

A CLASSICAL LIBERAL ARGUMENT AGAINST PARENTAL RIGHTS

UN ARGUMENTO LIBERAL CLÁSICO CONTRA LA PATRIA POTESTAD

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RESUMEN

Que la libertad de un individuo implique la falta de libertad de otro es un reto fundamental para el liberalismo, y este artículo examina cómo los niños plantean un problema para ciertas variedades de liberalismo. Comienza mostrando que el término liberalismo se utiliza de formas muy diferentes en la literatura sobre la patria potestad. Luego se realiza un análisis de una vertiente del liberalismo denominada liberalismo político clásico, basada en John Locke y John Stuart Mill. A continuación, se propone un marco liberal clásico en el que el gobierno no tiene deberes positivos exhaustivos para garantizar que los niños alcancen determinados resultados, pero en el que sí tiene el claro deber de crear y asegurar un espacio negativo para cada niño. También se argumenta que la teoría liberal se basa en una concepción integral del bien y que, para saber qué tipo de espacio negativo se requiere, hay que reconocerlo.

PALABRAS CLAVE

Liberalismo, patria potestad, derechos del niño, el bien, paternalismo.

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ABSTRACT

That the freedom of one individual entails the unfreedom of another is a fundamental challenge for liberalism, and this article examines how children pose a problem for certain varieties of liberalism. It begins by showing that the term liberalism is used in very different ways in the literature on parental rights. Then an analysis of a strand of liberalism referred to as classical political liberalism, based on John Locke and John Stuart Mill, is performed. A classical liberal framework is then proposed, where the government does not have comprehensive positive duties to ensure that children achieve certain outcomes, but in which it does have a clear duty to create and secure a negative space for each child. It is also argued that liberal theory is based on a comprehensive conception of the good, and that in order to know what sort of negative space is required, this must be acknowledged.

KEYWORDS

Liberalism, parental rights, children's rights, the good, paternalism

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1. INTRODUCTION

While liberalism, and classical liberalism in particular, is often claimed to be the philosophy of individual liberty, one may ask: to whom does it apply? That the freedom of one individual entails the unfreedom of another is a fundamental challenge for liberalism, and this article explores how children pose a problem for certain varieties of liberalism.

The problem of discussing liberal theory and parental rights is often characterised by a lack of precision when using the term liberal, and liberalism. This article begins by examining the main themes discussed in the literature on liberalism and parental rights. This is important both in order to see what questions are important, and in order to create a broad canvas from which we can subsequently cut the non-relevant parts after defining what sort of liberalism we are interested in.

The focus of attention is a strand of liberalism often referred to as classical political liberalism. This tradition is explored through two of its originators – John Locke and John Stuart Mill – with an emphasis on their ideas about children and their rights. Through an analysis of these two philosophers, seven propositions, which together form a classical liberal argument against strong parental rights, are constructed.

After reworking and combining the ideas of the Locke and Mill, a framework that is clearly based on classical political liberalism is proposed. In this framework, the government does not have comprehensive positive duties to ensure that children achieve certain outcomes. However, the government does have a clear duty to create and secure a negative space for each child. Furthermore, the article argues, despite numerous claims to the contrary, that liberal theory is based on a comprehensive conception of the good, and that in order to know what sort of negative space is required, this must be acknowledged. The argument here presented involves deeply normative elements concerning the value of individualism, power, and the role of government. This is not a flaw, but the basis of the conclusion that follows. The question of parental rights is a deeply normative issue.

2. PARENTAL RIGHTS AND THE CONFUSION OVER LIBERALISM

Before embarking on the reading of Locke and Mill, a set of central contributions aimed at understanding the role of children in liberal theory – broadly understood – are explored. This is done in order to show how very different positions are said to be the result of liberal theory, with the result being that the term liberalism is often misunderstood, and often misrepresented.

Education is one field in which parental rights are central. Here, the interests of society often clash with the desires of parents. How far can society go in demanding that the young be educated in certain ways? McLaughlin (T. H. McLaughlin, 1984; T. H. McLaughlin, 1991) asks the same question – whether the right to educate one's children as one sees fit can be defended. While the question has been much discussed in liberal education theory, the focus has mainly been on whether society – through school and teachers – can justifiably instil conceptions of "the good life" in children (T. H. McLaughlin, 1984). While White (2010) argues against the right of parents to indoctrinate their children, T. H. McLaughlin

(1984) argues that not all parental education involves such indoctrination and argues that parents to have a right to impose non-indoctrinary educations based on religious – or other – values.

However, "personal and moral autonomy" must always be preserved – also for the children (T. H. McLaughlin, 1984). For T. H. McLaughlin (1991, p. 2), liberty is focused on "valuing and developing the autonomy of the child", and according to Parton (1998, p. 12), "autonomous free individuals" – who can be governed – is the liberal ideal. Callan (1985) argues against T. H. McLaughlin (1984) and claims that "the right to self-determination which the child will acquire as an adult is threatened by a religious upbringing" (Callan, 1985).

