

THE JUSTIFICATION OF COMPULSORY EDUCATION

by

ROLAND CASE

B. Comm., Concordia University, 1974

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF MASTER OF ARTS

in

THE FACULTY OF EDUCATION

Department of Social and Educational Studies

We accept this thesis as conforming
to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

October 1982

© Roland Case, 1982

In presenting this thesis in partial fulfilment of the requirements for an advanced degree at the University of British Columbia, I agree that the Library shall make it freely available for reference and study. I further agree that permission for extensive copying of this thesis for scholarly purposes may be granted by the head of my department or by his or her representatives. It is understood that copying or publication of this thesis for financial gain shall not be allowed without my written permission.

Department of SOCIAL AND EDUCATIONAL STUDIES

The University of British Columbia
2075 Wesbrook Place
Vancouver, Canada
V6T 1W5

Date: October 5, 1982

ABSTRACT

Proponents of compulsory education have a responsibility to justify infringing upon, what is argued to be, children's basic right to liberty. This thesis is an attempt to spell out the criteria for and provide a description of a justified compulsory education.

The preliminary stage in this vindication of compulsory education is an articulation and defense of the necessary and sufficient conditions for the moral justification of interference in general. The rationale for this approach is simple. Prior to tackling the derivative issues of compulsory schooling and compulsory curriculae, it is well advised to first sort out the grounds upon which any and all compulsion is justifiable. Coming to an understanding about this fundamental issue helps to untangle, if not substantially resolve, the educational polemics.

The justification then turns directly to current educational theory. The liberal arts curriculum, as the prevailing emphasis in the existing educational system, is reviewed critically in light of these criteria. The liberal arts ideals, although commendable, are shown to exceed what is permissible to require in a mandatory curriculum. An account of a new, 'liberal' curriculum which fulfills the criteria for moral justification is presented. As well, the constituent objectives and areas of study of this curriculum are defended as being legitimate educational pursuits. In other words, this new, 'liberal' curriculum is shown to be both consistent with the grounds for the justification of compulsory education and compatible with the ideals of a liberal arts education.

TABLE OF CONTENTS

Abstract	ii
Introduction	1
Chapter One: The Logical and Conceptual Territory	3
I. Field of Justification	3
II. Conceptual Groundwork	5
A. Liberty vs Interference	5
B. Harm vs Benefit	15
Chapter Two: Other-Regarding Considerations	28
I. The Well-Being of Others	29
II. Proviso Conditions	34
Chapter Three: Self-Regarding Considerations	42
I. Proper Guardian Challenge	43
A. Categorical Exclusion	45
B. Conditional Exclusion	56
II. Circumstances Challenge	68
A. Is Harm Necessary?	69
B. Is Consent Sufficient?	74
III. Reasonableness of the Interference	88
IV. Summary: The Theory of Justified Interference	90
Chapter Four: The Case For Compulsory Education	94
I. Justifiably Compulsory Activities	95
A. Basic Moral Education	96
B. Primary Educational Goods	97
C. Undiminished Agential Capacity	98
II. Justifiably Educational Activities	101
A. Autarchy vs. Autonomy	102
B. LCM vs HCF	106

Bibliography111

INTRODUCTION

It is my contention that compulsory education is an interference with, what I hold to be, a basic right to liberty. A consequence of this position is a responsibility, on the part of proponents of compulsory education, to provide justification for this infringement. Not only have educators failed to do so, they have generally failed to recognize the need for a vindication of this sort. The prevailing attempts at educational justification have hinged on the value of pursuing what is held to be 'intrinsically' good or ideal. In my mind this leaves the question fundamentally unanswered. They have neglected to consider the extent to which we are justified in requiring that children pursue these aims, however good or ideal. This thesis responds to this unresolved question by (1) explicating the moral grounds for justified interference; and (2) offering a description of a compulsory curriculum which satisfies the requisite moral criteria and accommodates other educationally important considerations.

The first three chapters address the critical task of identifying the necessary and sufficient conditions for the justification of any and all liberty-limiting interference. Chapter One maps out the logical and conceptual territory upon which a theory of justified interference is to be built. Chapter Two addresses the considerations which must be met if interference

with an individual is to be justified by an appeal for the well-being of other persons. Whereas, Chapter Three looks at the considerations required if the appeal is to be based on a concern for the well-being of the individual him/herself.

Finally, Chapter Four employs the theory of justified interference to make a case for compulsory education. This justification consists of the articulation of a curriculum which is shown to be justifiably compulsory. The constituent objectives and areas of study of this curriculum are then shown to be desirable from an educational perspective. The upshot is a vindication of a new 'liberal' compulsory education.

CHAPTER ONE

THE LOGICAL AND CONCEPTUAL TERRITORY

This chapter is devoted to the clarification of a number of moral and conceptual understandings that are critical to a theory of justified interference. In the section titled 'Field of Justification' several presuppositions about the nature of morality will be identified. It is these fundamental understandings that determine the logical parameters of moral justification. In the section 'Conceptual Groundwork' a number of key concepts will be explained. Some of the explanations are merely stipulated definitions offered as a convenience to facilitate discussion. Other explanations, like those of the conceptions of harm and benefit are 'precising' definitions and will require extensive justification. Achieving greater clarity about these central concepts will resolve a number of difficulties muddled in the literature and will expedite the identification of the necessary and sufficient conditions for the justification of interference.

I. Field of Justification

There are two widely-held theories of the nature of morality. The deontological position views morality as the specification of those duties and obligations which an individual ought to fulfill. Actions are right or wrong because they

conform, or fail to conform, to these moral imperatives. On the other hand, the teleological position looks upon morality as the identification of those goals or ends which an individual ought to pursue. Actions are right or wrong depending on whether or not they are directed towards the achievement of these ends. Although the substantive moral codes of each theory need not differ, the justification for them is fundamentally different. It would be an ambitious task to attempt to defend the selection of one theory over the other. Let me merely announce that I espouse the teleological conception of morality and share with Warnock the view that the point of morality is to "ameliorate the human predicament" (Hamm & Daniels 1979, p. 21). This implies that a necessary condition for a justification being a moral one is that the reasons offered must distinguishably relate to the well-being of individuals (i.e. harm or benefit to individuals).

There is a further moral consideration which warrants clarification and that concerns the meaning of having a right to liberty. The right to liberty is predicated on what Benn calls the "principle of non-interference". He describes this as

the minimal or formal principle that no one may legitimately frustrate a person's acting without some reason (Benn 1976, p. 109).

Acceptance of this principle implies two things: (a) that the onus of justification lies with the person who wishes to interfere; and (b) that since it is being offered as a moral principle, the reasons offered must be moral ones. Hart shares this second fundamental intuition:

It is, I hope, clear that unless it is recognized

that interference with another's freedom requires a moral justification the notion of a right could have no place in morals (Hart 1955, pp. 188-9).

There is one final distinction that has had moral significance ever since Mill drew attention to it. There are potentially important moral differences between the concepts of 'other-regarding' and 'self-regarding'. An 'other-regarding' moral justification identifies a justification which makes appeal to the well-being of persons other than the individual him/herself. A 'self-regarding' moral justification identifies a justification which makes appeal solely to the well-being of the individual.

We can now identify the field of justification upon which our theory of justified interference is predicated:

If a person has a right to liberty, then interference with that person is morally justified only if the interference improves or safeguards other-regarding and/or self-regarding well-being.

II. Conceptual Groundwork

Much of the substantive disagreement about the justificatory grounds for interference can be traced to conceptual differences. Feinberg's conception of 'legal moralism'¹ and Hodson's notion of interference² are cases in point. Because of this, considerable effort will be expended in an attempt to clarify, what are undeniably, the key pairs of dichotomous concepts:

- a) liberty vs interference
- b) harm vs benefit

A. Liberty vs Interference

The central characters in a liberty-limiting relation-

ship are the:

Agent: the human being whose liberty is at risk of
being interfered with;

Claimant: the human being on whose behalf the liberty
of the agent is being interfered with;

Intervenor: the human being or institution who will
effect the interference with the agent's
liberty on behalf of the claimant.

In the situations that will concern us liberty-limiting
interference is either a dyadic or a triadic relationship.³

The dyadic relationships occur when:

- a) an Intervenor interferes with an Agent for the
Agent's own good (i.e. the Agent is also the
Claimant); or
- b) an Intervenor interferes with an Agent for the
Intervenor's own good (i.e. the Intervenor is also
the Claimant).

A triadic relationship occurs when:

- c) an Intervenor interferes with an Agent for the
good of a third party, the Claimant.

In an educational context these relationships translate as follows.
Educators, parents and legal authorities force a child to attend
school for

- a) the child's own well-being; and/or
- b) their own well-being; and/or
- c) the well-being of others and society.

Enough has been written about the potential self-serving motivations for compulsory education to make us suspicious of the

second justification. Clearly, the most easily defensible grounds are those where compulsory education promotes the well-being of the child him/herself or the well-being of 'impartial' others. Our account of the criteria for the legitimacy of this justification awaits our discussions in Chapters Two and Three. What remains to be accomplished presently is an explication of the conditions for the proper ascription of the concept 'interference' and that will require a discussion of the concept 'liberty'.

Isaiah Berlin, in his article "Two Concepts of Liberty", identifies two central features that any account of liberty must incorporate. Liberty has a negative component indicating the absence of impediments to acting in the way one wants. This is reflected in Berlin's claim that

I am normally said to be free to the degree to which no man or body of men interferes with my activity (Berlin 1970, p. 122).

The other constituent refers to the more positive requirement that what the individual wants to do stems from a choice that he has made and has not been effected by others. Berlin calls this "to be directed by one's 'true' self" (Berlin 1970, p. 134). There may not be, as Loenen (1976) argues, two concepts of liberty but clearly there are two distinguishable components embedded in the concept.

A formulation of liberty that incorporates Berlin's distinctions and escapes his conceptual difficulties is the view presented by MacCullum (Benn & Weinstein 1971, p. 194). This formulation can be expressed as follows

A is free from I to do (or choose) X

where

A is an agent;

I is an impeding action or condition;

X is an action or condition A would want to bring about.

The types of factors which would render A unfree to do X are generally physical constraints. These can range from having one leg: "A is not free to run"; or prison: "A is not free to wander". The types of factors which would render A unfree to choose X are those impediments which affect the deliberative process. Restraints in this area operate in two ways. One, the intervention may make the choice of X an unreasonable option for A. These restraints could be in the form of threats, peremptory commands, or, even, the withholding of information.⁴ Or two, the intervention may directly manipulate the mechanism of choice. This may be brought about by hypnosis, brainwashing, conditioning, or subliminal seduction.

We can now make use of this account of the notion of freedom to specify the conditions which must be present before we can properly say that A has been interfered with. We can start with the proposition:

(1) "A would naturally have X'ed if I didn't Y";

where

a) A and I are agents;

b) X is an action or a choice;

c) Y is a verbal or physical action or omission open to I;

d) and 'naturally' is used to (i) eliminate all constraints of a non-human kind (i.e. natural physical impossibilities) and (ii) identify what

X would otherwise have done.

Since interference is a type of influence which affects action or choice we can immediately add that:

(2) "I does Y"; and

(3) "A doesn't X".

Our account is not sufficient to warrant application of the term interference since I may simply have informed A that A would be late for the movie if he continued to chat. Some qualification about the nature of I's influence on A is necessary. We must distinguish I affecting A's choice from that of I effecting A's choice.

(4) "Y is reasonably sufficient to cause A not to X"; where 'reasonably sufficient to cause' includes physical restraint as well as what has been called "the loading of choices" (i.e. making it unreasonable to choose X). It should be obvious that threatening someone with severe repercussions is effectively as confining as physical restraint. In fact most legal interference takes the form of the threat of punishment to deter non-conformity. This point has been made generally about penalties, in that they

make the prohibited course so unattractive that, by ordinary standards of prudence and interest, it could be considered closed (Benn & Weinstein 1971, p. 205).

Elsewhere Benn has successfully argued that threats and bribes are inhibitions to freedom where they are irresistible. A threat or bribe would be irresistible

if a man could not reasonably be expected to resist it even though others might have resisted in the past (Benn 1967, p. 245).

Thus "A is not free to break the law" signifies not that he is unable to do so but that it would generally be thought to be an unreasonable choice for him to make. The legal sanctions likely to ensue are thought to deter, in as much as they make it unreasonable to act contrary to the law.

There remains one final condition necessary to complete the account of interference. It reflects a distinction made between being forced by "the logic of the situation" and being coerced (Pennock 1972, p. 3). The change in A's course of action cannot be a voluntary one, but must be effected against his wishes. In other words, A must not choose that he be forced to change. This will distinguish the man who allows himself to be bribed from the man who can't help himself.

- (5) "A did not choose, had not, or, had he been aware, would not have chosen that I do Y";

where

- a) 'A did not choose' specifies that, at the time, A did not intentionally and voluntarily choose that I do Y;
- b) 'A had not chosen' specifies that, at an earlier point, A did not intentionally and voluntarily choose that under certain circumstances I do Y or, if he had, that the intentional and voluntarily choice had been rescinded; and
- c) 'A, had he been aware, would not have chosen' specifies that, if there had been time to inform A of the relevant facts or if A had thought of it A would not have intentionally and voluntarily chosen

that I do Y.

An example of the failure of (a) to obtain would be the predicament of a man who, at the time of being offered a bribe, wishes that he had not been tempted because he is too weak to resist the opportunity to make easy money. The man did not choose to have the offer extended and was unable to resist it. Conversely, a classic illustration of the failure of (b) to obtain is Odysseus's insistence that his men tie him to the ship's mast and ignore any subsequent orders to set him free while passing through the district of the Sirens. Odysseus's crew were not interfering with his right to liberty because they were acting in accord with his instructions. An instance of a failure of (c) to obtain is the case of the man unknowingly about to step into the path of an oncoming car but is stopped by a bystander. In this situation, if he had known, he would not have stepped into the path of the car. Therefore the bystander has not interfered with his wishes. Similarly, the husband who, if he had thought before hand that he might become intoxicated, would have requested that his wife insist that she drive home has not had his right to liberty violated.

Condition (5) has the effect of making interference a moral concern. The concept of interference does operate outside the moral domain. It is often said that 'the blocking back ran interference for the quarterback' or that 'television interferes with my studying'. In these cases only conditions one through four obtain. But, the absence of a qualification about interference being contrary to the intentions or 'real' wishes of the agent obviates the need for moral justification. Where A

gives I permission to do something involving A's freedom (and A is presumed competent to extend that approval), the granting of permission acts as a waiver of A's right to liberty. Any intervention without that approval must be shown to be defensible on grounds that override A's prima facie right to liberty. Attempts to defend paternalism on a theory of subsequent consent rely on the intuitive attractiveness of an individual waiving his right rather than having to justify why the individual's right need not be respected. My point is that if the right has been waived by the individual then it cannot be interfered with. It is condition (5) which specifies the ways in which one can clearly be presumed to have waived their right. These qualifications must be interpreted narrowly. The prior permission must authorize the intervenor to act in, and only in, a certain manner in anticipation of a particular set of eventualities. This implied permission holds only where the agent would certainly be known to wish a particular course of action. When that certainty is not present (i.e. it is merely assumed that the agent might choose it) it should not be presumed that he has waived his right. More will be said in Chapter Three about the problematic nature of presumed waivers in our discussion of consent.

To anticipate a still later point, condition (5) could legitimately be employed in an educational setting. Suppose that schooling is not compulsory, but in order to operate effectively, children are expected to participate on a regular basis for set lengths of time. If children were informed that this was a condition of their agreement to register for school, then penalties for absenteeism would be justified without it

being interference. Of course, this condition would only apply if their non-attendance was the result of a temporary softening in their resolve and not indicative of a more permanent change of heart. Justification in the latter situation might then hinge on obligations to keep promises - but it would be, by my explication, interference.

Another educationally relevant implication of this account of interference concerns the admissibility of consent. If a child agrees to attend school largely because of "undue influence" (eg. guilt and fear of parental disapproval) and the child can not reasonably be expected to resist this pressure, then the child's freedom has been interfered with. More generally, if children are psychologically more susceptible to domination than adults, then children are more vulnerable to interference. And if we are committed to a respect for the rights of others then we should take steps to repair this vulnerability rather than reinforce it. That children can be induced to comply more easily than adults should not lull us into a false sense of easiness about the extent of our interference with children's rights to liberty.

In conclusion, although we have, as yet, not elaborated on the grounds for justified interference we have uncovered the conditions under which interference requires a moral justification:

I has interfered with A's right to do or choose X, if and only if:

- (1) A would naturally have X'ed if I didn't Y; and
- (2) I does Y; and

- (3) A doesn't X; and
- (4) Y is reasonably sufficient to cause A not to X;
and
- (5) A did not choose, had not, or if he had been
aware, would not have chosen that I do Y.

Also we have identified that interference can be effected in three general ways:

- a) I physically restraints A;
- b) I makes X an unreasonable option for A;
- c) I manipulates A's mechanism for choice.

At this juncture it may be useful to offer a few comments about the nature of interference involved in compulsory education. There are actually two ways in which education if it is compulsory is potentially an interference with the liberty of children:

- (1) if attendance is mandatory; or
- (2) if there is a prescribed curriculum.

The former requires that proponents justify why it is necessary for children to attend an institution for a set number of hours each day. The moves in support of this compulsion might be to argue that mandatory attendance at 'school' is necessary to keep children off the streets and out of trouble, or to prevent child labour abuses. However, these would still not justify insisting that children pursue a particular activity, let alone a prescribed course of study. Regarding the latter, if it can only be justified that children pursue a pared down curriculum, then it would cast serious doubts about the justifiability of mandatory full-time attendance.

B. Harm vs. Benefit

The literature and common usage abounds with diverse conceptions of what it means to harm someone. In the most defensible account of the topic, John Kleinig (1978) has identified four general "traditions" in the historical development of the concept. I have categorized them as:

- (1) harm as an event;
- (2) harm as a violation of a legal interest;
- (3) harm as an infringement of a moral right;
- (4) harm as impairment of well-being.

Although his understanding is largely correct my treatment and conclusions are different. My approach is not historical, but reportive of the four general categories of the term's usage. In the end, I settle on a precisising conception of harm as impairment of well-being rather than opt for a more conventional interpretation.

