

## **PATERNALISM AS NON-DOMINATION: A REPUBLICAN ARGUMENT**

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**April 24, 2009**

**Prepared for the Northwestern University Society for Ethical Theory and Political Philosophy 3<sup>rd</sup> Annual Conference.**

Few philosophers have been more suspicious of paternalism than John Stuart Mill. In what has become known as his Harm Principle, Mill presents a decisive principle to govern mankind's dealings in coercion and compulsion: the only occasion that warrants interference on another's action is to prevent harm to others. 'Others' for Mill is the operative word; harm to oneself is not sufficient grounds for intervention. The very moment the Harm Principle is introduced, it is immediately followed by an explicit rejection of paternalism as sufficient grounds for coercion.<sup>1</sup>

There are, however, two exceptions for which Mill found paternalism to be warranted; when the subject of such paternalistic intervention is a child or when the subject aims to sell herself into slavery. My paper focuses on these two interrelated exceptions that have been entrenched in the liberal orthodoxy, but it pays particular attention to the first exception – paternalism over children. There is something so seemingly self-evident about treating children paternalistically. However the dearth of philosophical examination into paternalistic action over children is both theoretically negligent and practically dangerous.

Philosophers often follow Mill's lead in assuming that paternalism is legitimate if it is directed at children and that there is only philosophical interest in paternalism directed at adults.<sup>2</sup> The general argument for brushing off the expressed interests of the child is that children do not yet know what is in their best interest and so for the time being they need to be treated paternalistically in order to develop into independent and capable adults. But there are many coercive measures contrary to the child's wishes that are purported to be in her best interest. It is

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<sup>1</sup> J. S. Mill. "On Liberty", Chap 1, Para. 9, p. 14.

<sup>2</sup> For an example of a philosopher who holds this opinion explicitly, see Herbert Morris, "A Paternalistic Theory of Punishment" in *Paternalism*, Rolf Sartorius ed., (University of Minnesota Press, 1983) p. 140.

too broad a stroke to argue that paternalism is justified in all cases that involve children; some moral boundaries must be established on the kinds of paternalistic action that can justifiably be carried out. Intuitively, coercing a child to attend school when she feels it in her best interest to stay at home and play video games seems justified, more questionable, however, is the legitimacy of coercing a young self-appointed vegetarian to eat meat for protein. How are we to evaluate which of these interventions are paternalistic in the first place and which of these paternalistic interventions are legitimate?

A few philosophers have taken up the challenge of producing a standard of paternalism towards children.<sup>3</sup> These theories go a long way in developing a theory of legitimate paternalism but, ultimately, they fail because they base their justification on some form of consent. Consent-based justifications of paternalism are especially problematic given the fact that children may not yet be at a stage of development where consent is even possible; moreover, whatever paternalistic measures are taken may influence the possibility of consent in the future. Instead of justifying paternalism on a consent-based model, I introduce a new defense of paternalism into the mix: one that focuses on developing in the child the capability of contestation rather than the possibility of consent. Paternalism happens regularly in the daily lives of children, in some cases it is justified and in others, it is not. By discovering the limits to paternalism for children, we can begin to see how these limits can extend to cases of paternalism against adult subjects whose values and interests are more clearly defined.

## **PATERNALISM AND CONSENT**

Gerald Dworkin provides an entry point on the topic of paternalism, which he roughly characterizes as “the interference with a person’s liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests, or values of the person coerced.”<sup>4</sup>

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<sup>3</sup> Amy Gutmann asks “If children are not the property of their parents, why – and to what extent – should parents have power over them?” in her article, “Children, Paternalism and Education” in *Philosophy and Public Affairs* (1980) p. 338. Tamar Schapiro asks “What is a child, such that it could be appropriate to treat a person like one?” in her article, “What is a Child?” in *Ethics* (July 1999) p. 715.

<sup>4</sup> Gerald Dworkin, “Paternalism” in *Paternalism*, Rolf Sartorius ed. (University of Minnesota Press, 1983) p. 20.

Along with this definition there is an important caveat – namely, that paternalism “will always involve limitations on the liberty of some individuals in their own interest, but it may also extend to interferences with the liberty of parties whose interests are not in question.”<sup>5</sup> Dworkin calls such a case, ‘impure paternalism’. Impure paternalism is extremely prevalent in the lives of children and there is often nothing problematic in such censures. The state uses its paternalistic power by enforcing an age limit to get a driver’s license; it does this regardless of the expressed interests of precocious 15-year-olds both for their own safety as well as for the safety of older (and younger) members of society. Also parents use their paternalistic power on their children throughout the humdrum of daily family life. Sometimes parents make paternalistic decisions for the child’s own interest but often for the interests of a sibling or perhaps even an aging aunt.