Burt (1994, p. 1) focuses on religion and proposes a liberal defense of an illiberal education. She states that it is incompatible with liberalism to privilege secularism, and that parents should be allowed to give their children a religious upbringing. According to Burt (1994), parents should be able to prevent their children from learning about things such as evolution should they desire to do so. She also claims that political philosophers too often adopt the "my way or the highway" approach to these issues. She claims that the clash of interests is cultural, and that parental rights to provide a religious upbringing do not "compromise children's future autonomy" (Burt, 1994, p. 53).

Burt (1994) also restricts the parental rights of those "united by the conviction that the less distance between church and society the better", and those that "truly do deprive children of the opportunity to be informed, educated citizens" (Burt, 1994, p. 68). The latter could involve the deprivation of fundamental skills (such as literacy), subversion of constitutional principles (such as racist segregationist beliefs) (Burt, 1994). She does, however, state that sexist beliefs, for example, must be tolerated (Burt, 1994).

It is obvious that it will not do to speak of one liberalism in the literature on parental rights. Galston (1995) distinguishes between two concepts of liberalism, and names the autonomy-focused concept liberal, while there is also a conservative approach which focuses on the state's need to enforce its interests. He also mentions how there are problems with political approaches to tolerance based on a diversity model, where illiberal groups are accepted if there is free entrance and exit (Galston, 1995). In reality, he points out, free entry and exit into such groups is a fantasy, as seen when we consider the fact that we are, for example, born into them, and free exit will in many instances be exceedingly difficult in practice (Galston, 1995).

Gilles (1997) discusses the same, and he uses the term liberal parentalism for the position that deference to parental authority is appropriate unless parent's choices are plainly unreasonable; government is the "backstop against parental wrongdoing" (Gilles, 1997, p. 9). Gilles contrasts liberal parentalism with liberal statism, and places thinkers like Amy Gutmann in the latter category. The result, for statist, is "some mixture of majoritarian, constitutional, and governmental control of institutionalized education" (Gilles, 1997, p. 11). As many others, Halstead (1996) prefers a broad approach to liberalism, and refrains from discussing the internal tensions within what is called liberalism. However, these internal tensions matter, as this literature review shows.

Society should ensure a liberal education, Gutmann states, but two principles must be followed: nonrepression and nondiscrimination. The first precludes society from restricting "rational deliberation of competing conceptions of the good life and the good society", while the latter states that no educable child should be excluded from receiving a proper education (Gutmann, 1999, p. 29).

Gutmann (1980, p. 338) quotes Mill, and asks why, "if children are not the property of their parents", parents should have rights over them. She claims that giving equal freedom to children would be "absurd", as they need some education. Paternalism is necessary in the case of children, but it must be aimed at their "present or future" interests, and we must see them as "potentially rational beings" (Gutmann, 1999, p. 338). Liberal paternalism is usually based on consent – tacit or explicit (Gutmann, 1999). Such consent is problematic with regards to children, so how do we solve this?

A common liberal argument in favour of parental rights over children is that parents are best positioned to act in their children's best interests (Gutmann, 1999). Furthermore, some argue that raising one's children as one pleases is a right in itself (Gutmann, 1999). Any meddling by others constitutes undue interference and a reduction of liberty. Gutmann (1999) proposes, however, that children have a right to autonomy – a right that can oppose parent's rights to educate as they please.

According to Singh (1998, p. 165) the emphasis on individual autonomy is based on the idea that a "just society seeks not to promote any particular view of the good life, but enables its citizens to pursue their own ends consistent with a similar liberty for all others". Singh (1998) bases much of his argument on Rawls, and Fowler (2010) and Fowler (2011) do the same, when they focus on Rawls' political liberalism. Fowler (2010) emphasises that the restriction on government power leads to undesirable consequences, as parents can instil bizarre and dangerous beliefs in their children. Andersson (2011) answers Fowler, and believes that political liberalism places more restrictions on parental authority than suggested by Fowler, and that we have access to some of the interests of children, which implies that we can protect these interests.

Ruderman and Godwin (2000) also discuss liberalism and parental control of education. They set their aim on the idea of autonomy, and argue that such a focus has led to the illiberal policies of, amongst others, Gutmann (Ruderman & Godwin, 2000). Supposedly liberal theories which favour government education of parental rights "fails to abide by Locke's central distinction between political and parental power" (Ruderman & Godwin, 2000, p. 503). This harms society, they claim, by leading to more ethical servility and less diversity. It will later be shown that Locke in fact does not provide parents with inviolable parental power.

