

Chapter 14

Children's Rights, Well-Being, and Sexual Agency

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14.1 Introduction

Talk about children and sexuality, or worse sexual children, and you are likely to provoke anxiety.¹ This is especially true when discussion strays from the need to protect children from abuse. But stray we will, right into the contested area of whether children are sexual agents in their own right, with elements of their well-being entwined with that sexual agency. This discussion is necessary both so that we do not misrepresent the lives of children, and in order to deliberate about how to treat them both now and with a view to their development into fully autonomous, flourishing adults.

In this paper we offer a review of some of the literature about childhood sexuality, draw attention to certain gaps in that conversation, and suggest directions for future research. We also provide support for the claims that sexuality may be a good of childhood, and that a self-chosen and explored sexuality can be an aspect of children's well-being. It is likely, we suggest, that children have some degree of sexual agency that ought to be supported in order to support their well-being and to fully respect them as they are in the present and not simply as future adults.

We begin by describing two sets of discourses that direct and constrain common understandings of child sexuality. Section 14.2 contrasts 'romantic' with 'knowing' children, i.e. understandings of children as either asexual innocents or little adults made so by premature exposure to sexuality. The discourse is problematic in that it makes childhood sexuality inconceivable. Section 14.3 presents two recent and

¹A reaction dubbed "visceral clutch" by Masters and Johnson (Stainton Rogers and Stainton Rogers 1992: 162).

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conflicting discourses. One represents sexual children as ‘out-of-control’, while the other represents them as legitimately ‘developing’ their sexuality. Proponents of the former view argue that children’s sexual agency ought to be strictly controlled, while those supporting the latter argue that it ought to be carefully encouraged. In this context, debates about children’s sexuality focus on rights to sexuality-related health services, comprehensive sex education, and freedom from abuse. Discussion about sexuality as a good of childhood or as an aspect of child well-being finds no place in this context.

In the third section we take up three sets of worries raised by the suggestion that children may be legitimately sexual. These worries center on questions about the ability of children to legitimately consent to sexual activity, about parental rights, and about what to do in cases where children’s welfare and autonomy conflict. The fourth section asks what rights follow from thinking of sexuality as something in which children have an interest.

Some important qualifications: First, throughout this paper we assume that children are appropriate bearers of, at the very least, a set of human rights.² We understand rights in developmental terms according to which rights first protect interests (in the case of the very young) and later protect choices (in the case of fully autonomous adults) and in the middle defend a mix of the two.³ Second, though we focus on children’s abilities to act as sexual agents we do not mean to imply that children are fully autonomous, fully mature, or that their sexuality is identical to that of adults. Children are not adults, though the boundaries of the two categories blur during adolescence. Third, ‘children’ is not a uniform category. Though we suggest that it is important to recognize children’s sexuality without focusing solely on their development, children are in the process of maturing physically, cognitively, socially and emotionally. As a result, they will have different and expanded interests, needs, desires and abilities related to sexuality as they get older and their knowledge and skills increase, i.e. as they become more confident, informed, and competent decision-makers. Different behaviours and expressions of sexuality will be appropriate for children of different ages. Less mature children and adolescents do require protection from adults and sometimes from themselves; however, as stated above, their immaturity does not negate the degree of autonomy they do have, nor should protection be understood strictly in opposition to that autonomy.⁴ Fourth, nothing that is said here should be construed as suggesting that children ought to be sexual in any particular way. We argue only that when they are, both their sexual

²For a defense of this position, not universally held, see Brennan and Noggle (1997).

³See Brennan (forthcoming), and Brennan (2002).

⁴As we discuss below, a person is autonomous when she has and uses the capacity to understand, deliberate between and endorse (or identify with) her desires, values, actions and so on, with the possibility of making significant choices between them. We would argue that she does not need to be self-transparent, perfectly informed, or uninfluenced by others, though she cannot be coerced in order to be autonomous. To be an autonomous agent, rather than simply an agent, is to be able to choose relatively freely rather than simply to chose. See John Christman’s article on “Autonomy in Moral and Political Philosophy” in the *Stanford Encyclopedia of Philosophy*.

well-being and autonomy ought to be supported and respected. Finally, children are regularly sexually abused and those violations need to be taken very seriously. Claims about children's sexual agency or autonomy should not be used to attempt to justify sexual abuse.

14.2 Innocence and the Romantic or the Knowing Child

There was a shift, during the Enlightenment in the West, from thinking of children as "faulty small adults" tainted by "original sin," to thinking of them as asexual innocents, blank slates in need of protection and guidance as they grew into adulthood. On this later view children are innocent because they lack knowledge. They have nothing to hide because they have yet to become aware of the adult meanings of their actions. Without that knowledge they cannot do or intend to do anything wrong, much less anything sexual. This image of the "romantic child" was a highly sentimentalized picture of blissful innocence and natural purity. Such innocence is fragile. In their unknowing state children cannot protect themselves from unwitting exposure to the experiences or information that might erode their innate naivety.⁵ (Irvine 2002; Ferguson 2003) Instead adults become the guardians of innocence.

