

The Child in the Moral Order

FRANCIS SCHRAG

In the early 1700s the Flemish explorer Sicnarf Garhcs discovered a society, the Namuh, which he described in his two-volume compendium of primitive societies. As this society bears on my present topic, I begin with a summary of its salient features:

(1) It consists of two classes of people, the Tluda and the Dlihc, whom I shall hereafter refer to as the T's and the D's. Relative to the D's, the T's are (on the average) strong, intelligent and knowledgeable about the world. The D's are (with some exceptions) weak, ignorant and dim-witted.

(2) The society is divided into several communities and each community in turn into households. The T's offer protection and the necessities of life to the D's of their own household. The D's in return do the bidding of the T's and are required to adopt the beliefs and religion of the household. They are free to pursue their own enjoyments only within the boundaries arbitrarily determined by those T's who protect them. These boundaries vary from household to household and often from day to day within the same household.

(3) The T's retain the right to punish D's for transgressions of the rules, and punishment is often meted out on the basis of the flimsiest and most circumstantial evidence. Occasionally D's are allowed the opportunity to explain and defend themselves against an accusation but there is not even a semblance of due process.

Garhcs was able, through an interpreter, to question several of the T's about the reasons for their seemingly barbaric handling of the D's. Apparently it was thought that the sometimes harsh and unpredictable regime under which they live is a necessary part of an evolutionary process. At the conclusion of this process, Garhcs was told, the D's are 'ogtel' or 'emancipated' by the T's. 'Since they are unable to choose what is best for themselves, we make their choices for them. The necessity for occasional infliction of pain and deprivation is a manifestation of our love and concern for the growth of the soul', Garhcs' informant tells him. Garhcs apparently gives some credence to this response for he emphasizes the affection which T's and D's often seem to display towards each other, yet he remains hesitant about crediting this story about the emancipation of the D's. 'In my two month sojourn with the Namuh I only witnessed one such emancipation, and in this case the D was, I think, a freak of some sort, for his appearance was closer to that of a T than to that of a D.' So much for Garhcs.

How would we judge this society from within our own moral framework? There is little doubt, I think, that any such hierarchically ordered society would be universally condemned by almost every writer on ethics since Kant (and no doubt many before). Such a society denies to an entire class the fundamental right of freedom to pursue one's own life (limited only by the equal rights of others), a right claimed by writers as diverse as Locke, Kant, Bentham, Mill, or, in our own day, H. L. A. Hart, John Rawls and Robert Nozick, to name only a few. The fact that the T's claim to restrict the D's in the latter's own 'true' interests would only partially mitigate this judgment. Even supposing that they are indeed 'emancipated' after a period of several years or decades this would hardly cause us to alter our judgment. Does one of us have a right forcibly to bend another to his will for a week or even a day even in the name of the latter's future happiness or freedom? Such a question is surely rhetorical.

Let us try, however, as an exercise whose purpose will become clear presently, to justify the Namuh society from within our own ethical traditions. It is possible to defend Namuh society from two different points of view. (1) A utilitarian defence would focus on the amount of happiness realized in Namuh society compared to a more egalitarian alternative. To be convincing, such a defence would have to show not only that total happiness was greater among the Namuh but that the subordinate class, the D's, prospered. (2) A rigorous anti-paternalistic defence would hold the right to freedom inviolable while at the same time ascribing less than human status to the D's, the inferior class. As Isaiah Berlin once pointed out, 'conceptions of freedom directly derive from views of what constitutes a self, a person, a man. Enough manipulation with the definition of man, and freedom can be made to mean whatever the manipulator wishes.'¹

I said that the Namuh society bears on our own topic of the child in the moral order. In what way? As will no doubt be obvious, Namuh society is our own human society, the two classes being adults and children. The point of introducing the topic in such a deceitful way is to jar the reader's sensibilities in order to free them from their customary perspective. This perspective, shared by virtually every philosopher in our tradition, has two salient defects: it presents a distorted view of the *human* moral order; and it appears to solve certain difficult problems by concealing them without being aware that it is so doing.