Moving beyond the realm of education, Godwin (2015) makes the argument against parental rights. She argues that the right to choose what she refers to as desire-contingent good on behalf of one's children breaks with liberal and egalitarian ideals. It is a general liberal principle that individuals should not have legal powers over others, and it is not self-evident that exemptions should be made for children (Godwin, 2015). Children, like adults, have an interest in liberty, dignity, and freedom from coercion" (Godwin, 2015). This implies that parental rights are problematic if based on an argument of protectionism, and parental rights must thus be based on the idea that "children are still implicitly accorded a quasi-property like status in law and society" (Godwin, 2015, p. 8). Godwin (2011) also argues that denial of full rights for children are "inconsistent with liberal and progressive beliefs about social justice and fairness" (Godwin, 2011).

Schoeman (1985), on the other hand, objects to this view, and states that parents should, and do, have special rights over their children, because they are "intimately related", and this intimacy erects strong barriers to state intervention. Cradock (2007) examines the dilemma posed by liberalism's emphasis on individual rights, while children's rights are undermined

by them being seen as family members. Government, he argues, lacks direct access to children, because parental rights and the family as an institution block this access (Cradock, 2007).

Liberalism, Brighouse and Swift (2006) argue, is about the rights of individuals to control their own lives. The exception, for most liberals, are young children (Brighouse & Swift, 2006). They argue that parental rights are legitimate, and that it is "morally permissible for parents to pursue" their own interests "at some cost to their children's interests", and that "it is wrong for the state (or anyone else) to prevent them from" doing so (Brighouse & Swift, 2006, p. 81). Despite these parental rights being fundamental, they are nevertheless referred to as conditional and limited (Brighouse & Swift, 2006).

In relation to education, they emphasise the possibility that minority cultures with non-mainstream upbringings may create a bulwark against "commercial culture", but that liberalism is required to secure the autonomy of children (Brighouse & Swift, 2003, p. 371). They also claim that parents have no right to have children educated in accordance with their own values (Brighouse & Swift, 2003).

This article focuses on the danger parental rights pose for children, and not the potential benefits children may derive from deference to such authority.

3. LIBERALISM IN ITS VARIOUS GUISES

Liberalism is a ubiquitous concept in modern political theory, but few employ the term in exactly the same way. That this applies to the literature on parental rights has become clear. Some, like Bell (2014), seek a general definition that is partly a sum of all the differences between the various liberals during the ages, while others are concerned with raising borders and placing labels within the tradition. The current goal is to see how well, or ill, equipped a particular kind of liberalism is to deal with the issue of children. The analysis is based on two liberal philosophers, and will not consider liberalism as a diffuse and all-encompassing "constitutive ideology of the West" (Bell, 2014). The aim of this article is not to trace the full ideational history of liberalism, but to extract and evaluate some key concepts in classical political liberalism.

So, where do we begin to delineate the most interesting variations of liberalism? Bell (2014) shows how the word can today mean pretty much everything, but there are three main categories of particular importance. Firstly, the traditional political liberalism we often trace back to Locke. Secondly, the classical economic liberalism often associated with the Austrian school of economics, F. A. Hayek and others. Thirdly, the social liberalism usually attributed to John Rawls. This classification is a pragmatic one, and many borders and labels within liberalism are necessarily not given the attention some feel it deserves. The first two types mentioned are often lumped together as "classical liberalism", as opposed to "social liberalism"; the proponents of the two sides, however, would perhaps prefer to label each other "libertarians" and "socialists" (Bell, 2014).

Classical liberalism is a term used with much caution. While often appropriated by modern proponents of *laissez faire* as they seek to label their form of liberalism, there are important differences between such thinkers as Locke and Mill, and the more economically oriented Hayek, von Mises, Friedman, etc. Thus, the first kind is referred to as classical political liberalism and the other classical economic liberalism. The prefix classical is maintained in order to separate them from social liberalism.

When answering the question "What is liberalism?", this article is based on what Bell (2014) labels the comprehensive approach (as opposed to the prescriptive and explanatory)

– "[r]ather than prescribing a favoured conception they seek to identify the actual range of usage, mapping the variegated topography of liberal ideology" (Bell, 2014). This approach will by many be understood as canonical, as the strands examined in large part consists of the writings of a selection of influential philosophers (Bell, 2014). However, the resulting description of the strands will be stipulative, meaning that certain necessary conditions is identified in order to say that a tradition is of a certain strand (Bell, 2014). By not saying that tradition X is defined by the writings of philosopher Y, some of Bell's (Bell, 2014) criticism of the canonical approach is avoided; by not attempting to unify liberalism, but identifying some major differences within the tradition, some of his criticism of the stipulate approach is accommodated.

The pitfalls of not contextualising liberalism, as liberalism is traced to such thinkers as Locke and Mill, that did not know the term or use various words and concepts the same way we now do, have repeatedly been pointed out by such writers as Dunn, Skinner and Tully (Bell, 2014). However, while it might be problematic to state that Mill and Locke were liberals, identifying the origins of, and affinity to, modern concepts now employed, is of value.

4. CLASSICAL POLITICAL LIBERALISM

In the literature on parental rights, authors often refer to Mill and Locke (Gutmann, 1980; Ruderman & Godwin, 2000). Their prominence in liberal political theory, and their writings on parental issues, makes it hard to avoid either of them when constructing a liberal argument against parental rights.