The figure of the all too "knowing child" acts as a foil to that of the romantic child. Knowing children have seen things they shouldn't have: poverty, drunkenness, life on the streets, and who knows what they've done. They are portrayed as innocent victims of an uncaring society, forced to grow up too soon and morally compromised in the process. Describing this image, Christine Piper notes the Victorian connection between unlimited exposure to the world, as with urban street children, and the taint of precocious sexuality. She repeats, for instance, the 1882 Select Committee description of "girl street sellers in Liverpool" which reads "though she may carry a basket, there is very little difference between her and a prostitute" (Piper 2000: 33, note 43).

According to Piper, knowing children are those who should be but are no longer children. Their innocence, and with it their childhood, has been lost or stolen.⁶ In these portraits of the romantic and knowing child Piper finds evidence for the claim that "child + sex = abuse" and "child + sex = adult" are the only socially acceptable configurations of childhood sexuality. Lost is any possibility for recognizing the existence, let alone legitimacy, of childhood sexuality or agency in the form of "child + sex = OK"⁷ (Piper 2000: 28–29). Romantic and knowing children cannot

⁵This suggestion resonates with Rousseau's prescriptions for Emile.

⁶This image of the child in danger and in need of protection, and of the threat posed to childhood by sexuality, is explicit in Postman (1982).

⁷Daniel Monk concurs writing that "the traditional construction of the child as a non-sexual innocent" is often protected by "excluding the sexual child from the category of childhood itself" this time in using a medical model of childhood (Monk 2000: 187).

be sexual agents. In the former case they are innocent of all things sexual, and in the latter they are both adults and passive victims.⁸

Piper notes a socially accepted link between claims of innocence and claims to protection. The available configurations of “children + sex” described above leave out the possibility that children might be voluntarily sexual and yet still deserve protection from adults. On this view the innocent are defined as helpless; they are dependent on others to guide and protect them and they deserve help because they are not yet responsible for themselves. There is no room here to recognize that children may have an interest in exploring, developing, or expressing their sexuality as semi-autonomous sexual agents who can be *involved* in their own protection but who nonetheless remain children who deserve and benefit from adult help and guidance.

To support her claim that discourses of the romantic and knowing child are still major influences on our understanding of childhood Piper cites the fact that despite being unable to give legal consent to sex underage prostitutes in Britain are regularly prosecuted as offenders themselves, rather than treated as victims (Piper 2000: 27–28). Further evidence that romantic notions of childhood innocence, the dangerous role of sexual knowledge, and the adult status of knowing children are still with us can be found in all manner of places including:

- Outrage in 2011 in response to a link, posted on the US Department of Health and Human Services website, to a KidsHealth webpage that describes children as “sexual beings.”⁹
- Extraordinary funding levels for abstinence only education in the United States from 1996 to 2010. For example, 2005 funding for the program was \$170 million.¹⁰

⁸The knowing child was a figure that was popular during the eighteenth century and which proved especially useful to social reformers who aimed to keep children off the streets, out of the factories and back in homes and schools. The purity movement of the time in fact used such images to strictly control female sexuality and to deny female pleasure (Piper 2000). The knowing child image resurfaced again during the depression in the 1930s and circulates today in discussions aimed at curbing abuse and youth pregnancy, restricting child pornography and international sex tourism, and even in discussions that advocate for abstinence-only sex education. Our point, and Piper’s, is that this definition of children desexes them so that, while it is crucial in many of these circumstances, protection comes at a price. Though in many cases protection is absolutely necessary the knowing child figure helps to solidify an image of children as victims and as passive non-agents who cannot be sexually autonomous—this is an image that can greatly limit the rights they are accorded regarding sexuality.

⁹Fox News gives an overview of the situation online (see Fox News 2011) while Krepel (2011) gives an overview of outraged responses which, it claims, “boil down to a demand that information about sexual health not be discussed by public health officials,” especially in regards to children.

¹⁰See Collins (1999) and government information available at http://www.hhs.gov/news/press/2010pres/09/teenpregnancy_chart.html, http://www.hhs.gov/news/press/2010pres/09/teenpregnancy_abstinencegrants.html, and www.aids.gov/federal-resources/pacha/meetings/2012/may-2012-cse-resolution.pdf.

- News articles published in 2011 online with titles such as “Sex Education and the Rape of Our Children’s Innocence”¹¹ and “A Child’s Innocence is Precious. That’s Why It Must Be Protected” with opening lines like “Children seem to be disappearing. They are physically present, but infant clothes, toys and street games seem to have been subsumed by a rush to adulthood”¹²
- The following public responses to a BBC news story on sex education and the pregnancy of three girls aged 12–16:
 1. Children are growing up far too early nowadays and their innocence is taken away from them.
 2. It seems to me that the answer is to stop sex education...
 3. Children were allowed to be children and didn’t know about sex until it was necessary. Nowadays infants know what it is. There is too much knowledge.
 4. These children obviously knew what they were doing and if they are mature enough to make that decision to engage in a sexual relationship, then they must accept the responsibility for themselves.¹³

A number of authors have criticized the image of the romantic child. Many cite James Kincaid (1998), who argued that images of childhood innocence work together with an almost complete eroticization of children. The “cultural double-speak” Kincaid uncovers, writes Kevin Ohi, “allows us the pleasures of imagining and perpetuating the victimization of children while praising ourselves for protecting them” (Ohi 2004: 82). At the same time eroticizing childhood innocence requires us to erase certain realities of the lives lived by actual children. In this way, we come to define children by what they don’t know, need or do, rather than by examining their actual understandings, desires, needs, and activities¹⁴ (Ohi 2004: 82–83).