(1) Harm as an Event

The distinction operating in this use of the term contrasts harm as an event as opposed to harm as an effect. In Kleinig's words it means that

"Harm" thus came to refer not only to the grief or sorrow, but also to the loss which occasioned it. Typically, that loss was felt but as the second tradition developed this no longer became necessary (Kleinig 1978, p. 27).

Characteristically, when certain events occurred (eg., damaged reputation, theft, death of a family member, etc.) harmful results ensued (eg., suffering, deprivation, grief, etc.). These events became labelled as "harms". However, these "harms" are not intrinsically harmful - being robbed may turn out to be

a blessing in disguise, a damaged reputation need not result in any disadvantage, and not all mourn the loss of a relation. In short if we forget that classifying an event as a harm is contingent upon it having a harmful result, we risk the paradox of a harmless harm. Harm, properly understood, must adversely affect the individual.

To clear up a related matter, it is worth mentioning the relationship between harm and the risk of harm. Since the point of our analysis of the concept is to identify what constitutes harm so that we may prevent its occurrence, the notion of the risk of harm is the operative concern. This is not to say that the risk of harm is, itself, a harm.⁵ Clearly, harm must involve deleterious consequences and not merely pose the possibility. Taking this point one step further, harm is necessarily an experienced effect. Writers, such as Kleinig, have suggested that:

A person could suffer harms of which he had no knowledge, either at the time he suffered them, or ever. Thus, while it remained true that what one doesn't know couldn't hurt, it may harm (Kleinig 1978, p. 27).

It is one thing to suffer and not know that it is because someone had done something damaging. It is quite another thing never to suffer even though someone had done something damaging.⁶ At this stage in the discussion we can at least conclude that harm is not an event but must necessarily involve adverse effects that are experienced or felt.

(2) Harm as Violation of Legal Interest

An obvious historical offshoot of the previous

tradition is the view that harm is the "violation of some legally protected interest" (Eser 1966, p. 345). Feinberg argues that

the crime of burglary consists in inflicting a forbidden harm whether or not it will be discovered or will hurt (Feinberg 1973B, p. 27).

The comments made in the prior section obviously have relevance here. But, because Feinberg employs a slightly different defense and because this conception has wide currency in the literature, his line of reasoning deserves a specific refutation.

He starts with the tenable premise that to violate an interest is to harm. The problems arise the moment he confuses a person's interests with a person's legally protected interests. If I have an interest in something and am deprived of it I will necessarily be adversely affected. This is especially true if one agrees that "interests are not just arbitrary wishes, fleeting fancies or capricious demands", but concerns which have a "certain permanence and stability". (Rees 1966, p. 101). However, an individual need have no such interest in a particular infraction of his 'legal interests'. It is not an improbable conjecture that a rich man who had been robbed of a small sum of money might not miss, be upset by, or otherwise adversely affected by the few dollars lost. He would have no interest in that money and possibly an equal lack of interest in this violation of his legally protected interest. As such, he has not been harmed.

The appeal that is lurking beneath Feinberg's "forbidden harm" is that legal violations affect the ability of society to function and, as such, we can be presumed to have a prudential interest in upholding the public order. I think it is irrelevant whether the harm is done to specified individuals or to

unspecified individuals. The important concern is whether or not persons are actually affected adversely. Clearly our interest in the violation of public ordinances ought to be contingent upon whether or not harm to persons ensues.⁷

It should be sufficient to conclude this discussion of harm as a violation of a legal interest by offering the following counterintuitive difficulties:

- a) this conception includes what Kleinig calls 'legal fictions' (i.e. violations which are illegal but not harmful); and
- b) it excludes genuine harms which are not legally recognized (i.e. the mistreatment of blacks before it became illegal, the use of the strap).

(3) Harm as Infringement of a Moral Right

A third interpretation of the concept casts harm as an infringement of a moral right. Although this conception avoids the above mentioned objections, it does so at the price of being an excessively narrow articulation. For example, Rees' claims that harm requires that there has been violation of a distinct and assignable obligation leads him to exclude from the concept of harm being "very seriously affected by the action of another merely because I have an extraordinarily sensitive nature" (Rees 1966, pp. 94-6). Another writer claims that "I am not harmed if I am deprived of goods that I have stolen" because a necessary condition of harm is "some claim or reasonable expectation" (Honderick 1967, p. 293).

The confusion that gives rise to these counterintuitive

claims can be sorted out if we examine the implications of two different cognates of harm. Consider:

(1) 'X has harmed Y'; and

(2) 'the consequences of X's action have been harmful to Y'.

For the former statement to obtain it is not sufficient that X's action has adversely affected Y. Implicit in the statement is some culpability on X's part. However, in the latter statement it is sufficient that Y be detrimentally affected by X's action. It is for this reason that we would resist describing the execution of a convicted murder as 'Society harmed the individual'. But surely we would be hard put to suggest that the individual had not experienced grievously harmful consequences. When we use 'harm' in its verb cognates we identify a perpetrator and assign moral censure. Harm in its nounal and adjectival cognates simply requires adverse effects.

In short, although I am inclined to believe that harm is a necessary condition for describing something as morally wrong, I am certain that immorality is not a necessary condition for harm.

(4) Harm as Impairment of Well-Being

The most defensible interpretation of the concept of harm involves defining harm in terms of impairment of well-being.⁸ Before defending this claim I need to offer a 'precising' conception of the harm/benefit notion. Consider the concept of 'well-being' defined as the satisfactory functioning of an individual (physically, emotionally, and intellectually). Now

picture two domains: one of supra-satisfactory or supra well-being, and one of sub-satisfactory or sub well-being. We will call the dividing zone between these two domains minimal well-being. The epitomy of an individual with physical supra well-being is the disease-free athlete with perfect muscle tone, excellent cardio-vascular output, 20/20 vision, acute hearing and so on. More frequently found, and a clear case of an individual experiencing physical sub well-being is the stress-ridden, flabby, hypo-glycemic, slightly jaundiced smoker. An individual in what I have termed the minimal state of physical well-being is one who approximates the norm of what Ausubel calls 'functional and structural integrity' (Brown 1977, p. 20). This individual may have the odd pains, ailments and other minor physiological disruptions but, by and large, the body does its job satisfactorily. Admittedly this norm or minimal state of well-being is subjective and somewhat amorphous, but it serves our purposes by allowing us to distinguish among what I want to isolate as four logically distinct terms:

Harm: the lowering of the well-being of an individual
below the minimal state of well-being;

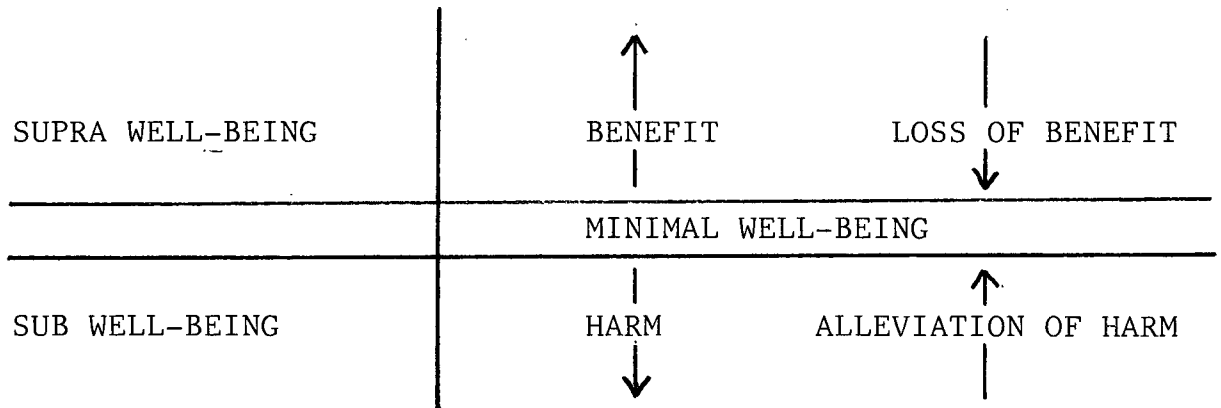
Benefit: the raising of the well-being of an individual
above the minimal state of well-being;

Alleviation of Harm: the raising of the well-being of
an individual up to the minimal
state of well-being;

Loss of Benefit: the lowering of the well-being of an
individual that does not cause it to
go below the minimal state of well-

being.

These logical relationships can be diagrammed as follows:



The consequences of this conception, which I admit does not reflect conventional usage, is that harm (causing or alleviating) operates solely in the domain of sub well-being and that benefit (promoting or diminishing) is limited to the domain of supra well-being. This means that the ascription of 'loss of benefit' be restricted to situations where the well-being of the individual was lessened but not to the extent that it impaired the satisfactory functioning of the individual. Examples of this would be a fairly wealthy person incurring the loss of several hundred dollars on the stock market, or in an educational setting, a student not being exposed to, say, division of fractions or not participating in a large number of supposed 'creative' writing assignments. The common feature being that in none of these cases has the minimal norm of well-being been impaired (i.e. they are simply less well off).

I now wish to offer a number of comments in support of the definition of harm in terms of well-being and in particular in terms of a minimal norm of well-being. At this stage I hope that it is clear that at the heart of the concept of harm is the

notion of adverse effects. The other three traditional conceptions of harm (which I believe are exhaustive if its other uses) have been shown to be extensions of this feature. Making the connection between impairment to well-being and harm is supported by the fact that the oldest sense of the word, one which dates to 1000 A.D., is that of "grief, sorrow, pain, trouble, distress, affliction," (Oxford English Dictionary, 1933). There are a number of writers who agree that harm is damage to well-being but who would resist that it be defined in terms of a lowering below a norm of minimal well-being. Instead they have suggested alternative sufficient conditions such as

- a) that the person is merely mildly worse off; or that
- b) the person experiences residual impairment..

I see the former as an undesirably lax interpretation⁹ and the latter an unacceptably stringent interpretation¹⁰ of the concept. In support of this view, that a necessary and sufficient condition of harm is impairment of well-being, let us turn to the concept of health. The concepts of health and well-being are in an important way logically analogous. Both are normative 'deprivation' concepts which means they are defined largely in terms of deviations from a standard. Health has been defined as "functional normality" (Boorse 1975, p. 50). 'Unhealthy' deviations from this 'normality' are normative and not statistical in nature. For example, there are many differences in persons' physiology that are not unhealthy (eg. certain eye colours, blood types, number of toes) and conversely there are many 'non-deviations' that are unhealthy (eg. tooth decay, minor lung irritation). This suggests that there are standards or

minimal norms of operating efficiency below which someone is said to experience some degree of dysfunction.

We can identify a host of conditions which in their mild states are not debilitating but when in an aggravated state are clearly disruptive. The following conditions, which curiously have physiological as well as a psychological currency, are reflective of the range: irritated, annoyed, bruised, sore, sensitive, itchy, and tender. Although we may not be able to delineate strictly the functional norm we could intuitively imagine the range at which it occurs. And it is this subjective zone of minimal functional normality and analogously the minimal state of well-being which I offer as the standard for distinguishing the concepts of harm and benefit. Although this distinction is not conventional (i.e. the term harm is often used to include what I have called 'loss of benefit' and similarly benefit commonly refers to the 'alleviation of harm') it is more precise. By establishing mutual exclusiveness among the terms we can avoid some of the confusion that clouds the debate on the justification of interference. Specifically, I have in mind arguments in support of the view that benefit enhancement is a sufficient justification for interference when, in fact, what supplies the arguments with their surface credibility is a disguised claim for harm avoidance.

Notes to Chapter One

¹Legal Moralism, Feinberg's label for a class of harmless yet immoral behaviour, has been offered as grounds for legal interference, most notably by Lord Patrick Devlin. A paradigm of this type of conduct is the 'immorality' of homosexual acts committed by consenting adults in private where the only harm done is the immorality of the act. If we accept the teleological theory of morality, it is a logical contradiction to identify an act as both harmless and immoral. This fact has been pointed out about Lord Devlin's position:

a second mistake embodied in his conception is the failure to insist that some such reason like harmfulness must be available to justify our identification of an action as immoral (Dybikowski 1975, p. 91).

Coincidentally, Feinberg is suspicious of Devlin's category and eventually rejects it as grounds for justified legal interference (Feinberg 1973A, p. 83).

²Hodson's conceptual confusion about the concept of interference causes him to claim that avoidance of a minor inconvenience is a legitimate justification for paternalism. He succumbs to this position because he considers getting someone's attention at a party and informing them that the liquor they are about to drink is foul-tasting constitutes an instance of interference.

³There is an anomalous situation (eg. the punishing of innocent people) where the relation is conceivably four-partied. This would involve the innocent Agent who is interfered with, the Claimant who is being protected, the Intervenor who is effecting the interference, and the party who is threatening the Claimant should the Agent not be punished (eg. an extortionist). These types of situations will not be included since they represent an incredibly contentious moral dilemma requiring a substantially more complex justification. Nor are circumstances of this nature likely, much less central, candidates for consideration in the educational issue that is being addressed.

And finally there are two cases which, although more properly viewed as instances of self-control or self-discipline, may strictly speaking be cases of interference. These occur when we would be tempted to cast either the Agent and the Intervenor

as one (i.e. the Agent should prevent himself from doing something for the benefit of someone else) or the Agent, Intervenor and Claimant as one (i.e. the Agent should prevent himself from doing something for his own good). I do not wish, nor need to pursue the possibility of self-interference. Our concern is not whether a person ought to force himself to go to school but whether a party other than the Agent has moral justification to require that the Agent attend school.

⁴In an article "Medical Paternalism" Buchanan makes a case with regards to patients that the withholding of information is an interference in that it deprives the individual of the opportunity to make his own choice (Buchanan 1978, p. 371).

⁵Knowles suggests that to place someone in jeopardy is to harm them (Knowles 1978, p. 214). He defends this view by reference to the insecurity that ensues when people are exposed to potentially harmful situations. I have no difficulty understanding that creating insecurity in people can be harmful. But not all persons in jeopardy of being harmed experience debilitating insecurity.

⁶Consider the following situation:

At birth a doctor errs in the delivery and because of that the child has an unnoticeable deformity in one leg. The only negative result of this damage is that the child never develops proficiency in football - an activity that he would have been accomplished at and consequently enjoyed immensely. Instead, because the child never spent time playing football, he devoted the time to chess. Suppose that the satisfaction he actually enjoyed in playing chess was identical to that which, had he not been deformed, he would have experienced with football.

Has the child been harmed? I contend not on the grounds that he never suffered from the damage and therefore was not harmed by the event. A more difficult situation occurs if we hypothesize that the child did not derive an equivalent amount of satisfaction from playing chess as he would have were he able to play football. Has the child now been harmed? Again I suggest not. Although, ex hypothesi, there has been a loss of benefit the child may still have enjoyed a satisfying youth. For reasons that will be elaborated upon in part (4), the loss of opportunity for enjoyment need not harm the individual. It is certainly the case that developing a child's capabilities is crucial for his chances of enjoying a satisfying life. However, failing to maximize a child's opportunities is not harmful if the child has a sufficient number of developed options to actualize his interests and goals. If a person would be fulfilled if he were a farmer, one has not harmed him by failing to turn him into a philosopher.

⁷This point is the subject of a lengthy and interesting discussion of the historical evolution of the legal concept of harm (Eser 1966). Eser's thesis is that a shift has occurred:

In traditional common law crimes which dealt with the basic impairment of human rights and interests, the presence of harm was so apparent that there was no need for special emphasis of its requirements. In contradistinction, the objects of modern welfare offenses are usually so highly technical in nature that they are often scarcely recognizable (Eser 1966, p. 347).

To compensate for this historical distortion, Eser separates harm as the 'formal' wrong (i.e. the mere breach of a law) from the 'material' wrong (i.e. the actual injury done) (Eser 1966, p. 348). The latter is the primary concern since harm is essentially a felt injury.

⁸Well-being is, on occasion, used interchangeably with welfare (Peffer 1978, p. 65; Oxford English Dictionary 1933); but generally the latter has the connotation of being a narrower concept with a different emphasis - largely that of social resources (eg. income, health, service, education). So I shall choose the more "global" well-being (Rescher 1972, p. 4). Usage of the phrase 'social welfare' as opposed to 'social well-being' has the following distinction. The latter indicates a felt state which is characteristically a result of the former (i.e. an array of social 'goods' and resources). I am not legislating this distinction, but merely reporting an emphasis that seems to underlie common usage.

⁹"Mildly worse off" is a phrase used by one writer to identify the lower range of the concept of harm (Van De Deer 1979A, p. 1978). He claims that a person is harmed if someone steps on his toe. Feinberg offers for "clarity and convenience" a comparable definition - "a change in one's condition in a harmful direction" (Feinberg 1973B, pp. 30-1).

An initial reaction to this suggestion is that they have stretched the notion of harm beyond the limits even of conventional usage. I suspect that recognition of this fact is what motivated Feinberg's excuse that the definition was being offered for "clarity and convenience". I am not convinced that this stipulation clarifies the issue. If Feinberg wishes to include minor disturbances as grounds for intervention then he ought to do so but not pretend that they constitute harming. Consider the scenario of a young athlete. Suppose that two months ago he was in excellent shape but because of failing to exercise has lost some of his muscle tone and becomes slightly flabby. It would not properly be said that he was unhealthy, merely that he was less healthy. We would refrain from stating that his health was harmed until such time as there was detectable dysfunction (eg. shortness of breath, poor

circulation, pains)

¹⁰ Kleinig defines harm as a lingering impairment that interferes with welfare interests:

Impairment is thus an interference which has substantial deleterious effects. This is not to imply that what is impaired cannot be restored, any more than that which is damaged cannot be repaired. But restoration is not constituted solely by the removal of the interference. A stab wound does not disappear when the knife is withdrawn. When harm is done, there is always a wound, or at least a weal, and there is often a scar. It may go with time, but take time it will. (Kleinig 1978, pp. 32-3)

I concur that impairment is central to a proper ascription of harm. And that impaired states usually require a recuperative period or at least leave their mark. However it is not a necessary feature of harm that the impairment be residual. Two examples should illustrate this point:

- (i) A man has a brain tumour which is applying pressure on the brain resulting in distress and incapacitation. A drug is administered which completely dissolves the tumour. The tumour while present impaired the man's well-being and even threatened death and yet its removal resulted in immediate cessation of the problem and left no residual scar.
- (ii) An American hostage is held captive in Iran. During his confinement he is miserable and afraid for his life. His reaction upon release is one of immediate relief and he suffers no psychological scarring.