In an attempt to determine the limit of paternalism, Dworkin argues that parents should orient themselves in a way that their children will one day see the ‘correctness of the parental intervention’; accordingly, he emphasizes a notion of “future oriented consent.”<sup>6</sup> But Dworkin’s theory faces two problems. First, children up to some age of development do not yet have the faculties necessary to consent and it is questionable what values they will hold in the future; this is especially relevant in thinking about those children whose parents weigh their values differently than the norm and may be seen as attaching unreasonable weight to some value. It is uncertain what values the child of a Christian Scientist will hold; will that child one day grow up to attach more weight to her religious convictions than to her life if her life depended on a blood transfusion? Even if future consent was guaranteed - if it is certain that the child of a Christian Scientist will take up the same values as her parent - the legitimacy of some paternalist actions ought to still be evaluated. Which leads to the second objection; the guarantee of future consent

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<sup>5</sup> Recent laws banning the use of trans fats in restaurants are an example of the paternalism of this kind. Under such laws, the patrons are benefiting because their interest of health is being protected through the limitation of no longer being able to order delectably cholesterol-rich food; at the same time there is another class of people whose freedom is being restricted – namely, the restaurant owners who can no longer use the inexpensive oil in cooking. See Dworkin, *Paternalism*, p. 22.

<sup>6</sup> Dworkin’s use of the word ‘intervention’ is problematic, since as I have already noted and will discuss later, children must have the support from guardians in order to thrive. The child would not persist without the appropriate “interventions” on the part of its guardians. So a better word might be “paternalistic action” or “paternalistic support”. I thank Asha Bhandari for pointing this out to me. See Gerald Dworkin, “Paternalism” in *Paternalism*, p. 28.

is not enough for the legitimacy of a paternalistic action. Rawls presents an example of an intervention that coerces people to undergo a psychological treatment forcing them to abandon a presently held religious or philosophical belief for a different belief in the future.<sup>7</sup> If guarantee of future consent is a sufficient condition for a paternalistic action then such a procedure would be justified. But future consent is a dubious concept when dealing with children. The tricky part about parental paternalism is that parents not only act in ways that they think are in the best interest of the child, but their actions also shape what the child herself takes to be in her best interest in the long run. The paternalistic action, if it is manipulative enough, may guarantee future consent on the part of the child; this does not mean that it is justified. If consent is a product of illegitimate coercion, then it ought not be counted.<sup>8</sup> We therefore need to come up with a conception of paternalism that is not justified by the child's current or future consent.

### NON-DOMINATION IN THE FAMILY

Recently Philip Pettit and Quentin Skinner have reinvigorated the classic republican notion of freedom as not living in servitude to any other person, namely, 'freedom as non-domination'.<sup>9</sup> This conception of freedom serves as an alternative to Berlin's dichotomy of positive and negative freedom. It is not "positive" since it is not contingent upon the subject's own achievement of self-mastery. And it is not completely "negative" since it attends to the types of relationships that the subject holds with others; as Pettit puts it, it is vigilant against "the power of interference that others may wield not just on the actual interference that they perpetrate."<sup>10</sup> Freedom as non-domination makes room to call a person unfree even in cases that there is no actual interference. With negative freedom, or freedom as non-interference, a citizen is considered free if she lives under a despot who happens to be benevolent and therefore never interferes in her life. Similarly, in the absence of any domestic abuse laws, the negative

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<sup>7</sup> John Rawls, *A Theory of Justice Revised Edition*, (Harvard University Press, Cambridge 1999) p. 220.

<sup>8</sup> This is a problem that received most attention in Bernard Williams's later work in political philosophy, see especially *Truth and Truthfulness*, (Princeton: Princeton University Press, 2002), Ch. 9.

<sup>9</sup> Philip Pettit, *Republicanism*, (Oxford University Press, Oxford 1997); and Quentin Skinner, "The Paradoxes of Political Liberty," in *Liberty*, David Miller, ed., (Oxford University Press, Oxford 1991).

<sup>10</sup> Philip Pettit, "Freedom as Antipower," in *Ethics*, (April 1996), p. 578.

conception of freedom considers a woman free even if she is under the constant threat of abuse, just as long as it comes to pass that her husband never hits her. With the negative conception of freedom as non-interference, people's freedom is contingent on the success of charm, wit or favor in the eyes of the dominator. Pettit's conception of freedom concentrates on the relationships that the agent finds herself part of rather than merely the circumstances she finds herself in.

