

Children, Rights, and Powers

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Abstract

A long-standing debate on the concept of rights sets the so-called choice theory in contrast to the interest theory. As has been noted in the literature, the debate is relevant for the question of whether children can be conceived as rights-holders at all. This essay reflects on the concept of rights as applied to children, motivated by the view that instead of settling the conceptual issue, we should directly discuss the moral status of children as possible rights-holders. In this way, two main insights are gained. First, it is pointed out that the moral position of children – if they have rights – is very different from the status of adult rights-holders. Second, it is made clear that regardless of whether children have rights, the focus on duties towards children, rather than a focus on their rights, provides us with a clearer picture of children's moral status.

Keywords

children – rights – normative powers – consent – proxy consent – parental duties – choice theory – interest theory

In the liberal tradition of moral and political philosophy, it has mostly been assumed that children have moral rights.¹ However, not all of the common theories of rights seem to be able to account for this widespread view. According to the so-called choice theory (or will theory) of rights, having a right entails some sort of choice with regard to that right: you can choose to waive or enforce it (Hart, 1973). As children – or young children, at least – are often

1 The considerations in this essay are focused on so-called moral rights, that is, rights that individuals have regardless of whether they have corresponding legal rights. Many aspects of the argument layed out here, however, can be applied to legal rights as well.

conceived as incompetent choosers,² it is questionable whether they should be granted this kind of choice. According to the choice theory, someone who cannot have a choice with regard to her right is not in a position to have the right itself.

Neil MacCormick (1976) has brought up children as a “test case” in his critique of the choice theory of rights. He argues that as children obviously have rights, the choice theory must be false. This leads to a natural alternative – the so-called interest theory. According to this account, rights have the function of protecting individuals’ interests, needs or welfare. Since children have interests, they can have rights protecting these interests.

In this essay, I do not aim at resolving this long-standing debate on the concept of rights. Rather, I propose to go directly to the normative level – that is, I focus on children’s moral standing itself, without a clear-cut notion of what it means to have a right. As I try to show, the normative debate reveals that children, even if they are seen as rights-holders, have a significantly different moral status. The reason lies in the one aspect that is at the centre of the conceptual debate – the issue of choices or “powers” regarding one’s rights.³ Children’s alleged lack of such powers, I claim, affects them as bearers of rights. As will become clear, this is in part because of the role of parents and others authorised to make proxy decisions on behalf of children. Against this backdrop, I point out that in deciding which of the children’s rights to waive or to invoke, parents are bound by welfare-oriented duties towards their children. How children are to be treated – and which of their rights are to be respected – thus ultimately depends on other persons’ special duties towards them.⁴

1 Rights – Choices and Interests

Do rights protect our choices or our interests? While this is a good question to start with, it also gives rise to a possible misunderstanding. The interest theory states that the main function of rights is to protect interests, such as the interest in survival. In this context, rights referring to liberty or autonomy

2 The view of children as rationally incompetent has been commonly defended in the liberal tradition of moral and political thought, going back to John Locke (1963, II, ch. 6, §55) and John Stuart Mill (1977: 224).

3 The concept of “powers” – as it is used here – is clarified later on in this essay. It refers to so-called normative powers that are related to pre-given rights.

4 Onora O’Neill (1988) argues that with regards to children, we should take a duty-based perspective. It should be noted that my argument is not directly related to O’Neill’s (Kantian) views.

are framed as protecting interests as well, namely, the interest in being free or autonomous.

It might be assumed, then, that the choice theory focuses on this latter kind of right, namely, those rights that provide for choices. In this interpretation, rights relate to individuals as agents who make choices regarding their lives, and act on these choices. This raises the question of how to conceive of those rights (such as the right to life) that do not directly refer to choices or actions. The answer could be that being alive is a precondition for being an agent.