4.1. JOHN LOCKE

If people were to nominate the most influential liberal philosophers, it is not controversial to assume John Locke (1632-1704) would be included (Bell, 2014). While Locke might be more of a "ripe fulfilment of the past than the herald of the future", and some argue that his "theory of political society is decidedly weak", his philosophy does contain valuable insight and the emerging fruition of liberal ideas (Lamprecht, 1918, pp. 6, 150).

Locke was a champion of constitutional monarchy, and the protection of the nation (and property) was his criteria for good government (Cook, 1969). Viewing the state of nature as an actual condition, he portrayed it as a social state, but one in which troubles arise from the lack of an authoritative judge (Cook, 1969). Of particular importance is his emphasis on the consent of the governed, and his faith in "the reasonable nature of man" (Cook, 1969, p. 35).

4.1.1 INDIVIDUALISM AND INDIVIDUAL RIGHTS

Locke is of interest as he is by many considered the "real father of the doctrine of individual rights, not simply against the community, but within in"; the protection of individual rights is the reason for government, and it limits government (Cook, 1969, p. 22). But who are considered individuals, and how extensive are their rights? Are children individuals? If not, could they be property, or semi-property, as suggested earlier?

Locke's theory of property is famous – and infamous – and it states that whatever man takes from nature and mixes with his labour, becomes his (Cook, 1969; Locke, 1969). Can

children can be considered property under this theory? Does man, by begetting children (from nature?) and labouring for their survival and education, own them?

While the first of the *Two Treatises of Government* (1690) is often given less attention than the second in modern political analysis, it is of interest here, in that patriarchal authority figures so prominently in Locke's attack on Filmer's *Patriarcha* (Filmer, 1690). Against Filmer, Locke claims God gave dominion to man collectively, not as private patriarchal dominion (Locke, 1690).

Locke emphasises men's desire for reproduction. Furthermore, he makes it clear that individuals tend to do whatever it takes to secure not only themselves, but also their children (Locke, 1690).

If children are indeed property, this spells danger for the young in a Lockean framework. Property in others stems from "the right a man has to use any of the inferior creatures for the subsistence and comfort of his life", and such property exists for "the benefit and sole advantage of the proprietor" (Locke, 1690, p. 116). The proprietor "may even destroy" such property (Locke, 1690, p. 116). Government, on the other hand, requires that the good of the governed is pursued:

"[...] for the magistrate's sword, being a "terror to evil doers", and by that terror to enforce men to observe the positive laws of the society made conformable to the laws of nature for the public good, i.e., the good of every particular member of that society, as far as by common rules it can be provided for – the sword is not given the magistrate for his own good alone" (Locke, 1690, p. 116).

For the children's sake, we should hope that parents are "governors", rather than the "owners", of their offspring (Locke, 1690).

4.1.2 MEN, NON-MEN AND EQUALITY

In Locke's state of nature, individuals are perfectly free; free to do as they please with both "possessions and persons", if only they keep within Locke's rather vague laws of nature (Locke, 1690, p. 168). One thing they cannot do, however, is to destroy themselves – God alone has the right to destroy them (Locke, 1690).

In this state all are equal and have the same natural rights (Locke, 1690). This equality, precludes any subordination that would allow for the destruction or slaughter of others (Locke, 1690). But, again: who are individuals, and thus equal to the rest? Being considered equal to the rest is of vital importance in a philosophy that seems to say that all those who are not equal to us may be subordinated or slaughtered at the will of those superior. Nature, and dangerous wild beasts, for example, may be destroyed as we please, since they cannot take part in the societies we create (Locke, 1690).

But Locke's equality is only in principle – it is judicial. Some are given "just precedency" by for example age and virtue, and birth may "subject some ... to pay an observance to those whom nature, gratitude, or other respects may have made it due" (Locke, 1690, p. 193). This is, Locke claims, compatible with the kind of equality he cares about:

"... the equality which all men are in, in respect of jurisdiction or dominion one over another, which was the equality I there spoke of as proper to the business in hand, being that equal right that every man hath to his natural freedom, without being subjected to the will or authority of any other man" (Locke, 1690, p. 193).

It is interesting to note that individuals might be born to observe duties to others. How does this correspond with the complete natural freedom of all? Law is for Locke a prerequisite for freedom; it directs us to our proper interests, and confines us, so that we shall not wander into or over "bogs and precipices" (Locke, 1969, p. 194). Liberty is freedom from restraint and violence from others. It is also limited, as a freedom for all to do as they please would lead to an unfreedom characterised by the danger of arbitrary dominion (Locke, 1969). Liberty, then, is:

“... a liberty to dispose and order as he lists his person, actions, possessions, and his whole property, without the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own” (Locke, 1969, p. 194).

