaming response should be constrained by the nature of the *actual* relationship, in this case the professional relationship.

In addition, to base blame on actual relationships in the way just suggested brings out some procedural constraints on the *force* of the blaming response. Since there is a relationship that consists of moral as well as special obligations, these obligations limit how strongly the adult can respond. The intent expressed cannot be to terminate the relationship, for example, at least not if it is a carer-child relationship. Nor can the response be demeaning, hostile or in other ways express that the child should not expect care, concern or respectful treatment after what he or she did. It can and should reveal that what the child did matters, however, and how. In

¹⁵⁴ Sher seems to interpret Scanlon as leaning to the ideal relationship, since he seems to think that the attitudes and expectations are reciprocal. I agree with Sher that Scanlon often describes e.g. friendship as defined by mutual expectations, but it does not necessarily follow from his position. There is no need to think that the parent-child relationship is always characterised by mutual affection, for example. Scanlon is also quite clear that it is actual relationships he has in mind (Scanlon, 2013, p. 89).

Ida's case, violence and arson are frightening and far beyond what one expects from anyone, young in age or not. It is inappropriate not to express this, but it is also inappropriate not to give Ida the opportunity to show regret and offer apologies.

What about the hypocrisy condition? It is sometimes argued that past wrongs disqualify a person from blaming another person for the same wrongdoings (Cohen, 2006; Scanlon, 2008). Scanlon holds that past wrongdoings are reasons to modify one's relationship to that person. This includes that person's standing or position to blame another (Scanlon, 2008, p. 176). However, the fact that people have done wrong things does not disqualify them from criticising others. People are not hypocrites because they have done blameworthy acts, but because they *fail to acknowledge* the blameworthiness of their own act. Insofar as one recognises one's own blameworthiness, the wrongness can be forgiven and one's standing restored. Therefore, the problem of hypocrisy is not the existence of past wrongs, but inauthentic blame. The blaming response must be genuine or *authentic*. When communicated it must express what the person really cares about.

The complicity condition is a very difficult condition to handle correctly in parental or fiduciary relationships. For example, it is not unlikely that some of Ida's actions were things she did because she felt provoked. Blaming is, as we have argued all along, a social phenomenon that takes place in very complex interactions. What is being said and done, and how we express ourselves, has an influence on the response we get. Even though actions like arson are impermissible, deeper understanding of how our actions affect others can make impermissible actions understandable. If, as in the case of Ida, we could conclude that we did in fact provoke her, and that the *meaning* of her response was to respond to a provocation, this should affect the blaming response.

In sum, this gives us five conditions of appropriate blame that have bearing on the type and strength of one's response. Appropriate blame satisfies

- (1) The Responsibility Condition – it is a response to a wrongness attributable to the child;
- (2) The Consistency Condition – it is consistent with one's general and special obligations to care for and protect the child;
- (3) The Relationship Condition – the response fits with the nature of an actual relationship;
- (4) The Authenticity Condition – it is genuine or authentic, and;
- (5) The Intentionality Condition – it reflects the *meaning* of the wrongdoing attributed to the target of blame.

In principle, to blame a child is appropriate if these conditions are satisfied. It is clear, however, that for people who are almost perfect strangers to the child, appropriate blame will probably not amount to more than negative evaluation of an act combined with a hostile attitude. Even a stranger has moral obligations to a child, however (cf. claims made in chapters 3, 4 and 5). Similarly, the special obligations of parents limit how strongly they can respond. This is also true for other fiduciaries or professionals with whom the child has formed a bond. In these cases, termination of the relationship as the result of blame is not merely inappropriate, but also a violation of an obligation to the child.

7.4.2 The Significance of Praise

Praise has received less philosophical attention than blame or blaming attitudes. The reason is perhaps that praise raises fewer interesting moral problems. In contrast, being the target of blame is something we have reason to avoid, and it matters whether it is appropriate. The resemblance between blame and punishment makes blame subject to conditions of appropriateness (cf. Coates & Tognazzini, 2013, p. 4) even if punishment is a far more serious matter.

Among the few comments on praise that we find, there is the view that praise is the positive counterpart of blame (see e.g. Strawson, 2008). This raises the question of whether praise has the opposite function of blame: Rather than impairing someone's moral standing, praise can perhaps elevate it? In this section, I will make some brief comments in support of this assumption, which, if true, possibly gives praise or positive moral appraisal a fundamental role in the child's moral development – where development is understood as gradual and social.

While some hold that praise is the positive counterpart of blame, this idea is rejected by several philosophers. Some note, for example, that it would be odd to praise someone for doing the right thing (Korsgaard, 1996; Scanlon, 2008; Smith, 2007). In other words, it seems odd to praise someone for living up to our ordinary expectations. Thus, an increasingly popular view is that blame and praise are *asymmetric*: Praise is not blame's positive counterpart (Carlsson, 2015; Scanlon, 2008, pp. 151-152).

There is reason to suppose that praise is different from blame in the case of children as well. The rationale for praising a child is often the positive consequences it will have – it is a strategy to encourage good behaviour or a form of education. This sets such responses apart from blame as described above. Such responses are also forward-looking and not responses to prior acts.

However, it is implausible to think that genuine praise is interpreted correctly if intentionality and control of the praiseworthy act is not attributed to the person who performs it. If these conditions are not satisfied, then praise would not be as valuable for the target of praise. Thus, it would seem that the value of praise also depends on some of the appropriateness conditions of blame just listed, such as authenticity and intentionality. Also, it seems to presuppose responsibility. To properly encourage good behaviour, we have to presuppose that the child is capable of recognising reasons that count in favour of doing good, at least in a minimal way.

In Scanlon's account of blame as impaired relationships, praise and blame are not counterparts. Generally, praise does not improve relationships, but is a form of evaluation (Scanlon, 2008: 152). However, Scanlon believes gratitude may involve modified attitudes with respect to one's benefactor (Scanlon, 2008: 151). On my view, as we have seen, apology and forgiveness are responses that also improve relationships in the sense that they allow redemption. It is also possible for relationships to improve after forgiveness is given.

More generally, I believe that the way praise affects a person's standing depends on the relationship between two people. In *asymmetric* relationships such as parent-child or manager-worker relationships praise can modify the subordinate person's standing and thus *elevate* it. Adult relationships are very often characterised as symmetric, something that in many cases is more like ideal thinking than reality. Insofar as that this is a general attitude we have in our relations with other adults, this account explains why we are more inclined to blame than to praise, since mere fulfilment of sober expectations does not seem particularly praiseworthy. If expectations are uncertain or a person exceeds our expectations, however, we are properly impressed and insofar as we also modify our attitudes, then this is an instance of sincere praise.

There is an analogy here with giving people responsibility. In the case of children, we sometimes give children tasks they only manage to complete with some difficulty. A teacher, for example, gives children homework assignments based on what it is reasonable to expect a child of a certain age and level to be capable of, but the teacher does not always know each child's capacity. If the child excels, then sincerely given praise should reflect the judgment that reveals that they are capable of performing better than expected. In other words, the child's standing in the relationship is modified or elevated. This is, I believe, a central function of praise – to elevate children's moral standing. Thus, in this respect, praise plays a vital role in the child's development, both with respect to moral expectations and other expectations.

Like blame, this idea of praise is consistent with the idea that we can praise people in private. Praise is certainly not limited to those we are in relationships with, but there is nothing

incoherent about the idea that we can come to hold high regard for a stranger if their acts impress us. Such cases do not imply a relationship but they imply modified attitudes with respect to that person.

Scanlon's claim that praise generally is mere evaluation is a possible objection to this idea of praise. On his view, to praise someone is merely a form of appreciation of what the person has done, but does not involve any judgment pertaining to the person's character. For example, we praise a great pianist for a great performance, but this does not entail that we are thereby moved to change our attitudes about them. We respond to the merit of their performance, but their standing seems unaffected by this fact. We should, however distinguish between thinking that a performance of a moral act or an artistic performance is praiseworthy on the one hand, and on the appraisal itself on the other. Both praiseworthiness and praise concern what the acts mean to us, but only praise concerns how the acts move us. Only in the latter case will it seem appropriate to express our gratitude, admiration or esteem, or alternatively, to feel shy about meeting the artist, and so on. All of these responses are, at least in part, expressions of standing. It also seems to me that part of the reason why we are concerned about the sincerity of praise is that they reflect something about our relations to others. The depth of our concern with genuine or sincere praise seems to me to be better explained by a disposition to care about one's standing than as a desire for positive reviews. It reveals how our very person seems to be at stake when others judge us.