This line of thought, however, misconceives what the choice theory of rights is all about. This theory does not make the substantive claim that rights protect the choices of agents instead of their interests. Rather, it states that having a right is constituted by a choice regarding that very right – a choice of whether to waive or to enforce it. Enforcing the right to life, for instance, means to demand others respect that right. Waiving this right means, by contrast, to permit others to kill oneself. As H.L.A. Hart puts it, having a right means to have –

exclusive control, more or less extensive, over another person's duty so that in the area of conduct covered by that duty the individual who has the right is a small-scale sovereign to whom the duty is owed.

HART, 1973: 192

Having a right means, then, (1) that others have a duty towards oneself, and (2) that one is in control of that duty. In Hart's view, the interest theory is flawed because it only considers the first – but not the second – aspect as constitutive for what it means to have a right. But if a right is merely a correlative to a duty, the concept of a right seems useless and redundant (*ibid.*, 191). Everything that is morally or legally relevant is already expressed in the concept of a duty.

Hart also points out that the choice theory appropriately explains why animals cannot be rights-holders although there can be duties towards them (*ibid.*: 193): animals cannot make choices and therefore cannot be granted control over other's duties. The same might be said, however, about children. Neil McCormick takes up this point in his critique of the choice theory. He assumes that it is intuitively obvious that children have rights:

[A]t least from birth, every child has a right to be nurtured, cared for, and, if possible, loved, until such time as he or she is capable of caring for himself or herself. ...I should regard it as a plain case of moral blindness, if anyone failed to recognise that every child has that right.

MACCORMICK, 1976: 305

MacCormick states that the choice theory must be false because it cannot make sense of children as rights-holders. He goes on to defend the interest theory of rights, and explains (*ibid.*: 31):

[T]o ascribe to all members of a class C a right to treatment T is to presuppose that T is, in all normal circumstances, a good for every member of C, and that T is a good of such importance that it would be wrong to deny it to or withhold it from any member of C.

Within this framework, then, children can have rights regardless of whether they have the additional power to waive or enforce them. MacCormick's point is that persons' lack of this kind of power does not deprive them of the underlying right. There can be rights as mere correlatives of duties, with no choices regarding these duties attached.

Harry Brighouse (2002) has built on the interest theory, developing an account of children's rights that distinguishes welfare rights and agency rights. Both types of rights are grounded, according to Brighouse's view, in corresponding interests, serving the protection and promotion of the rights-holder's well-being. Being free to act on one's own views is, in this picture, an aspect of individual well-being. Clearly, children can have welfare rights, but as Brighouse explains, they are restricted in their agency rights: '[I]t is generally inappropriate to ascribe agency rights to children, at least young children' (*ibid.*: 46). This means two different things: first, children cannot have the specific rights that protect their agency and choices. They are not entitled to pursue their own projects in the same way that adults do. This refers to the substance of rights. Second, it also means that children are not authorised to waive or enforce their welfare rights: '[A]mong the agency rights adults have are the rights to forgo, for whatever reason, particular sources of welfare', that is, 'to waive the right' to a particular source of welfare. Brighouse adds that 'many welfare rights are waivable, as a matter of agency' (*ibid.*: 39). As children lack agency rights, they also cannot have control over their welfare rights. Here, powers of control over one's rights or others' duties – that are constitutive for the concept of right in the choice-theoretical framework – are built into the interest-based account of agency rights. The power to waive is considered as just another agency right.

Samantha Brennan (2002) has promoted a similar theory, with the important difference that she does not take all rights to be grounded in interests. She expresses doubts as to whether granting persons choices can be justified in a strictly welfare-oriented way, and claims that the demand that other people's choices be respected should be grounded in considerations that do not refer