David Archard identifies three dangers posed by the romantic ideal that positions children as asexual innocents. First, it obfuscates the reality of a child’s actual sexual development. Second, it is an ideology that denies facts to maintain the appearance of what is wanted from the child, a “natural” innocence adults cannot have. Third, such an ideology may be dangerously sexual...attractive for being that which is not yet but can be corrupted (Archard 1998: 118–119). Together the work of Kincaid, Ohi and Archard suggests that failure to recognize child sexuality not only misrepresents but may actually undermine children’s well-being.

¹¹ See Brown (2011).

¹² See The Guardian (2011).

¹³ See BBC News Online (2005).

¹⁴ This empty understanding of childhood, writes Ellis Hanson, allows us to project our fantasies of innocence and corruption onto children “to construct, watch, enjoy the erotic child without taking any responsibility for our actions” (Hanson 2004: 134).

14.3 Sexuality and the Out-of-Control or Developing Child

Humans are sexual, broadly understood, from a very young age and certainly before puberty. Children are curious about their own and other bodies, they ask about babies and sex, touch their genitals, are aware of themselves early on as gendered, they engage in pre-adolescent sex play, and they have “crushes” when they are quite young (Larsson 2001; Coleman and Roker 1998; Friedrich 2003; Ince 2004). Though young children do not understand their emotions and behaviour as adults with greater knowledge of the physical, social, and emotional aspects of sexuality do, it is reasonable to claim that their behaviours are sexual. In Canada “the proportion of teens who reported having had sexual intercourse before they were 15 years old fell from 12 % in 1996/1997 to 8 % in 2005” and approximately one-third of teens aged 15–17 years have had intercourse (again with percentages decreasing since 1996/1997)¹⁵ (Rotermann 2008). Other non-coital yet interpersonal sexual behaviour also occurs among teens (Princeton Survey Research Associates International 2004). Given this information, insisting on the romantic innocence of childhood is unlikely to lead to an adequate understanding of children’s abilities, needs or well-being in relation to sexuality.

Adults who accept evidence that children and teens are sexual usually respond in one of two ways. First, they may focus on the need to control what they perceive as premature and irresponsible sexual behaviour. Members of this group often promote abstinence sex education and highlight the dangers of precocious sexuality.¹⁶ They often use inflammatory language, for example describing “the same frightening story...that rattled me to the core...—STDs, risky behaviors, and in younger and younger kids. Not just in the tough crowds—in all types of crowds” (Meeker 2004). Such language leads to the perception of a sexual crisis facing youths and the parents who have to deal with them. With headlines like “It’s An Oral Sex Epidemic,”¹⁷ books such as the 2004 *Epidemic: How Teen Sex is Killing Our Kids*,¹⁸ and newspaper articles about sexting that focus on fear (for example in Ross 2013; Meeker 2005) this ‘Out-Of-Control’ discursive representation of teen sexuality can lead to what some describe as “moral panic” (Coleman and Roker 1998; Potter and Potter 2001).

There are legitimate reasons to be concerned about risky behaviour, but sensationalized discussions that credit teens with little or no responsible agency are unhelpful. They ignore the importance of sex education for younger children; often interrogate only female sexuality as girls risk pregnancy and are usually the ones performing oral sex; and importantly, distract from the fact that the majority of 13–17 year olds are purposefully not becoming sexually active. A 2004 poll in the United States indicates that “The vast majority (87 %) of teens aged 13–16, have not had sexual inter-

¹⁵For further information on teenage sexual behaviour in a Canadian context see McKay and Bissell (2010).

¹⁶For a discussion of adolescent sexuality and sex education that explicitly rejects this focus on danger see Moore and Rosenthal (1998).

¹⁷See The Oprah Winfrey Show (2002).

¹⁸Meeker (2004).

course. Most (73 %) have not been sexually intimate at all. Seventy-four percent say they have not had sex because they made a conscious decision not to. As many (75 %) have not because they believe they are too young" (PSRAI 2004).

Despite evidence of adolescent responsibility, 'out-of control' understandings of child sexuality continue to position children and teens as non-autonomous objects of adult attention rather than as potentially responsible sexual agents. Often the parents or schools of these "kids gone wrong" are seen as irresponsible, at fault by reason that they didn't teach children "any better" or restrict children's freedom. While parents and schools do have a responsibility to guide and educate children, on this view children and teens cannot be involved in protecting themselves.¹⁹ The assumption is that, given their immaturity, lack of knowledge and potential to "go wrong," it would be dangerous for young people to enjoy their current sexuality. Sexuality is not seen as a potential source or arena of well-being on this account.

This understanding of sexual youths can also create a class based and racialized distinction between 'bad kids and good kids'. Public response to the BBC report on child pregnancy above, where the three teen mothers were black, includes regular reference to "people like these" whom the "government throws money at" and to "the country's underclass" whom the new babies are "destined to join." One respondent, Elizabeth, uses language that is racially coded saying that the teens share their mother's "'whateva' attitude to sex" (BBC News Online 2005). These attitudes are repeated in *Epidemic*, the book quoted above as an example of moral panic. The author, Meg Meeker, begins her story saying that "even the suburbs" are now infected by the diseases and teen pregnancies that used to appear only in the "mess" of the inner-city and that such problems "didn't belong in my patients," that is in white middle-class suburban kids. Without sympathy, she contrasts "multitudes of kids with countless problems" in the inner city to suburban "red-faced babies who nursed beautifully," babies of young girls who are now in danger from "inner-city" disease (Meeker 2004).