7.5. Conclusion

Blaming is a hazardous activity but an inevitable part of our relationships with children. If we want to understand what we do when we respond to them, and what appropriate responses to them should be, we should include moral appraisal in our understanding of our own judgments and what our responses express, even if we only assume that we are educating them or providing guidance. We should appraise their actions both to express our concern for them and to express our regard for moral values. The hazard of blame, however, is that its function is to impair the child's standing.

Therefore, appropriate responses should satisfy a set of conditions, including that the child understands the response, that it reflects a standard of conduct he or she is familiar with, and that the child cannot be blamed so harshly that it is incompatible with the obligations the adult has not to wrong the child. In addition, the special obligations that define the role of a particular person may introduce additional constraints. Foster parents cannot immediately assume that they have the standing of parents, nor can two adults assume that the impact of

their response to the child will mean the same, even if they utter the same words. Parents, foster parents or other professionals should not impose standards that seem alien to the child or pretend that they care more than the meaning of their acts reveal. Appropriate blame fits with the actual relationship and it is an authentic response to the child's action and to the child's standing in the relationship. Finally, appropriate blame is constrained by a proper understanding of *why* the child did something blameworthy. Though all normal adults may unintentionally say harsh things in anger, responses that are too harsh should be followed up by efforts to understand the child's action.

When a relationship works properly, the impairment that follows from blaming responses are redeemable. Within properly functioning relationships, parties have a mutual interest in one another and their standing in the relationship. Since blame impairs the target's standing, apologies and forgiveness are uniquely appropriate responses. Both the conditions of appropriate blame and the quality of the relationship are therefore of central importance. Blaming children is unavoidable, so appropriate blame is not, therefore, a violation of a child's standing. It is an invaluable and necessary practice for the child's moral development. Praise is also a form of moral appraisal, and I have argued that it is the positive counterpart of blame in the case of children or another asymmetric relationship. Genuine praise, which has similar conditions to those of appropriate blame, elevates the child's moral standing. This allows us to explain the gradual development of full moral standing in the case of children.

8. Future Rejectability

What do we owe to our children? The purpose of this chapter is to outline the conception of a justifiable act and how a carer ought to reason to find out whether the treatment of the child is justifiable. The outline and clarifications of the conception of a justifiable act is the topic of part 8.1., where I first break down and explain the components of the future rejectability formula (part. 8.1.1.) and then consider it as a model for the reasoning of the carer (8.1.2.). In section 8.1.2. I also claim that the model of reasoning that corresponds to future rejectability cannot fully live up to the requirements of a justifiable act. This leads to questions of why we need a standard of justifiability that we cannot fully live up to. These questions are addressed in part 8.2., where I first explain why future rejectability should also be seen as a conception of justifiability that necessitates active participation by the child (8.2.1). Then, I consider some reasons why this is particularly important in public care (8.2.2.).

8.1. Outlining Future Rejectability

The conception of justifiability I propose in this chapter can be compared with a guidance principle like the best interest principle. The best interest principle guides thinking in three ways: First, it tells us what a morally relevant *reason* is. A morally relevant reason, in the case of the best interest principle, is everything that constitutes or is instrumental to the child's well-being. Second, it provides a model of *reasoning*, in which we consider the benefits, costs, risks and likelihood of a given outcome of available options. Third, it expresses a standard of justifiable acts.

Future rejectability is an alternative formula of a justifiable acts, one that also incorporates a different idea of which reasons are morally relevant, and that is a different model of reasoning. It is a conception of justifiable acts based on the carer-child relationship as outlined in prior chapters. What does this involve? It holds that what we owe to our children is to *act on principles the child, as an adult and motivated as a carer would be, could not reasonably reject as basis for the same treatment of another child in similar circumstances.*¹⁵⁵

8.1.1. The Formula

The purpose of this section is analyse the formula piece by piece. First, future rejectability tells a person to 'act on principles'. What does this mean? Following Scanlon, I use the term 'principles' in a wide sense, where they are "... general conclusions about the status of various kinds of reasons for action" (Scanlon, 1998, p. 199). What is the difference between acting on

¹⁵⁵ This formulation draws on Scanlon's formulation of his contractualism (Scanlon, 1998, p. 153).

‘reasons’ and on ‘principles’? When we act, we act for certain reasons. By taking some reasons to count in favour of acting in a certain way, I also claim, as Scanlon writes, that “... such reasons are sufficient grounds for so acting under the prevailing conditions” (Scanlon, 1998, p. 197). Thus, I defend a ‘principle’ whereby I also license others to act in the same way, should they be in the same circumstances.

When any action is undertaken or stands out as an option, it is an act that is licensed by some principle(s) in the sense just described. Thus, the assessment of an act starts out from an act that has a determinate description, and when we consider if this act is justifiable, we consider the principle that permits acting in the suggested way. So, when I ask, may I do x, I ask, ‘is the principle that allows me to do x, justifiable’?

After referring to ‘principles’, the formula above refers to a complex set of standpoints – that of the ‘child’, the child ‘as an adult’ and ‘motivated as a carer would be’. The point of referring to these standpoints is that they are the standpoints through which the relevant information on the case and the child’s interests enter in the judgment.

Let me clarify what relevant information comes from ‘the child’. Why should we not refer to some impartial spectator or claim that ‘no one’ could reasonably reject some principle? The main reason is that the type of motivation we are trying to grasp, is not a view from nowhere or an impartial point of view, but how a carer ought to treat someone he or she regards as special and who depends on the carer. The carer’s motivation must reflect this. For a carer, there is something strange about claiming that the carer’s primary motivation should be to refer to what ‘no one’ could reasonably reject.¹⁵⁶ It suggests that the child is no more important for the carer than any other person is, or that the carer is both motivated and obligated to do what any carer would have done. This would move attention away from the individual nature of the relationship and contradicts the idea that the child ought to be regarded as special from the carer’s viewpoint. To think of what we owe to our children in terms of the general obligations we have to everyone might not only fail to account for the special importance the child ought to have for the carer, it might also be seen, as Scanlon notes, as a moral deficiency (Scanlon, 1998, p. 172).

That being said, a similar observation might also lie behind the way both substitute judgment and the best interest principle are formulated. Both of these standards refer to the child, which leads us to think that the child is the most important target of the decisions or treatment this thesis is concerned with.

¹⁵⁶ Which is one important reason for why this conception of justifiability is different from Scanlon's formula.

Nevertheless, one might ask what relevant information the child brings. The reference to ‘child’ is not intended to capture everything that matters. The formula refers to the child in two specific senses. First, the child will attach a certain *meaning* to the treatment he or she is subjected to. This meaning may be different from what the adult intends or what the adult’s reasons for acting in a certain way are. For example, in a recent newspaper article on traumatised children, a psychologist made the following statement: “When [the child or young person] suffers so much internal agony that cutting [herself] eases the pain, we remove the razor blades. [But] we do not manage to give them the feeling that we understand them” (Arntzen, 2017, my translation). The psychologist’s point is that, unless the child also experiences beneficial acts as care, the carers have failed.

This example illustrates the meaning of an action from the child’s perspective. And this aspect of the reasons that count in favour of or against an action refers to the child’s perspective in the formulation above. Thus, referring to a child involves a role-reversal operation, where the point is to include the meaning the child attributes to the act as relevant to the justifiability of the act.

Second, the child will in many cases have personal reasons to want something, or reasons that concern the child’s personal aims, projects, and so on. These reasons are, as argued in chapter 6, not necessarily authoritative, but they may be. Thus, just like the meaning the act has for the child, these reasons must be taken into consideration.

This leads us to the reference to the child ‘as an adult’. The principle that permits the act is addressed to an adult who has experienced the treatment or the act in question. This person is not the child but a hypothetical person who has temporal distance to the act. ‘The child, as an adult’ does not refer to how that adult would respond, but rather to the adult’s retrospective perspective on the treatment he or she was subjected to as a child. Thus, if we consider an act as an event that can be given a determinate description, referring to the child gives us the child’s experience as part of the description of that act. The meaning the child attributed to the act is part of the facts of what happened, as are the aims the child had at the time.