to interests (*ibid.*: 64–65). In her view, the interest theory applies to children and other sentient beings, while the choice theory refers to adults' rights: the rights of adults protect choices, while children's rights protect interests. Brennan explains that children's interest-based rights are to be gradually replaced by choice-based rights, as individuals become more mature and develop their agency-related capacities (*ibid.*: 63). She characterises this "gradualist" account of children's rights as combining the choice theory with the interest theory. Both theories, Brennan states, are inaccurate (*ibid.*: 67). From the choice-theoretical standpoint, her account will be rejected because it allows for rights to be in place without choices attached to them. Within the interest-theoretical framework, it is acceptable that some rights go along with choices, while others are not. However, questions may be raised regarding Brennan's view that granting choices to people is not justified in welfare-oriented terms. As set out by Brighouse, both those agency rights that directly protect people's choices (such as the rights related to liberty or autonomy), and the powers attached to rights (such as the power to waive one's right to life) are justified to the extent that they protect people's welfare.

Following MacCormick, Brighouse and Brennan accept the view that in order to conceive of children as rights-holders, the concept of a right must be understood, at least in part, in interest-based terms. An alternative way to approach this issue is to reconsider the choice theory, and ask whether it is really impossible to ascribe rights to children within this theoretical framework. Hamish Ross (2014; 2013) has argued that Hart's choice theory actually allows for such a move: Ross explains that –

the powers or choices that, for Hart, are integral to the possession of a right, are commonly exercised not directly by a child but on his or her behalf through others who are not similarly incapacitated – for example, a child's parents, or others appointed to represent or act for a child (such as a tutor or guardian) (2014: 49).

According to this picture, then, a right is necessarily tied to a power, but the rights-holders might not be capable of exercising this power by themselves. It can be exercised by someone else, in particular the parents, who might enforce or waive a right on behalf of the child. In this way, then, we can assume – within the choice-theoretical framework – that children can have rights, although they do not have full control over these rights.

It must be acknowledged that this model, while formally upholding that rights are tied to powers, does not present the rights-holder as a free agent: the children themselves have no choice in this, but are under the control of

others. Recall that Hart characterises the rights-holder as ‘a small-scale sovereign’. Children whose powers are exercised by their parents lack the very sovereignty that is considered in the choice theory as constitutive for having a right. It does not come as a surprise, then, that not all choice theorists support Ross’ interpretation of this theory. Hillel Steiner, for instance, starts from a choice-theoretical concept of rights – assuming that children are not the kind of beings that can have rights – and goes on to normative considerations that deny children an independent moral status: children, he says, are at their parents’ ‘disposal’ until the age of majority (Steiner, 1994: 248), basically because their parents made them. It is this kind of normative position that motivates the fear that denying rights to children on the conceptual level weakens their moral position. MacCormick calls it ‘a case of moral blindness’ to consider children as excluded from the sphere of rights-holders. Clearly, however, there can be duties towards children that protect them in the same way that a right would protect them.

2 Rights – Conceptual and Normative Issues

The debate between choice theorists and interest theorists is to be conceived as concerning the *concept* of rights – not their content and normative justification. At the same time, however, it should be noted that the interest theory goes beyond conceptual considerations. This theory normatively grounds rights in interests, and assumes that persons’ basic interests give rise to corresponding rights (Preda, 2015). This means that it provides a justification for why persons have rights, namely as a protection for their basic interests, and it thereby also determines the content of these rights.

The choice theory, by contrast, merely states that having the power to waive or enforce a right is constitutive of what it means to have a right. No further assumptions as to the content and normative justification of rights or corresponding duties are made. The conceptual view that children cannot have rights makes it impossible, of course, to justify rights for children. Nevertheless, very similar normative views might be defended on the basis of the two rival theories of rights. My idea, therefore, is to leave the conceptual question open, and move on to substantive issues where there is wide-ranging agreement.

First, most liberal theorists do not share the view that children are at their parents’ disposal, as if they were some sort of property. It is widely agreed that children and adults have equal moral standing, although members of the two groups are to be treated differently due to morally relevant differences between them. Children are commonly seen as especially vulnerable and dependent on

others' care. They are conceived as developing persons with special abilities for learning – as persons who have not yet acquired all the capacities and forms of knowledge necessary to lead an (autonomous) adult life. This view of childhood grounds the notion that there are special duties of care and protection towards children, but also duties regarding education and development. In addition, it is mostly agreed that there are duties (and rights) to restrict children's agency for paternalistic reasons, that is, for reasons of their own good.