I

In what way is the customary view a distortion? Seen from its perspective, human freedom is an inviolable right. From this it follows naturally that in

¹ Isaiah Berlin, 'Two Concepts of Liberty', *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), 134.

a just society paternalism (the coercion of people in their own interest) is virtually absent; that the human right to freedom extends to any person at any time, and that what has been called the negative conception of liberty will be cherished, the positive conception rejected.² But from a broader perspective that encompasses the entire *life-span*, it is clear that no actual society nor any philosopher's ideal cherishes negative liberty to the exclusion of the positive conception, accords human children the right to freedom, or fails to endorse a paternalism which embraces every person for at least a quarter of his or her life. I do not think this point needs documentation. The fiercest opponents of paternalism, such as Mill, Berlin and Robert Nozick, do not hesitate to accept it for children. So Berlin's own tradition manipulates the definition of man in just the way he decries, embracing the doctrine of equal liberty for adults while reserving paternalism for children. Or, to put the matter more judiciously, perhaps, an enormous philosophical weight is made to rest on the adult/child distinction, yet the basis of the distinction is left unexamined.³

The important question which I see at stake here may be put like this: the ancient philosophers (or at least most of the prominent ones) took it for granted that there were marked differences in the capacities of men, differences which were not capable of being obliterated and which therefore would be and should be reflected in the social order. A hierarchical and paternalistic society was neither unnatural nor unjust from the point of view of Plato or Aristotle. Following Locke and Kant the modern philosophers, to generalize somewhat crudely, reject this doctrine totally. They assume that no differences among adults in the morally relevant attributes approach the difference between adults and children. They further assume—at least I have never seen evidence to the contrary—that childhood ends at about the traditional age of majority, that is at the age of twenty-one. These two assumptions could be combined and formulated more precisely like this: if we classify human beings according to the characteristics relevant to paternalism, then the *only* defensible system of classification (1) is based on degree of maturation as measured by chronological age and (2) divides the human population into two groups by drawing a line in the neighbourhood of twenty-one years of age.⁴ I see no reason

² Contemporary exemplars of this perspective, in addition to Berlin and Rawls, would include Richard Wasserstrom in 'Rights, Human Rights, and Racial Discrimination', *Human Rights*, A. I. Melden (ed.) (Belmont, Cal.: Wadsworth Publishing Company, 1970), 96–110; and Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, Inc., 1974).

³ The one philosopher I have located who perceives this point plainly is J. Fitzjames Stephen, *Liberty, Equality, Fraternity* (Cambridge: Cambridge University Press, 1967), 141–142.

⁴ I have discussed the justification for using chronological age as a criterion in 'The Child's Status in the Democratic State', *Political Theory*, November 1975.

why this should be *assumed*, and I am not at all sure that it is true.

Unless the defender of the conventional view can illuminate the nature of the adult/child distinction, it is not clear how he can defend his radically divergent attitude towards human children and adults. Let us canvass some of the possible criteria which could be said to constitute the morally relevant differences between the two stages. These differences need not manifest themselves in a single, sudden metamorphosis such as is found occasionally in the animal kingdom. Still, we seek a qualitative difference rather than a very gradual development of powers which are always present to some degree, or if a gradual development, at least one that does not stretch out over the entire life span. Otherwise the line we conventionally draw at about the age of twenty-one could as well be drawn at ten or at forty, revealing a degree of arbitrariness which should make the defender of the conventional view uncomfortable.

Three relatively dramatic transformations come to mind, the development of locomotion and of linguistic competence in early childhood and the achievement of sexual maturity at puberty. In the case of the first two, the attributes could well be related to the human creature's ability to survive in the world as an independent being. There is, of course, a sense in which we develop our linguistic and locomotor abilities well into adolescence and beyond, but both personal observation and rigorous research confirm that most children have developed a basic competence in these areas by the age of six.⁵ If either or both of these are the differentiating factors, we could in no way justify the protracted period of paternalistic rule over children typical in Western society. No theorist, to my knowledge, has taken this view. The development of the capacity to reproduce with its attendant transformations in physique and psyche occurs closer to the conventional child/adult boundary, and indeed serves, I would guess, as the chief visible basis for discriminating between the two 'stages'. But I do not see any clear way in which these developments relate to the justification of paternalism. It is much easier to coerce a person of reduced size and strength, which might explain why parents usually abandon a paternalistic regime after their children reach physical maturity. But how does relative physical strength bear on the question of whether or not adults *ought to* continue paternalistic domination well beyond the beginning of adulthood or perhaps abandon it much earlier?