The ‘adult’ we refer to is not merely an adult, but an adult who is ‘motivated as a carer would be’. Thus, there is a second role reversal in this part of the formula, where the child is placed in the shoes of the ‘ideal’ carer. The person referred to in the formula is an ideal carer who himself or herself has experienced the treatment. What these parts of the formulation above secure, is to limit what considerations count as morally relevant *from the viewpoint of the child* and *from the viewpoint of the carer*. And these points of view give us different information. The child’s point of view gives us information of how he or she as a target sees the act’s

meaning, whereas the adult perspective of the ‘ideal’ carer concerns what the child has reason to want or has an interest in. As pointed out in chapter 2, the ‘ideal’ carer *cares* about the child as valuable for his or her own sake, *respects* the child as someone capable of understanding and responding to reasons, and has special concern for the child. This includes, as argued in chapter 6, respecting the child by considering the reasons that count in favour of the child’s views. It also includes considering what the child would benefit from, but within the limitations of the parental role described in chapter 3, where I claimed, following Brighouse and Swift, that relevant considerations for the carer concerns, first and foremost, the quality of the carer-child relationship and ensuring that the child’s interests are satisfied in a somewhat coordinated manner.

To ‘reasonably reject’ an action, involves two concepts – ‘reasonableness’ and ‘rejection’. First, to claim that something is ‘reasonable’ leads to the question, ‘reasonable in terms of what?’¹⁵⁷ In the future rejectability formula, reasonableness refers to two standards – the normative ideal of the carer-child relationship and the normative ideal of the moral relationship. For example, it involves asking oneself whether a proposed course of action compatible with what we can expect a carer to do, given how we understand this ideal, and whether accepting a principle also take the interests of third parties into account.¹⁵⁸ Seen in this way, ‘reasonableness’ is an idea with moral content.¹⁵⁹

However, in this formula, the moral relationship we have to all others is not at centre stage. To act reasonably means to take others into account, but makes no reference to what type of relationship we have with other moral agents, for example that we can be held accountable *by* them and that we should justify our acts to them. A full explanation of the moral relationship compatible with this idea can be found in Scanlon’s work (Scanlon, 1998). Here, the inclusion of the ‘reasonableness’ condition is intended to show that a person motivated as an ideal carer

¹⁵⁷ As Scanlon notes, to claim that an act is reasonable “... presupposes a certain body of information and a certain range of reasons which are taken to be relevant, and goes on to make a claim about what these reasons, in fact support” (Scanlon, 1998, p. 192)

¹⁵⁸ Such considerations support Brighouse and Swift’s claim that the carer-child relationship has certain limits; that not all a child has an interest in leads to a parental responsibility. Similar considerations also led Brighouse and Swift to conclude that a parent cannot permissibly confer (certain forms of) advantage to the child, because it produces disadvantage for other children whose parents are unable to provide the same advantages (Harry Brighouse & Swift, 2014).

¹⁵⁹ Which, as Scanlon notes in his discussion of reasonableness, invites charges of objectionable circularity. This charge holds that one presupposes a substantive idea of what is acceptable or non-rejectable when this is what the formula’s use of ‘reasonable rejectability’ is supposed to establish. However, the point of the standpoints in the formula is to include a plurality of possible reasons to act, none of which are established as wrong prior to being considered in the future rejectability formula. What the formula aims to establish is how someone’s normative reasons to act on behalf of a child is transformed into a moral principle. And there is no presupposition that the normative reasons are in fact moral reasons (which would make the entire idea of reasonably rejecting them superfluous).

is also a *moral* person and member of the moral community. As such, he or she takes others into consideration. But the primary motivation of the carer is to justify the act to the child. The future rejectability formula is inspired by Scanlon's contractualist formula, but unlike Scanlon's formula, the formula above aims to outline what we owe to *the* child we care for.

Why should we 'reject' a principle, as opposed to *accept* it? Do we not, in fact, accept a principle if we could not reject it? To use the term 'reject' refers directly to the idea that there may be some objection to a principle, for example, that it imposes too heavy a burden on the carer or on others. Moreover, it might be reasonable for someone to accept a level of treatment that is below what would be acceptable for another child, for example if the child is somewhat self-sacrificing or does not want his or her carer to sacrifice something.¹⁶⁰

This leads us to the last part of the formula, where the principle one assesses is regarded 'as a basis for the same treatment of another child in similar circumstances'. 'As a basis for' refers to the fact that the principle licences the same treatment in cases other than this individual case. Thus, it is a universalisation condition, something that also explains how this part of the formulation connects with 'the same treatment'. A principle holds that it is permissible to act in a certain way under the prevailing circumstances, and it would therefore also apply to all cases where a child is in 'similar circumstances'. With 'similar circumstances' I refer to cases where there may be small differences, but where the description of the act overall would be the same. That is, cases where the same principle applies and where the same reasons apply as possible objections to the principle.

The statement that the child as adult and motivated as a carer could not reasonably reject the same treatment 'for another child' refers to the fact that this person occupies the perspective of the carer. Thus, another child could mean 'my own child', but it need not. It refers, however, to a child that the carer cares for – the child the carer has reasons to care about.

8.1.2. Future Rejectability as a Model of Reasoning

Future rejectability is a conception of a justifiable act that corresponds to a model of reasoning. In this section, I will outline briefly how this model of reasoning works.

It should be clear from the outset that this idea of moral reasoning does not immediately lead us to a justifiable result. It merely outlines what we might call an 'aspirational' model; one that reflects the appropriate idea of motivation and awareness of what counts as morally relevant reasons, a way of counting in the relevant information and facts about the child's circumstances

¹⁶⁰ This example is inspired by a similar example in Scanlon's "Contractualism and Utilitarianism" (Scanlon, 2003a, p. 133).

and according the appropriate weight to the view of the child and others. However, as ‘aspirational’, the model of reasoning regards our reasoning as fallible, as a continuing process.¹⁶¹

Phrased differently, we are, *in practice*, unlikely to get *conclusive* answers to the question of whether an act is justifiable or not. At best, we can reach a conclusion by retrospectively regarding the act from the correct standpoint – and this is the standpoint that future rejectability expresses.

For those who find this unsatisfactory, it is worth reminding the reader that few other moral standards amount to more than this. We will not get fully satisfactory answers to whether applying the best interest principle or other consequentialist principles led to a justifiable result before we get a full grasp of the consequences our act has had. Similarly, we cannot really settle the question of whether a substitute judgement was, in fact, justifiable until the target of the decision can decide for themselves if they would have accepted it. Both of these alternative approaches refer to some ideal conditions that we cannot satisfy when acting. Thus, these models are also ‘aspirational’ in the same sense as future rejectability is. Thus, the main difference is between what is included and discounted in a judgment, and whether the reasoning leads to a conclusion based on agreement, maximisation or some other notion.

So, the main difference between the future rejectability formula and the other two standards does not lie in the aspirational aspect, but in how these different conceptions of justifiable acts help determine what is morally relevant in order to determine whether or not the act is justifiable, and how the interests of others enter into consideration. In the future rejectability formula, the former is established by the idea of motivation as an ‘ideal’ carer, which leads to the idea that the child is an addressee and a person who, more than anyone else, can hold the carer accountable. The interests of others enter into consideration as, first, someone the carer regards as special, as someone the carer values for his or her own sake, and respects as someone able to understand and respond to reasons. Third parties enter into consideration as fellow members of the moral relationship and therefore as constraints on what the carer can permissibly do on behalf of the child.

Future rejectability holds that an action is justifiable if it cannot be reasonably rejected from the following standpoints: (1) from the point of view of the child, as an adult; (2) from the point of view of the ‘ideal’ carer (3) from the point of view of members of other carer-child

¹⁶¹ Similar views are expressed in e.g. Scanlon (Scanlon, 1998, pp. 157-158; 393n155), and Habermas (Habermas, 1990, pp. 66-67).

relationships and (4) from the point of view of others who may be affected by the act. All of these standpoints are built into the formula above.

This reflects ordinary moral judgements, where *anyone* is required to consider whether anyone has a sufficiently weighty reason to object to one's action. This requires taking a number of standpoints into consideration (Scanlon, 1998, p. 213). But when we consider the standpoints of others in moral judgements, we usually make rather abstract assumptions about what they have reasons to want; not least in cases where we ask if our action is something we all could will.