In an interest-theoretical perspective, these substantive views will be expressed in the language of rights *and* duties. MacCormick (1976), for instance, assumes that children have a right to be nurtured, cared for, and loved, that generates duties on the side of adults, in particular parents. This approach is compatible with the view that children lack some of the rights that adults possess, in particular agency rights (Brighouse, 2002). The choice theorist can express the very same normative substance by referring to duties alone. In this picture, parents have duties of care, but children have no corresponding rights. Children themselves – or others on their behalf – cannot invoke their rights (because they do not have them), but they can still point to other persons' duties towards them, especially in cases where these are not appropriately discharged.

Second, it is broadly agreed that children do not have the same kind of powers with regard to their rights as adults. The notion of power is used in the classical taxonomy of rights proposed by Wesley Hohfeld (1919), depicting one of four types of rights, and it has also come up in recent debates on moral phenomena such as consenting, promising, or requesting. As David Owens (2012) puts it, competent adults have the 'normative power' to change the 'normative situation' – which is made up of rights and duties. He explains, referring to consent as a normative power: 'On my usage, consent involves not the granting of a right, but just the waiving of it. To consent to S's dentistry is to intentionally communicate the intention of hereby making it the case that S does not wrong you by whitening your teeth, etc.' (2012: 165). It might also be said that by consenting to dentistry, we release the dentist from his duty not to touch or injure us. As choice theorists put it, we control the dentist's duties over us.

Persons' normative powers should be (conceptually) distinguished from their substantive agency rights, that is, the rights that protect their choices and enable them to act on their own views and values. The choices involved here directly refer to courses of action that people want to pursue – such as the choice to have children, or to quit their job. As Owens puts it, choices of that kind have 'non-normative objects', whereas the powers to change the normative situation refer to 'normative objects', namely particular rights and duties.

The distinction between rights and corresponding duties on the one hand and normative powers on the other is not only conceptually relevant. The justification of a particular right or duty (such as the right to life, or the duty not to kill others) and the associated powers (such as the powers to waive one's right to life) requires different kinds of normative considerations. In the case of normative powers, the focus will be on agency-related capacities: a person might be ascribed the power to waive her right to life under the condition that she does so voluntarily, and has the capacity competently to assess what this choice is all about, and how it affects her interests.

The role of these conditions (in short: voluntariness and competence) might be interpreted in different ways: According to an "interest-based" reading, granting competent persons the power to waive their rights by consenting is in these persons' interest because they know better than others what is good for them. This raises the question of how to react when competent persons' consent obviously runs against their basic interests (such as the interest in staying alive). Is it legitimate to intervene paternalistically in these cases, and thereby invalidate the person's consent?

A strictly anti-paternalistic approach might be provided by a "deontological" or "respect-based" reading of the conditions of valid consent: here it might be argued that the normative powers of persons who satisfy the relevant conditions have to be respected regardless of what this means for their welfare. Both the interest-based and the respect-based account provide the theoretical resources to justify denying normative powers to children – to the extent that children cannot yet satisfy the conditions for the valid usage of these powers. In both accounts, however, it is also possible to ascribe to children certain limited or local normative powers, that is, powers to waive their rights in particular situations where they satisfy the necessary conditions. For instance, a child might be ascribed the power to permit others to play with her toy, thereby waiving some sort of property right, or to enter her bedroom, which would be a violation of the child's right to privacy if done without permission. Children might also be considered as being in control over their right to bodily integrity, in that they can allow others to touch them.