CHAPTER TWO

OTHER REGARDING CONSIDERATIONS

The logical and conceptual preliminaries to the thesis have been completed. We have generated a conditional analysis of the concept of interference which requires that:

An intervenor must act or fail to act in such a way, not chosen by the agent, which is sufficient to cause the agent not to do or choose to do what he would otherwise have done.

We have seen that interference with an individual will be justified only if it promotes or protects the well-being of the individual and/or of others. Because the justification of interference on self-regarding grounds is different from the justification of interference on other-regarding grounds, each appeal will be considered separately. In the current chapter we will address the other-regarding considerations. We will identify one set of necessary conditions for this justification by examining the ways in which the well-being of others can be promoted or protected. From our 'precising' conception of harm and benefit we can see that there are four logically distinct and collectively exhaustive ways in which this can occur:

harm: (I) may interfere with (A) to prevent harm;

alleviation of harm: (I) may interfere with (A) to
alleviate harm;

loss of benefit: (I) may interfere with (A) to prevent

loss of benefit;

benefit: (I) may interfere with (A) to promote benefit. We shall then offer a number of proviso considerations which, with the well-being considerations, are collectively necessary and sufficient conditions to justify other-regarding interference.

A. The Well-Being of Others

There is a prevalent presumption in morality that the minimization of harm is morally required while the maximization of benefit is merely morally desired. In recognition of this widely held and, I think, defensible delineation of moral obligation I propose that prevention and/or alleviation of harm (to others) are necessary conditions for justified interference. And on the grounds that we are not normally obliged to promote and/or avoid loss of benefit to others, I shall argue that one ought not be forced to do so. The defense of this position will take the form of the refutation of a number of potential counterclaims.

Proponents of classical utilitarianism hold that the good of others is a sufficient justification for interference. In fact, in its strictest form, an obsessively altruistic act utilitarian would hold that one is always morally required to intervene against another whenever doing so will result in the highest total utility. Our intuitions about supererogation ought to be sufficient to convince us of the indefensibility of this view. In fact, it is this objection to classical utilitarianism that has prompted a theory of negative utilitarianism. This revised view argues that our only obligation to others is

to minimize the harm to them. Clearly this theory is compatible with the position I hold.

Another objection might be that the domain of moral obligation is restricted to avoiding hurting others and does not extend to helping others. This would require avoiding loss of benefit but exclude an obligation to alleviate harm. Mill, at least according to traditional interpretations, has been heralded as a staunch supporter of this view. However, recent writers have pointed out that Mill stretches the notion of 'not hurting' others to include situations where a small sacrifice on one's part would result in significant help to a person in a harmful state. It has been argued that Mill had included in his "harm principle"

a great many instances which cannot be classed as harming others, but only as failing to help them and the like (Brown 1972, p. 158).

Brown is sympathetic to the position I hold and is simply pointing out the inconsistency in Mill's articulation.

David Lyons recommends a less restrictive interpretation of Mill's "harm principle":

there may be circumstances in which one may justifiably be required to come to other's aid, even though one is not responsible for their difficulties (Lyons 1975, p. 6).

Whether Mill is actually inconsistent or not, is of secondary importance. What is clear is that alleviation of harm is recognized as legitimate grounds for moral obligation. However, I do not accept that our obligations to others include refraining from causing a loss of benefit. Although actions which cause a loss of benefit to others are undesirable, they are not morally

forbidden and therefore do not warrant interference. Feinberg expresses this view when he discusses what he calls the 'Offense Principle'. Although he overstates the case on the potential for offenses to cause harm,¹ he is correct when he states that actions which are "merely unpleasant, uncomfortable or disliked" do not counterbalance the harm caused by coercion (Feinberg 1973B, pp. 28-9). It is my view that situations which precipitate solely a loss of benefit are more commensurately dealt with through reproach, disapproval and persuasion. Any action that was more than a minor offense, or threatened noticeable disadvantage, would run the risk of harming others, and, as such, could legitimately be interfered with.

There may be those who would suggest that the promotion of the benefit of others is, in particular situations, an obligation. They might, for instance, wish to argue that it is morally justified to require parents to promote the 'good' of their children. To the extent that this is true is the extent to which a parent has a duty to care for his child. This duty is necessarily a correlative of a right of the child to certain treatments. As Sutton remarks, these treatments or welfare rights are closely identified with 'basic' needs:

Our reason for endorsing welfare-rights, then, is that they protect and insure those minimal goods which we all need in order to live satisfying human lives (Sutton 1975, p. 106).

Clearly these welfare rights are importantly tied to minimal well-being. We may certainly have immense difficulty drawing a crisp demarcation between those needs and interests which a parent has a duty to provide for and those which are merely desirable to provide for. Nevertheless, they provide guidelines which explain

why parents are expected to feed children adequately, bathe and clothe them, insure proper medical attention, but are not required to provide piano lessons or expensive toys. In short, the justified forcing of parents to care for their children demands the provision of only those services and goods without which the child would be deemed to be harmed.

Others might point to the government taxation and legislation as an example of citizens legitimately being required to promote the good of others. A potential candidate for this claim is the individual taxpayer who neither makes use of nor approves of the symphony, yet is required to finance this venture for the benefit of others. It should not be inferred that I am here insisting that supporting the symphony is solely a matter of benefit. There are likely many people, both performers and observers, whose well-being would be detrimentally affected. However, that is an empirical claim that is difficult to substantiate and outside the realm of this paper. What I propose to provide are a number of philosophical responses to this objection.

Before examining three hypothetical scenarios it will be worthwhile advancing a simplified account of social contract theory. Let us accept that participation in the voting procedures and the payment of taxes is implicit consent to the following:

that the citizen will abide by the decisions of the government provided the governmental decisions are constitutional and not morally wrong.

Now let us consider case one of a taxpayer who is an avid baseball fan and a fanatic loather of classical music. He

adamantly refuses to support the symphony, (he wants a new baseball diamond built), and claims that he is being unjustifiably interfered with for the benefit of others. In this situation he approves in principle of money being spent on recreational and cultural activities (and in fact utilizes many of the benefits of public financing) but disapproves of a particular expenditure. His consent to the public financing of the symphony is extended by virtue of his participation in other publicly financed recreational activities. It has been argued that a sufficient condition for implied consent is the fact that the person willfully derives benefits from a scheme (Simmons 1976, p. 287). Also it would be unreasonable of him to expect other taxpayers to finance his particular interests if they could not expect a reciprocal benefit.

Case two represents a different situation. In this instance, the taxpayer's refusal to support the symphony is motivated by the conviction that medical, police, and welfare services are grossly inadequate. Because these services are central to the interests of the public, he believes that the government is remiss in the execution of its duty by supporting a symphony. This misallocation of funds, because it involves harm to the public welfare, is something to which he has not given prior tacit consent and his freedom is being interfered with unjustifiably. However the objection here is not that he is being required to benefit others but that harm is being done.

The final case borrows from a position espoused by Robert Nozick (Sampson 1978; Danley 1979). The underlying view is that anything beyond minimal redistribution in a liberal

society is unjustified. All 'costs' to the taxpayer must be compensated for by providing services that the taxpayer desires or by some other method of reimbursement. Now, suppose that a taxpayer does not want public financing of recreational activities, believes in a user pay philosophy, and if he does avail himself of public facilities, it is only because he has been forced against his will to subsidize them.

I am sympathetic to this objection and believe that where practically possible in situations that are substantially those of benefit maximization, as opposed to harm prevention, efforts must be made to compensate for redistribution. It could only be conjecture on my part as to the extent of the need for special compensation over and above the inbuilt compensatory benefits. However, in principle, redistribution for the benefit of others without compensation is unjustified.

II. Proviso Conditions.

Thus far we have isolated the necessary well-being considerations for other-regarding interference. They are not sufficient conditions for interference. In situations where the avoidance of harm imposed great hardships to the agent or where the claimant was unreasonably affected we would be hesitant to impose restraints. In short, certain provisos must be met before interference is justified.

Feinberg provides a key to the identification of these provisos when he suggests the following qualifications to his Offense Principle:

- (i) the standard of universality - i.e. before an

offensive act can justifiably be interfered with
it must be contrary to the fundamental moral
beliefs of most of the persons in a society; and
(ii) the standard of reasonable avoidability - i.e.
that the offensive situation could not be averted
without unreasonable effort or inconvenience
(Feinberg 1973B, p. 44).

There are unacceptable difficulties with Feinberg's
articulation but the spirit of the criteria is well placed.
Michael Bayles rejects Feinberg's first standard in that it
disallows many "reasonable" acts (eg. homosexuality, flag
burning) merely because they are universally disapproved of; and
allows the continuance of many "unreasonable" acts (eg. racist
abuse) that are universally shared. Clearly value judgements
about which offenses should be permitted are not to be settled
by empirical resolution (Bayles 1973). In response to this
pressure from Bayles, Feinberg concedes that the Offense
Principle must be weighed in light of the "worthiness" or
"importance" of the interests at stake (Feinberg 1973C, p. 128).
Regarding the second standard, merely that an act is not easily
avoidable, is not by itself sufficient grounds to exempt it from
prohibition. It may be sufficiently offensive to justify
imposing considerable inconvenience to the persons who would
otherwise perform it.

Feinberg's account does suggest that two factors must
be accommodated when assessing the justifiability of interference:

- (a) that the individual's claim for protection is
justified; and

(b) that the particular interference is reasonable. Therefore I propose the following proviso conditions that must be met before interference is clearly justified:

- (1) Soundness of the Claim - i.e. that the Claimant has a defensible claim against the Agent to be protected from harm; and
- (2) Reasonableness of the Interference - i.e. that the particular interference proposed is acceptable.

The 'Soundness of the Claim' condition requires that the Claimant's justification be a logically sound moral argument. Coombs (1971) has identified two criteria that must be met before a moral judgement is defensible. First, the facts supporting the judgement must be

- (a) true or well confirmed;
- (b) genuinely relevant; and
- (c) must encompass a sufficiently broad range of the facts about which the judgement is being made.

Second, the value principles implied by the judgement must be acceptable. Four tests have been articulated to assess the acceptability of value principles:

- (a) Subsumption Test: the principles from which the value claim derives are themselves defensible;
- (b) Role Exchange Test: occupying the role of others involved in the situation doesn't affect the consistency of the judgement;

(c) Universal Consequences Test: the consequences of everyone adopting and acting on the judgement are not undesirable;

(d) New Cases Test: imaginatively constructing similar cases doesn't force one into counterintuitive positions.

The 'Reasonableness of the Interference' requires that the proposed interference be acceptable. The following criteria are the relevant factors to be considered in arriving at this assessment:

- (a) the presumption of minimization of harm;
- (b) the least restrictive alternative.

The 'presumption of minimization of harm' is a prima facie intuition that the interference ought not cause or risk causing greater harm than the harm it prevents or avoids. The 'least restrictive alternative' is a principle advanced by Dworkin (1971) requiring that there be no alternative which would prevent the harm to the Claimant and result in less disadvantage to the Agent and others. The former is distinct from the latter in that an alternative might be the least restrictive and still cause greater harm than it prevents.

In a clear case of justified interference both the 'soundness' and the 'reasonableness' conditions must be met. However, there is likely to arise cases where one or the other won't clearly be met and we still might wish to claim that interference was justified. Because justification is often a matter

of degrees, the extent to which one condition was met must be weighed against the degree to which the other wasn't. In situations where neither condition obtained, the interference is never justified. A qualification that these provisos be met on balance is necessary to allow for the following types of situations:

- a) Suppose an individual has an undeniably strong claim for protection and that the cost (in human suffering and/or dollars) of such protection exceeds the harm prevented, but not to any significant extent. We might feel, by virtue of the strength of the individual's right to protection, that the interference was justified even though by doing so we failed to minimize harm; or
- b) Suppose an individual has what we might call a 'fairly legitimate' claim for protection but that the cost to others to provide this protection far exceeds the potential injury to the individual. We might feel that we would not be justified in interfering in light of the excessive costs of doing so; or
- c) Suppose an individual does not have a legitimate claim for protection but that the cost to the individual should we fail to provide this protection would be considerable; and further, that it would be possible to provide this protection at very little cost to others. We might be inclined to provide this protection by virtue of the considerableness by which harm is minimized.

In other words there are likely to be situations where trades-off between the reasonableness of the interference and the soundness of the claim for protection will require that these provisos be assessed on balance.

Before closing our account of the necessary and proviso conditions for justified other-regarding interference it is worth responding to a challenge that Feinberg offers with regards to justificatory principles:

the best way to defend one's selection of

principles is to show which position they commit one on such issues as censorship of literature, 'moral offence', and compulsory social security (Feinberg 1973B, p. 34).

In this vein we shall outline the likely position that would be prescribed in the following cases:

- (1) pornography
- (2) public copulation
- (3) universal compulsory pension plans.

(1) Pornography

It can be presumed that persons have a justifiable claim not to be assaulted as they walk down the street or to have their children constantly exposed to 'indecent' sexual literature. However, should it be banned, the ability of many to earn their livelihood or to gain satisfaction from the literature would be deprived. In short, the Claimant's rights are roughly balanced by the Agent's rights. The operative factor in this situation would appear to be the avoidability of the harm. Certain restrictions such as localization to particular areas of the city and/or confinement to enclosed areas of the store would effectively allow persons to avoid the harm at minimal inconvenience and, by and large, allow publishers and subscribers to satisfy their needs. (The line of argument presented here and in the following case have been suggested by Bernard Williams).

(2) Public Copulation

The total prohibition of public copulation would prevent considerable shock to the unwitting witness and would pose only minor inconvenience to the would be perpetrators. It

would therefore seem on all counts justified to ban public copulation whenever there was a risk of innocent exposure.

(3) Universal Compulsory Pension Plans:

If the absence of a compulsory plan caused sufficiently greater harm than voluntary or private plans, and, if universal subscription was necessary to ensure the plan's success, then it would be justified. However, if the public plan was ineffective in preventing harm, or if it was not necessary to include all income groups, then certain limitations on the mandatoriness and universality of the plan would be in order.

The upshot of the discussion thus far is that the necessary and sufficient conditions for justified other-regarding interference are:

I. Interference is justified if it prevents or alleviates harm to others; and

II. On balance the following provisos are met:

i. the claim for protection is sound:

a) the facts are true, relevant and sufficiently broad,

b) the value principles implied are acceptable; and

ii. the interference is reasonable:

a) the presumption of minimization of harm, and

b) the principle of the least restrictive alternative.

Notes to Chapter Two

¹Feinberg's Offense Principle proposes that

we agree that offensiveness as such is strictly speaking a harm (i.e. violates an interest in not-being offended or hurt) but harm of such a trivial kind that it cannot by itself ever counterbalance the direct and immediate harm caused by coercion (Feinberg 1973B, p. 28).

He cites as indicative reactions to offenses the following list: "disgust, shocked moral sensibilities, shameful embarrassment"; and characterizes their effect on the individual as "merely unpleasant, uncomfortable or disliked" (Feinberg 1973B, p. 29).

His account of offense is mistaken in two ways:

- (i) if offenses are merely unpleasant then, as I have argued, they do not justify interference but merely reproach; but
- (ii) since offenses can be very damaging, they are in fact actually harmful to well-being. Consider the instances of the 'moralistic' parents who walk in on their daughter in the act of copulation, or the parents who discover that their son is a homosexual. In each case their "shocked moral sensibilities" are likely to be painful and debilitating.

CHAPTER THREE

SELF-REGARDING CONSIDERATIONS

Our attentions now turn to the task of identifying the necessary and sufficient conditions for justified self-regarding interference. Self-regarding interference, usually referred to as paternalism, occurs whenever an Intervenor (I) interferes with Agent (A) on behalf of A's well-being. (I) acting paternalistically with respect to (A) is a narrower concept than (I) acting paternally with respect to (A). The former specifies that the intervention is done against A's wishes while the latter need not imply that. Our concern is clearly with this narrower domain, since acting in accord with the wishes of an individual does not, as I have suggested, require a moral justification. Therefore, in order to unfold which of the potential grounds are necessary conditions for self-regarding interference, it will be useful to examine in detail the rationales for the justification of paternalism presented in the literature.

As a pillar of modern social and ethical philosophy, and because he addresses the issue head on, Mill is worth quoting:

Each is the proper guardian of his own health, whether bodily, or mental and spiritual. 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. (Mill 1975, p. 18)

The key assumptions in Mill's position identify the two seminal

issues in the justification of paternalism:

- (1) Each is always the 'proper guardian' of his welfare.
- (2) There are no circumstances under which we gain by interference.

Intuitively we know that Mill is wrong on each account; but there is enough substance to his position to warrant using these two claims as vehicles to analyse the debate on paternalism. The first, which I shall label the 'proper guardian' challenge, are purported sufficient grounds for disqualifying individuals from the responsibility for their own well-being. The second, the 'circumstances' challenge, are attempts at justification which focus on concomitants of the proposed intervention.

In this chapter, by examining each of the proffered defenses for paternalistic interference, we shall unearth the necessary conditions for self-regarding interference. In the final section we shall articulate an additional qualification on the reasonableness of interference. Together these will complete our account of the necessary and sufficient conditions for justified self-regarding interference.

I. Proper Guardian Challenge

As we have just mentioned, one line of support for paternalism hinges on a challenge that the Agent is not the proper guardian of his well-being. The rationales for this claim fall into two broad classes. The first approach, which I have called 'categorical exclusion', categorically disqualifies persons from the privilege of directing their affairs by virtue of their membership in a particular class of persons. Membership in these

groups is considered sufficient justification for denial of rights. It is usually argued that since they are in some way deficient, they are not full persons, therefore they do not have a claim to the full rights of persons. McMurtry documents that, at least legally, children are regarded as chattels:

it is a criminal offense punishable by ten years in prison "to deprive a parent or guardian or any other person who has lawful possession of a child"; not withstanding the fact that the child may be leaving of his or her own volition, or indeed escaping from someone who beats and imprisons him or her to someone who does not - Criminal Code of Canada Section 249-250 (McMurtry 1980B, p. 35);

Section 42 of the Criminal Code explicitly exempts parents and teachers from prosecution for physically assaulting children in their custody ... if the assault may not "result in permanent injury" (McMurtry 1980B, p. 37).