The freedom Locke discusses sounds wonderful, but how can it apply to children, especially if they can be born into subordination? The only way to rid oneself of natural liberty is to agree with others to form a community. Of great importance is Locke's position that sometimes tacit or implicit consent to things undesirable is sufficient (Locke, 1969).

“It is plain mankind never owned nor considered any such natural subjection that they were born in to one or to the other that tied them without their own consents to a subjection to them and their heirs” (Locke, 1969, p. 225).

A crucial point in Locke's argument is his claim that freedom from absolute and arbitrary power is so crucial for us, that without it, we forfeit our “preservation and life together” (Locke, 1969, p. 178). In society, liberty consists in being "under no other legislative power but that established by consent in the commonwealth", and not under the "dominion of any will or restraint of any law, but what that legislative shall enact according to the trust put in it" (Locke, 1969, p. 178).

4.1.3 CHILDREN AND GOVERNORS

It seems that parents are the governors of their children. "[L]unatics and idiots are never set free from the government of their parents", Locke says, which implies that others are first subjects of their parents, and then subsequently released (Locke, 1969, p. 196). The property of parents is also the expectation of their children, and the parents are commonly "sparing or liberal", depending on how well the children have pleased their "will and humour" (Locke, 1969, p. 202).

When discussing experience, Locke (1997, p. 60) asks whether "children and idiots have souls, have minds", which he concludes that they do not. Humans are blank slates, and the blank slate – no mind, no soul – is the child. He also likens children to idiots and savages when he says that these are beings in which any innate ideas, if real, would be visible; he concludes that there are no such things (Locke, 1997).

Parents are governors, but Locke denies them absolute power, as no one "by any compact whatsoever bind his children or posterity" (Locke, 1969, p. 226). Furthermore, the power of a governor in general is limited to the public good, and they can "never have a right to destroy, enslave, or designedly impoverish the subjects" (Locke, 1969, p. 235). This leads

to a crucial point in any theory of parental rights: "... for his son, when a man, being altogether as free as his father, any act of the father can no more give away the liberty of the son than it can of anybody else" (Locke, 1969).

Living under arbitrary power is worse than the state of nature; none can be assumed to want this, which implies that it can never be legitimate (Locke, 1969). How, then, does the state protect the rights of children against the dominion of parents? The main problem is to determine to what extent children are future persons with rights currently, and how this can limit the rights of parents to dispose of their property as they see fit. Consent is insufficient for establishing rule over children, unless one desires to argue that the dominion is based on some form of implicit consent derived from an examination of the child's needs. A social contract has problems dealing with fully rational beings, and even bigger problems with children.

If children are considered property, the government cannot normally intervene without the consent of the parents. This follows naturally from Locke's insistence that the preservation of property is the end of government (Locke, 1969). The only legitimate goal of government is "to preserve the members of that society in their lives, liberties, and possessions" (Locke, 1969, p. 255). Assuming that they erected a state in order to preserve their property, allowing the state to interfere with their property, would be "too gross an absurdity for any man to own" (Locke, 1969). The government is limited by such considerations, and cannot exercise arbitrary power, neither through executive powers nor through legislation (Locke, 1969, p. 238).

Briefly summarising Locke's views, we have found no evidence of children being considered the property of their parents. It may be argued that they are indeed labour mixed with nature, but Locke himself does not seem to hold this opinion. They are presented more like idiots who tacitly consent to the rule of their parents; the ones that grow out of idiocy are then subsequently released from the subjugation.

-Proposition 1: Children are not property, but neither are they fully rational individuals.

Locke also implies that parental authority can indeed be abrogated, when the good of the state so requires it. Little has been found in ways of absolute rights for children, but they are portrayed as holders of future rights, which imply that parental rights must be limited in order to protect the exercise of such rights.

-Proposition 2: Children are bearers of future rights, and parental authority must be abrogated in order to protect the free exercise of such rights.

4.2. JOHN STUART MILL

Another important figure in classical political liberalism is John Stuart Mill. In *On Liberty* (1985), he states that his objective is to discuss "civil, or social liberty: the nature and limits of the power which can be legitimately exercised by society over the individual" (Mill, 1985, p. 59).

According to Mill (1985), the state was instituted for the purpose of protecting the weak. In order to protect all from the state, the state would have to be limited. We thus have a double agenda in Mill's liberalism: The protection of the weak and the limitation of the state. In order to protect the weak, which might for our purposes include children, the state will

have to be strong enough. However, it cannot be so strong that it threatens liberty – the space where individuals have freedom and the state has no access (Mill, 1985).

4.2.1 LIMITATION OF MAJORITY POWER

Whenever society interferes with things "it ought not to meddle" in, it is "social tyranny" (Mill, 1985, p. 63). This social tyranny is worse than most other forms of tyranny, as "it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself" (Mill, 1985, p. 63).

Mill's main fear was not, as for Locke, the authoritarian dictator, but the dictatorial majority. Rule by "the will of the people" involves some idea of majority rule, and protecting the minority thus becomes a main concern (Mill, 1985, p. 62). Mill's focus on individual liberty from interference by the majority is significant for the question of what rights individuals have to decide how to raise their own children. The fear of majority tyranny may seem to imply that the state should stay away from childrearing and education. However, we first have to answer the question of what kinds of entities children are.