In the justification of substantive rights – such as the right to life (or a duty not to kill) – other considerations will come into play. The justification of duties and rights is, of course, a highly complex and contested matter, and depends on basic moral-theoretical presumptions. Without going into detail here, it can be assumed that the justification of a right to life will refer, in some way or other, to the importance or value of being alive for human beings. Clearly, it makes no sense to ascribe such a right to inanimate objects. Some will ascribe this kind of right to all sentient beings, while others will have the more restricted view

according to which only “persons” can have rights. If personhood is defined by agency-related criteria, some human beings, in particular infants, might not be characterised as bearers of rights (Griffin, 2002). Even if we take this latter view, we will nevertheless consider the conditions for the valid use of normative powers separately: a child – as a person – might be ascribed certain rights, in this view, but not the power to waive them.

There are, then, two different normative debates here, one concerning substantive rights and duties, the other focused on powers regarding these rights and duties. Both debates can proceed without a clear-cut understanding of the concept of rights. In choice-theoretical terms, the debate on powers is directly related to the issue of rights – you cannot have rights without powers. Within the interest-theoretical framework, by contrast, the question of rights can be pursued without considering the issue of associated powers. McCormick (1976, 315) points out, however, ‘that in all normal cases rights ought to carry with them powers of waiver or enforcement’.

3 Rights, Powers, and Proxy Powers

Against this background, I would like to make clear that a lack of normative powers on the side of children affects their status as right-holders – if they have rights. So, I assume – for the sake of argument – that the concept of rights is applicable to children in one of the ways discussed in the first section. My point is that even if they are right-holders, their normative standing regarding their own rights is very different from the status of competent adults. Children are not in control of their rights, and this means that they do not “have them” in the same way that adults do. They might not be able to waive some or their rights and, also, it might be impossible to invoke their rights, in particular situations.

Consider the right to education. This right, Joel Feinberg (1980: 157) writes, ‘seems to be a kind of “mandatory right” in that children who possess it have no choice whether to go to school or not’.⁵ As Feinberg explains, children only seem to have a ‘half-liberty’ (*ibid.*) with regard to their education, and he asks if it is appropriate at all to characterise the right to education as a “right”. In line with the choice theory, Feinberg thinks that it is constitutive for a right that it can be exercised, that is, claimed or waived. Apart from the conceptual question, it is clear that having a right they cannot waive puts persons in a

5 This is cited from “A Postscript to the Nature and Value of Rights”, attached to the original journal article in a book collection of Feinberg’s essays.

normative position that is different from the normal status of a rights-holder: for children, having a right to education is indistinguishable from having an obligation to go to school. This might not be considered as problematic, as going to school is in the child's interest and it would do the child no good to waive her right. In other words, making it impossible for the child to waive this right protects the very interest that the right refers to – the interest in education.

With regard to education, the common idea is that there should be political and legal arrangements ensuring a corresponding right and obligation. These arrangements deprive the children themselves as well as their parents of the freedom to waive the right to education. In other contexts, however, parents or other specially authorised persons might have a role to play in waiving or invoking the children's rights by proxy. Here, we might speak of ascribing them "proxy powers" with regard to children and their moral rights. This means that they are authorised to exercise the normative powers tied to the rights of children on their behalf. The best way to explain what this amounts to is to focus on the normative power of consent, and the idea of parental "proxy consent".

The problem is this: in some situations in everyday moral practice, people's consent is demanded for actions affecting them. The typical example is medical treatment: treating people without obtaining their informed consent violates their right to bodily integrity. By consenting, they set this right aside and thereby transform the normative situation: what was previously prohibited becomes permitted as the right is waived. But what should we do when the person who needs treatment is not capable of giving valid consent? One possible answer is that this person might be legitimately treated without consent, on the basis of a duty to safeguard her interests. The common practice, however, provides a different solution: someone else consents on behalf of her. The idea is, then, that proxy consent – e.g., by parents for their children – is normatively equivalent to personal consent, in that it transforms the normative situation. Physicians would violate the children's right to bodily integrity if they treated them without consent, but they do not morally wrong them when their parents have given their permission.