Our investigation of a number of attempts to justify paternalism on the grounds of categorical exclusion reveals that this approach is unfairly discriminatory.

The second and more defensible line of argument for disqualifying persons as the proper guardian of their well-being is what I have labelled 'conditional exclusion'. Proponents argue that the presence, at given times or in given situations, of 'vitiating' factors, requires that the person not be presumed to be the best judge of his well-being. The inspiration for this approach stems from what the English Homicide Act of 1957 has called "diminished agency". This plea allows a defendant to claim that he ought not be held responsible for an act committed because of the absence at the time of full volition on the part of the agent (Glover 1970, pp. 127-128). Since this tack is

clearly more tenable than the categorical approach, a considerable amount of effort will be expended in establishing defensible criteria for conditional exclusion.

A. Categorical Exclusion

C.L. Ten proposes the following conditions, each sufficient, to warrant paternalistic intervention:

either a) the agent's decision is clearly and seriously impaired,

or b) the harm inflicted on the agent is of a severe and permanent type. (Ten 1971, p. 65)

Although I prefer to concentrate at this stage of the paper on the "proper guardian" candidates, it is worthwhile dealing briefly with Ten's claim that "severe and permanent" harm is a sufficient condition. If this were so it would mean that it would never be justifiable to allow even the most "unimpaired" agent to commit suicide even if it was the most rational course of action for him. In addition, this would prohibit the pursuit of a very large number of activities such as mountain climbing, space travel, motor racing, since all of these involve the risk of severe and permanent harm. For anyone who objects to the inclusion of the word "risk" of harm they should be reminded that since paternalism is intended to prevent harm from occurring, one can only talk in terms of the risk of harm. Clearly, then, harm is not a sufficient condition for paternalistic intervention. More will be said later in this chapter as to why it is a necessary feature.

Regarding the 'proper guardian' condition, Ten lists

four sufficiency criteria for determination of clear and serious impairment. He suggests that at least one of the following be present:

- 1) the individual belongs to a special class of persons; (eg. children, mentally insane, mental retardants)
- 2) the individual lacks knowledge; (eg. of consequences or of the nature of the act)
- 3) the individual lacks control; (eg. emotional imbalance, drugged)
- 4) the individual is subject to undue influence - (eg. coercion, pressure or custom) (Ten 1971, pp. 60-3).

The last three conditions fall into the 'diminished agency' appeal and will be dealt with in the succeeding section on conditional exclusion. However, what is prominent about Ten's account is his first condition. It is the assumption that by virtue of being a member of a specific category of persons one is almost automatically subject to any form of paternalistic intervention deemed desired. This attitude is prevalent and is a legacy attributed to Locke:

the child's good is the same as the parents'. Parental benevolence is sufficient to ensure the fulfillment of children's rights (Worsfold 1974, p. 145).

The justification for this categorical indifference to the rights of children characteristically has been assumed rather than defended.¹ The only explanation offered for the alienation of the rights of these groups is that they do not have the same

capacities as "normal" adults and therefore their decisions are generally subject to "vitiating" factors (Ten 1971, p. 60).

This rationalization is clearly inadequate:

- a) Exactly what capacities is it that each member of these groups lack and all "normal" adults possess?
- b) If their decisions are only "generally" subject to "vitiating" factors why then are the remaining decisions not exempt from intervention?
- c) If the "vitiating" factors affecting children and others are not different in kind from those affecting adults (eg. lack of control, lack of knowledge, and undue influence) why are children categorically subject to paternalism and adults only conditionally?

A further appeal that is often used against children to justify interferences such as compulsory education is that their "disabilities acutely threaten the adequate development of those capacities we deem necessary to full human life" (Sutton 1978, p. 107). There are three general cautions that should be made about the presumption that children should be interfered with in order to foster their development as responsible, fulfilled adults. One, we should be mindful of the fact that treating childhood substantially as a means to adulthood is not to treat children with respect. David Wardle reminds us that childhood is

a stage having characteristic needs and interests which have a value of their own regardless of their role in preparing for adult life (Kleining 1976, p. 5).

We seem too easily to disregard the interests of children. Two,

why do we not operate on the presumption that children learn best when allowed to learn from their own mistakes?

Treating children as though they are autonomous aids them in developing into genuinely autonomous persons; treating them as responsible persons aids them in becoming responsible persons (Murphy 1977, p. 237).

Others have specifically claimed that for these reasons paternalistic treatment is "not conducive to the intellectual and moral development of the individual" (Ten 1971, p. 64). Three, the danger of investing expansive powers over children is that much of what occurs is likely to be for the "self-convenience" of adults and not out of regard for the children (McMurty 1980, p. 16).

One final argument for the categorical exclusion of certain groups from the right to be guardians of their well-being is an appeal to expediency. The claim asserts that for practical purposes, since the incidence of likely harm is significantly large among a particular category of persons, and since it may be impossible or at least extremely costly to identify exceptions, then the most reasonable approach is to categorically exclude the group as a whole. Magsino uses a version of this line of argument as an excuse for the exclusion of children from option rights. He acknowledges that deprivation of such fundamental freedoms requires "demonstrable incapacity to make acceptable use of one's liberties" (Magsino 1979, p. 183). Unfortunately he assumes, rather than proves, that children have a 'demonstrable incapacity' that leads to 'unacceptable' use of their liberties. Clearly, the principle of non-interference places the onus on the intervenor. As well, this argument from expediency does not hold in

cases of interpersonal paternalism. Having first-hand knowledge of the agent and being able to supervise individually renders the claim for the categorical exclusion of children from any prima facie rights to liberty especially untenable.

Where this line of reasoning is more appropriate is in the area which Carter calls "legislative paternalism". In such cases it may often be necessary to establish a legal age or minimal I.Q. upon which legal entitlement is officially recognized. However, it must be remembered that age-based and I.Q.-based restrictions are only empirical generalizations. Chronological age, by itself, is not a morally acceptable discriminatory criterion. Arguments against mandatory retirement and job discrimination on the basis of age have fought this point. In cases where practical or legal constraints dictate the use of age, or other statistical norms, there are a number of limitations that must be placed on the categoricalness of the legislation before it is justified.

- (1) The disenfranchisement should be based on specific criteria. This means that the legislation should be "carefully specified, limited, controlled and explicitly tailored to the kind of incompetence manifested" (Murphy 1974, p. 479). In other words, interference should be localized to criteria of the activity under consideration rather than refer to the overall capacity of the individual. For example, fifteen year olds are not allowed to drive cars, not because they are categorically incompetent, but because statistically they make bad choices while driving. The same principle now applies to repeated drunken drivers. This approach allows

that groups of persons who may have in the past been dismissed as categorically 'incompetent' (children, mental retardates, etc.,) would be legally recognized to have the option to exercise their discretion in matters which are not specifically legally prohibited.

- (2) The ascertainment of the normative 'cut-off' point should be carefully scrutinized. It must be demonstrated that statistically few persons below the 'cut-off' point meet the criteria and most persons above the 'cut-off' satisfy the minimal requirements.
- (3) Provision should be made for exceptions to the restriction based on an ability to demonstrate competence. This may involve discretionary powers to allow for individual circumstances, or a formal testing procedure to ascertain the defensibility of the appeal for exemption. In a discussion on the fairness of adult suffrage Schrag cites a study which reports that in political discussions

six percent of the eighth graders make the kinds of statements made by the most sophisticated 51 percent of the population (Schrag 1975, p. 450).

This suggests that an age-based criterion was unfairly discriminatory. In lieu of an age criterion, Schrag tentatively proposes a 'voter fitness test' based on what he calls the 'minimal formulation' of voter competence. Although he later rejects this idea because of the potential dangers, he admits the reasons for this abandonment have not been conclusively demonstrated to be persuasive (Schrag 1975, p. 454). His hesitancy to base the franchise totally on a fitness test may be well-advised; however, I find consider-

able appeal in a compromise. Young persons below the legal age of suffrage ought to be allowed take a fitness test which would grant suffrage to those who passed.

- (4) And finally, as Dworkin (1971) argues, legislation should impose only the minimal interference necessary to protect the well-being of the individuals (eg. partial restrictions rather than general prohibitions; temporary bans rather than permanent outlawing). This view echos a distrust that Mill had for legislative paternalism:

The interferences of society to overrule his judgement and purposes in what only regards himself must be grounded on general presumptions; which may be altogether wrong, and even if right are as likely as not to be misapplied to individual cases. (Dworkin 1971, p. 114)

These limitations on legal paternalism significantly alter the notion of categorical exclusion. I suggest that although age-based restrictions may look like categorical exclusions, they are not justified unless they have the effect of generalized conditional exclusions.

Thus far the argument against the categorical exclusion of children from a right to liberty has largely been one of default. The tack has been to disclaim that there are defensible grounds for discriminating against children. I propose to begin to lay the groundwork for a more positive defense of this position by identifying the basis for ascription of a natural right to liberty. I shall endeavour to demonstrate on these grounds that children qualify for this entitlement.

Children are not simply being accused of being statistically more likely to make mistakes. If they were, then the

criteria for assessing impairment would be the same for adults and children. Furthermore, being a child would not by itself be logically sufficient grounds for paternalism. After all, not all children act "childishly"; in fact, few children always act "childishly" and, perhaps more significantly, many "normal" adults often act "childishly". Daniel Wikler raises a related objection regarding the categorical denial of rights to the mentally retarded:

I want to examine the presupposition that there are two possible statuses: one of impaired and one of unimpaired intellect, the one lacking a right to self-direction, the other possessing it (Wikler 1979, p. 379).

He suggests that impairment is relative - the moderately retarded is relative to the average intellect just as the average intellect is relative to the gifted. His probing question is then why is "ordinary" intellect enough to secure rights to self-direction? Surely there is nothing intrinsic to the status of average intellect (which is itself a statistical norm) that establishes it as the justifying criteria for freedom from paternalistic interference. Wikler suggests that the operative criterion is the ability of the individual to deal with the situation. He recommends that paternalistic policy be based on "selective competence" where a retarded person would be judged incompetent with respect to specific tasks and (perhaps) competent in other respects" (Wikler 1979, p. 385). For similar reasons, D.G. Brown (1971) in an article, "The Rights of Children", challenges the presumptions behind our refusal to recognize the entitlement of children to a right to liberty. He argues that conditional freedoms ought to be granted to children by insti-

tutions such as schools in recognition of the extent to which children are capable of the competent conduct of their affairs. I contend this same principle (i.e. the extent to which an individual is capable of 'competent' choice is the extent to which he is entitled to exercise his right) ought to be applied equally to all persons.

Hart suggests that in order for sense to be made of the notion of moral right, in general, there need be at least one natural right, namely an equal right to liberty. He asserts that entitlement to "this right is one which all men have if they are capable of choice; they have it qua men" (Hart 1955, p. 1975). If children possess this requisite 'capacity to choose' then qua chooser they have a natural entitlement to liberty. It should be clear why school-aged children qualify for this entitlement when we compare them with infants. I agree, as Hart is reported to claim, that young children (infants) don't possess this basic right to liberty (Kleinig 1976, p. 10). This is so for the reason A.I. Melden suggests. He claims that a necessary condition of choosing is that one have interests as opposed to merely having wants and desires. Only with the advent of interests is the individual "able to carry on with a program of his own" (Melden 1977, p. 147). The requisite conceptual framework and the mechanism for agency are not sufficiently developed to warrant the claim that the young infant is interested in, or has an interest in, something. The volumes of literature urging educators to appeal to students' interests attest to the fact that we consider children in possession of interests.

Daniel Pekarsky shares a similar view. He argues that

the concept of personhood is dependent on "the capacity to act in the light of understandings and valuations emanating from the self". He further states:

It is a consequence of this interpretation of personhood that children do count as persons; although it is true that their skills are only rudimentary, their behaviour is already mediated by thought and intention (Pekarsky 1977, p. 360).

Even Thomas Sutton, a strong opponent to the notion of children's right to liberty, accepts the 'capacity to choose' as the basis for entitlement. Sutton argues that welfare rights are importantly tied to basic needs and in this regard children are relevantly similar to adults (i.e. they have the same basic entitlement). He also recognizes that option rights (of which a basic right to liberty is one) are tied to pursuit of interests (Sutton 1978, p. 102). However he claims that because children lack "mature intellectual faculties" they are in this regard relevantly dissimilar. As he points out, "it is at the very least confused to accord a being, incapable of rationality, rights of rational choice" (p. 109). Unfortunately for Sutton, it is he who is at the very least confused to assume that children are incapable of the necessary degree of rationality to qualify for rights of rational choice. This should be clearer if we examine how Sutton's formulation of rationality is inadequate to provide a logically relevant distinction between adults and children. Sutton suggests that rationality be characterized as the ability and the disposition to act

not merely from impulse or desire or habit, but rather from the blending of desire with the intelligent anticipation of the consequences that result from acting on desire (Sutton 1978, p. 108).

Regardless of whether the rationality requirement is interpreted weakly or strongly, it is incapable of sustaining the distinction that Sutton requires. Viewed in its minimal sense (i.e. mere capacity for rationality) it is empirically not at all convincing that children lack this capacity. As D.G. Brown reminds us:

Even a five-year old is master of a complex language, has a personality structure and an awareness of his own identity, and is quite capable of implicitly invoking a generalisation principle to protest unfair treatment by a parent or teacher (Brown 1971, p. 15).

In a similar vein Robert Young claims that

Children are far from always being too immature or irrational to know, and be able to express opinions, when their interests are affected (Young 1976, p. 29).

In short, if the claim is that the grounds for entitlement are simply a capacity for rational choice then children qualify as titleholders. If a stronger claim is implied then Sutton runs the difficulty of categorically excluding many adults from a right to liberty. To a large extent the choices of many 'average' adults are characterized by a disposition to act on impulse, habit and compulsiveness. I can think of countless activities (eg. smoking, overeating, getting drunk, wasting money, procrastinating, whimsical risk taking) that are 'irrational' for most of the participants, and yet we do not consider that sufficient grounds to interfere with an adult's decision to do so. Put simply, the problem with Sutton's justification is that either the 'average' child is not irrational enough or the 'average' adult is not rational enough to uphold the distinction he asserts.

There is, however, a sense in which rationality is at the heart of an entitlement to a right to liberty and that involves

the logical relation between choice and having a reason. As

Reginald Jackson points out:

It is possible no doubt to act without a reason. But it is just here that deliberate action differs from impulsive action. Only where what is done is done for a reason, whether sound or unsound, does the agent choose. Choice not only can, choice must be reasoned (Jackson 1942, p. 362).

This sense of 'having reasons' does not refer to the valuation that one's choice is 'rational' or reasonable, merely that one has chosen.

Thus far in the discussion, all that has been shown is that persons who are capable of choice have a prima facie right to liberty. This implied that children being persons capable of choice have a natural right to liberty. Naturally, children who fail to respect the well-being of others or who flagrantly disregard their own well-being are justified in having their rights overridden. To use Hart's words, natural rights are not "absolute, infeasible or imprescriptible" and can only be exercised under certain restrictions (Hart 1955, p. 1976). However, the significant feature is that this would be a conditional, not a categorical, forfeiture of liberty and it would not be on any grounds save those which all title-holders are liable.

B. Conditional Exclusion

For all its initial appeal, the suggestion that rationality provide the criterion for the justified suspension of rights to liberty is unacceptable regardless of which conception of rationality is used. Whether rationality is understood as perfectly rational (i.e. what all rational men to agree to) or

minimally rational (i.e. "consistency or coherence of one's value judgements with each other and with one's other beliefs" - Buchanan 1975, p. 399); the nagging question arises: Must one do the rational thing? The former always commits one to doing the best possible thing while the latter requires that it at least be a reasonable thing to do.

Joel Feinberg offers the most illuminating alternative to the 'rational' criterion. Rather than evaluating the "wisdom or worthiness of a person's choice", let us determine whether "the choice really is his". (Feinberg 1971, p. 113).

Feinberg (1971) introduces what he terms "the standard of voluntariness". To be fully voluntary would require:

- 1) the proper appraisal of the facts - i.e. the agent be "fully informed of all relevant facts and contingencies, with one's eyes wide open, so to speak"; and
- 2) full use of reflective faculty - i.e. "the absence of all coercive pressure of compulsion" such as derangement, illness, severe depression, unsettling excitation, inhibiting factors (eg. alcohol) and not involve immature or defective faculties of reasoning.

To the extent that these conditions fail to obtain is the extent to which one has failed to choose in a 'full-bodied' sense. We can refer to Mill's claim that man is the proper guardian of his welfare and agree with him that this signifies that we are not entitled to interfere with the liberty of another in self-regarding matters just because we disapprove of his choice. However, it does not prohibit us from arguing that the extent to which an individual's decisions are not "his own" is the extent to which he is not the proper guardian of his welfare. Feinberg,

commenting on Mill's view that prevention of harm to others is the only reason for impeding liberty concludes:

"The harm to others" principle after all, permits us to protect a man from the choices of other people ... "non-voluntary choices" which, being the choices of no one at all, are no less foreign to him. (Feinberg 1971, p. 124).

Feinberg admits that his explication of the conditions of voluntariness is not sufficient for the kind of 'standard' he has in mind. He compares his conception to what Aristotle calls "deliberate choice". Feinberg understands this to mean that one's acts have their origin "in the agent", represent him "faithfully in some important way" and are therefore acts for which one can take responsibility for "in the fullest sense". (Feinberg 1971, p. 113).

Coval and Smith, in an article called "The Concept of Action", provide a more adequate account of this criteria. As a tool to analyze the constituent parts of the concept of action, they consider the types of ways in which it is possible to deviate from the standard, "full-bodied" sense of acting. By so doing they have generated a list of the ways in which agency is attenuated. Since their account will form the nucleus of the criteria for diminished agency, it deserves detailed elaboration. For clarity I have labelled the types of attenuating factors into three categories:

- 1) intention criteria--the agent must choose the outcome
- 2) volition criteria--the agent not only must choose the outcome but the choice must be willfully selected.
- 3) commission criterion--the behavior of the agent's

body must stand in a causal relation with the outcome.