The ability to make rational decisions is usually given as a necessary condition for independence. The conception of rationality is often rather vague, however, as can be seen from a remark by G. J. Warnock. To be a rational being, says Warnock, one must be able 'to achieve some understanding of the situations in which one may be placed, to envisage alter-

⁵ See Paul Mussen, *The Psychological Development of the Child*, Chap. III (Englewood Cliffs, N.J.: Prentice-Hall, 1973).

native courses of action in those situations, to grasp and weigh considerations for or against those alternatives, and to act accordingly'.⁶ This conception of rationality seems to be germane to the question of paternalism. If one is, like a child, 'unable or inadequately able to understand and think, . . . or . . . unable or not fully able to choose and to act in accordance with one's thoughts',⁷ one is hardly able to act in one's own best interests and consequently needs paternalistic protection. The problem with such a vague notion of rationality, from our point of view, is that its development is so gradual and continuous an affair that it seems hard to draw a line at any point in the sequence from infancy to old age in order to separate humanity into those who require paternalistic protection and those who do not. I am *not* merely referring to the arbitrariness of taking a particular point rather than a neighbouring one, e.g., twenty-one rather than eighteen or twenty-three. I am talking about the absence of any compelling rationale to draw the line in the neighbourhood of twenty-one rather than eleven or thirty-one. The problem is not, to make this quite clear, like that of identifying the point at which night becomes day. For here, although we do not have a sudden, dramatic change, we can identify a neighbourhood. We can say, e.g., that from the point of view of the presence or absence of daylight there is a qualitative difference between 4 and 7 a.m. not matched by the difference between 7 a.m. and any other time until evening. Moreover, this vague notion of rationality allows for the possibility that some older adults stand in relation to the average twenty-one-year-old as the latter does to the average twelve-year-old. We adults are likely to recoil at the suggestion that others might be better placed than we, ourselves, to make decisions regarding our own welfare. But why do we not recoil from the idea that *we* are so placed with regard to our own children's welfare? Might not my psychoanalyst, for example, have a better understanding of my situation and its possibilities and limitations than I do myself?

One might seek to remedy the inadequacy of a very vague conception of rationality by seeking a more precise, technical conception, if possible one which is also known to be related to human development. The work of the Swiss psychologist Jean Piaget provides us with a promising candidate. Piaget has identified several stages in human cognitive development, the highest of which, the stage of 'formal operations', begins 'at about age twelve and is consolidated during adolescence'.⁸ This stage can be characterized in general terms. ' . . . the adolescent's system of mental operations has reached a high degree of equilibrium. This means among other things,

⁶ G. J. Warnock, *The Object of Morality* (Oxford: Oxford University Press, 1973), 144.

⁷ *Ibid.*

⁸ Herbert Ginzberg and Sylvia Opper, *Piaget's Theory of Intellectual Development: An Introduction* (Englewood Cliffs, N.J.: Prentice-Hall, 1969), 181.

that the adolescent's thought is flexible and effective. He can deal efficiently with problems of reasoning . . . can imagine the many possibilities inherent in a situation. Unlike the concrete-operational child, whose thought is tied to the concrete, the adolescent can transcend the immediate here and now.⁹ This general conception seems also to have a clear bearing on the person's ability to minister to his own needs and to seek his own good in his own way. Its chief virtue lies, however, in its being translatable into a set of precisely defined operations whose presence or absence is capable of being verified empirically. There are, for example, sixteen 'binary operations' e.g. 'negation', 'conjunction', 'conjunctive negation'.¹⁰ The ability of a person to use these operations is determined by observing him as he attempts to solve scientific problems such as identifying factors affecting a pendulum's frequency of oscillation.