Jessica Fields' examination of the rhetoric of "children having children" confirms that images of the out-of-control sexual child are not neutral with respect to race, class, or gender. She writes that "Those advocating 'abstinence-only sexuality education' argued that their curricula would protect innocent children from others' corrupting influence; racialized language and images suggested that these 'others' were poor, African American girls" (Fields 2005: 549). It might not be an out-of-control, hyper-sexualized child's fault, but here they are still seen as "bad," dangerous to the "good kids" and potentially irredeemable. Especially in the United States, where access to public health care is limited, where eugenics has been practiced on a

¹⁹The public response to the BBC article on teen pregnancy again illustrates this point. Respondents cite children's mothers, schools and, though rarely, the older fathers of the girl's babies as responsible, rarely examining the choices girls themselves make. One person writes, for example, "This mother is entirely to blame and her children should have their children taken away to be adopted by adults ready and willing to take on the responsibility of children" (BBC News Online 2005). Of course there is still a question of whether or not these girls could be expected to choose differently given their circumstances and lack of education, but that does not mean that children of this age are naturally incapable of responsible choice.

strikingly similar basis (even in 2010),²⁰ and where similar “controlling images” were used to legitimate slavery and now to limit citizenship rights and deny institutional racism,²¹ the effects of racialized and classed images of overly sexual, out-of-control children on children’s well-being need to be interrogated.

That was one common interpretation of the fact that children are sexual. A second response comes from those who argue that children displaying sexuality are in the process of developing as competent and mature sexual agents, which they need help to do safely. This response can itself proceed in one of two ways: either with a sole focus on the need for adult guidance that once again makes children into objects of concern, or with an awareness of the complexities engendered by a need to balance children’s “best interests” with their developing sexual autonomy.

Fields discusses the former move as a strategy for ensuring protection for sexually active young people in a context where being responsible and deserving of protection are taken to be mutually exclusive. She writes that “Those promoting ‘comprehensive sexuality education’ recast these girls as ‘children having children’—innocents who needed guidance and who could not be held responsible for their missteps” (Fields 2005: 549). This image of the innocent yet sexual child differs from romantic images of child purity, but still fails to make any room for the possibility that children may be capable of some degree of autonomous sexual agency (see Tolman 2002). As Fields notes, it also preempts questions about responsible or irresponsible sexuality in boys.

Roughly, a person is autonomous when she is a competent decision maker with the ability to act, uncoerced, on the basis of her significant decisions. She is a competent decision maker when she has and uses the capacity to understand, deliberate between and endorse her desires, values, actions etc., and she need not be self-transparent, perfectly informed, or uninfluenced by and/or completely independent of others in order to do so.²² If we recognize that sexual children often possess some degree of autonomy and are, as they should be, in the process developing that autonomy, and if autonomy depends on skills and competencies related to understanding and deliberation, then children can be well sexually only with adequate access to information about sex. They have an interest in maturing into adulthood by becoming better decision makers about sexual and other matters, which information helps them to do.²³ Since the ability to act on the degree of autonomy that one has developed is part of one’s well-being, if children are already autonomous to

²⁰ See Center for Genetics and Society (2012) and Johnson (2013).

²¹ Collins (1999).

²² See Christman (2009).

²³ On this point, Corrine Packer adds “any young individual seeking information on sex and human reproduction demonstrates ipso facto a certain degree of maturity and competency to deal with the subject matter” so that children ought to be given the information they seek (Packer 2000: 169). The UN Convention on the Rights of the Child agrees, saying in article 13.1 “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.” See also article 17.

some significant degree then they also have an interest in deciding certain things for themselves, at least when they are relevantly competent.

Claims about children's autonomy then lead to a host of further questions. To mention only a few: Would children's well-being be better supported if they had easier access to contraception? Should girls or young women be able to choose to have an abortion in contexts that allow adult women to do so? If so, should they be required to secure parental consent? Should children have a right to privacy about their sexual lives and health? Can young people legitimately consent to and engage in sexual activity, and if so what kind, with whom?

14.4 Consent, Parental Rights, and Autonomy/Welfare Conflicts

Three sets of worries arise from the suggestion that children may be legitimately sexual, worries hinted at by the questions in the previous section. They are: first, about children's ability to legitimately consent to sexual behaviour and to make sexual related health care decisions; second, about potential conflicts between parental and children's rights and interests; and third, about conflict between children's own decisions and their "best interests," that is, between their autonomy and welfare. We will discuss each in turn.

Questions about consent: What must obtain for a child to be able to give consent to sexual activity? Do those requirements change depending on her age, her partner, or the activity in question? What is at stake when asking about a child's right to consent?²⁴ We will use David Archard's discussion of child sexual consent to sketch the terrain here.