According to Coval and Smith, an action is attenuated whenever any of the criteria are not met. Failure to meet the intention criterion occurs when "agent X performs action Y" and it is done:

- a) Accidentally - Y is caused by mediating circumstances that were unforeseen by X;
- b) Mistakenly - Y is the result of relevant untrue beliefs held by X;
- c) Inadvertently² - Y is the result of concomitant consequences unforeseen by X;
- d) Carelessly³ - Y is the result of X's improper care and attention to how the act was executed.

Although action may be intentional it may still be involuntary. It would be involuntary whenever the choice was not based on a "normal selection of goals from among the array normally integral to him" (Coval & Smith, p. 8). To explain this the authors envision the following mechanism of choice:

- 1) a set of ordered goals (eg. desires and needs)
- 2) a means of selecting which goals to actuate, involving:
 - a) an ability to assess the consequences of one's choices;
 - b) an ability to relate that assessment to the remainder of one's needs and desires.

The ways in which volition is affected are:

- 1) abnormal goals - it was not one's normal goals but ones foreign to him - eg. if one was drugged with an aphrodisiac, or pressured by peer approval or the threat of harm, brainwashing;
- 2) pre-empted - it was the result of one's normal set of goals being rearranged in order of priority because of events outside one's control - eg. if one was forced to choose between two alternatives, both of which the individual wanted;
- 3) impaired mechanism - the means of selecting and

comparing goals is short-circuited and leads to distortion - eg. any mania, stress, or general internal compulsion.

The commission criterion refers only to the necessity of being able to say "X was the person who did action Y." - i.e. that a certain relevant behavior of X's body was in effect.

The justification for making the transition from attenuation of action to attenuation of choice takes its lead from Brown's account of action. He defines the point of view of the agent as "that of the person for whom the question of what to do arises" (Brown 1968, p. 3). The "settling of the question" of what to do can either be a theoretical settlement or a practical resolution. A theoretical settlement would signify that the individual had made a choice or decided. A practical resolution would be the performance of the act. While Coval and Smith are concerned with attributing the act to the agent our interest is in attributing the choice to the agent. Nevertheless, both are a "settling of the question" of what to do. This switch in focus simply requires a number of adjustments to the articulated criteria. The intention criteria can now be translated: "the agent approaches the question of what to do with his own desires and preference but errors in the deliberation result in a choice which will not secure what the agent had really wanted to choose". Turning to the specific ways in which this unintentionality arises we can transcribe Coval and Smith's accounts into the language of choice.

Their account of "accidental" can be summarized: "X intends D but because of unforeseen causes does A". The crux of this excuse lies in the failure of X to foresee mediating events

that will prevent X from getting what he intends. In other words: "X's choice of course of action C will not secure desired results D because of unforeseen event Y". Because of the change in the context, the label 'accidental' would be better replaced by the phrase 'failure to predict mediating events'. An illustration of this category is: X takes only \$50.00 from the bank for the weekend (C), but runs into a friend whom he owes and must repay \$40.00 (Y). This leaves X without enough money to go out to dinner (D). The failure to predict the need to repay the debt (Y) prevents X from getting what he wants (D). The decision to take out only \$50.00 was in this regard not fully intentional. (Choosing C but failing to predict Y prevents actualizing D).

Their 'mistaken' condition can be stated: "X intends D but because of false beliefs does C". The attenuation occurs because: "X's choice of action C will not secure desired results D because the selection of C arises out of certain false beliefs Y". An example of this would be: X desires to pass his math test. He calculates that two days will be sufficient time to study so as to guarantee passing the test. X studies only for the two days and ends up failing his test because he hadn't recalled enough.

'Inadvertence' can be restated: "X's choice of course of action C will secure desired result D but will also have a concomittant consequence A". The occurrence of A is the unintentional result of X's failure to predict the consequences of C. Inadvertence is better labelled 'failure to predict consequences of the choice'. A situation which exemplifies this species of unintentional choice is as follows: X does not realize that if he goes out to buy his newspaper at this moment he will come in contact

with a person who has the measles. X chooses to buy his paper (C) and contracts the measles (A).

'Carelessly' identifies that: "X intends D but because of inattention or recklessness in the commission of D does A, and may or may not also do D". Prior to proceeding with the translation of this attenuation a few comments are in order. First of all, it is a category mistake to include careless with the other pleas. Careless is a relative term - what counts as careless with dynamite does not with rocks - while the others are not. More importantly, careless is never value neutral while the remaining often are value free. The others can be used as excuses to reduce or avoid culpability; carelessness does not diminish responsibility, even if it diminishes agency. What Coval and Smith wish to identify in this category is the notion that inattentance to the act results in unintended results. The unintended results are not attributable to mistaken beliefs or a lack of foresight but are the consequence of not attending to the act (or, in our case, of not attending to the deliberation). In its translated format: "X's choice of action C will result in A (and possibly in D which is intended) because X failed to deliberate or attend to his choice of C".. An extreme case of this lack of deliberation, and one that stretches the concept of choice such that it is problematic, is the rash or impulsive decision. This plea which I shall call 'undeliberated choice' is distinguished from the others in that although flawed they are all deliberated choices.

To recap, we have identified the following grounds for diminished intentional agency: Agent X voluntarily chooses C but

C is not fully intentional since its selection

- (1) arose out of a deliberated choice which
 - (a) failed to predict
 - (i) mediating events; or
 - (ii) consequences; or
 - (b) was based on mistaken beliefs;
- or (2) was an undeliberated choice.

Since the volition criteria in Coval and Smith's account are tied closely to choice, they can be directly incorporated with certain additions into the conception of diminished agency. The most notable additions involve their explication of the preconditions for the normal selection of goals. Their account of the mechanism for choice is predicated on the agent having a set of ordered goals which are "normally integral to him". Yet they stipulate no criteria which accommodates a failure in this precondition. Feinberg offers a description of an agent who would be a candidate for this category of malfunctioning:

The undisciplined person, perpetually liable to internal collisions, jams and revolts is unfree even though unrestrained by either the outside world or an internal governor. To vary the image, he is a person free of external shackles, but tied in knots by the strands of his own wants. In the apt current idiom he is subject to "hang ups". When he may "do anything he wants" his options will overwhelm his capacity to order them in hierarchies of preference (Feinberg 1973B, pp. 14-15).

This deficiency will be identified as an inability to order goals.

A further way in which an agent might fail to have a properly structured set of normal goals is reflected in the case of self-deception. According to one account, genuine self-deception occurs if an individual deceives himself into adopting

a set of standards that are not those that he ought to live by.

The values by which he acts and lives are not his values; he has not made them his own ... Such a man can call nothing his own - neither his values, nor the emotions he displays, the desires he seeks to satisfy, the interests he pursues, the actions he performs, the activities in which he engages (Dilman & Phillips 1971, p. 127).

The person could be said to have allowed himself to be lured into living by a set of values which he can't live with. The result is an artificial ordering of his priorities - although they are normally his goals, they are not properly his.

A third failure to meet this requisite would be the person whose ordering of goals is in a constant flux or is fickle. The shortcoming here is distinct from the previous two - his goals are not unordered or improperly ordered, but are unstably ordered.

A second assumption built into their hypothetical mechanism of choice is "a means of selecting which of these goals to actuate" (Coval and Smith, p. 8). This is understood to include "an ability to reckon the consequences of one choice and to relate the effect of that back to the remainder of one's needs and desires". Deficiencies of this kind are covered by the criterion they identify as "impaired mechanism". In addition to the list provided by Coval and Smith (mania, stress, internal compulsion such as kleptomania) there are two others which deserve emphasis. "Unalterable intention" is a term used by Glover (1970, p. 136) to identify a person who is not moved when confronted by reasons. He is non-rational in the sense that reasons (whether sound or not) do not act as strong motives. A second species of internal compulsion is the array of conditions which have been

called "personality disorders" and include alcoholism and addiction. They are characterized by an inability to defer immediate gratification - "an inability ever to resist the impulse or temptation of the moment" (Glover 1970, p. 137).

The remaining criteria for diminished volitional agency are attenuation because of "abnormal goals" (e.g. hypnosis, brainwashing) and "pre-empted goals" (eg. threats). They stand as explicated by Coval and Smith. It is worthy of note that these are both ways in which an agent has been interfered with.

We can summarize the criteria for the diminished volitional agency as:

- (1) mal-priorized goals
 - a) unordered
 - b) improperly ordered
 - c) unstably ordered
- (2) impaired mechanism of choice
- (3) interfered mechanism of choice
 - a) abnormal goals
 - b) pre-empted goals.

The analogue of the commission criterion in the logic of choice is recognition that the question of what to do is not settled; namely, no choice is made. This would be typified by the hesitant or indecisive person, or possibly by the person about whom it is said 'he just doesn't know what he wants'. In the paradigmatic failure to meet this condition the agent simply fails to make a choice. As Coval and Smith say:

In the absence of this ingredient the concept of an action cuts out entirely (Coval & Smith, p. 13).

In circumstances where the need for a decision was dictated by the immediacy of the danger or its gravity it would be appropriate that the decision be made for the agent. Strictly speaking, cases of this type fail to qualify as interference. Rather, it would more accurately be said that someone merely took charge of the situation. There is the interesting possibility that this commission criterion may only be partially fulfilled - when perhaps the individual had only an uneasy preference or was ambivalent about the choice. Interference in cases of this sort would be of an attenuated nature. The weakness of the agent's resolve abates the moral uneasiness associated with interference. Both full and partial failure to choose constitute criteria for diminished commissional agency.

The concept of diminished agency can now be summarized: The agency of a choice is diminished whenever any of the following conditions obtain:-

I. Attenuation of Intention of Choice

(A) flawed deliberate choice

- (i) failure to predict (a) mediating events
(b) consequences

(ii) mistaken beliefs

(B) undeliberated choice

II. Attenuation of Volition of Choice

(A) mal-priorized goals

(i) unordered

(ii) improperly ordered

(iii) unstably ordered

(B) impaired mechanism of choice

(C) interfered mechanism of choice

(i) abnormal goals

(ii) pre-empted goals

III. Attenuation of Commission of Choice

(A) failure to choose

(B) inconclusive choice

It should not be assumed that this account of diminished agency is unproblematical, or that the identification of attenuations is straightforward. These difficulties occur particularly in the conditions for the attenuation of volition and commission. This is due, among other things, to fact that our command of the complexities of human psychology is relatively primitive. I do wish to assert that in cases where none of the criteria for diminished agency can demonstrably be shown to be present the individual must be presumed to be the proper agent or guardian of his well-being. As in our legal system, presumption is in the favour of the individual and the onus is on others to prove the case. This stands with one qualification. A qualification which originates from a point that Ten raises:

There is a general presumption that men do not like to have severe physical injury inflicted on them. (Ten 1971, p. 65).

There may likely be occasions where intervention must be initiated before an assessment of agency is possible. Operating on Ten's presumption gives us good grounds to presume diminished agency in situations:

- (1) which are emergencies and require immediate action to prevent harm (eg., pushing someone out of the way of a speeding car);

- (2) where it is very difficult to assess diminished agency and, although not strictly an emergency, nevertheless demands action.

Compulsory education is, I take it, an instance of this latter circumstance. This is great difficulty in assessing the extent of "diminished agency" involved in a child's decisions about school, especially if the child has had limited contact with it. It would be permissible to presume the "diminished agency", send the child to school and then assess the nature of any resistance to the compulsion. However, any child who persists in resisting the interference and cannot be shown to meet the criteria must be released from mandatory attendance. Failure to allow the presumption in cases of compulsory education may mean that children will be disadvantaged in their educational career only because assessing agency on such an issue would be a complex process. It might be suggested that the same presumption of diminished agency apply in situations involving considerable benefit. In the next section I shall argue that harm is a necessary condition for self-regarding interference.

II. Circumstances Challenge

The second crucial issue in the justification of paternalism is what we have called the "circumstances challenge". This appeal does not deal with impairment or authenticity of the choice directly but with concomitant features of the intervention. Surveying the literature, the following conditions have been offered:

- a) intervention would be in the individual's best

interests;

b) intervention would prevent harm to the individual;

c) intervention would, at some point, be consented to.

These condense into two essential questions:

1) Is harm a necessary condition?

and 2) Is consent a sufficient condition?

A. Is Harm Necessary?

A paradigm example of interference which is merely beneficial would be that of the child who is required to take piano lessons. The justification being that this is in the best interests of the child and he is incapable of realizing what is good for him. Firstly, from what has already been argued, it should hold that if it was, in fact, good for an adult to take music lessons then he too should be in no way less immune from compulsion than the child. If that is not the case, and if we are to be fair, we must provide a relevant reason why adults are exempt from intervention and children not.

Although it is likely true that statistically children more often qualify for inclusion under the 'diminished agency' condition than adults, it does not license the interference with children merely for their own good.⁴ Unless, of course, we are prepared to extend the same imposition on any 'normal' adult who operates under 'diminished agency'. The consensus seems to be that adults ought not to be interfered with merely for their own benefit. Mill's claim that a policy of this sort would likely result in more harm than good is one reason for our intuitions against forcing adults to do what is merely beneficial.

It might be argued that the justification for interfering in purely self-regarding benefit situations stems from a problem which is almost exclusively present in children. The claim might be that since adults are more stable and their aims and aspirations more permanent, they are in a position to determine what is in their own best interests. While children, since their desires and the ordering of their goals change drastically over time, are not able to decide what is for their own good. This is not an appeal to 'diminished agency' since the instability captured here is not the same as those problems identified under mal-prioritized normal goals. The implication here is that the normal ordering of goals in children is likely to change considerably as he proceeds from young child to young adult. The goals are impermanent, not unstable. In other words, it might be claimed that a child cannot be presumed to know what his interests are until his desires have developed the consistency that only comes with the maturity of adulthood.

There are a number of objections to this claim. Empirically, it is not clear that it is an adequate account of the average adult or the typical child. One of Hart's objections to Mill's position is that he attributes normal adults with the:

psychology of a middle-aged man whose desires are relatively fixed, not liable to be artificially stimulated by external influences; who knows what he wants and what gives him satisfaction or happiness; and who pursues these things when he can. (Hart 1969, p. 33).

This same type of inconsistency could be leveled against all adults who did not have the settled permanency of middle-age. As well, the likelihood that adult's aspirations are less prone to

change than children's is not a relevant reason for denying children the right to pursue their current desires and preferences where no harm, whether short or long term, is in question.

Brian Barry (1970) provides a useful insight in the justification of interference on the basis of acting "in one's interests". He distinguishes between 'want-regarding' interests (i.e. what an individual actually wants) and 'ideal-regarding' interests (i.e. what an individual ought or could possibly want) (Barry 1970, chp. 3).

The justification of interference on the basis of want-regarding best interests limits one to foster those things which Rawls has identified as "primary goods". Essentially they are those means which are universally desireable no matter what one's individual tastes or goals are, because they are necessary in order to achieve any particular aspirations. Examples of these primary goods or prerequisites are self-respect, intellectual capability, source of revenue, self-discipline, power, and health. The justification lurking underneath interference on these grounds is the risk of impairment of the individual's ability to pursue his wants whatever they may be. This, then, is justifiable on the grounds of the avoidance of harm. The justification of interference beyond what could be called 'primary goods' becomes questionable particularly since we are working on the assumption that a child's interests will change significantly over the course of his young life.

On the other hand, the ideal-regarding stance is predicated on a view that there are certain wants that a child ought ideally to have and will only come to if interfered with.

This appeal is suspect when it does not involve the risk of harm especially when the child does not even want that which is expected to be of benefit. As has been pointed out:

There is a kind of sophistry in the suggestion that one's desires will be satisfied by a certain kind of life - if one changes one's desires (Benson 1976, p. 191).

We are confronted with the assertion that at some later date the child will be grateful, or enriched, if we force him, for example, to learn to play the piano. This type of speculation is unacceptable, or at least highly problematic for a number of reasons.

Firstly, it is often conjecture that the interference will successfully alter the interests of the child. Secondly, even among those who later are enriched, there are those who may not have been worse off without the interference. For instance, they might have come to this new interest on their own, or developed similarly satisfying interests. And this would have been accomplished without the displeasure and frustration of being forced to develop them at a time when they had no desire for the activity. Thirdly, we should operate on the premise that other things being equal, present harm/benefit counts more than future harm/benefit. Future orientated considerations are often highly contingent whereas immediate consequences are more certain. The final, and perhaps conclusive reason for interfering only where harm is concerned is that it appears to be a fact of human psychology that it is difficult to benefit a person when they don't want it. It is often clear what will harm a person, and often possible to prevent that harm even against their will. The same does not hold with near comparable frequency in areas of

benefit. Stopping someone from drinking a poisonous liquid prevents harm even if it is against their will; requiring that a person take Latin so that it will improve his vocabulary rarely, I suspect, benefits anyone but those who would have taken it anyway.

Before leaving the topic I wish to close one further avenue of defense for the ideal-regarding interventionist position. Strong support for the development of 'self-benefiting' interests in children is derived from Rawls' "Aristotelian Principle":

other things equal, human beings enjoy the exercise of their realized capacities/their innate and trained abilities'and this enjoyment increases the more the capacity is realized, or the greater the complexity. The intuitive idea here is that human beings take more pleasure in doing something as they become more proficient at it, and of two activities they do equally well, they prefer the one calling on a larger repertoire of more intricate and subtle discriminations (Rawls 1971, p. 426).

However, Pekarsky, in his article, "The Aristotelian Principle and Education", goes some distance in weakening the extent to which this principle justifies imposition of particular educational pursuits. He suggests that this principle is based on empirical facts which may or may not be true, and even if they are true provide educators with an "important motivational principle" and not a justificatory principle (Pekarsky 1980, p. 290). If the Aristotelian Principle were a justification for interference, it would mean that there was in some way a responsibility to maximize benefit to ourselves. C. Oliver in an article "Self-Respect and Private Morality" suggests that the

consequences of this are counterintuitive. If we have a moral obligation to develop our interests and talents, as Peters argues, then a person who 'ought' to have been a plumber, or 'ought' to have taken up bridge, and who has failed to do so, would legitimately be subject to blame, censure, or even punishment. (Oliver 1979, p. 2). It is more defensible to claim that a necessary, although not sufficient, condition for invoking paternalism is that there was a breach of moral standard and that requires some harm be done. (Ten 1971, p. 63).