This constellation, however, puts children – as possible rights-holders – in a special normative position: the right they have might be waived by someone else on their behalf. So, it is not only that children cannot waive certain rights by themselves, but also that the rights they have do not strictly protect them from interference because others have proxy powers associated with these rights. In other words, being subject to proxy consent undermines one's standing as a bearer of rights. Someone in the normative position of a child cannot be sure that her rights will be respected.

4 Proxy Powers and Welfare-oriented Duties

In the last section, I have presupposed that parents have a special role to play in the exercise of their children's normative powers. Looking more closely at the role or "status" of parents sheds more light on the special normative standing of children as holders of rights. It makes clear that the exercise of proxy powers is tied to the special welfare-oriented duties of persons in the status of parenthood.

A status, as I use the term here, is constituted by specific rights and duties. The question is, then, why there should be a status of parenthood, and which rights and duties should be seen as constitutive of this status. A "parent-centred" justification of the status of parenthood would refer to the freedom or the interests of the parents, namely, their interest in raising their children on their own terms. In a liberal perspective, however, it seems problematic to justify the authority of persons over others with reference to the former persons' interests. If children are considered as individuals with independent moral standing, providing others with proxy powers must be justified in a "child-centred" way, namely, by referring to children's status and interests. Clearly, children only have an interest in others taking over their normative powers to the extent that they themselves are incapable of exercising these powers. While it is uncontested in liberal moral and political philosophy that younger children lack the capacities necessary to exercise their powers, it is not clear at which point persons acquire these capacities (Anderson and Claassen, 2012; Franklin-Hall, 2013). The considerations in this essay, however, do not rely on a clear-cut answer to this question. The argument refers to those children who are uncontroversially presumed to lack the relevant traits. In particular, it leaves open how adolescent rights-holders should be treated, that is, to what extent they should be allowed to waive or invoke their rights by themselves.

Children who cannot exercise their normative powers themselves thus have an interest in social arrangements ensuring that they be taken care of. This entails a right to proxy decision-making that also refers to children's rights and powers. Obviously, establishing a status of parenthood is in line with children's interests only if parents exercise their role in a way that indeed protects and promotes children's welfare. It might be said that parental status is, first and foremost, constituted by *duties* towards children, in particular special welfare-oriented duties. It can then be added that the rights of parents, among them paternalistic rights, are derived from their duties: parents are ascribed those rights that are necessary for them to discharge their duties (e.g., Archard, 2010). Situating parental proxy powers within this framework means, then, to tie their exercise to welfare-oriented parental duties. Parents should have

the proxy powers necessary to discharge their duties, and they should exercise their powers in line with these duties.

Parental proxy consent is thus very different from personal consent: while there are different views on the limitations of valid personal consent, it is mostly assumed that individuals have the power to permit actions that are not in their interest. They can even consent to actions that they do want to occur: for instance, I can permit someone to call me in the middle of the night, although I have no desire for this to happen.

In the status of parenthood, by contrast, the use of normative powers is restricted to courses of actions that are in line with one's status-specific duties. Parents are not entitled to waive or enforce their children's rights at will. Usually, some discretion is granted to parents in determining what is in their children's interests. However, there are clear-cut boundaries to this. First, parents are not entitled to refuse to consent to courses of actions when this is likely to lead to a violation of the children's basic interests. Second, parents cannot legitimately consent to courses of action that bring about significant harm for the child.

As to the first point, it is widely understood that parents cannot refuse urgent life-saving treatment on behalf of their children. They have the power to refuse it for themselves, but not in their status as parents. Parents' proxy power in cases like this seems to be tied to a "duty to consent" rooted in their duties of care. This means that parents have no alternative to waiving the right of their children. Should they refuse to consent, others would step in – would have to step in – to invalidate their refusal, namely state authorities. They too have no choice in these matters, as they are bound by the duty to protect children's welfare. The notion of a right that *has to be waived* is at odds with common understandings of what it means to have a right, and it seems normatively pointless: there is no value in having a right that one is required to waive. However, children – if they are rights-holders at all – seem to be in the strange normative position of having a right that they themselves cannot waive, but that their parents have a duty to waive.