While Mill fears those who seek to exert state authority whenever they imagine that something good (in their eyes) can be done, he does provide a simple principle to determine when state interference is warranted: "That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection" (Mill, 1985, p. 68).

Furthermore, in everything that "merely concerns himself", individuals have absolute independence, and over their own bodies and minds, they are sovereign (Mill, 1985, p. 69).

-Proposition 3: Individuals have absolute independence when their actions do not affect others, and absolute sovereignty over their own bodies and minds.

Once more the central dilemma rears its ugly head: Do we interfere with parent's rights to choose what they deem to be best for their children, or do we close our eyes to the fact that some children, if left to the mercy of their parents, will not in any meaningful way be independent, or guaranteed an upbringing that gives them the chances of succeeding later in life? Even if that means they will not be able to freely choose among the various philosophies of life that they will only later on be fully able to rationally evaluate?

4.2.2 MATURITY OF FACULTIES

While this can be seen as a dilemma, Mill didn't. Full rights only apply to "human beings in the maturity of their faculties" (Mill, 1985, p. 69). Children require protection, both against themselves and external injury, and in this they are like barbarians living in "backward states of society in which the race itself may be considered in its nonage" (Mill, 1985, p. 69). For barbarians, and children, if we keep Mill's comparison, "[d]espotism is a legitimate mode of government", and "[l]iberty ... has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion" (Mill, 1985, p. 69). Berlin (2002, p. 51) likewise discusses whether or not liberty is a universal value, or one reserved for "particular societies, or particular times and places"

(Berlin, 2002). However, we need not take such notions to imply that parents must have authority over young individuals.

Children, then, must be protected. They are not allowed liberty, because Mill thinks they would only hurt themselves or be hurt by others. Someone must be their despots. But who is to be the despot of children? Should parents be Hobbesian sovereigns with absolute power over the children, or must they be protected also (or even mainly) by the state? It is important to note that Mill says this despotism must have the improvement of the children (or barbarians) as the end, and only means conducive to that end are justified (Mill, 1985).

-Proposition 4: The only legitimate goal for someone with authority over children is the child's improvement – fostering development towards self-determination and maturity of human faculties.

If parents are allowed to be despots, their despotism is only legitimate if the improvement of their children is achieved. Does this open for state intervention wherever parents abuse their authority? If so, we'll need an arbiter to decide what is conducive to children's improvement. Can the majority – the state – define what improvement of a child means, or is this judgement left to parents? If left to parents, the rearing and education of children is completely off limits for the state; if the majority gets the power of definition, the dominion of parents over their children is shattered and the state must be assumed to play a very active role in deciding how children are raised and what they should learn.

4.2.3. INDIVIDUAL DETERMINATION

For anyone with a "tolerable amount of common sense and experience", the choice of way of life should belong to them (Mill, 1985, pp. 132-133). The good is subjective, and Mill does not assume that that we have access to knowledge about what is objectively good. He simply defends their right to choose for themselves. Individuals must choose for themselves "because it is his own mode" he chooses, and "[h]uman beings are not like sheep" (Mill, 1985, p. 133). This strong individualism precludes me from choosing for you, but what does it say about a parent choosing for a child?

People are not like sheep, and if we agree with Mill that children are not their parents' property, it seems obvious that children's right to choose for themselves must also be preserved. We cannot make them choose while young, but we may be required to do our best to keep their options open, so that they can choose freely when they become able to. So diverse are people, Mill says, that they cannot "obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable" if others determine their way of life (Mill, 1985, p. 133). Berlin (2002) proposes that being "free to choose, and not to be chosen for, is an inalienable ingredient of what makes human beings human", at least for those who have experienced liberty (Berlin, 2002, p. 52).

-Proposition 5: Individuals must choose their own way of life, and cannot achieve their fair share of happiness or achieve their potential mental, moral, and aesthetic stature if others choose from them.

When children attain "the capacity of being guided to their own improvement by conviction or persuasion", despotism is only justifiable if necessary for the protection of

others (Mill, 1985, p. 69). This is where Mill's harm principle enters the equation, but the question of who defines improvement is still unanswered. Harm can be caused both by action and inaction, so our duties to others are not purely negative (Mill, 1985). This might be of interest with regard to children, as not doing something, one can, according to Mill, "cause evil to others" (Mill, 1985, p. 70).

4.2.4 UTILITARIANISM

When it comes to ethics, Mill in *On Liberty* is a utilitarian, and he regards "utility as the ultimate appeal on all ethical questions" (Mill, 1985, p. 70). What kind of utility? Utility "in the largest sense, grounded on the permanent interests of man as a progressive being" (Mill, 1985, p. 70).