The response to the question 'Is harm necessary?' has hinged on the right of persons, including children, to pursue their own interests. The contention is that unless detectable harm is likely to ensue individuals are entitled to freedom of choice, even if they would benefit from interference. We are generally loathe, out of our fundamental respect for freedom, to recommend forcing adults to do things that are solely a matter of benefit enhancement. And I contend that children as persons and titleholders to the same natural right to liberty ought to be treated similarly.

B. Is Consent Sufficient?

The most popular rival account to the necessary conditions which have been offered so far is the view that the consent of the agent is sufficient justification of paternalism. This broadly shared view has three versions:

- 1) hypothetical prior consent - the Agent can be presumed to have extended hypothetical consent to the interference, at least, in principle;

- 2) concurrent hypothetical consent - the Agent can be presumed to have extended hypothetical consent at the time of the interference;
- 3) subsequent subjective consent - the Agent can likely be expected to extend consent to the interference at some later date.

1) Hypothetical Prior Consent

Gerald Dworkin argues that because of the presence in everyone of "irrational propensities", "cognitive deficiencies" and "emotional capacities" it would be prudent to agree, at least hypothetically, to a set of paternalistic measures that would provide protection against oneself. It would be, as he calls it, a social insurance policy (Dworkin 1971, p. 120). Dworkin does not suggest that specific measures be agreed to but uses the metaphor of "a more-or-less blank cheque" with carefully defined limits. His 'so-called' carefully defined limits are actually a general list of conditions which he supposes rational men could accept. Briefly, they are situations which involve any of the following:

- 1) the promotion of certain 'goods'
- 2) irrational weighing of values
- 3) failure to act in accordance with actual preferences
- 4) where harm is irreversible
- 5) when decisions are made under pressure or stress
- 6) inability to appreciate consequences
- 7) inability to rationally carry out own decisions

What is overlooked in this account is that the prima

facie attractiveness of consent as a justificatory principle is that it is felt to be the criterion most consistent with respect for individual liberty. When an individual agrees to the intervention whether prior to, concurrently or even subsequently, he has personally extended permission and/or absolution for the interference. Dworkin's account of hypothetical consent does not meet the requirements of implicit consent and therefore does not vindicate the interference. No individual approves of the intervention; it is only a metaphor about what "fully rational" fictional persons would accept. To put it bluntly, the basic problem with Dworkin's account is that it is not in any acceptable way consent. What remains of the account is a list of conditions which are parallel, yet inferior to the criteria offered in this thesis for the justification of paternalism. A brief examination of his list of grounds should illustrate their inadequacy:

- (1) Although I have argued that the promotion of Rawlsian 'primary goods' is likely to avoid harm, I have also tried to argue that it is not a sufficient condition.
- (2) I do not believe that the 'irrational' weighing of values is grounds for intervention - I insist I retain the right to decide to smoke although I don't believe smoking is rationally justified.
- (4) Irrevisibility is not a sufficient cause for intervention.
- (3, 5, 6, 7) Are all covered by my concept of diminished agency and are not on their own sufficient.

In short, rather than leave a "more-or-less" blank cheque to be

filled in at the discretion of the state and pretend to call that consent as Dworkin would have us, I prefer and have proposed a stricter delineation of the conditions for justified interference.

2) Concurrent Hypothetical Consent

The concurrent hypothetical version of consent is predicated on the presumption that the individual at the time of intervention implicitly offers consent. Van De Veer claims:

If the recipient of paternalistic treatment were in a condition to calmly and soberly choose and was "in touch with" his deepest interests and were appraised or (sic) relevant information he would not choose to perform a certain act (e.g. stepping into an elevator--less elevator shaft) and would hence approve of being paternalistically prevented from doing so (hence, ceteris paribus, such paternalism would be justified) (Van De Veer 1979B, pp. 640-641.

This argument can be summarized as follows:

if (1) an agent was not in a state of diminished agency
he would not have chosen to perform a certain act;
then (2) he would approve of being prevented from doing
that act.

This version of consent has initial appeal over Dworkin's account in that it attempts to establish a link to what an individual might actually consent to. However this connection is flawed in two ways.

First of all, it should be clear that statement (2) does not necessarily follow from statement (1). For instance, although I might choose not to do something, it does not imply that I approve of being prevented from doing so. I may, if I was not under abnormal stress, choose not to smoke heavily.

However, I would likely disapprove of someone attempting to prevent me from having a cigarette.

The second problem, which is even more crippling, derives from the fact that the approval accorded in statement (2) is approval in principle of being prevented. It is not approval of any particular paternalistic intervention. And it is the latter which any acceptable justification of paternalism must address. The examples that Van De Veer cites conveniently ignore this potential discrepancy. Consider his model example of the prevention of someone from stepping into an elevatorless elevator shaft. There are different ways of stopping someone from doing that (eg. hitting them over the head or simply calling their name). We cannot presume that approval in principle of being prevented justifies any particular intervention. The person must be expected to consent to the method of prevention. However, the cost of making this move preempts the central feature of his account (i.e. that the diminished agency of the choice is sufficient grounds from assuming the likelihood of consent). This bind is exacerbated if we consider more difficult cases of paternalism, such as schooling or psychiatric care. The presumption of concurrent consent to an extensive and possibly taxing intervention becomes problematic. The implausibility of inferring concurrent consent to a particular mode of interference from the diminished agency of a particular choice drains Van De Veer's account of any semblance of 'real' consent.

3) Subsequent Subjective Consent

Rosemary Carter in an unpublished M.A. thesis "A

Justification of Paternalism" and in a shorter published version "Justifying Paternalism" offers a different version of consent:

Consent, or the disposition to consent upon request or upon the receipt of certain information, is necessary and if none of a, b, or c, hold sufficient for the justification of paternalism:

- a) the act requiring justification by consent is causally sufficient for that consent;
- b) the consent would have been withheld or would be withdrawn if the subject's desires, preferences or beliefs had not been distorted;
- c) the consent would have been withheld or would be withdrawn upon the receipt of relevant information (Carter 1977, pp. 137-8).

Carter claims that consent can be given to paternalism in two ways: prior or subsequent. As we identified in our conditional analysis of interference, the concept does not apply if prior permission is granted. Clearly, the critical issue is that of the nature of subsequent consent. Carter suggests that subsequent consent can be 'justified' either subjectively or objectively. The latter means that the decision to interfere with an individual is justified if subsequently it actually receives the individual's approval. The problem with objective justification is that it always occurs after the fact. Because we can never know at the time. We must rely on subjective justification. Paternalism is justified subjectively if the agent judges that it is "at least reasonably likely" that the interference will meet with the subsequent consent of the individual. (Carter 1974, p. 54).

I shall endeavour to show that Carter's account of

subsequent consent is untenable as a justification of paternalism on the grounds that:

- (i) subjective consent is not a necessary condition for justified interference;
- (ii) where it is sufficient justification, it is most likely unnecessary;
- (iii) in its present form it is an unacceptable criterion for assessing justification.

Carter claims that consent is a necessary condition for justified paternalism. She avers that interference in self-regarding situations is justified only "when the possessor of the prima facie right alienates it" (Carter 1974, p. 48). She then suggests that the only manner in which a right can be alienated is by consent.

A basic objection to this position is that subsequent consent

cannot serve to dispossess one of a right held earlier where it was not, at the time, alienated in any manner (Van De Veer 1979B, pp. 638-9).

It is indeed an oddity that one could presently alienate a right by some future action. A more plausible claim is that the right had already been alienated by some condition present at the time. Carter should only claim that the likelihood of future permission or approval is one justification for interfering in the present. There is another way in which prima facie rights can be waived in self-regarding situations. I refer to Vlastos' principle for "justified exceptions to natural rights". The principle holds that the only defensible reasons for exceptions to human rights

must be the very reasons we have for ascribing the right in the first place (Sutton 1978, pp. 105-6). If, as Hart suggests, persons qua choosers, acquire a right to liberty, then justification for interference must make an appeal to the agent's choice. It was argued in the previous section that the extent to which a person fails to choose in a full-bodied sense (i.e. operates under diminished agency) is the extent to which he has alienated his right. It suggests contrary to Carter's claim that alienation of the right can occur without consent.

If the alienation of the right can occur without eventual consent, then presumably the justification of the interference may also be possible without consent. Surely it should be sufficient to establish that harm is likely, that the agent's choice is diminished, and that the intervention is reasonable and prevents the harm. It would be unreasonably dogmatic to insist that consent be eventually forthcoming before the action is vindicated. On these grounds consent is not a necessary condition of justified paternalism.

Although it may be admitted that subsequent consent is not a necessary condition, it might still be recognized as a sufficient one. I would agree that where several alternative forms of interference were available the most defensible one, other things being equal, would be the one of which the agent is most likely to approve. However, where subsequent consent is a sufficient condition it would require that, at the time of the proposed interference there be a high probability that the subject will eventually consent.

The ramifications of this 'high probability' require-

ment are crippling. The earlier paper, yet not the later one, states that it should be "at least reasonably likely" that consent be forthcoming. I can only conjecture as to the reason for the deletion from the later version. I suspect that it has much to do with the problems which arise should she propose a less vague articulation about the degree of certainty necessary. I shall now explain why there need be a 'high probability' of forthcoming consent.

The attractiveness of the notion of subsequent consent is contingent on the likelihood that the subject will exonerate the intervenor by actually offering consent. As Carter says:

I believe that consent plays the central role in justifying paternalism, and indeed no other concepts are relevant (Carter 1977, p. 1350).

If there was only a fifty percent chance of subsequent approval it would mean that half of the time interference would be unjustified. Even seventy-five percent would be low. Suppose a certain paternalistic treatment (say compulsory schooling) was to meet with the approval of three-quarters of the students, it would still mean that very large numbers of persons have an unjustified imposition forced upon them. The grounds for assessing the likelihood of subsequent consent to schooling would have to be made more stringent so that confidence levels would be high. Since Carter insists that it could never be justified to interfere without consent she could presumably tolerate only a very small numbers of unavoidable victims. Otherwise, the treatment in toto would be unjustifiable.

The instances of paternalism which would fulfill this

requirement are only a small subset of the total situations in which justification would be sought. Long-term and universally-based treatment would inevitably be beyond the minimal limits of required certainty. Consider the case of compulsory education. If Carter would want to claim that it could be justified on paternal grounds then it would be incumbent on the intervenor to predict the values, preferences and aspirations that an individual who is now only a child, would have in the future. The future may be as far down the road as twenty-five years when we consider that many only come to acknowledge the import of their education years after its completion. As well the intervenor must be able to predict the success or failure that a student is likely to encounter in the course of his schooling. Persons who don't do well in school are understandably not nearly as likely to approve of the compulsion as those who succeed. In short, there is little certainty of the likelihood of consent in any situation predicated on the individual changing his desires from those which he now holds.

The only cases where the probability would be sufficiently high would be those where imminent consent was merely contingent on being informed of relevant information or upon abatement of a passing influence. Yet under these conditions it is highly doubtful whether interference has actually occurred. A condition of our concept of interference required that if the agent was aware of the situation, he would have or had intended that the intervenor interfere. This implies that stopping someone from stepping into an oncoming car, or helping someone to resist temptation when they did not wish to succumb, are not inter-

ferences in the proper sense.

Interestingly enough, Carter cites Mill's well known example of seizing the man who is about to cross a bridge which, unknown to him, is likely to collapse. According to Mill this action is effected

without any real infringement of his liberty;
for liberty consists in doing what one
desires, and he does not desire to fall into
the river (quoted by Carter 1977, p. 138).

Carter rejects this interpretation on the grounds that Mill is

ignoring the fact that the subject does want
to cross the bridge, and that we are
preventing him from attempting to satisfy
that desire (Carter 1977, p. 138).

I am sympathetic with Carter's need to resist this conception of interference. Otherwise she is robbed of her clear, and possibly only, cases of justified paternalism. However, she is mistaken. Although it is true that the person consciously desires to cross the bridge, it is also true (otherwise consent won't be imminent) that the person has a greater desire to get across the bridge safely. The person is not conscious of this stronger desire, essentially because he has no reason to suspect that acting on the former is not sufficient to satisfy the latter. We can resolve this confusion between what an individual consciously wants and what, on balance, he really wants by suggesting

Interference is only apparent interference when
it is against the individual's conscious wishes,
and actual interference when it is against the
individual's real wishes.

The upshot of this interpretation is that where consent is highly probable it would only be in cases where the 'interference' was only apparent. In cases of actual interference

where justification is most needed, consent would be at best educated conjecture. There is then the paradox that where the assurances of subsequent consent are sufficiently strong to justify interference, the circumstances would be such that the concept of interference doesn't hold; conversely the cases where the likelihood of subsequent consent is unreliable are the times we most require justification.

Thus far the discussion has not touched upon Carter's criteria for judging the probability of consent. She offers the following considerations:

1. whether the paternalistic action is in accordance with the permanent aims and preferences of the subject;
2. whether the proposed subject is in a temporary state of relative incompetence;
3. whether the subject lacks relevant information which he will, in the normal course of events, come to possess;
4. the size of the utilities promoted or the disutilities prevented;
5. whether the action has harmful consequences which are irreversible;
6. whether certain conventions obtain.

(Carter 1977, p. 139).

Overall, the most disturbing inadequacy in Carter's account is that she fails where it most counts. The integrity of her requirements for likely consent evaporate in connection with children, the mentally ill and the mentally retarded. These groups represent the hard cases as well as the most frequent cases for paternalistic consideration.. Essentially she argues that permanent incompetents, such as the mentally retarded,

either have few rights or have rights that are easily overridden (Carter 1977, pp. 143-4). She is committed to this position largely because of the improbability of presuming that they could ever offer legitimatizing consent. Children are disqualified because

their abilities (to assess and appreciate) are inferior to, and values often different from, what they will be when they become adults (Carter 1977, p. 141).

It is appallingly ingenuous on her part to presume that because of the 'relative incompetence' of children

paternalism towards the child has a good chance of meeting with the subsequent approval of his adult self, since with the development of his abilities and judgement he will probably see the wisdom of our interference (Carter 1977, p. 141).

It should be unnecessary to rehearse the arguments against the categorical exclusion of children from a right to liberty. That a child is relatively inferior in ability or possess different values than that which he will have as an adult are unacceptable grounds for discounting his current wishes.

A final difficulty with Carter's account are the counterintuitive positions it forces her to accept. Consider a situation where a person's "temporary" incompetence (eg. a disturbed psychological stress) becomes a permanent trait. Suppose that a widower has for the twenty years since his wife's death lost all desire to live. He would never on his own consent to treatment. Further suppose that the only way to cure this man's debilitating moroseness is through hypnosis and subliminal suggestion. In other words, the treatment is causally necessary and sufficient for the eventual consent. According to Carter's

articulation that treatment is unjustified (Carter 1977, p. 136). Carter can't avoid this difficulty by incorporating a proviso that in cases of diminished agency, consent causally resulting from treatment is admissible. This qualification would legitimize forcibly interfering with individuals who had minor compulsive eccentricities as long as the treatment guaranteed that the person would afterwards consent. The dangers of opening the doors to the legitimatizing of such interferences as subliminal suggestion would make the refinement disastrous. Consequently, Carter is forced to concede that even though significant harm is avoided, the agent's choice is diminished and the intervention is reasonable; the interference is unjustified because the interference is causally sufficient for the consent.

Carter's difficulties do not stop with blatant cases of brainwashing and conditioning. There arises a serious practical problem in deciding whether more subtle forms of persuasion would classify as distorting. Wright offers an interesting instance of this dilemma, calling it "normative pressure" (Wright 1980, pp. 44-7). It refers to an elaborate set of rewards, sanctions, pressures and threats which are employed to create an internal "motivational mechanism" used by society to regulate behaviour. The sociologist Goffman has documented the pervasive and inescapable effects of institutions on the perceptions, self-conceptions and values of the inmates. R.S. Peters frequently talks of education as an initiation - of "being on the inside of a way of life". The suggestion is that it is unavoidable and perhaps even desirable that some forms of intervention have pervasive psychological effects on the individual. The problem

for Carter becomes how to decide if the vindicating consent has been 'distorted' by psychological factors. Carter in a curiously worded apology begs this question:

Admittedly I rely on a pre-theoretic intuition as to what counts as distortion, so I cannot offer any principles with which to determine whether a person's preferences, desires or beliefs have been distorted. I do think, though, that the concept can be brought under theoretical control, in a way suited to the use I make of it. (Carter 1977, p. 137)

I am not insisting that this problem is unresolvable. Simply that until the issue is settled the notion of subsequent consent in many critical areas of paternalism is an impractical measure of assessing justifiably.

Our examination of Carter's subsequent subjective consent, and the earlier versions of hypothetical prior and concurrent consent have shown all three to be wanting. My sentiments are strongly that no explication of consent will stand scrutiny.

III. Reasonableness of the Interference

Thus far our account of paternalism has identified two necessary conditions for justification (i.e. the individual must be operating under diminished agency, and interference must be required to prevent or alleviate harm). These are not sufficient since it is possible to imagine cases where harm was being prevented, and it was the result of diminished agency, yet we would not approve of the intervention (at least not any intervention whatsoever). Conditions must be attached to the selection of the method of paternalistic treatment, not merely that the

paternalism in principle is warranted.

We can borrow from our discussion of the provisos attached to other-regarding intervention for insight. The first other-regarding qualification, the 'soundness of the claim' has already been dealt with. In self-regarding situations, since the claimant is the agent, the soundness of the agent's resistance must refer to the authenticity of his choice. The notion of diminished agency provides us with the criteria for that assessment. The second other-regarding qualification, the 'reasonableness of the interference' involved two considerations:

- 1) the 'presumption of minimization of harm';
- 2) the 'principle of the least restrictive alternative'.