In the carer-child relationship, this is different (and similar things could be said about other personal relationships, like friendships). In these cases, we have special concern for someone, and our judgement reflects that we regard how they will react or respond to it as important. If we did not, then we would not value the relationship as special. Thus, a judgement that corresponds to the future rejectability formula differs from a moral judgment in that it reflects that the child is the target of the act. Moreover, the carer does not relate to the child to find out what *anyone* could have reason to want, he or she asks how an act matters *to the child*. And as I have explained it above, this is a question about what meaning an act has, from the child's perspective. This means that the *only* person whose *agent-relative* reasons to object to the act matter, in the future rejectability formula, is the child as an adult. In contrast, when we consider the objections people occupying standpoints (2), (3) and (4) would have to our act, we rely on what Scanlon has called 'generic reasons' – or "... commonly available information about what people have reasons to want" (Scanlon, 1998, p. 204).

Framed in this way, we can see that the model of reasoning that corresponds to future rejectability involves asking oneself a number of questions, each of which mirror a perspective from which one can raise objections to the act. What the adult *can* do in order to determine whether doing x is justifiable, is to ask the following questions:

1. What reasons count in favour of and against doing x?
2. What reasons, as seen from the viewpoint of the ideal carer, count in favour of, or against doing x?
3. How does it feel for the child to be the target of x?
4. Could I, motivated as an ideal carer, and in light of the reasons I have mapped by asking questions 2 and 3, sanction doing x to the child I care about, and permit anyone to do the same?

The relationship between these questions and the future rejectability formula is that the latter outlines what a justifiable act is, whereas the former concerns how we *can* reason, insofar as

we are motivated to act justifiably. To act justifiably is to be motivated to act in a way that the child, as an adult and motivated as a carer would be, could not reasonably reject as the basis for the same treatment of another child in similar circumstances. That formula states that there is something we *should* know, but that in many cases this may be outside our grasp (i.e. the meaning of the act as seen from the standpoint of the child as an adult). And the questions above illustrate how we can act in accordance with the requirements of a justifiable act, even if we cannot fully satisfy the requirements. Thus, we need the formulation of a justifiable act in order to give a satisfying answer to the question of what it is to fail to live up to the ideal of acting justifiably.

Why should we merely be required to act *in accordance with* the conditions of a justifiable act, as opposed to directly applying the formula? The reason concerns the reference to the child. The main difference between these questions and the future rejectability formula lies in question 3. The future rejectability formula requires the actual subject of the act to not reasonably reject it. But this condition is not something that a carer can know at the time he or she acts. The adult can only make informed assumptions about what meaning an act had for the child, and how the child will assess that meaning when he or she has some distance to it.

When we assess each other's action and ask what an act performed by someone meant in the sense outlined in prior chapters, we engage in very complicated interpretations to make explicit what is often initially only a vague sense of unease (if we think an act may have a different meaning than we charitably might hope for, for example). For such reasons, it is not clear that *a child* (or another individual person, for that matter) is fully able to grasp an act's meaning right after the act was performed. But the fact that the child will have to think about what an act meant to him or her does not make their judgement irrelevant to how we ought to assess the act.

One way to clarify this point is to consider briefly how other backwards-looking judgements work, for example forgiveness. Forgiveness often requires some distance from the act we want to forgive. We cannot forgive what we don't fully understand, and the reason why we need some distance from an act is to assess what the act meant to us and what other reasons supported it. And when we say, for example, that 'there is nothing to forgive', we make a claim that implies that we accept that the act was justifiable under the prevailing conditions at the time, even if we did not like the act or we thought, at the time, that it reflected badly on our standing in the relationship with the person.

Thus, the gap between the future rejectability formula and the questions that ought to guide our reasoning about what we ought to do, reflects the idea that we almost always act in

non-ideal circumstances. We do have an ideal that explains what is required of us, but we are very rarely in position to live up to the ideal. Insofar as we value the relationship with the child, we aspire to act justifiably. We can do this by ensuring, as far as possible, that we have taken account of the relevant reasons by asking whether we could sanction the act for the child and for other children in the same circumstance. But by doing so, we only act in *accordance* with the requirements of future rejectability, we do not fully satisfy the requirements.

This leads to two questions. Firstly, why we need the future rejectability formula to explain our obligations. It appears that, on this account, the idea of reasoning outlined here, to try to see things from the child's perspective, is what we *can* do. But since ought implies can, we cannot be obligated to do more. We cannot be held accountable for failing to act justifiably if what a justifiable act requires consists of several unknowable facts. Secondly, and related, does this mean that the future rejectability formula is redundant? I address these worries in the next part of the chapter, as the answer to these questions will help us clarify exactly how the future rejectability formula applies to our treatment of the child, and its significance for public care.

8.2. Future Rejectability and Adult-Child Interaction

According to the first of the two objections above, a carer who asks himself or herself the questions 1 to 4 above, but who does not act in accordance with the future rejectability formula, cannot be accused of having wronged the child. To act according to principles the child as an adult and motivated as an ideal carer could not reasonably reject is more than what is required, because it is more than the carer *can* do. This is clearly a correct observation, so I will not attempt to argue against it. Instead I will try to explain how it matters as an ideal or aspiration by arguing that the tension between what we can do and what a justifiable act is, should affect the treatment of the child. It should lead us to think of justifiability as requiring active engagement in the child's life and the child's active participation as part of the basis for how we treat him or her.

8.2.1. Actual or Hypothetical Rejectability?

Future rejectability combines hypothetical and actual considerations. This creates a tension. On the one hand, carers consider what the child has reasons to want in light of the ideal-carer child relationship. On the other hand, the significance an act has for the child refers to how the child experiences the treatment he or she is subjected to, something that we cannot include by thinking of future rejectability as a purely hypothetical form of reasoning. I believe that this tension is something we have to live with, and that we cannot arrive at fully justifiable

conclusions about what we owe to the child by only using a hypothetical standard. Rather, we must seek to reconcile the tension through active engagement with the child, and by attempting to grasp what the child cares about and what meaning various acts are likely to have, as seen from the child's perspective. In short, future rejectability involves both hypothetical reasoning and an active, engaging interaction with the child.

I have outlined the *hypothetical* application of future rejectability in section 8.1.2., and explained that it involves asking oneself a set of questions that involves taking in various perspectives, including the perspective of the child and the 'ideal' carer, and asking oneself if this is something one could will for one's own child and others. However, since there is a tension between the four questions and the requirements of future rejectability, and this tension involves how the child's *actual experience* and *assessment* of the act enter into consideration, acting in accordance with future rejectability requires more than merely having an answer to the four questions. It also involves regarding the child as the addressee for the justification. Thus, the child is not merely a target of an action that we can regard as justifiable or not by considering how it is supported by the answers to the four questions. It requires that the child him- or herself, with the child's own experience, can place him- or herself in the situation where the same questions are asked, and where he or she arrives at the same answer.

This is far more than a hypothetical procedure – what it requires is *actual* rejectability. As *actual* rejectability, future rejectability is retrospective. The child, as an adult, looks back on his or her own story, looks at it from the perspective of an 'ideal' carer who cares about the child and asks whether the treatment the child was subjected to could not be reasonably rejected from this perspective. This is actual rejectability, since it represents the judgment based on which adults ought to be held accountable to the child.

Why should we hold that future rejectability should also involve holding people accountable, as opposed to seeing it only as a hypothetical idea of justifiability? The retrospective application of future rejectability implies a situation where a child actually holds substitute carers and child protection employees accountable for their decisions. There are three reasons for this requirement. First, it avoids the problem that hypothetical agreement or rejectability is redundant or is merely an epiphenomenon – that one could just as plausibly consider the reasons that count in favour of one's judgment of how to treat the child, in which case actual rejection or agreement is superfluous.

However, for this to be credible, there has to be a reason for including actual rejectability beyond merely addressing this difficulty. This leads us to the second reason for actual rejectability. Actual rejectability ensures due consideration of the individual case – and leads

us to consider whether the treatment was good for *this* child and not any other child. Finally, actual rejectability as an accountability-mechanism will even out the power asymmetry between the child and the adults. I will consider this last reason in the next section and the first in this one.¹⁶²

Unlike the idea presented here, which combines hypothetical and actual rejectability, Scanlon's idea of justifiability is only hypothetical. As he writes, "... the appeal of actual agreement cannot be the motivational basis for morality, since there are obviously cases in which acting morally requires one to resist the prevailing consensus about what is and is not justified" (Scanlon, 1998, pp. 154-155). Scanlon's worry is that people may think that their interests are much less important than the interests of others. Consent given from such a motivational stance will not give us a justified decision.