First, in order for a child to have the ability to consent that child must be relevantly competent. As described above, competence obtains when a person has and can use the set of skills, abilities, character traits and knowledge relevant to making a given decision. We cannot give an exhaustive list of everything required for competence in this case; however one might be expected to know and understand the significance of the physical, emotional, social, and possibly moral risks involved. As David Archard puts it, one ought to have "a certain level of cognitive development—that is, an ability to understand the relevant facts, a certain degree of acquired knowledge" and the maturity to appreciate those facts and to act based on that appreciation²⁵ (Archard 1998: 124). In other words, young people require more than information about the risks and mechanics of sexual activity to be competent as "information alone does not allow teenagers to take control of emotions and relationships" (Rees et al. 1998: 140). They also require social skills and character traits

²⁴We do not address her ability to consent to sexual health care, though perhaps there are similarities between this and the case of sexual activity.

²⁵Note the similarity here to the Gillick test to determine a child's competence to give medical consent (Downs and Whittle 2000: 202–203).

including, but not limited to: the ability to resist peer pressure; a sense of self-worth and self-trust; an ability to evaluate the trustworthiness of potential partners; the ability to acquire and insist on using protection; understanding of their motivations and values; knowledge of and the ability to set limits regarding the activity they are comfortable with; and so on (see Moore and Rosenthal 1998). Archard also notes that physical maturity is relevant and adds that we ought to attend to the ages at which most kids actually are choosing to engage in a particular behaviour when considering where to set the age of majority for such acts (Archard 1998: 126).

Second, it seems reasonable to posit that a child's level of competence does not need to be as high to consent to lower risk activity, such as kissing or genital touching with a peer, as it does for higher risk activity, such as intercourse. People have different standards of what counts as higher and lower risk activity. Some argue, based on homophobic premises, that the age of consent for same-sex activity ought to be higher than for the same behaviour when heterosexual. We leave Archard and others to argue against that proposal though we believe it to be discriminatory and flawed. We add, however, that it is not clear what a bisexual young person should do here. Such a proposal appears to contradict itself since it will have to say that a bisexual person both is and is not legally ready to have sex.

Third, Archard argues that in order for a child's consent to be legitimate it must not be coerced or negated by a significant power imbalance with a potential partner, where that imbalance may occur either because of age difference or because of a "special relationship" between the parties. The question of consent between an older and younger partner has been hotly debated both because of apparently unfair prosecution of boys who are consensually partnered with slightly younger girls and because of claims about "harmless" intergenerational sex or pedophilia.

The question of prosecution of boys or young men who are close in age to younger but consensual partners is complex. We offer considerations here, rather than answers. To begin with, in some places the age of consent for girls was set higher than for boys, so that a boy might be prosecuted for sex with a girl of a given age when the same would not be true had she been the older and he the younger partner (Archard 1998: 121–122). We can find no good defense for this imbalance, especially as girls begin puberty earlier and mature more quickly than boys. Likewise it seems unreasonable to prosecute a young person for something that his partner wants to engage in. However even differences of only 3 years are significant between partners of, say, 13 and 16. In many places these teens are still in different schools (the difference between middle and high school) and the 16 year old is likely to have the benefit of knowledge, experience, skills, and social status (as a highschooler) that his partner lacks. Aware of these considerations, Archard provides a strong defense of a young person's right to consent if she has the competence to do so. To legally discount her consent and her sexual wishes, to say she does not have the right to make sexual choices for herself, is to define her as asexual. Doing so makes her chosen actions criminal and positions her as confused, misguided or naive. As a result her sense of being an agent and a competent chooser may be undermined, thereby limiting her autonomy (Archard 1998: 120).

Proponents of pedophilia or intergenerational sex use evidence of children's autonomy and competence to claim that such involvement is harmless when it is apparently consensual. They may also argue that young children give legitimate consent if they appear to enjoy the interaction and that even children at a young age can know what they want sexually (Archard 1998: 127). They may even argue that they are caring for or beneficently teaching children by engaging with them sexually. Archard is quick to note the obvious inconsistency in claiming that a child can know what she wants and likes in order to consent to it, and at the same time positioning oneself as a teacher of what the child does not yet know (Archard 1998: 127). Archard objects to imposing adult sexual needs on children, and he relates the position of feminist and gay critics of pedophilia that "Fundamentally, there are issues of disparity of experience, needs, desires, physical potentialities, emotional resources, sense of responsibility, awareness of consequences of one's actions, and, above all, power between adults and children" (Archard 1998: 127). He is correct to assert that those imbalances negate consent. Though some may disagree, where one cannot reasonably say no, certainly one cannot say yes. For similar reasons certain "special relationships" involving an imbalance in authority, for example between teachers and students, likely do not allow for legitimate consent. These consent issues are closely tied to claims about a child's right to protection from harm and abuse as well as to her right to make her own decisions.

Questions about parental rights and balancing autonomy and welfare: Mention of conflict between parental and children's rights usually arises around discussions about state-mandated sex education when parents wish to withdraw their children for moral or religious reasons. Parents may also act in ways that violate a child's "human rights," i.e. rights that are not dependent on her autonomy or ability to take up various social roles. Those possibilities aside, a semi-autonomous young person may very well wish to make decisions that her parents do not approve of. She may wish to have an abortion for instance. When she is a minor, but seems to appreciate the potential consequences of her decision, should she require her parent's permission to do so? Does she have a right to privacy in this case or the right to make her own moral, medical and life-affecting decisions? Or do her parents have a right to know, and to guide her choices for her own good, especially if she is not fully mature? (see Rodman et al. 1984).