The first consideration suggested that the interference not cause greater harm than the harm it avoided. While in other-regarding situations it was argued that there may be grounds for waiving this presumption, clearly in self-regarding situations there could be no such exceptions. No one would agree that it could be justified on paternal grounds to cause more harm than was prevented. Thus we can in self-regarding cases insist on the 'principle of minimization of harm'. The second consideration also needs revision to accommodate the change in context. Rawls' account of permanent aims provides guidelines in determining the acceptability of a particular interference. Borrowing loosely from his account (Rawls 1971, p. 249) we can offer the following guidelines for the 'principle of the least restrictive alternative':

- (a) the interference must tailored as much as possible and practical to the interests and preferences of

the individual in so far as acting on them is not harmful; or

- (b) where knowledge of the individual's interests and preferences is uncertain, or where acting on them is harmful, interference must be limited to the theory of primary goods - i.e. what is necessary no matter what interests a person may have.

These can be summarized as follows: the necessary and sufficient conditions for the reasonableness of self-regarding interference are:

- (1) the principle of minimization of harm; and
- (2) the principle of the least restrictive alternative:
 - (a) identifiable non-harmful interests, or
 - (b) theory of primary goods.

IV. Summary: The Theory of Justified Interference

The explication of the grounds for justified interference is now complete. The necessary and sufficient conditions for interference with the liberty of an individual are:

- (1) Other-Regarding Considerations:

- (1.1) Interference is justified if it prevents or alleviates harm to others;

and (1.2) On balance the following provisos are met:

- (1.21) the claim for interference is sound:

- (1.21a) the facts are true, relevant and sufficiently broad, and

- (1.21b) the value principles implied are acceptable;

and

(1.22) the interference is reasonable:

(1.22a) the presumption of minimization of
harm, and

(1.22b) the principle of least restrictive
alternative,

and/or

(2) Self-Regarding Considerations:

(2.1) Interference is justified if it prevents or alleviates
harm to the agent;

and

(2.2) The interference is reasonable:

(2.21) the principle of minimization of harm;

and

(2.22) the principle of the least restrictive
alternative:

(2.22a) identifiable non-harmful interests,
and

(2.22b) the theory of primary goods,

and

(2.3) The agent's choice is a result of diminished agency:

(2.31) attenuation of intention of choice, and/or

(2.32) attenuation of volition of choice, and/or

(2.33) attenuation of commission of choice;

or

(2.4) The presumption of diminished agency is reasonable
and required to prevent serious harm to the agent.

Notes to Chapter Three

¹A most appalling instance of this presumption, and one that borders on a double standard, comes from an article defending the exclusion of children from the right to vote.

The many, stupid, foolish citizens must have their right to vote protected; the rational capacity presupposed by participation is theirs. The case of children is very different. Some youngsters, as we all know very well, exhibit remarkable maturity at 15, or 12, or 10 years of age. But human maturation is slow, the young do not have, in the early stages of their growth, the rational capacity that democracy presupposes (Cohen 1975, p. 461).

²An accident is distinct from an inadvertance, in that the former implies an unforeseen interfering event, the latter merely an unforeseen result of the normal commission of the act. For instance:

I change my stance while standing in a queue in order to relieve a cramp. In having done so I step on your foot. I have inadvertently stepped on your foot. (Coval & Smith, pp. 5-6)

³Careless is different from inadvertent in that the former pertains to the manner in which the action is performed while the latter refers to the consequence of performing the action.

If in passing you the salt across the table I spill the milk, I could be said to have passed the salt carelessly. (Coval & Smith, p. 6)

⁴In the field of mental illness, where there is a presumption that patients are "in need of treatment" several writers have raised doubts about the involuntary confinement of persons where there is no significant degree of risk of harm to self or others. They cite the Arizona Territory Statutes of 1901 that, even then, would permit confinement in an insane asylum only if

by reason of his or her insanity he or she be in danger, if at liberty, of injuring himself or herself, or the person or property of

others (Shuman, Hegland & Wexler 1977,
p. 337).

CHAPTER FOUR

THE CASE FOR EDUCATION

If compulsory education is to be justified it must be vindicated in two ways. It must be shown to be justified as a compulsory activity and it must be shown to be justified as an educational activity. In other words, we must identify a set of curricular objectives and areas of study that are:

- 1) permissible under the theory of justified interference; and
- 2) acceptable as appropriately educational pursuits.

The former will be achieved by demonstrating that the proposed activities are:

- a) 'reasonable' strategies to secure the 'sound' claim of others for protection from harm;
and/or
- b) 'reasonable' strategies to prevent harm to the individual resulting from, or presumed to result from, his/her own diminished agency.

The latter will be achieved by demonstrating that the proposed activities develop attainments requisite to the liberal arts ideal of the educated man.

In short, the justification of compulsory education involves the identification of a 'new' liberal curriculum which is compatible with the theory of justified interference and consistent with the ideals of a liberal arts education.

I. Justifiably Compulsory Activities

R.F. Dearden provides the lead in identifying the curricular objectives permissible under the Other-Regarding considerations of the theory of justified interference. He suggests that a society has a legitimate interest in how children are taught, quite simply, because children, as members of that society, affect the society. He claims that

At the very least this interest extends to a basic moral education and to the acquisition of such competencies as will not make the adult that the child will become needlessly economically dependent on the rest of that society (Dearden 1976, p. 18).

The curricular objectives permissible under the Self-Regarding considerations are those which would minimize harm to the individual and/or minimize the occasions of individuals acting under diminished agency. To coin a phrase from Rawls, the former would involve the provision of 'primary educational goods'. They might be described as basic skills and knowledge necessary for minimal well-being. (I see this as subsuming Dearden's minimal economic competencies.) The minimization of diminished agency would involve fostering the dispositions and skills involved in acting and choosing in an unattenuated manner. To summarize, the components of a new 'liberal' curriculum permissible under the theory of justified interference include:

- (1) a basic moral education
- (2) provision of 'primary educational goods'
- (3) development of unattenuated agential capacity.

Before providing an outline of the constituents of this new 'liberal' curriculum, it is crucial to remember that these

attainments and areas of study must be interpreted in a minimal sense. The principle of 'the least restrictive alternative' dictates that interventionist strategies must not exceed what is merely sufficient to secure protection from harm. For example a 'basic' moral education ought to be interpreted to mean that which is minimally necessary (yet not in itself immoral) to foster acceptable moral behaviour (i.e. the development of dispositions to act with concern for others). This is contrasted with what is more traditionally held to be the aim of moral education (i.e. foster the 'autonomous' moral agent). More precise criteria for the identification of this distinction will be articulated in the section on 'Justifiably Educational Activities'.

A. Basic Moral Education

Coombs in an, as yet, unpublished article "Attainments of the Morally Educated" provides the following list of objectives intended to "teach students to make and act on rationally grounded decisions about moral issues".

1. Knowing that moral reasoning is guided by two principles:
 - a) It cannot be right for me to do X unless it is right for any person in the same sort of circumstance to do X.
 - b) If the consequences of everyone's doing X in a given circumstance would be unacceptable, then it is not right for anyone to do X in that circumstance.
2. Being sensitive to morally hazardous actions, that is, actions which require assessment from the moral point of view. Morally hazardous actions are of two basic kinds; those which may have consequences for others which one could not accept if they were to befall him, and those which may have unacceptable consequences were everyone to engage in them. Such sensitivity is based, at least in part, on the following:
 - a) Knowledge of such moral rules as:

Don't kill.Don't deprive of freedom.

Don't cause pain.	Don't break promises.
Don't disable.	Don't cheat.
Don't deceive.	Don't break the law.

- b) Knowledge of what things generally harm human beings either emotionally or physically.
 - c) Possession of a wide range of moral concepts such as indoctrinating, cheating, stealing, lying, bullying, demeaning, belittling, etc.
3. Ability and disposition to seek out all of the morally relevant facts about actions which are morally hazardous.
 4. Ability and inclination to imagine, when contemplating a morally hazardous action, the consequences that would ensue if everyone in your circumstance were to engage in the action.
 5. Ability and inclination to put oneself imaginatively into the circumstances of another person and thus come to know and appreciate the consequences of a proposed morally hazardous action for the other person.
 6. Ability and disposition to seek advice and counsel from others about moral decisions one is making.
 7. Ability and disposition to check the validity of moral arguments and to reject invalid arguments.
 8. Disposition to require justifying argument from others who propose morally hazardous actions.
 9. Resolution to do what one has decided is right and to refrain from doing what one has decided is wrong.
 10. A sense of self-worth including the belief that achieving one's plans, pursuing one's interests, and so on, is important.
 11. Knowledge of any way in which a person's perception of things harmful to himself differs radically from that of people in general.

B. Primary Education Goods

These 'goods' represent a list of achievements which are felt to be virtually necessary for all to have any chance to sustain a minimal level of well-being. They are considered to be so essential that anyone who did not desire to attain them could be presumed to be acting in a diminished capacity. Briefly they

would include:

- a) a reading, listening, speaking and writing vocabulary and fluency equivalent to the level of public media;
- b) an elemental computation competence in addition subtraction, division and multiplication of whole numbers and money;
- c) a cursory general knowledge of some history, geography, science and psychology;
- d) knowledge about and the inclination to keep physically healthy;
- e) a developed interest in several pursuits of sufficient complexity to challenge and gratify the individual.

Of the above, the only attainment that is not self-explanatory and self-justificatory, is the last one. The motivation for inclusion of this objective comes from Dewey's remarks on the necessity of play and the arts ((Dewey, Section 4). Very briefly, his theory employs a Freudian account of the need to channel impulses intelligently towards the creation and sustenance of enduring interests (Dewey 1957, p. 156). According to Dewey, the pursuit of these developed interests have moral significance in that they "sublimate" aggression in a harmless way (160) and they "forestall and remedy" emotional imbalances which otherwise could lead to mental imbalance (164). The claim is therefore that the development of some degree of competence in a few non-harmful interests is central to sustenance of mental health. The choice of which interests were to be pursued ought to come, as much as is feasible, from the student, although, it would be mandatory that they pursue and develop some interests.

C. Undiminished Agential Capacity

Borrowing from our earlier discussion of the criteria of

diminished agency, we can suggest that the educationally relevant attainments would be those which were necessary to prevent the attenuation of intentional, volitional or commissional agency. The most obvious educational strategy to safeguard against diminished intentional agency is to develop the ability and disposition to base one's choices on careful and critical assessment of the situation. The work of Ennis (1967) on the empirical and conceptual components of critical thinking and of the Association for Values Education and Research (AVER 1978) on value reasoning provide a general account of what may be included in these attainments.

Ennis identifies twelve aspects:

1. Grasping the meaning of a statement.
2. Judging whether there is ambiguity in a line of reasoning.
3. Judging whether certain statements contradict each other.
4. Judging whether a conclusion follows necessarily.
5. Judging whether a statement is specific enough.
6. Judging whether a statement is actually the application of a certain principle.
7. Judging whether an observation statement is reliable.
8. Judging whether an inductive conclusion is warranted.
9. Judging whether the problem has been identified.
10. Judging whether something is an assumption.
11. Judging whether a definition is adequate.
12. Judging whether a statement made by an alleged authority is acceptable.

(Ennis 1967, p. 117)

AVER identifies four objectives:

- Being able to differentiate value judgments, claims, or issues from other sorts of judgments, claims, or issues.
- Understanding the structure or logic of value reasoning such that one can tell whether one's own and others' value arguments are sound.
- Understanding the significantly different kinds of value judgments a person can make.

- Being able to test the adequacy of the standards or rules one uses in making value judgments.

(AVER 1978, p. 6)

Diminished volitional and commission agency involve an inter-related group of cognitive and psychological factors. The problem of volition is obviously complex. All that will be attempted is the identification of a few educationally appropriate strategies to address this problem. One approach to minimize the likelihood of malpriorized goals would be to promote self-knowledge. The values clarification approach (Raths 1966) identifies seven strategies for helping children develop value clarity.

1. Encourage children to make choices, and to make them freely.
2. Help them discover and examine available alternatives when faced with choices.
3. Help children weigh alternatives thoughtfully, reflecting on the consequences of each.
4. Encourage children to consider what it is that they prize and cherish.
5. Give them opportunities to make public affirmations of their choices.
6. Encourage them to act, behave, live in accordance with their choices.
7. Help them to examine repeated behaviors or patterns in their life.

(Raths 1966, pp. 38-9)

... S.I. Benn's article on the 'autarchic' agent provides a potentially useful list of the attainments that are necessary to be free from "inner-impulsion" - i.e. impaired mechanism of choice.

- a) it must be possible to identify a single person corresponding overtime to a physically acting subject; (psychic continuity)

- b) he must recognize canons for evidence and inferences warranting changes in his belief;
- c) he must have the capacity for making decisions when confronted by options, and for acting on them;
- d) changes of belief must be capable of making appropriate differences to decisions and policies;
- e) he must be capable of deciding in the light of preferences;
- f) he must be capable of formulating a project or a policy so that a decision can be taken now for the sake of a preferred future state.

(Benn 1976, p. 116).

This list essentially identifies those conditions requisite to the ascription of the minimal rationality necessary before the concept of choice can be invoked. Schools ought to diagnose deficiencies in minimal rationality. Strategies to strengthen resistance and to overcome defects in the ability to act on the basis of reason ought to be developed. Also, since interfered mechanism of choice and diminished commissional agency are likely to occur when the agent is not confident of his ability to act for himself, or secure about the prospects of acceptance, steps should be taken to remediate these factors. A social institution which was perpetually mindful of creating a supportive environment where it was possible to acquire experience and gain confidence would go a long way in alleviating this agential deficiency.

II. Justifiably Educational Pursuits

The second step in the justification of compulsory education requires that these 'permissibly compulsory' objectives be shown to be desirable educational pursuits. This connection will be made by demonstrating that the objectives of the new 'liberal'

curriculum are consistent with what are widely regarded as the ideals of the educated person. In fact, it will be argued that the objectives of the former are minimal formulations of the goals of the latter. The distinction between the concepts of 'autarchy' and 'autonomy' (Benn 1976) will be the vehicle to justify this claim with regard to moral education. The distinction between the notions of 'lowest common multiples' (LCM) of human development and 'highest common factors' (HCF) of human development (Hirst and Peters 1970) will serve as the barometer to justify the educational desirability of the provision of 'primary educational goods' and the development of 'undiminished agential capacity'.

A. Autarchy vs. Autonomy

D.C. Phillips, in very general terms, identifies two kinds (or perhaps more accurately two degrees) of autonomy:

"Autonomy #1": the few individuals in each generation who get to challenge the framework of beliefs and practices of their society.

"Autonomy #2": the rest of us who accept a framework but work autonomously within it (rather like Thomas S. Kuhn's "normal scientists") (Phillips 1975, p. 11).

Benn in a sharper contrast, and one that matches with our purposes exactly, differentiates between an 'autarchic agent' and an 'autonomous agent':

I have used the term 'autarchy' rather than the more usual 'autonomy' because I want to distinguish the former, as the characteristic of a normal chooser from a particular

personality ideal which by no means all
choosers instantiate

(Benn 1976, p. 123)

The failure to act "autarchicly" would constitute disqualification as a chooser and is defined in normative terms as the absence of inner and outer impulsion (Benn 1971, pp. 112-3). Acting 'autonomously' requires that the individual prescribe for himself, as opposed to merely adopt, the norms or rules by which he lives. The former is a minimal standard by which responsibility for an act is attributable to the agent, i.e. he must not operate under "diminished agency". The latter is, in a maximal sense, an ideal. In Peters' terminology it is the distinction between 'self-regulation' and 'self-determination'.

I now want to defend the claims that (1) the development of an 'autarchic' moral agent is the goal of the proposed 'basic' moral education, and (2) this is consistent with, in fact, requisite to, the liberal arts ideal of the 'autonomous' moral agent.

According to the theory of justified interference it would be sufficient if an individual internalized a moral code, even if it was more by exposure than by critical assessment. The salient requirement is that the agent act in a morally acceptable manner (i.e. refrain from harming others). The only other remaining condition is that the method of this moral initiation be reasonable (i.e. in itself not be harmful or excessively restrictive). In Kohlbergian terms, development to the conventional stage (i.e. conformity or approval) and perhaps even the pre-conventional stage (i.e. prudential or authority) would be sufficient. As long as the moral code is internalized, and not

the result of manipulation of the mechanism of choice (eg. hypnosis, brainwashing), the individual would meet the requirements of an 'autarchic' moral agent. According to several accounts (Partridge 1976) 'autonomous' moral agency requires the development of the equivalent of Kohlbergian post-conventional moral reasoning. The critical difference being 'autarchic' agency merely requires 'self-regulated' reasons for acting while 'autonomous' agency requires 'self-determined' reasons for acting.

It should be clear that increasing the incidence of individuals acting in a morally acceptable manner ought to be the fundamental concern in moral education (although it need not be the sole concern). I am not convinced that elevating everyone to the status of 'autonomous' moral agent is required. That involves educating everyone to be ethical philosophers, and even then, that is no guarantee of moral behaviour.

Instead, in compulsory moral education, we ought to emphasize the 'training of character'. As Peters says, the call for training of this sort occurs

when we wish to ensure reliability of response
in accordance with a code

(Peters 1963, p. 28).

This training need not be rigid authoritarian conditioning but rather be designed to produce acceptable moral habits. In Dewey's words:

the essence of habit is an acquired predisposition to ways or modes of response, not to particular acts except as under special conditions these express a way of behaving. Habit means special sensitiveness or accessibility to certain classes of stimuli, standing predilection and aversions, rather than bare recurrence of specific acts. It means will. (Dewey 1957, p. 42).

The telling reason for this emphasis on training is acceptance of Peters' claim that the internalization of concepts and habits of acceptable moral behaviour are a precondition for the development of moral autonomy (Peters 1966, p. 259). This point is emphasized elsewhere in a critique of Kohlberg:

He does not take "good-boy" morality seriously enough either from a practical or from a theoretical point of view. Practically speaking, since few are likely to emerge beyond Kohlberg's Stages 3 and 4, it is important that our fellow citizens should be well bedded down at one or the other of these stages. The policeman cannot always be present, and if I am lying in the gutter after being robbed it is somewhat otiose to speculate at what stage the mugger is. My regret must surely be that he had not at least got a conventional morality well instilled in him. Theoretically, too, the good-boy stage is crucial; for at this stage the child learns from the inside, as it were, what it is to follow a rule. Unless he has learned this well (whatever it means!), the notion of following his own rules at the autonomous stage is unintelligible. (Peters 1975B, p. 678).