This worry is relevant to child protection cases, where many children may have been given less than their due, or where their motivation in important respects differ from what is reasonable. Actual rejectability, as retrospective application of future rejectability requires, reflects the actual psychological state of the child. But the latter does not refer to the 'child's' actual desires or operative reasons, but to what the parent-child relationship as an ideal gives him or her reasons to want.

This might seem utopian. How, one might ask, can we think that someone could alter their motivational stance in the way future rejectability requires? Also, the requirement of reasonableness is even more demanding than, for example, informed consent to medical treatment, since it does not merely concern what one wants for oneself but for another person, given a perspective on the situation that may be far removed from one's actual perspective. For example, it requires that someone who may have been mistreated or has reason to be frustrated by the treatment they were subjected to, should, first, be able to abstract from these experiences and identify with the ideal relationship. Second, from this perspective, he or she should not only consider what they would want for themselves, but also for someone else.

This raises a number of difficult questions about the value of *actual* rejectability. To appreciate what is reasonable is likely be very difficult for someone with this background and

¹⁶² Since actual application of future rejectability depends on judgment about the circumstances of the child, the retrospective use of future rejectability need not immediately follow from the basic formulation. What follows is that insofar as the child in fact holds the adult accountable, then there is a duty to comply with this claim. This follows from the second-person authority of the child. In some cases, like in child protection, there are additional reasons (which I discuss in this section and the next) to require actual justification. What this means is that hypothetical justifiability is the more basic form. So conceived, the formulation of future rejectability should be: "act on principles the child, as an adult and suitably motivated, *could* not reasonably reject as basis for the same treatment of another child in similar circumstances".

history. In this sense, the requirement of reasonableness, as a substantive requirement about the reasons a person is supposed to see, is more demanding than informed consent, which merely requires someone to have a conception of their own plans in life. The idea might also seem disrespectful, because it draws attention away from the person's own story and focuses instead on whether the treatment would be permissible for someone else. Additionally, one might also ask what value actual agreement would have in cases where the 'child' is unable to be reasonable and therefore accept or reject treatment on other grounds. Finally, any appropriately motivated adult will have non-instrumental reasons to listen to the child's views and take these views into consideration, so it does not seem that we need actual rejectability in order to secure the child's influence.

Let us start with the problem of the demandingness of actual rejectability. What is demanded of the child as an adult? What is required by the retrospective application of future rejectability is not that each individual is capable of fully adopting the ideal motivation of the parent, but that the procedure of holding responsible adults accountable satisfies what the child, given the child's knowledge of his or her own story and considering this story from the perspective of someone motivated as a parent, could not reasonably reject. Actual rejectability does not require the *child* to reject this. It requires adults to facilitate a procedure in which the child in principle *could* consider the treatment he or she was subjected to, from such a standpoint. At a minimum, this amounts to asking the child to consider his or her story and how he or she would assess this, if the child cared for the person and were in the shoes of a parent with the responsibility of caring for a child.

If we distinguish between the individual story of the child and the ideal motivational standpoint of reasonableness, we can imagine that a judgment of acceptance or rejectability could combine a child's report of his or her story with assessment of the principles that would permit the treatment he or she was subjected to.¹⁶³ The fundamentals of such a judgment is first to ask the child to tell his or her story as truthfully as possible, then to identify whether there was something amiss, troubling, hurtful, etc. in the story, and finally, to ask whether the child as a parent or substitute carer would have permitted the same treatment of a child he or she cared for and that behaved as the child did. What is required is that the child reports his or her own story and considers this story from the perspective of a substitute carer or parent motivated to care for another child. This does not require capacity beyond what we would expect from

¹⁶³ Following Molander, I distinguish between reporting and accountability: "The core of good reporting is to provide adequate descriptions, whereas the core of accountability is good reasoning" (Molander, 2016, p. 64).

someone of normal moral standing, which explains why it is the child as an adult who is invited to make this assessment.

In cases where this, for some reason, is unattainable, it is sufficient that, given the child's story and the child's perspective, *no one* could reasonably reject that it would be permissible to subject another child to the same treatment. There is little reason to assume that all former institution residents or foster children will be able to take this stance. Nevertheless, carefully constructed interviews with those who have greater obstacles in reporting their stories will be required to assemble an adequate picture of what the child has gone through and how the experience has affected him or her. Thus, in many cases, we will not be able to conduct such procedures without relying on trustees. The important point to note here is that there is no way of getting these views represented or of treating the child as valuable for his or her own sake that could possibly exclude the child from such an accountability procedure. Thus, the inclusion of trustees does not imply reliance on purely counterfactual reasoning, but brings in the child's voice as a source of reasons.

Insofar as the child's own story is taken seriously, and this story marks the point of departure for an assessment of the justifiability of the treatment of the child, I see little grounds for claiming that this is disrespectful. Nor is it superfluous. A story presented by the child itself will inevitably include information and perspectives on the relationship that differs from how others will tell the story. Finally, to consider this story as a claim of permissible treatment of someone else invites the 'child' to look beyond the child's own experience and consider whether he or she could have performed differently. It invites the child to see the relationship not merely from the perspective of the recipient but also from the carer.

One final clarifying comment about this accountability mechanism is in order. It should be distinguished from a 'blame game'. Moreover, it is not obvious that it should lead to sanctions. That a child has been wronged does not necessarily mean that one individual is blameworthy. There may be structural explanations that best explain why a child received impermissible treatment. Alternatively, many people may have some responsibility for the wrong that has befallen the child, in which case it would be deeply unfair to sanction or blame only one individual.¹⁶⁴

8.2.2. Power Asymmetry and Future Rejectability

Retrospective application of future rejectability is not only a way to facilitate the child's influence on a judgment of justifiability. It is also a response to a structural problem of the

¹⁶⁴ For similar observations, see Young's *Responsibility for Justice* (Young, 2011).

parent-child relationship, one we can roughly refer to as a problem of domination. As we recall, Brighthouse and Swift argued that the parent-child relationship should enjoy some level of protection from external intervention and monitoring. The reason is that valuable aspects of the individual parent-child relationship, such as spontaneous expressions of affection and idiosyncratic forms of communication and interaction, will have suboptimal conditions of development without protection of privacy (ch. 3, sec. 3.1.2). This, however, creates a structural problem where the child is dependent on the motivation of the parent. Privacy is only a good thing if the parent or substitute carer is appropriately motivated or possesses the ability to understand, respond to and act on the right principles. To rely on appropriate motivation is not a satisfying way to deal with this structural problem, given the impact power abuse could have in the child's life. Thus, given the desirability of protecting family privacy, mere reliance on a hypothetical application of future rejectability will not address the problem of structural domination.

As we recall, Anca Gheaus' suggestion is to target parental monopoly of child-rearing, and allow other adults, who are independent from one another and who can both support and supervise one another, to form and maintain caring relationships with the child (Gheaus, 2017, p. 5). Simply put, her suggestion is to implement a form of power separation, in the form of "...mandatory attendance of day-care centres, kindergartens and schools..." (Gheaus, 2017, p. 12). This position is plausible for at least three reasons. First, it reflects how many societies organise child-rearing as a joint effort, although Gheaus goes further than most in arguing in defence of mandatory attendance in preschool child-rearing institutions outside the family. Secondly, it is supported by the claim that all moral agents have parental obligations in the sense of ensuring that a child has a parent and protecting the child from harm (cf. ch. 4). Finally, it is consistent with an idea of a moral division of labour between parents and other fiduciaries, who all form relationships with the child, but where each generic type of relationship has a different nature and purpose. The fact that a child can develop caring relationships with adults outside of the family is compatible with the level of family privacy needed to develop a valuable parent-child relationship.

The worry, however, is that, even when countries have institutionalised 'communal' child-rearing in ways that resemble Gheaus' recommendations, there is still residual space for ample power abuse. Moreover, even within the family, one parent can be blind to the treatment the child is given by the other parent. Such examples of neglect are also occasionally attributable to professionals in public services, such as a child's physician, nurse, kindergarten

or school teachers.¹⁶⁵ Therefore, distribution of child-rearing responsibilities are not sufficient, on their own, to address problems of objectionable dependency or structural forms of domination.