We shall shortly see how Mill conceives of human liberty. We must note that he has already stated that children are not fit for this liberty, but can we really disregard the question of what is required to raise individuals to be fit for a meaningful use of these liberties when they grow up? The following suggests that many upbringings might be prohibitive of the future liberty for children:

"This then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness, demanding liberty of conscience in the most comprehensive sense, liberty of thought and feeling, absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological" (Mill, 1985, p. 71).

The first region of human liberty concerns individuals' consciousness. This is shaped in the years they live with their parents, and this part of humans is also notoriously hard to control politically. The second region is the "liberty of tastes and pursuits, of framing the plan of our life to suit our own character, of doing as we like, subject to such consequences as may follow, without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong" (Mill, 1985, p. 71). Mill's third region is the liberty of association, which is of less interest here.

If the despotic parent instils in his children dogmatic doctrines that will guide the child for the rest of his life, this will to a certain degree be akin to choosing the child's "plan of life"; individuals that let others choose their plans of life "has no need of any other faculty than the ape-like one of imitation", and it seems absurd to argue that these kinds of individuals are what Mill would prefer to be raised (Mill, 1985, p. 123). The malleability of children makes their protection extra important.

Berlin (2002) seems to imply that individuals need a certain minimum space in order to flourish, and this might just hold also before they become adults. He refers to Locke and Mill, and states that the "minimum area of personal freedom" must on no account be violated, because if it is, an individual "will find himself in an area too narrow for even that minimum development of his natural faculties which alone makes it possible to pursue, and even to conceive, the various ends which men hold good or right or sacred" (Berlin, 2002, p. 171).

-Proposition 6: Liberty requires a minimum space which allows for a liberty of conscience and the liberty to plan own lives.

4.2.5 STANDARDS OF TRUTH

Regarding truth and an individual's ability to achieve certainty, Mill is a sceptic (Mill, 1985, p. 78). This is one of the main reasons for demanding toleration of various opinions, but it does not devolve into a doctrine of relativism: "Men and governments must act to the best of their ability. There is no such thing as absolute certainty, but there is assurance sufficient for the purposes of human life" (Mill, 1985, p. 79).

Even if one cannot be sure that the majority, or anyone else, know what really constitutes improvement in children, or what is beneficial for them, we need not, and should not, make this an argument for non-action. While uncertainty should certainly urge caution, we must – when necessary – act upon our sufficient assurances.

-Proposition 7: Lack of absolute truths is not an argument in favour of parental authority, as we have assurance sufficient for the purposes of human life.

While requirements on the rearing and education of children will interfere with the absolute liberty of individuals to order their own lives, Mill's harm principle may require it. While children are not mature, and are in ways like barbarians, but they are also to be protected from harm. Precluding people from making their own choices in life, and thus achieving happiness, can certainly be construed as causing harm. Thus, parents that take choices away from their children, and act contrary to their improvement, cause harm and act unjustly.

Furthermore, the rest of society can be understood as accomplices to this injustice if they were in a position to prevent the harm. Mill is clear on the fact that not acting can also be to "cause evil", and those that could have prevented the evil, but didn't, is equally accountable for the injury (Mill, 1985, p. 70). Mill has thus provided a potentially very strong liberal argument in favour of state intervention in the protection of the liberty of children. When it comes to the practical considerations of utilitarian evaluations, we also have the uncertainty concerning who determines what is good and improvement for children. This uncertainty means that Mill does not really provide a useful guide for practical politics in this matter. He has, however, provided us with some important arguments in favour of protecting the negative space around individuals – young ones included.

5. A CLASSICAL POLITICAL LIBERAL ARGUMENT FOR STATE INTERVENTION

From the preceding analysis of Locke and Mill, propositions have been established:

1. Children are not property, but neither are they fully rational individuals.
2. Children are bearers of future rights, and parental authority must be abrogated in order to protect the free exercise of such rights.
3. Individuals have absolute independence when their actions do not affect others, and absolute sovereignty over their own bodies and minds.
4. The only legitimate goal for someone with authority over children is the child's improvement – fostering development towards self-determination and maturity of human faculties.

5. Individuals must choose their own way of life, and cannot achieve their fair share of happiness or achieve their potential mental, moral, and aesthetic stature if others choose from them.
6. Liberty requires a minimum space which allows for a liberty of conscience and the liberty to plan own lives.
7. Lack of absolute truths is not an argument in favour of parental authority, as we have assurance sufficient for the purposes of human life.

These propositions form the basis of a new classical liberal argument against strong parental rights. The first part of such an argument involves defining children as individuals with full rights – a move that imposes duties on others. The second part involves government, and how it has a duty to protect a negative space around persons that are not of full mental, or moral, capacity. Children are amongst these persons. Lastly, and importantly, this classical liberal argument against parental rights is based on an acknowledgement that liberalism is based on a comprehensive conception of the good. This conception is the basis of government intervention, and an argument of this kind is both more honest and easier to apply to real politics than traditional liberal arguments that purport to be based on a general skepticism of such conceptions. The latter part will be discussed first, before an examination of the latter two follow.