Parental, or rather paternal, rights were originally understood as a kind of property right to one's children and to the income generated from their labour. Samantha Brennan and Robert Noggle argue instead that parental rights should be understood as stewardship rights. They justify this position by arguing that children are immature and require physical, mental, and emotional care and guidance. Someone must protect, care and advocate for them and, given their probable emotional ties to and personal investment in their children, parents are often best suited for the job. Stewardship rights come with thresholds, i.e. they can be infringed if a child is being harmed, if her needs are not being met, or if her parents violate her basic rights. As stewards, parents have a duty to further their children's development and promote their interests, but this is an imperfect duty so that there is "a great deal of leeway" in how parents may decide to do so (Brennan and Noggle 1997: 13). Likewise, a

child's rights may be infringed but only when there is a great deal at stake—perhaps, suggest Brennan and Noggle, her future ability to exercise her rights—and her rights do not cease to exist when they are over-ridden and must be considered in the process (Brennan and Noggle 1997: 16–17).

Since a parent's stewardship rights "exist only insofar as the parent is indeed promoting the interests of the child" questions about what those interests are become crucial (Brennan and Noggle 1997: 13). Certainly it is in a child's interest to learn how to exercise autonomy through competent decision making. Respecting and guiding her actual decisions will help her to learn this ability. Parents must balance this interest with the child's other interests, some of which might be endangered if she is allowed to make her own decisions. We return here to questions of risk and best interests. The concern is that too much leeway in parental determination of best interests may not, in fact, be in a child's best interest nor respect her sexual rights. Some parents, for example, may hold that a child's interests are best served by demonstrating concern for the welfare of her moral character and perhaps the state of her soul. In that case, as demonstrated above, they may well interfere with a child's decision to access information about, say, contraception or HIV. Community standards, wider public debate, objective considerations about potential harms (here of unwanted pregnancy and possible death), and the affect on other rights the child may have (such as the right to health) will all need to be weighed when considering whether or not parents really are acting in a child's best interest by balancing her need for protection and respect for her sexual rights.

Things get more complicated when older children and teens become competent enough to be semi-autonomous. In that situation a child may have rights to make decisions for herself when she is able to do so. That is, she now becomes not only an object of adult concern but a fellow subject. The issue now is about respecting the rights she does have, not the abilities she is developing. There are two questions here: first, "what does it mean to be semi-autonomous?" and second, "Is there a relevant difference between a competent young person and an adult such that when both decide to engage in high risk behaviour, using acceptable decision procedures, the child's right to chose may be infringed while the adult's may not?"

Reference to "semi-autonomy" indicates that a child is not fully competent, or is competent in some areas and not others. In the former case parents ought to respect the competence she does have and consider her intended decisions but may violate them given sufficient risk to her other rights, interests, and abilities. In the later case parents should respect a child's decisions in the areas in which she is competent, though perhaps that competence will not itself be complete without competence in other areas. The issue of what constitutes risk and best interests arises again here, and must be addressed on a decision by decision basis with serious consideration given to the child's stated preferences, and to the degree of autonomy she does have. As we suggested when discussing consent, significant leeway should be given to semi-competent children making lower risk decisions. Questions to ask here are "What happens to a child's rights when he is partially autonomous?;" "Does she thereby gain more than basic or 'human rights?;" "Do her basic rights require that we respect the autonomy she does have?;" "When can that autonomy be infringed?;"

“Are there reasons to hold that respecting her autonomy is the best way to further her interests?;” “How do we decide what her interests are?;” and “Are there special considerations if her decisions are sexual in nature?”

We cannot fully address the second question, regarding a fully competent minor's right to make a bad decision using a good decision procedure. Some have proposed that the quality of the decision making method teens use is more important than the actual choices they make, so that it is better for them to be autonomous choosers than good choosers.²⁶ This would mean that if they have considered all their options, realize the risks involved, believe it actually could happen to them, and so on, that they might legitimately choose to have intercourse without protection and it would be better for them to do so and contract an STD than to have others interfere with their decision. Though we will not repeat their discussion here John Rees et al. argue that this position is clearly mistaken.

Nevertheless choosing badly is part of what we protect with rights that protect our choices. The right to act in a way that sets back our well-being is part of what it means to have one's actions protected by rights. An older teenager making sexual choices may well make mistakes. Some of these mistakes will be part of the learning process. Some of them will be part of the process of sexual experimentation that seems to be associated with teen sex. We try to protect our children from bad choices by educating them about options available—safer sex, for example—but ultimately at some point the choices are theirs to make. At this point, when acting within their rights, it's our sense that we would do better focusing on good sex and fostering well-being than on harms, bads and wrongs. A sex education program that focused positively on good sex and how to get it is far more likely to engage and influence teenagers than one which points only to dangers and counsels sexual abstinence. Abstinence-only education may even lead to rather than prevent risky behaviour and bad decision making. A teen who believes that choosing to have sex is terribly wrong may not acquire or use condoms, for example, because to do so would indicate the premeditated choice to have sex—an action perceived as blatantly rebellious and morally worse than being “swept away in the moment.”