Following Goodin, Ghaus' line of reasoning in defence of the power division strategy is that the alternative, namely to promote a symmetric relationship and ensure that the parties can, if necessary, defend themselves against each other, is implausible in the case of parents and children (Gheaus, 2017, p. 4). Thus, her solution is to forestall the threat of exploitation or domination by "... depriving superordinates of discretion ... (Gheaus, 2017, p. 4; cf. Goodin, 1986, p. 202). However, strategies for limiting someone's discretion can target either discretionary *space* or discretionary *reasoning* (Molander, 2016; Molander, Grimen, & Eriksen, 2012). Discretionary space concerns the area in which someone has authority to make judgments (Molander, 2016, p. 20), whereas discretionary reasoning concerns how someone is entrusted to make judgments within their assigned discretionary space. Thus, parents or foster parents are entitled to privacy on the condition that they can understand, respond to and act on reasons to treat the child as valuable for its own sake.

Gheaus' strategy straddles this distinction, although it is mainly directed towards limiting discretionary space. In contrast, retrospective application of future rejectability will primarily target discretionary reasoning. It does so in two ways. First, it guides reasoning. Second, anticipation of being held accountable is an incentive to act in accordance with non-rejectable principles, and it thereby targets the parent or substitute carer's *operative* reasons. Moreover, this is done without imposing any additional external monitoring or supervision on the relationship other than the future accountability situation that will come sometime after the child has reached the age of majority. In principle, then, retrospective application of future rejectability forestalls structural domination by imposing an anticipation of accountability.

A possible objection to this claim is that the motivation of the reasonable parent is incompatible with the motivational assumptions that ground the need for holding parents or substitute carers accountable. That is, anticipating accountability naturally leads the substitute carer to think that it is in his or her self-interest to be a good parent, since that is the only way to avoid unpleasant consequences in the future. This could imply that the carer, instead of being motivated to act out of concern for the child where the child is valued for its own sake, acts out of self-concern and fear of making mistakes that he or she will be held accountable for.

¹⁶⁵ Two horrendous and well-known examples (in the UK and Norway, respectively) are the deaths of Baby P – Peter Connelly in England in 2007 (Popple, 2015) and Christoffer Kihle Gjerstad in Norway in 2005 (Østli, 2009).

Whether or not this is a real worry is, of course, an empirical question. However, if we assume that there is a risk that the substitute carer's motivation could be corrupted by considerations of self-interest, this does not necessarily imply that we should reject the idea of holding substitute carers accountable when the child has become an adult. It appears that we would be pressed to abandon the contractualist framework, however, because we are left with consequentialist considerations of whether being held accountable is not better than the alternative. That is, we could claim that, all things considered, the problem of structural domination is sufficiently serious to lead us to sacrifice the contractualist account of motivation for a better outcome.

That being said, there are reasons to question the impact actual accountability will have on the motivation of substitute carers. First, there is reason to think that the considerable time-distance could lead substitute carers to discount the importance of being held accountable sometime in the distant future. There is also reason to believe that the present and future oriented application of future rejectability will be more relevant to substitute carers' motivation, since it is more helpful for the purpose of justifying one's decisions. Moreover, survey data reveal that a majority of foster parents report that their motivation was based on a desire to establish a family or to help a child in need (Havik, 2013). Thus, there is reason to believe that substitute carers will normally have operative reasons that are closer to the ideal parent than self-interests. Second, from this perspective, there is also reason to believe that they will appreciate the reasons for institutionalising accountability. That is, they will see both the importance of giving the child an opportunity to evaluate treatment he or she received, and see the importance of being subject to such pressure themselves, should they be in circumstances where pressure, exhaustion or other factors could lead them to forget that the relationship is valuable, and also appreciate the reasons for addressing the problem of structural domination. Third, what impact the anticipation of a future accountability process will have on someone's motivation depends on what impact being held accountable will have, for example if there is a real likelihood of being liable to substantial financial compensation or other sanctions. Institutionalising accountability does not necessarily imply such consequences, however. Fourth, even if the outcome of a placement is bad or suboptimal, it does not follow that one can attribute wrongness to the adult. In many cases, there may be no grounds for blame, and even in cases where adults are appropriate targets for criticism, there will usually be more than one blameworthy agent. The fact that child-rearing, and child protection specifically, is a shared responsibility, lessens the impact of blame for the individual. In conclusion, there is reason to believe that, in normal

cases, the impact on a substitute parent's motivation will be less troubling than suggested above, and that actual future rejectability is compatible with reasonableness.

8.3. Conclusion

Our obligations to children derive from being someone who is motivated to treat the child as his or her *own*, that is, from having reasons to value the child for its own sake. This is essentially the standpoint we have reason to take when we consider ourselves as members of the parent-child relationship. It includes attaching special importance to the child, ensuring that the child's relationship with us as parents is valuable and promoting the goods that this relationship can realise, i.e. familial relationship goods. This relationship is also a moral relationship, in the sense that what we owe to our child must be consistent with what we owe to all others. But what we owe to our children is not fully explained by considering the nature of the moral relationship. What constitutes a good parent and a good parent-child relationship is continuous with, but different from, how a person is motivated to act in a morally permissible way.

Since what is right or permissible within the parent-child relationship is based on different reasons and principles compared with the moral relationship, what constitutes a justifiable or permissible action or treatment must reflect this difference. I have argued that what we owe to our children is to act on principles that the child, as an adult, cannot reasonably reject as a basis for the same treatment of another child in similar circumstances. This formula of justification is applicable in a present, future-oriented and retrospective way. As present and future-oriented, it allows a child's parents or substitute carer to consider the justifiability of their treatment of the child or their judgments on how the child should be treated. As a retrospective consideration, it allows the child to consider the justifiability of the treatment he or she was subjected to. Moreover, retrospective application of future rejectability allows us to assess the justifiability of individual public care placements, as well as constrain adults' actions if they, for some reason, fail or find it difficult to be appropriately motivated.

While the conception of future rejectability developed in this chapter is clearly relevant to public care, several of the issues discussed in this thesis have been left unaddressed. Moreover, the idea that future rejectability gives us a unified account of these issues raises questions of how certain practices or arguments relate to the overall conception of justifiability. For example, we have not discussed what use employees in residential institutions and those who have supportive functions – those who do not occupy a parental role – have for the concept of future rejectability. This question, and the question of the practical implications of future

rejectability and the positions taken in other chapters of this thesis will be discussed in the next and final chapter of this thesis.

9. Conclusion and Implications

In this conclusion, I briefly summarise some of the main differences between the relationship-based contractualist approach advocated in this thesis and a well-being based approach to the same questions. Also, instead of giving a detailed summary of prior chapters, I will use most of the remaining space to mention some practical considerations and implications raised by previous discussions.

The outline is as follows. In section 9.1. I briefly repeat some of the main claims of the thesis and compare the contractualist account with an interest-based account. In section 9.2. I raise the question of *who* future rejectability applies to, where I also claim that it applies to those I call non-parent carers, i.e. those who make decisions on behalf of the individual child but who are not directly involved in daily care. In sections 9.3. and 9.4. I follow up on some of the practical and politically relevant issues raised in chapters 3 and 4, where I address two issues. In 9.3., I address the issue of how parental responsibilities should be allocated between the foster home or institution on the one hand, and the child protection service on the other. In 9.4., I address the issue of whether substitute carers ought to be able to terminate their contract. In section 9.5. I briefly consider the implications chapter 6 might have for how children's participation and influence has on decisions.

9.1. Contractualism and a Well-Being Based Approach

Throughout this thesis, I have argued that to be motivated as the ideal carer would be shapes the way the child's interests enter into our considerations. That the carer cares about and respects the child leads them to take a wide range of considerations seriously, possibly wider than merely what is good for the child or what the child's well-being consists in. Also, it leads to a form of reasoning about what substitute carers ought to do that is not exclusively based on promoting the child's well-being. The model of reasoning outlined in prior chapters emphasises the justifiability of the carer's acts, based on the idea that carers ought to be motivated to justify their acts *to* the child.