But what this more rigorous approach to defining rationality gains in precision it loses in relevance. The ability to perform the sorts of logical operations described by Piaget seems to be neither necessary nor sufficient to be a basis for adopting paternalistic rule. We all know people able to perform such operations who are quite impotent to act on their conclusions. We also know some children, precocious intellectually, whose experience of people in the real world is so limited as to make them very unlikely to survive should they have to look after themselves. On the other hand, someone lacking these sophisticated logical abilities might be sufficiently canny and determined to succeed admirably in the world. Stories abound of very young children, such as those orphaned by war, who fend for themselves most successfully. Moreover, suppose that what has already been partially confirmed turns out to be true, namely that many *adults* do not reach the stage of formal operations.¹¹ What do we do then? Consider the attainment of the previous stage, the stage of concrete operations, sufficient? On what grounds? Piaget believes that this stage is normally reached between seven and eleven.¹² Ought we, therefore, to lower the age of majority by ten years? The lack of any clear answer here reveals the arbitrariness of relating paternalistic policies to Piaget's stages of cognitive development.¹³

The problem with using the notion of rationality as a criterion for distinguishing children from adults is this: the most relevant conception is too

⁹ Ibid.

¹⁰ Ibid., 195.

¹¹ See Beth Stephens *et al.*, *The Development of Reasoning, Moral Judgment, and Moral Conduct in Retardates and Normals, Interim Progress Report* (Philadelphia, Pa., Temple University, January, 1972), 42.

¹² Ginzberg and Opper, *op. cit.*, 133.

¹³ Lawrence Kohlberg's scheme of stages of moral development, which might be thought to be a plausible candidate, does not really bear on the question of paternalistic rule.

vague to draw a clear distinction between adults and children. But the more precisely the notion is formulated the less clear is its relevance to the question of paternalism. Not much argument is required to see that if the notion of rationality suffers from this defect, a notion like 'maturity' would fare even worse.

Kant suggests one other candidate which we might consider, the ability to be self-sufficient: in society 'The Children of the House . . . attain *majority* and become Master of Themselves (*Majorennnes, sui juris*), even without a Contract of Release from their previous state of Dependence, by their actually attaining to the capability of self-maintenance.'¹⁴ This is a plausible candidate because such ability is usually achieved at about the time we conventionally distinguish the end of childhood, and because it seems as if those unable to sustain themselves are in need of the protection and sustenance of others. But a moment's reflection will reveal that this candidate is not suitable either. 'Self-sufficiency' may mean something as vague as 'maturity' in which case it does not allow us to draw the sort of sharp line we want to. Or it might be defined more narrowly as ability to sustain oneself financially. But then it is both too strong and too weak a condition. A very young child might be capable of earning enough money to support himself, by modelling for instance, but this does not imply that he is capable of assuming control of his own life. On the other hand there are numerous individuals incapable of supporting themselves, the crippled, the sick, the elderly, the unemployed, whose disability seems connected with their being able to live their own life only in the sense that they are not able to carry out their plans. They may require assistance from others, but there is no reason to suppose that they require to be *coerced* in their own best interests. It might be argued that any person who was unable to be self-sufficient, in this sense, *forfeited* the right to seek his own good in his own way. Regardless of whether this doctrine is palatable or not, it is clear that it could not be used to justify paternalism for children without at the same time embracing a sizeable portion of the adult population.

Unless I have overlooked something here, I am prepared to assert the following: the conventional view which endorsed paternalism for children while rejecting it for adults cannot be maintained on the basis of some allegedly clear distinction between children and adults, for no such distinction has any basis which survives scrutiny. In particular no criterion can be found such that: (1) it dramatically distinguishes older from younger human beings, (2) it has a clear bearing on a human being's ability to live free of paternalistic domination, and (3) it occurs in the neighbourhood of the conventional boundary between the two stages.

¹⁴ Immanuel Kant, *The Philosophy of Law*, trans. W. Hastie (Edinburgh: T. & T. Clark, 1887), 118.