The second point refers to rights that cannot be waived by their parents. As an example, we can take the issue of sexual consent. Children are commonly seen as lacking the power to consent to sexual activities with an adult. They may be ascribed a right to bodily or sexual integrity that they cannot waive. In the model just outlined, parents are ascribed the power of proxy consent, that is, the authority to waive the rights of children. However, as they are bound by their welfare-oriented duties in their use of proxy powers, they lack the authority to do so. The right to bodily integrity, then, seems to be "unwaivable" in this situation. At this point, we might refer to the notion of "inalienable

rights”: interest theorists have criticised the choice theory, claiming that it cannot make sense of the notion of a right that cannot be waived. In the choice-theoretical framework, a right that cannot be waived is not a right. The right to bodily integrity that is in play in the case of sexual consent is not commonly seen as inalienable or unwaivable. Competent adults can legitimately consent to sexual acts and, as suggested, even children can set the right to bodily integrity aside and permit others to touch them in particular contexts. In some situations, however, neither the children nor their parents can waive the children’s right. So, the duty-based approach to parental proxy consent provides strong protection for children’s rights in some contexts, and demands the waiving of these rights in others. Whether the children’s right is to be waived or not is determined by the welfare-oriented duties that are constitutive of the status of parenthood.

This emphasis on welfare-oriented considerations may raise the question why we should not go back to the view outlined earlier, according to which children have welfare rights, but lack agency rights (Brighouse, 2002, Brennan, 2002): should we not say that parents’ status-based duties correspond to the welfare rights of children? My point is that the focus on these rights and their correlative duties does not settle the matter. For instance, it might be suggested that persons have a welfare right to medical treatment. This does not mean, however, that treating them is the right thing to do, in any situation. Competent adults might waive their own right to treatment. In the case of children, it is up to the parents whether they are to invoke this right, in a particular context, or not. Physicians are not permitted to promote children’s welfare by treatment, unless they have obtained parental consent. Parental proxy powers thus refer to all of children’s rights, including their welfare rights. Depending on the context, those rights might be invoked or waived, but their exercise should be guided – and is limited – by parents’ welfare-oriented duties towards their children.

5 Conclusion

The conceptual debate on moral rights is focused on the role of so-called normative powers, that is, choices regarding one’s own rights. It is contested whether having such choices is constitutive of having rights. Because children are often considered as lacking such powers, the question is whether they can have rights at all.

While I leave this conceptual question open, in this essay, I argue that children’s lack of normative powers significantly impacts their moral status as

right-holders. This means that the very same aspect that drives the debate on rights on the conceptual level becomes crucial on the normative level. Even those who insist that children are not only objects of duties, but holders of rights, must acknowledge that their standing as right-holders is different from the moral status of adults.

I specify this basic idea in two related ways. First, I make clear that children are not in control of their rights, in the way that adults are. When others gain control over one's rights, by acquiring proxy powers associated with them, one's rights are not fully "one's own" any more. It is not only that one cannot waive them at will. Most strikingly, they might be waived by others on one's behalf, thereby making it impossible for oneself to invoke these rights in particular contexts. It has been assumed that children's moral status is special in that children can only have certain types of rights, but not others. As I show in this essay, children's lack of normative powers affects them as holders of any type of rights, including welfare rights.

Second, I argue that the usage of parental proxy powers is tied to welfare-oriented duties. How adults should be treated, as rights-holders, largely depends on their own choices in the exercise of normative powers. The moral treatment of children, by contrast, is ultimately determined by welfare-oriented considerations. The special duties of parents normatively guide and limit the exercise of proxy powers, to the effect that in some contexts, parents cannot legitimately waive or invoke the rights of their children.

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