This approach, which focuses on the relationship and the expectations that the adult and child *ideally* have of one another, is compatible with Brighouse and Swift's idea of familial relationship goods. While Brighouse and Swift focus on the goods the family can provide, my focus is on the motivation of the carer. A carer motivated in the way outlined in prior chapters will appreciate the value of familial relationship goods, since some of the central features of familial relationship goods are built into the carer's motivational disposition: The child has special significance for the carer. Someone motivated in this way will have reasons to promote

and secure a stable attachment. Thus, regarding the question of what is valuable about the carer-child relationship, there is little difference between the well-being based approach of Brighouse and Swift and the contractualist approach. Both include a similar observation about the value of the family, but this observation plays a different role in the respective theories. According to Brighouse and Swift, a carer (or a state) who fails to promote familial relationship goods harms the child. In the contractualist account developed here, there is a difference between *harming* and *wronging* the child. For example, if the child's interest in familial relationship goods is not sufficiently satisfied, the child is likely to be harmed. But this does not mean that the parent or carer wrongs the child. The parent could be poor and forced to work three jobs in order to pay the bills and keep the child nourished. Failure to secure or promote familial relationship goods in such circumstances is not wrong, although it is regrettable, and will harm the child.

That being said, Brighouse and Swift are able to explain such cases, since they hold that all adults are obligated to ensure that a child has a family. This, however, implies that there is a relationship between the parties, one that explains why failing to ensure that the child is not merely harmful but also wrong. Adults *wrong* the child because the child is member of a relationship where he or she depends on adults. I have claimed that this is true both for members and non-members of the carer-child relationship. All adults have some responsibility for caring for a child.

In addition, the contractualist account holds that being an acceptable carer or parent does not merely depend on the outcome of the carer's actions. Also, it depends on the character of the person. A carer should not merely do the right things, but also be moved by the right reasons, and act in a way that makes it evident that he or she is suitably motivated. For example, in the absence of some justification for why one has failed (such as poverty or illness), failing to secure familial relationship goods reveals that the parent fails to appreciate the value of the relationship, and thus that he or she fails to be moved by the reasons they *ought* to be moved by. Thus, not only will such a carer do wrong things to his child, but he will also be unfit as a carer.

The relationship-based contractualist approach also gives us a better understanding of the importance of morally important practices, such as the child's participation and moral appraisal. A well-being based approach explains why a child ought to be included terms of what is good for the child. In contrast, the contractualist approach explains that our reasons for including the child are, first, that it acknowledges the child's standing as a member of the relationship and, second, that the carer is accountable to them. In addition, the carer's expectations of the child are not only of someone who has certain interests, but of the child as someone who wants certain

things for certain reasons. Whether the child ought to have influence is not, in this account, based exclusively on what is good for the child. It is based on a fundamental form of respect, that leads the appropriately motivated carer to take the child's claims seriously, even when these claims are not clearly or obviously consistent with what the carer thinks the child has reason to want.

Concerning moral appraisal, the contractualist approach explains this practice as more than mere discipline or education. While there is certainly an educative aspect of blame and praise, moral appraisal is not only a forward-looking response that has the aim of educating the child in how he or she ought to perform. It is also a way of holding the child to certain expectations. This reveals that the child matters to us and what expectations we have. When we blame the child, we revise our expectations of him or her, something that impairs the child's standing in the relationship. This matters to the child because the child will, in most cases, regard the relationship as significant, and will therefore be motivated to redeem him- or herself. Beyond mere learning, to involve the child in practices of moral appraisal includes the child into a social dynamic that is essential to the way we as human beings relate to each other and value each other's actions. Unless the child is in fact innocent and we cannot attribute an act to him or her, we do not treat children differently in the sense that our responses to them are driven by completely different expectations. What we do is adjust our responses to fit with the nature of our relationship with the child.

What we owe to our children, as outlined in prior chapters, can be expressed as acting *on principles the child, as an adult and motivated as a carer would be, could not reasonably reject as basis for the same treatment of another child in similar circumstances*. This captures the idea that the child has special significance for us and that the significance our actions have *for him or her* is of central importance to the carer, that the child is the person to whom we are motivated to justify our acts, and that it requires a justifiable act to be reasonable and take others into consideration.

I have argued that this idea – 'future rejectability' – for the most part will be employed as a form of hypothetical reasoning. However, the fact that the child is addressee and that the significance that an act will have for the child is part of the content of such a judgment, gives the carer reasons to consult the child, to want to know how his or her actions affect the child, and so on. This observation leads to the conclusion that, even if the carer does the right thing and for the right reasons, the justifiability of an act cannot be fully determined prior to acting. The justifiability of an act is therefore to some extent dependent on its reception. This might seem to introduce a problem of contingency in the approach, but since this concerns the

meaning of an act – related to the child’s expectations – and the child's personal reasons, it is quite possible to have a qualified view of what significance an act is likely to have for the child prior to acting, even if this will merely be an informed prediction. Moreover, the point is not that *any* meaning the child might attribute to some act is morally relevant, or that the child's personal reasons are authoritative. The claim is weaker. It holds that the carer cannot discount the meaning an act has for the child or the child's personal reasons. A person who cares about and respects the child has reasons to take the child's perspective seriously.

9.2. Non-Parent Carers

The aspects of practical reasoning outlined in prior chapters refer to adults with parental responsibilities. That includes the child’s parents and substitute carers. But does it include non-parent carers? Non-parent carers are public employees whose role is to support the family or the foster family and those who are carers but not parents, and who in most cases care for the child in an institutional setting that is not a family. Defined in this way, the group includes more than just those employed in residential institutions and the child protection service.¹⁶⁶ It includes, for example, emergency foster care, institutions for treatment, and professionals outside the child protection service that also provide family support. What these groups have in common is that none of them work in an institution whose purpose is to be a substitute for the family. They have different roles and responsibilities.

Does the reasoning of the ideal carer apply to these groups? Since many of these groups have roles and responsibilities that are very different from the parent or carer, one might think that different normative ideals apply. For example, the County Board leader is a judge, and we expect him or her to be a judge, not a carer. There is something objectionable about thinking that someone who should be motivated to make impartial decisions should be motivated by special concern for the child.

My claim is that it does apply. The considerations that lead me to this view are the following. First, like any other adult, the County Board leader is morally obligated (and legally obligated) to ensure that the child has a family or an acceptable substitute. The essential consideration in that respect is *who* will be an adequate parent. To arrive at a conclusion about who the adequate parent is in each individual case, the County Board leader must apply some

¹⁶⁶ Others that are involved or sometimes involved in public care placements include parents, those who supervise the foster home (appointed by the municipality, (cf. CWA § 4-22), the person selected by the child (“a person whom the child particularly trusts”) (CWA § 4-1), members in the County Board, employees at the County Governor’s office, experts and witnesses in the County Board proceedings, experts who assist the municipal child protection service, teachers, psychologists, physicians, social workers employed in other services, police officers, etc.

sort of standard for child-rearing. Based on my claims in earlier chapters, this judgment involves the sort of reasoning expressed in the future rejectability formula. The same is true of other adults, insofar as what they do or make decisions about concerning supporting the family or the substitute care arrangement.

That being said, there is a sense in which these decisions are different. They are not based on actual membership in the parent-child relationship, but are made from another role or standpoint. A judge, for example, does not assess what is in the child's best interests from the standpoint of a carer, but from an impartial point of view. Moreover, the child is not personally dependent on people in these roles, as he or she would be on the parent. The child depends on them to ensure that he or she has parents and a family. Therefore, persons occupying roles that are different from the parental role will not have the same motivational basis for making judgements as parents or substitute carers. Nevertheless, non-parent carers make considerations of what is, and what would be, a valuable arrangement for the child and what characterises an acceptable carer. For the purpose of making such judgements, they should also consider what characterises the motivation and reasoning of the carer, and what justifiable treatment of the child consists in from the standpoint of the carer.

The comparison between carers and judges also point to another possible objection, namely that if non-parent carers reason in accordance with the future rejectability formula, this might lead to favouritism or objectionable forms of moral particularism. However, since future rejectability is a *reasonable* form of reasoning, it does not amount to objectionable forms of favouritism even if takes the child to be the central target of the decision. It represents a decision based on a standard that those affected by a decision would employ themselves, insofar as they appreciate the values of the relationship as a carer would.