In any case, questions to ask here include, to repeat, “What is the relevant difference between competent minors and adults that would allow the later and not the former to make high risk bad decisions?;” “Are fully competent minors young people or adults?;” “Can good decision procedures actually lead to bad decisions?;” “What kind of bad choices, if any, is it alright to allow minors to make?;” once again “Are there special considerations if her decisions are sexual in nature?” and so on. Notice that a child's right to make her own decisions may, or may not, include the right to pursue her own pleasure and to engage in certain levels of consensual sexual activity. Most authors do not discuss this possibility.

²⁶ See Rees et al. (1998).

14.5 Expanding the Conversation

While authors often state that sexuality does not consist solely of intercourse, or other forms of physical sexual activity, their awareness has not led to broader discussions of childhood sexuality. Debate instead centers on children's rights to sex education, pre- and post-natal health care and contraception, freedom from abuse (including debate about pedophilia) and on their ability to give consent (see Ekman Ladd 1996, for a useful discussion of these topics). These discussions are absolutely essential; however they should not completely distract us from other significant topics. Discussions that focus on protection, physical health and sex education leave at least two kinds of gaps in understanding child sexuality: they ignore questions about whether sexuality is a present rather than future good for children; and they may mistakenly oppose autonomy and protection.

Almost all of the discussion about children's sexuality is forward looking; it focuses on the child's right to develop into a sexual being, not on her right to express or enjoy her current sexuality. Nor does it treat pleasure as valuable in itself, or as something that is good for children now, within limits, and not only in adulthood. When authors do discuss a right to sexual expression they do so mostly through the lens of potential harms. We need to ask why sexual pleasure is seen as an adult and not a child good, and whether certain forms of sexual activity really are harmful for children. While intercourse and other personally and physically intimate behaviours may pose physical, emotional, and social risks for children it is unreasonable to think that all sexual behaviour does so. There is evidence to suggest, for example, that masturbation increases self-esteem and contributes to physical, emotional, and sexual health (Knowles 2002).

A few authors have begun to take the importance of sexual pleasure for children seriously.²⁷ Jon Ince discusses "erotophobia" and the importance of pleasure in a chapter titled "Attacking Youthful Lust," though he is not writing for a philosophical or academic audience (Ince 2004). And in *Harmful to Minors* Judith Levine argues that sex is not, in and of itself, harmful to young people (Levine 2002). She also insists on the value of recognizing pleasure in sex education.²⁸ This is the morally loaded claim that sexual pleasure is valuable and that children are entitled to experience it at their own pace; i.e. that they are entitled to relate sexually to their own bodies as they choose, when they are capable of so choosing.

A number of authors have recently investigated whether there are such things as intrinsic goods of childhood, that is, things that are good for a person, not because of how they instrumentally tie to leading a good adult life but because they are valuable

²⁷ See McCreery (2004) for a review of work by three such authors, including Judith Levine.

²⁸ Her book resulted in what some have called "a culture-war" and threats of action against her publisher. See Bronski (2002).

for their own sake.²⁹ Some of these goods—certain kinds of play, for example—might only be attainable during childhood. We think it might be the same for the goods of early explorations of sexuality. The delight of a first orgasm, the surprise of feeling another person's touch for the first time, the ability to be curious about unfamiliar body parts, the simple pleasure of holding hands and thinking that someone might "like" you with no thought at all of dating or sex, these firsts and childhood experiences are likely valuable and are no longer attainable in the same way for sexually experienced adults.

Further, some versions of adult goods are likely also good, in their own way, for children. Learning, self-knowledge, pleasure, comfort in one's own body, a sense of belonging to oneself, the ability to be and the experience of being intimately connected with oneself and others, all these are goods that can be gained in relation to sexuality. We see, for example, no reason to say that a child, feeling comfortable with and unashamed of her own body while experimenting on her own with her own sexual sensations, is experiencing something that is not now but would have been a good had she been older. So rather than counsel, "don't do it but if you do, don't get hurt," we actually think there may be goods associated with childhood and teen sexuality that the best sort of life ought to contain. Likewise, certain kinds of bodily exploration and self-pleasure are essential stepping stones to healthy sexuality but are also valuable for their own sake. They have both instrumental and intrinsic aspects to their good when they occur in childhood. There are a number of different kinds of contributions to well-being that childhood sexuality can make, from improvements in self-esteem and self-trust to physical and emotional well-being.

The teen years also offer an opportunity to play with gender and sexual identities and we would do well to foster and protect an environment in which teens can view their identities as fluid without feeling the pressure to reach conclusions (see Coyle 1998).³⁰ If it is right that there are certain sexual goods associated with life stages earlier than adulthood, then we should not wish that children and teens put off all sexual activity. In doing so, one misses out on an important life good. Current sex education for teenagers is negative or at best neutral about the role sex plays in life. Very rarely if at all is pleasure even mentioned. We think that a comprehensive sex education program for teenagers ought to move beyond discussions consent, safe sex, and birth control and include material about sexual pleasure, preferences, and the role of sex in healthy relationships. Such discussions might also include a much wider range of sexual and gender orientations than is currently taught in school. For example, few young people are taught about asexuality even though asexuality is a legitimate sexual orientation. The asexual person might do well to learn of the name for his orientation rather than feel so out of place in our culture.