II

Holders of strongly anti-paternalistic views are therefore faced with a dilemma. Either they must abandon their claim that 'to be able to choose is a good that is independent of the wisdom of what is chosen', to cite Gerald Dworkin's paraphrase of Mill;¹⁵ or they must be prepared to reject paternalism for children, at least for all those able to choose, that is, able to speak and give reasons for their actions. As Dworkin has it, '... better ten men ruin themselves than one man be unjustly deprived of liberty'.¹⁶ Yet this second course seems too drastic, I daresay. It invites the 'ruin' not of just ten but of millions rather than deprive them of liberty. As J. F. Stephen observed, 'If children were regarded by law as the equal of adults, the result would be something infinitely worse than barbarism. It would involve a degree of cruelty to the young which can hardly be realized even in imagination'.¹⁷

Faced with such a prospect, let us formulate a defence of the current arrangements by invoking the modified utilitarian rationale discussed earlier with respect to the Namuh, a rationale which would go like this: the purpose of social arrangements is the maximization of human happiness. Any person with some experience and understanding of the world is likely to have the keenest interest in and be the best judge of what will make him happy. As Mill said, 'Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest'.¹⁸ For those of limited understanding and experience, however, this generalization does not hold, as even Mill does not hesitate to acknowledge. In the case of children, the chances of their achieving happiness if left to pursue their own good in their own way are slim. They must submit for a time to the paternalistic rule of others. (Note that this resolution is a severely constrained utilitarianism, for we do not allow some to thrive at the expense of others. Rather we say that even the children, whose desires are often frustrated, are better off than they would otherwise be.)

What is attractive about this solution is that it does not presuppose any dramatic difference in capabilities between children and adults. It acknowledges that the development of an understanding of the sources of personal satisfaction and the ability to act on that understanding is a gradual process; that the identification of a precise point at which the risks of unwise personal choices are outweighed by the risks of unwise choices by parents or

¹⁵ Gerald Dworkin, 'Paternalism', *Morality and the Law*, R. A. Wassertrom (ed.) (Belmont, Cal.: Wadsworth Publishing Company, 1971), 117.

¹⁶ *Ibid.*, p. 126.

¹⁷ Stephen, *op. cit.*, p. 193.

¹⁸ J. S. Mill, *On Liberty*, R. B. McCallum (ed.) (Oxford: Basil Blackwell, 1947), 11.

guardians is impossible and therefore necessarily arbitrary to some extent. This helps us to accept the fact that the establishment of such a point can safely be left to convention. The stress on understanding and experience, moreover, rather than on the acquisition of particular powers or faculties, makes it reasonable for emancipation to follow puberty, so that a young person's initial encounters with the wider world and with members of the opposite sex, encounters likely to engender powerful, unfamiliar emotions, can be initially guided to some extent by those familiar with such emotions.

There is something troubling about this view of the moral order, which construes freedom as merely a means to securing happiness. What is troubling is the possibility, left open on this view, that this relationship of means to end need not always be so, that most men might be generally misled about the sources of their own happiness. The growing complexity of civilization, the increasing interdependence of spheres of activity, allows us to envisage a future world in which most adults are like our own children. We say that our children will come to agree that we were acting in their interests when we refuse to allow them to risk their future happiness by remaining unschooled, to take an example. We say that they could not possibly appreciate the consequences twenty years hence of entering the world uneducated. But can we not imagine farsighted individuals able to recognize that much that we do now is not merely injurious to others and to future generations but shortsighted in just the same way—that in twenty years we ourselves will profoundly regret the choices we have made, choices, for example, in the areas of diet or resource conservation or family planning. If maximizing the chances for happiness in the future is the test, such farsighted individuals would be justified in restraining us in our own interest. This possibility seems remote, but still remains a possibility.

Dworkin suggests that Mill himself was sensitive to this, which is why he spoke at times as if he attributed value to freedom 'independent of the wisdom of what is chosen'. Dworkin's own principle, namely that paternalism be justified only to preserve a wider range of freedom for the individual, is not much more satisfactory than the principle of securing future happiness.¹⁹ In the absence of a precise notion of a 'range of freedom', I do not see why one cannot almost indefinitely reduce present options, especially those which pose a risk to life or health in the name of expanding future options. Why not prevent people from eating certain foods now in the name of making possible a broader range of choices when they pass sixty?