5.1 THE LIBERAL CONCEPTION OF THE GOOD

“The heart of the liberal philosophy is a belief in the dignity of the individual, in his freedom to make the most of his capacities and opportunities according to his own lights, subject only to the proviso that he not interfere with the freedom of other individuals to do the same” (Friedman, 2002, p. 195).

Pluralism and deference to individual sovereignty unites most strands of liberalism in an emphasis on individual liberty (Raz, 1986). This liberty is of great importance, and it is the very foundation of governmental legitimacy in the classical liberal theory.

However, this seemingly innocuous concept is subsequently taken as an axiom that necessarily leads to liberalism as the answer to the question: What is the just, or good, society? By relying on this as an axiom, some proponents of liberalism seem to argue that non-liberal theories are dangerous because they are based on comprehensive conceptions of the good, while liberalism is not.

From this stance, they may argue in favour of pluralism and limited government, while justifying government intervention when others attempt to impose some conception of the good on others. The argument is that the value of individual liberty is clearly based on a comprehensive conception of the good, and that the role of a liberal government is to ensure that all citizens are given the chance to learn about, and take part in, this good.

With this position, a realist and competitive element to liberalism is introduced, which implies that it is one amongst other conceptions of the good, and that the government should promote liberalism’s conception of the good. Such a position merely makes explicit what has been implicit in most liberal theories. Furthermore, this makes it easier to see the role government has to play in terms of protecting children from attempts to turn them into individuals that will not have a chance to do well in liberal society.

The above propositions involve deeply normative elements concerning the value of individualism, power, and the role of government. This is not a flaw, but the basis of the conclusion that follows. The question of parental rights is a deeply normative issue.

5.2 CHILDREN AS BEARER OF RIGHTS

The propositions imply that children are individuals of some kind, and that they are bearers of rights. From Locke, we got the notion of children as bearer of future rights. Without knowledge of how the child would like to exercise such rights, we must make sure that as many doors as possible are kept open. Propositions 3, 4, 5 and 6 together require that individuals must be as free as possible to determine their own way of life, and this severely restricts the rights of parents to raise their children as they please. The fourth proposition is key in determining how children are to be governed, and the liberal conception of the good becomes the foundation of evaluating the exercise of parental governance and imposition of state power in the protection of children.

5.3 THE PROPER ROLE OF GOVERNMENT

Following Locke and Mill, government is created to protect us all from others, and to protect both our lives and liberties. Children are part of this all, and with a liberal conception of individual sovereignty, no person can have authority over another, apart from through the exercise of state power.

Children are, however, individuals without natural defences, neither physical nor psychological. Protecting them thus becomes a government imperative. A liberal state could demand other forms of organising families, but allowing families to raise children in their midst, and with broad liberties, seems to be the approach most compatible with the ideals of individual liberty. Granted that the government can intervene whenever families exercise undue force – physical or psychological – on a child.

This is similar to all situations in which some person attempts to dominate another, and, as such, this approach to children extends the approach to relations between rational adults to the relations between rational adults and non-rational ones. The relations are, however, somewhat different, as they are asymmetrical, and whoever has physical or psychological advantages over such vulnerable persons much exercise great restraint. If they do not, government must enforce the integrity of the negative space of vulnerable persons for them.

6. CONCLUSION

Parental rights and liberalism have a long and conflictual relationship. Some of the conflicts are, however, based on different conceptions of what liberalism is. The first order of business when discussing liberalism and parental rights should be to make clear what sort of liberalism one adheres to. When this is done, some will have made claims of liberalism that others will consider deeply non-liberal. Debates will nevertheless improve by way of conceptual clarity.

One tradition of liberalism is classical political liberalism. This is the school here exemplified with Locke and Mill, as their writings on children and authority have been examined in order to present a liberal theory which is inspired by them both. It is a limited theory, focused on the authority of parents and government over children.

The protection of individual rights is the reason for government, and a set of propositions have been deduced from the reading of Locke and Mill. These propositions, in sum, clearly limit parental authority. In this liberalism all individuals have equal rights, none have the right to dominate others, and children are individuals, too. Not property, nor slaves.

Liberalism is based on a conception of the good that emphasises the value of individual sovereignty and liberty. With such a conception, the ultimate good is to be under no other power than that of the government – erected to safeguard the integrity of society and protect individual liberty. Liberalism must acknowledge that this foundation is a conception of the good, and that this conception is the very reason for both the theoretical venture of liberalism and state legitimacy. Such a conception is the guiding star of liberalism, and this involves creating and protecting a negative space around each individual, including children.

Such a liberal theory may sound realistic: It involves an acknowledgement of the fact that liberalism is merely one amongst many conceptions of the good, but that it has power and the opportunity to enforce its own propagation and tend to do so. However, this is a liberal theory no different from the classical versions in substance – merely in words, and honesty.

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Breve currículo

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