9.3. Allocation of Parental Responsibilities

In this section and the following ones, I briefly consider the relevance that this thesis might have but for the regulation of child protection. Thus, these sections concern questions *policy*. That being said, the comments below do not have the status of *policy recommendations*. Instead, they should be regarded as attempts to clarify what I have claimed in earlier chapters, and as ideas that perhaps may be *relevant* for policy, given appropriate consideration. On the one hand, then, the point is to make explicit what difference some of the arguments made in this thesis could make. In part, this allows those less interested in moral arguments to see the relevance of taking on the task of reading this text. Also, it might make some claims or arguments more understandable.

On the other hand, discussing policy illustrates what improvements thinking about what we owe to our children could instigate. So why do these discussions merely relevant to policy, and not policy *recommendations*? First, the thesis concerns few discussions of whether the conclusions presented are politically viable. There is, for example, no discussion of what resources one would need to implement the conclusions, nor any discussion of administrative costs. Moreover, political support for the conclusions presented here require more than abstract (or narrow-minded) moral thinking. Second, careful attention to implementation at the institutional level may prove that some conclusions should be modified or rejected. Although the topics discussed here are anchored in actual regulations of the child protection system, the thesis contains a number of ideal assumptions, and some of these are very far from how the child protection system is currently organised. Avoiding undesirable results requires careful attention to whether and how suggestions made should be implemented.

Having stated these reservations, I will turn to a problem raised in chapter 3, concerning the *functional un-substitutability* of the family. In chapter 3, I argued that parental responsibility is limited to promoting familial relationship goods and to ensuring that what the child has reason to want is respected or promoted in a somewhat coherent manner. The problem we face in substitute care is that parental responsibilities are divided between substitute carers and the child protection service. For the purpose of coherent child-rearing, this is a practical problem.

Based on arguments in chapter 4, a possible response is to argue that, if the child develops a personal parental dependency to the carer, then this person should also have full parental responsibility. Consequently, the child protection service should transfer their decision-making prerogatives to the person who is, according to the dependency account, the parent. A possible way to understand this claim is that it counts in favour of the idea that substitute carers should at some point adopt the child.

The dependency account does not necessarily support that conclusion, however. It merely states that if the child develops personal parental dependency to the carer, then this person would have a reason that could support an eventual claim for full parental responsibility. But this is not necessarily a decisive reason. First, the dependency thesis holds that, if the child has developed parental dependency to someone, terminating the bond requires strong reasons. This does not mean that the person should also have custody. Also, I have argued that even if substitute carers should promote the relationship with the child, this does not imply that other ties should be severed. Therefore, it may be permissible to reunite the child with the original parent even if the child has developed personal parental dependency to others. Similarly, the dependency account does not prohibit divorce or shared custody. It is difficult to argue

conclusively that shared custody harms the child, however (cf. Fransson et. al., 2017), or that sharing custody implies that either parent wrongs the child.

Moreover, the burden of parental responsibilities may be heavier in child protection cases than in the average family, something that may count in favour of a joint effort involving multiple carers. In some cases, children in public care have attachment difficulties, mistrust, self-blame, behavioural problems, and other problems, problems that require treatment and considerable assistance. Both practical considerations and the emotional exhaustion carers might experience could count in favour of dividing responsibilities.

In conclusion, only individual judgments can determine whether it is permissible to terminate parental rights or adopt, or the future rejectability of these decisions. Thus, in cases where different adults, with different roles, share parental responsibilities, coordination problems may occur. The only answer this thesis provides that might have some impact on the coordination problems is to point out that those who provide support should employ the same basic form of reasoning, and if this idea of reasoning is made explicit, then different carers should in principle be capable of coordinating their effort under a common aim.

9.4. Freedom of Contract

In chapter 4, I concluded that, when the child has developed personal parental dependency to the carer, the carer satisfies the conditions for moral parenthood. When this condition of parenthood is satisfied, they can no longer terminate their contract. Of course, what 'parental responsibility' involves may be somewhat less demanding than what one might ordinarily expect from parents in a country like Norway. Further support for this claim was given in chapter 5, where I argued that there are moral reasons to claim that it is unacceptable to abandon one's responsibility for a child, even if this responsibility is a considerable burden.

Should this idea be institutionalised? That is, should we rewrite the terms and conditions of the contracts of those hired by or employed in public care? There are at least two ways in which the dependency account might be considered to have direct impact on these contracts. First, the dependency account might lead us to include clauses in contracts that specify that substitute carers should promote personal parental dependency. Moreover, this will be non-negotiable. Second, contracts might also specify conditions under which the carer-child relationship becomes interminable, and conditions for permissible termination.

The dependency account does not, in itself, give support for such regulations. It is a theory of the grounds of *moral* parenthood – on when someone should be, from a moral viewpoint, expected to be the child's parent. This view does not translate directly into legal arrangements,

since the legitimacy conditions for laws and contracts are different – they do not only rely on reasons but also on de facto consent and majority support. The dependency account holds only that someone who does not value the child and the carer-child relationship, or someone who terminates the bond without a non-rejectable justification *wrongs* the child.

Moreover, as argued in chapter 4, we do not want those with whom we have close affiliations to treat us as they do *merely* out of duty. Rather, we want parents and carers to treat us in a certain way and embrace their responsibilities because they possess certain attitudes towards us, like care. We expect carers to provide care and affection. And if such treatment is to have the appropriate meaning, care and affection can only be given. If we incorporate the obligations mentioned above into enforceable contracts, we risk that substitute carers do the right things for the wrong reasons, which might possibly deprive children of valuable relationships.

Finally, there are practical reasons that count against rewriting the contracts of substitute carers. If we, for example, changed contracts to ensure that substitute carers consented to taking on full parental responsibility at some point, there is reason to believe that this could affect recruitment of foster parents and institutional personnel. Due to increased use of foster homes, recruiting foster parents is a challenge and is likely to remain so (Meld. St. 17 (2015-2016)). If caring for a child was no longer a voluntary enterprise or one that contractors or employees were permitted to exit, then many children would receive no care at all.

9.5. Participation and Accountability

In chapter 6 I argued that respecting the child entails seeing him or her as capable of understanding and responding to reasons. This implies that the child has a certain standing, one where we are accountable to them. As they are accountable to the child, adults should make the reasons for why they reject or endorse the child's views explicit.

Also, I have argued that there may be reasons to implement future rejectability as an actual accountability procedure at some point after a public care placement is finished. I mentioned two reasons for doing this: First, to get the child's perspective on the placement and their story. Second, to forestall objectionable forms of oppression or domination.

Should these views be implemented? Again, some of the limitations of the views outlined in this thesis apply. Whether implementing future rejectability as a retrospective form of accountability after placement is recommendable is a question that depends on how it might work, something I can only speculate about. For example, I cannot conclusively rule out the possibility that implementing it in this way will not have an undesirable impact on the carer's

motivation. It may also prove difficult to convince those affected that it is different from a blame game or a form of sanction. I have merely stated *some* reasons that count in favour of the accountability procedure outlined in chapter 8, but I cannot conclude that we, all things considered, should implement future rejectability or some similar accountability mechanism.

Regarding the idea that adults should make their reasons for rejecting or endorsing the child's views explicit, this matter is different, at least as it applies to decisions that are formalised. Decisions made by the County Board, by the child protection service or acts of coercion made by personnel in child protection institutions are decisions where there are formal justification demands. The views expressed in this thesis support this practice.

On a general basis, it is difficult to see how the child could not reasonably reject a carer who ignored their claims without telling the child why. This does not mean that every decision a carer or parent makes that is contrary to the child's will must be followed by a justification. That would appear to undermine the parent's authority. However, a parent who routinely fails to make explicit why he or she overrules the child's will undermines his or her own authority. If he or she fails to appreciate the reasons why they ought to justify their acts to the child, then the moral authority they have as the carer, which entails respecting the child, is mere social authority.

9.6. Conclusion

Based on a few characteristics of the normative standard of the parent child relationship, this thesis develops a distinct view of what carers owe to their children. This view, I have argued, tells us what morally relevant reasons are and what a justifiable act or treatment of the child is like. While this view outlines the practical reasoning of carers in general, it is also an appropriate way of understanding what matters for foster parents and staff in residential institutions. The standard of justifiability I have called 'future rejectability' expresses what we owe to our children, both when the child is our biological child and when we care for a child within a public care arrangement.

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