If we cannot place an absolute value on freedom without risking our very survival, or at least that of our children, and if we dare not consider freedom as a mere means either to future happiness or to future freedom without risking our own freedom or that of our descendants, is there some

¹⁹ Dworkin, *op. cit.*, pp. 118–126.

alternative view which would protect both values while allowing us to preserve the conventional child/adult distinction? Suppose we posited a threshold of experience, beyond which freedom had an absolute value, whereas before this threshold was reached freedom of choice was but one among several goods. Now we have to question the basis for saying that prior to reaching this threshold, freedom did *not* hold absolute sway. Here presumably the costs outweigh the benefits, the risks are too high. Now what could these risks be but the risks of making disastrous choices, that is choices threatening future happiness or even survival? But once we have allowed for this possibility, what *guarantee* can we provide that now or in the future this threshold will be reached for all or most human beings? If the freedom of some may justifiably be limited by others under certain circumstances may not our freedom be justifiably limited in analogous circumstances? So the spectre of extensive paternalism beyond childhood would continue to haunt us.

III

I have presented two ways of looking at the child's status in the moral order. If we adopt one view, we can retain a rigorous anti-paternalism for adults by positing a sharp distinction between them and children. This by and large is the view of our philosophic tradition, at least since Mill. As we have seen, however, the facts about human development do not entitle us to erect such a clear boundary, at least not in the neighbourhood where most of us would like to, i.e. somewhere beyond the onset of puberty. The second view is far more consonant with the ways in which human beings actually develop. It does not require us to endow the relatively dramatic, visible changes occurring at adolescence with an unwarranted moral significance. Yet this closer fit to the 'data' is purchased at a price, the opening of the door to the possibility of an extension of paternalism beyond childhood, a possibility which could provide a basis for the kind of hierarchical society we abhor. It might be said that this opening amounts to no more than a crack for several reasons. First of all there is no reason to believe that most adults are not the best judges of their own interests. Second, there is no reason to believe that if some adults were not, others could be found to assume the role of benevolent 'parent' over them. If the past is any guide, such paternalistic relations would be almost certain to degenerate to the vilest exploitation, in which 'children' lost both their freedom and their happiness. For here the natural sympathy between parents and their children, which often acts as a bar to such exploitation, would no longer be present.

Yet even in our present society, which creates a sharp distinction between children and adults, there are areas where adults are treated as children,

too ignorant to be trusted to look after their own interests. For example, no adult is permitted to purchase powerful drugs without a physician's authorization. If one imagines a world of increasing complexity, a world of vastly enlarged technical knowledge of antecedent and consequent in such areas as health, interpersonal relations and vocational satisfaction, and a world in which the adult/child distinction is no longer taken as absolute, the crack in the door does not seem so trifling.

These speculations highlight the question of what criteria to apply in deciding between the two views. If the views are taken as theories to be assessed against the data they organize, then the second view is clearly more adequate. There is more at stake here than the scientific adequacy of a theory, however. Each 'theory' takes a different view of the process of human development, the one positing two distinct segments where the other perceives a continuum. One view reinforces the existing cultural patterns while the other undermines them. Such cultural patterns are not neutral with respect to their impact on people's lives. As the anthropologist Clifford Geertz has suggested, these patterns should rather be viewed as programmes:

Culture patterns—religious, philosophical, aesthetic, scientific, ideological—are 'programs'; they provide a template or blueprint for the organization of social and psychological processes, much as genetic systems provide a template for the organization of organic processes.²⁰

The choice between the two views is therefore a moral choice, in that it is one capable of having an impact on how human beings perceive and hence act towards each other. In view of the risks, slight though they be, of undermining a powerful bar to the encroachment of paternalism into our lives, I would opt for the first view. It makes a gamble also, one must admit, a gamble that in seeking their own good in their own way, most adults will fare better than most children would. Relative to the gamble of obtaining a benevolent paternalism, however, the former would seem to be a 'sure thing'.

In opting for the first view, I do not mean to endorse the particular age of majority recognized in our own society. A good case could be made for lowering the age to fourteen or fifteen. All I am arguing for here is maintaining the idea of a firm boundary between the two stages. Perhaps some will consider this a decision to support a kind of 'noble lie', but if so it is not one in which a few deceive the masses for their own good, but rather one in which we *all* believe for *our own* good.

University of Wisconsin—Madison

²⁰ Clifford Geertz, 'Ideology as a Cultural System', *Ideology and Discontent*, David Apter (ed.) (New York: The Free Press of Glencoe, 1964), 62.