²⁹ See, for example, Anca Ghaeus, "The intrinsic goods of childhood and the good society," in this volume. Also Brennan ([forthcoming](#)).

³⁰ At the 9th International Conference on Bisexuality held in Toronto in June 2006 the Focus on Youth Issues panel was presented by a group of older teenagers and young adults from a group called "Fluid." All members of the panel had felt pressure to identify as gay/lesbian/transgendered and reported wishing they had more scope for exploring these identities earlier and reported wanting more information about the range of possibilities at a much earlier age.

Heather Corrina's advice regarding the "10 of the Best Things You Can Do for Your Sexual Self (at Any Age)" (Corrina 2003) is an excellent place to start when thinking about childhood sexual well-being. Her recommendations would be an excellent starting point for a positive sex education program. She writes: Choose yourself as your first partner, learn to talk about sex, be honest with yourself and others, avoid drama, make decisions based on research and clear thinking, appreciate your own body, honor your feelings, don't make your sexual identity (whatever it is) your whole identity, learn as much as you can by reading about sex from a wide variety of sources, and last but not least, have fun. We won't elaborate here on issues of developing sexual self-esteem and the wide variety of choices one can make but we do want to ask one further question. Corrina's advice claims to be good "at any age" but we want to ask whether there might be age appropriate goods in the area of sexual well-being. Very young children are unable to do the kind of research Corrina suggests. Perhaps her advice that children be their own first partners is the most appropriate here.

One interest that follows from sexuality as a childhood good is access to sexually explicit material, such as that widely available on the internet. Although it is controversial we think that children's well-being can be enhanced through access to some kinds of sexually explicit material. It's not as if in most households they lack access now. A frank discussion with emerging adolescents about pornography and media literacy should acknowledge that it is normal to want to view this material and should give children critical tools for viewing, criticizing, and asking questions. Ideally, though this is a long stretch from where we are now, there would be material available for teenagers that was designed and produced for that audience. The alternative is that many young people will stumble across material that may be problematic (misogynistic, not representative of real bodies or real sex, etc.) with little guidance and few opportunities to process their experiences by talking to others.

Though controversial, these questions about pleasure and children's pleasure deserve further philosophical consideration. Rethinking childhood sexuality this way may change the rights we accord to children, the way we understand their well-being, or the behaviours that we accept as appropriate for them.

In addition to ignoring the possibility that sexuality might be a present good for children there is sometimes a tendency to treat furthering a child's autonomy and ensuring her protection as opposing aims. Doing so places parents and other adults in the position of protector and does not recognize the child as an agent who can also help to ensure her own well-being. Recognizing that protection and autonomy are not strict opposites allows the claim that furthering a child's autonomy, while acknowledging her current competence to decide for herself, likely increases her ability to protect herself. Just as one's ability to say yes is compromised by his inability to say no, to be able to refuse consent a child must have potential consent to give. To say what is not okay children must have some idea of what is okay (which is not to say that any level of sexual activity will actually be okay). Not only that, but when a child appreciates her body, and knows her own desires, needs and

abilities she is in a much better position to refuse activities that she knows she does not want. In other words, increasing teen sexual agency will allow young people to feel in control of their choices and improve their ability to say no and protect their own rights. Janet Holland and Rachael Thomson concur, reporting that a number of women they interviewed were able to negotiate safer sex with their partners when they came to value their own pleasure, which did not depend on having intercourse with penetration (Holland and Thomson 1998: 72–74).

At the same time, understanding autonomy relationally makes it easier to reconcile the need to respect children's autonomy with their need for adult and parental input and protection. To be autonomous a child doesn't have to make decisions in isolation. The interpersonal skills, self-regard, ongoing social support, information and input on sexual values that a child needs to make autonomous decisions develop with and because of her interactions with others. As many feminist theorists have argued, the same is true of adults.

14.6 Conclusion

We have reviewed two prevailing discourses of child sexuality, argued for the need to further investigate the status of (semi)autonomous sexual choice by minors given their potential competence but also potential bad decisions, and pointed to two gaps in conversations about child sexuality in relation to present goods and autonomy versus protection. Our hope is that this brief foray will spark broader philosophical conversations about childhood sexuality.

In particular we suggest that the following questions deserve further investigation: What is the relevant difference between competent minors and adults that would allow the latter and not the former to make high risk decisions about sexuality? What kinds of bad sexual choices, if any, is it alright to allow minors to make? Is sexuality a *good* of childhood? If so, in what way? How does the development of agency in childhood contribute to opportunities for well-being linked to sexuality? What are the connections between respecting a child's autonomy and ensuring her protection? How might thinking of autonomy as relational and recognizing the potential for semi-autonomy alter our response to childhood sexual exploration? What constitutes childhood sexual well-being, and how can we best support it? We have raised and sketched the beginnings of answers to these questions but there is more work to be done.

We believe that "child + sexuality = okay" is important for both the present and future well-being of our children. But we also know that not all forms of sexual experience will support a child's well-being. Until adults stop focusing solely on sex education, abuse, contraception and consent we will be unable to answer the questions raised above. And in that case we will be unable to fully support the children we love, as they are now and as they will be.

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