There may be those who would accept the validity of developing 'autarchic' agency, and reject the attainments identified as components of a 'basic' moral education. It might be suggested that these attainments are more stringent than what is necessary for 'autarchic' moral agency. I have suggested that the critical difference between autarchy and autonomy is the degree to which the standards have been rationally chosen as opposed to being merely adopted or accepted. For example, a morally autonomous agent must fulfill Coombs' knowledge attainments in the strong sense (i.e. a true belief held on the basis of good evidence) whereas the autarchic agent merely requires knowledge in the minimal sense (i.e. a true belief). In the

case of Coombs' attainment #1, it would be sufficient that an individual believed the two principles. He need not prove or be able to explain why it is that they could defensibly be said to be the guiding principles for moral reasoning.

Before leaving this topic of the internalization of moral beliefs, I wish to clarify one area of potential misunderstanding - namely, the morality of character training. If the internalization of the habits of moral behaviour precluded the likelihood of their being questioned or eventually rationally assessed, then the practice would be uneducational and probably immoral. But if moral training is, as Peters has suggested, necessary for initiation into a rational moral way of life, and if it is done conscientiously, then it cannot be immoral. As Ryle points out conditioning, in the early stages of most enterprises, is the "sine qua non" of learning (Ryle 1975, p. 56).

B. LCM vs HCF

Hirst and Peters provide a succinct phraseology for the distinction between the minimal objectives which the theory of justified interference will allow and the excellences which non-compulsory education ought ideally to foster. In their discussion of personal development they identify the Highest Common Factors (HCF) of "human excellences"; and the Lowest Common Multiples (LCM) of "mental health" (i.e. "a certain minimum level of functioning that is expected of anyone") (Hirst and Peters 1970, p. 56).

The degree of rational development is the characteristic distinction:

The latter consists in maintaining the basic structure of man as a rational animal; the former consists in developing these rational capacities to the full (Peter 1975, p. 125).

The following is a list of a number of the components that Peters includes in his notion of the LCM of personal development:

- (1) "an ability to use his reason in the sense of planning means to ends and regulating his desires" including delay of gratification;
- (2) the ability "to carry out tasks connected with the household and his occupations";
- (3) "some minimum level of understanding of his environment at other people";
- (4) has the "basic capacities of man as a rational animal"

(Peters 1975A, pp. 124-5).

In a more compact description, the L.C.M. of personal development would in educational terms involve the teachable aspects of the

minimal needs and nominal desiderata with respect to the constitution of a man's well-being.

(Rescher 1972, p. 8).

It is an elaboration of these minimal requirements which have been identified as constitutive of the provision of 'primary educational goods' and the development of 'undiminished agential capacity'. It should be apparent that these objectives, embodying the LCM of personal development, are central to the development of the ideals of the educated person. Although Peters would prefer that these minimal pursuits be called instructional, rather than educational,¹ they are none the less the enterprise of legitimate components of the enterprise of education. In fact, he admits that the LCM are requisites to the pursuit of the 'excellences' embodied in the educated person². In addition the objectives of the 'liberal' curriculum clearly satisfy Peters' criteria of

education:

- (i) that education implies the transmission of what is worthwhile to those who become committed to it;
- (ii) that 'education' must involve knowledge and understanding and some kind of cognitive perspective which are not inert;
- (iii) the 'education' at least rules out some procedures of transmission on the grounds that they lack the willingness and voluntariness on the part of the learner"

(McClellan, 1976, p. 20).

Before closing, I wish to affirm one final point. This justification of compulsory education ought not to be construed as an attack on the value of the liberal arts education. The status of the educated autonomous persons (in the full sense) as an ideal of education is not at issue. Rather, what is at issue, is the justification of requiring that this ideal be pursued. We should encourage and attempt to inspire appreciation for the value of this ideal, however, we cannot justify forcing persons to pursue it. On this point I concur with Glover:

"Respect for your autonomy involves giving priority to the decision you make about your future in light of your present outlook even if it is predictable that your future outlook will be quite different." (Glover 1977, p. 78)

This would suggest that education should consist of two components (at least):

- 1) a compulsory 'liberal' education limited to the provision of

- a) basic moral education
- b) primary educational goods
 - i) language arts facility
 - ii) arithmetic competence
 - iii) general knowledge
 - iv) health care skills
 - v) developed interests
- c) undiminished agential capacity
 - i) critical thinking
 - ii) values clarification
 - iii) minimal rationality
 - iv) confidence as a chooser

and

- 2) a non-compulsory 'liberal arts' education devoted to the development of
 - a) autonomous moral agency
 - b) the "excellences" of human development and achievement.

Notes to Chapter Four

¹Peters, for reasons of precision, prefers to equate education with a particular set of ideals, and instruction or training with lesser lofty objectives.

To draw attention, therefore, to the connection between 'education and the ideal of an 'educated man, and to maintain that we ought to use words like 'training' or 'instruction' when we do not connect what we are doing with such an ideal is an aid to communication in the service of an over-all ideal

(Peters 1970, p. 19).

²Recognition of this connection is evidenced in the following:

"A strong case can therefore be made for saying that any concept of personal development must include some reference to the rationality of man defined in a minimum sense. This provides the basic form of human experience without which any more idiosyncratic forms of development could not be sustained."

(Peters 1975A, p. 125).

Bibliography

- Association for Values Education and Research. 1978. Prejudice: Teacher's Manual. Toronto: Ontario Institute for Studies in Education.
- Barry, Brian. 1970. Political Argument. London: Routledge & Kegan Paul.
- Bayles, Michael D. 1972. "A Concept of Coercion". in Coercion, (ed.) J. Roland Pennock & John W. Chapman, pp. 16-29. Chicago: Aldine-Atherton Inc.
- Bayles, Michael D. 1973. "Comments: Offense, Conduct and the Law" in Issues in Law and Morality, (ed.) Norman S. Cane & Thomas K. Trelogan, pp. 111-126. Cleveland: Case Western Reserve University.
- Benditt, T.M. 1976. "Discussion: Benefit and Harm". Philosophy and Phenomenological Research. 37:116-120.
- Benn, S.I. 1976. "Freedom, Autonomy and the Concept of a Person". The Aristotelian Society. 76:109-130.
- Benn, S.I., and Weinstein, W.L. 1971. "Being Free to Act and Being a Free Man". Mind. 80:194-211.
- Benson, John. 1976. "Varieties of Desire". Aristotelian Society. 50:177-192.
- Berlin, Isaiah. 1970. Four Essays on Liberty. New York: Oxford University Press.
- Boorse, Christopher. 1975. "On the Distinction Between Disease and Illness". Philosophy and Public Affairs. 5:49-68.
- Brown, D.G. 1968. Action. Toronto: University of Toronto Press.
- Brown, D.G. 1971. "The Rights of Children". The Journal of Education. 17:8-20.
- Brown, D.G. 1972. "Mill on Liberty and Morality". Philosophical Review. 81:133-158.
- Brown, Robert. 1977. "Physical Illness and Mental Health". Philosophy and Public Affairs. 7:15-38.

- Buchanan, Allen. 1975. "Revisability and Rational Choice". Canadian Journal of Philosophy. 5:395-408.
- Buchanan, Allen. 1978. "Medical Paternalism". Philosophy and Public Affairs. 7:370-390.
- Carter, Rosemary Ann. 1974. "A Justification of Paternalism". M.A. Thesis U.B.C., 1977.
- Carter, Rosemary. 1977. "Justifying Paternalism". Canadian Journal of Philosophy. 7:133-145.
- Cohen, Carl. 1975. "On the Child's Status in the Democratic State: A Response to Mr. Schrag". Political Theory. 3:458-463.
- Coombs, Jerrold R. 1971. "Objectives of Value Analysis". in Values Education, (ed.) L.E. Metcalf, pp. 1-28. Washington, D.C.: National Council for the Social Studies.
- Coombs, Jerrold, "Attainments of the Morality Educated", to be published in Practical Dimensions of Moral Education, (ed.) Don Cochrane & Michael Manley-Casimir.
- Coombs, Jerrold R.. "Validating Moral Judgements by Principle Testing", to be published in Practical Dimensions of Moral Education, (ed.), Don Cochrane & Michael Manley-Casimir.
- Coval, S.C. & Smith, J.C. "The Concept of Action", Unpublished paper. Undated. U.B.C.
- Danley, John R. 1979. "Robert Nozick and the Libertarian Paradox". Mind. 88:419-423.
- Day, J.P. 1970. "On Liberty at the Real Will". Philosophy. 65:177-192.
- Dearden, R.F.. 1976. Problems in Primary Education. London: Routledge & Kegan Paul.
- Dewey, John. 1957. Human Nature and Conduct. Toronto: Random House.
- Dilman, Ilham and Phillips, D.Z. 1971. Sense and Delusion. London: Routledge & Kegan Paul.
- Dworkin, Gerald. 1971. "Paternalism". In Morality and the Law, (ed.) Richard A. Wasserstrom, pp.107-126. Belmont, Calif.: Wadsworth Publishing Co. Inc.
- Dybikowski, J.C. 1975. "Lord Devlin's Morality and Its Enforcement". The Aristotelian Society. 75:89-110.
- Ennis, Robert H. 1967. "A Concept of Critical Thinking ...". Psychological Concepts in Education, (ed.) B. Paul Komisar &

- C.J.B. MacMillan, pp. 114-148. Chicago: Rand McNally & Co.
- Eser, Albin. 1966. "The Principle of Harm in the Concept of Crime: A Comparative Analysis of the Criminally Protected Legal Interests". Duquesne University Law Review, 4:345-417.
- Feinberg, Joel. 1971. "Legal Paternalism". Canadian Journal of Philosophy. 1:105-124.
- Feinberg, Joel. 1973A. "Harmless Immoralities and Offensive Nuisances". In Issues in Law and Morality, (ed.) Norman S. Care & Thomas K. Trelogan, pp. 83-109. Cleveland: Case Western Reserve University.
- Feinberg, Joel. 1973B. Social Philosophy. Englewood Cliffs: Prentice-Hall, Inc.
- Feinberg, Joel. 1973C. "Reply". In Issues in Law and Morality, (ed.) Norman S. Care & Thomas K. Trelogan, pp. 127-140. Cleveland: Case Western Reserve University.
- Glover, Jonathan. 1970. Responsibility. London: Routledge & Kegan Paul.
- Glover, Jonathan. 1977. Causing Death and Saving Lives. London: Penguin Books.
- Gunderson, Martin. 1979. "Threats and Coercion". Canadian Journal of Philosophy. 9:247-259.
- Gutmann, Amy. 1980. "Children, Paternalism, and Education: A Liberal Argument". Philosophy and Public Affairs. 9:338-358.
- Hamm, Cornel M. and Daniels, L.B. 1979. "Moral Education in Relation to Values Education". In The Domain of Moral Education, (ed.) Cochrane, D.B., Hamm, C.M., and Kazepides, A.C., pp. 17-34. Toronto: The Ontario Institute for Studies in Education.
- Hart, H.L.A. 1955. "Are There Any Natural Rights". The Philosophical Review. 64:175-191.
- Hart, H.L.A. 1969. Law, Liberty and Morality. Stanford: Stanford University Press.
- Hirst, Paul H. 1974. Knowledge and the Curriculum. London: Routledge & Kegan Paul.
- Hirst, P.H., and Peters, R.S. 1970. The Logic of Education. London: Routledge & Kegan Paul.
- Hodson, John D. 1977. "The Principle of Paternalism". American Philosophical Quarterly. 14:61-69.

- Honderick, Ted. 1967. "Mill On Liberty". Inquiry. 10:292-297.
- Jackson, Reginald. 1942. "Practical Reason". Philosophy. 17:351-367.
- Kleinig, John. 1976. "Mill, Children and Rights". Educational Philosophy and Theory. 8:1-16.
- Kleinig, John. 1978. "Crime and the Concept of Harm". American Philosophical Quarterly. 15:27-36.
- Knowles, Dudley R. 1978. "A Reformation of the Harm Principle". Political Theory, 6:233-246.
- Lewis, Aubrey. 1953. "Health as a Social Concept". British Journal of Sociology. 4:109-124.
- Loenin, J.H.M.M. 1976. "The Concept of Freedom in Berlin and Others: An Attempt at Clarification". Journal of Value Inquiry, 10:279-285.
- Lyons, David. 1975. "Liberty and Harm to Others". Canadian Journal of Philosophy. Supplementary Volume, 5:1-19.
- Magsino, Romulo F. 1979. "Freedom and Rights in Schools: Towards Just Entitlements for the Young". Educational Theory. 29:171-185.
- McClellan, James E. 1976. Philosophy of Education. Englewood Cliffs: Prentice-Hall, Inc.
- McMurtry, John. 1980A. "The Case for Children's Liberation". Interchange. 10:10-28.
- McMurtry, John. 1980B. "Response to Winchester-Yes, Children Need Liberation". Interchange. 10:35-37.
- McPeck, J.E. 1977. "Can J.P. White's Categories of Activity Support a Compulsory Curriculum?". Philosophy of Education 1977. Urbana: Philosophy of Education Society.
- Melden, A.I. 1977. Rights and Reasons. Berkeley: University of California Press.
- Mill, John Stuart. 1946. On Liberty and Considerations on Representative Government. (ed.) R.B. McCallum, Oxford: Basil Blackwell.
- Mill, John Stuart. 1975. "On Liberty" in Three Essays, (ed.) Richard Wollheim. London: Oxford University Press.
- Murphy, Jeffrie G. 1974. "Incompetence and Paternalism". Archive fur Rechts-Sozialphilosophie. 60:465-486.
- Murphy, Jeffrie G. 1977. "Rights and Borderline Cases". Arizona Law Review. 19:228-241.

- Oliver, Charlotte. 1979. "Self-Respect and Private Morality". Unpublished paper.
- Partridge, Yolande. 1976. "Autonomy and the Moral Agent". M.A. Thesis, U.B.C.
- Peffer, Rodney. 1978. "A Defense of Rights to Well-Being". Philosophy and Public Affairs. 8:65-87.
- Pennock, J. Roland. 1972. "Coercion: An Overview". In Coercion, (ed.) J. Roland Pennock and John W. Chapman, pp. 1-15. Chicago: Aldine-Alberton Inc.
- Pekarsky, Daniel. 1977. "Education and Manipulation". In Philosophy of Education 1977. pp. 354-362. Urbana: Educational Theory.
- Pekarsky, Daniel. 1980. "The Aristotelian Principle and Education". Educational Theory. 30:281-291.
- Peters, R.S. 1963. "Education as Initiation". In Studies In Education, pp. 7-48. London: University of London Institute of Education.
- Peters, R.S. 1966. "Reason and Habit: The Paradox of Moral Education". In Philosophy and Education, (ed.) I. Scheffler, pp. 245-262. Boston: Allyn and Bacon, Inc.
- Peters, R.S. 1970. "Education and the Educated Man". Proceedings of the Annual Conference Philosophy of Education Society of Great Britain, 4:5-20.
- Peters, R.S. 1973. "Freedom and the Development of the Free Man". In Educational Judgements, (ed.) James F. Doyle, pp. 119-137. London: Routledge & Kegan Paul.
- Peters, R.S. 1975A. "Education and Human Development" in Education and Reason (ed.) R.F. Dearden, P. H. Hirst & R.S. Peters, pp. III-130. London: Routledge & Kegan Paul.
- Peters, R.S. 1975B. "A Reply to Kohlberg". Phi Delta Kappan. 56:678.
- Phillips, D.C. 1975. "The Anatomy of Autonomy". Educational Philosophy and Theory. 7:1-12.
- Raths, L., Harmin M., and Simon, S.B. 1966. Values and Teaching. Columbus, Ohio: Charles E. Merrill.
- Rawls, John. 1971. A Theory of Justice. Cambridge: Harvard University Press.
- Rees, J.C. 1966. "A Re-Reading of Mill on Liberty". In Limits of Liberty: Studies of Mill's on Liberty, (ed.) Peter Red-cliff, pp. 87-107. Belmont, California: Wadsworth Publishing Company, Inc.

- Rescher, Nicholas. 1972. Welfare: The Social Issues in Philosophical Perspective. Pittsburg: University of Pittsburg Press.
- Ryle, Gilbert. 1975. "Can Virtue Be Taught". In Education and Reason, (ed.) R.F. Dearden, P.H. Hirst, & R.S. Peters, pp. 44-57. London: Routledge & Kegan Paul.
- Sampson, Geoffrey. 1978. "Liberalism and Nozicks 'Minimal State'". Mind. 87:93-97.
- Schrag, Francis. 1975. "The Child's Status in the Democratic State". Political Theory. 3:441-457.
- Shuman, Daniel W., Hegland Kenney F., and Wexler, David G. 1977. "Arizona's Mental Health Services Act: An Overview and an Analysis of Proposed Amendments". Arizona Law Review, 19:313-345.
- Simmons, A. John. 1976. "Tacit Consent and Political Obligation". Philosophy and Public Affairs. 5:274-291.
- Steiner, Hillel. 1974. "Individual Liberty". Aristotelian Society, 75:33-50.
- Stern, Laurence. 1970. "Deserved Punishment Deserved Harm, Deserved Blame". Philosophy, 65:317-327.
- Sutton, Thomas L. 1978. "Human Rights and Children". Educational Theory. 28:102-110.
- Ten, C.L. 1971. "Paternalism and Morality". Ratio. 13:56-66.
- Van De Veer, Donald. 1979A. "Coercive Restraint of Offensive Actions". Philosophy and Public Affairs, 8:175-193.
- Van De Veer, Donald. 1979B. "Paternalism and Subsequent Consent". Canadian Journal of Philosophy. 9:631-642.
- White, J.P. 1973. Towards a Compulsory Curriculum. London: Routledge & Kegan Paul.
- Wikler, Daniel. 1979. "Paternalism and the Mentally Retarded". Philosophy and Public Affairs. 8:377-392.
- Winchester, Ian. 1980. "Response to McMurtry - Are Children in Need of Liberation". Interchange. 10:28-34.
- Worsfold, Victor I. 1974. "A Philosophical Justification for Children's Rights". Harvard Educational Review. 44:142-157.
- Wright, Georg Henrik Von. 1980. "Freedom and Determinism". Acta Philosophical Fennica. 31:1-88.
- Young, Robert. 1976. "Education and the 'Rights' of Children and Adolescents". Educational Philosophy and Theory. 8:17-31.