An asset of the republican conception of freedom is that it is "anxious about the informal sort of power that is not subject to constitutional check."<sup>11</sup> The state is not the only locus of coercion in our society; our freedom is often being undermined in more familiar settings such as in the workplace and in our intimate relations. While our vulnerability in these more personal domains is integral to our forging meaningful and codependent relationships, the importance of these types of relationships need not overshadow the fact that they have the potential to be incredibly unjust. This point is especially germane when it comes to the family.<sup>12</sup> One of the advantages of belonging to a family is the security and shared responsibility for the welfare of all members of the family. This shared responsibility can also be its greatest liability. Individual well-being is often wrapped up in the well-being of others in the family and so family members tend to make many sacrifices for each other. But what sorts of sacrifices can be reasonably asked for family members to make and what sorts of burdens should they justifiably endure? This is an especially weighty consideration when talking about impure paternalism in the lives of children

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<sup>11</sup> Philip Pettit, "Freedom as Antipower", p. 598.

<sup>12</sup> Some people may be averse to thinking about familial relations as matters of justice. There is a long held tradition beginning with Aristotle that clearly distinguishes between the private and the public realm. The public realm is the subject of justice whereas the private realm is the subject of affection, care, and self-regulation. However, I follow the lead of political philosophers like Susan Okin who have attempted to incorporate the family into the political sphere and to be subject to public scrutiny. The family is political on both ends in that it contributes to shaping the political and is itself partly shaped by political processes. Philosophers rightly see the family as the first political institution with which the citizen of a state comes into contact. But the family and its structure is not only integral to the production of future citizens, it itself has been designed and reformed by political factors. As Susan Okin asserts, "There is a cyclical process at work, reinforcing the dominance of men over women, from home to work to what is conventionally referred to as the 'political arena,' and thence back home again." See *Justice, Gender and the Family*, (Basic Books, 1989), p. 113. Gender norms are not the only kinds created and reinforced in families, other norms include norms of respect, etiquette and cooperation. It is therefore not only appropriate to talk about the family in political terms but necessary to do so. Also see Corey Brettschneider, "The politics of the personal: A liberal Approach" in *American Political Science Review* Vol. 101 No. 1, February 2007 p. 19 -31; and Michael Walzer, *Spheres of Justice* (Basic Books, 1983) Chap. 9.

who may not be in a position to understand or endorse the sacrifices that they are making or the burdens they are suffering. Under the guise of intimacy, family members, especially the young ones, may be exploited and coerced to do things that are not only *not* in their best interest but have long-term damaging effects. Because the republican ideal of freedom takes into consideration the kind of relationships people have with each other, it confronts such challenges more directly than the positive or negative conceptions of freedom that may redirect the legitimacy of familial relations through the language of rights handed out by the state.

So what would freedom as non-domination look like within a family? Using Pettit's definition, it is in effect when no family member (or members) dominates any other member (or members). There are three conditions that make domination possible: a member dominates another family member iff the dominating member has the (1) capacity to interfere (2) with impunity and at will (3) in certain choices that the other is in a position to make.<sup>13</sup>

This is a theoretically dense definition, so I will quickly try to unpack its significance. When one has the capacity to interfere, it is an actual capacity. It is not an inchoate capacity that needs further development; rather, to have a capacity is to be ready to exercise that capacity at will and under present circumstances. A young child may grow up to become bigger and stronger than his mother, but this does not mean that currently he has the capacity to overpower her physically while still very young. On the other hand, the mother has the capacity to overpower her small child and if the only thing that is standing in her way is her love for her child and her will not to harm him, then the child is being dominated.<sup>14</sup> For obvious reasons, it would be misguided to think that in order to secure the child from his mother's domination, we

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<sup>13</sup> Pettit, *Republicanism*, p. 52. This is a slight variation on what Pettit claims in *Republicanism*. I exchanged 'acting arbitrarily' for 'acting at-will and with impunity' which is how the concept is developed in Pettit's paper, "Freedom as Antipower." While I believe that at-will and with impunity give a clearer understanding of what type of limits could be set on dominating interference, it would be clunky to continue using such a phrase. So I will use the concept "at will and with impunity" interchangeably with "arbitrarily".

<sup>14</sup> While the child at a young age does not have the capacity to dominate his mother, he may turn out to have the capacity to dominate his mother when he grows older. There are many examples of children dominating their parents. In patriarchal societies, male sons may quickly develop dominating relationships over all the female members of their family, including their mothers. The virtue of the republican model is that it can account for such power relations in a way which other theories of the family which deal primarily with children's rights cannot.

ought to physically weaken her. The republican model directs us restrict the mother's capacity through legal or social reprimands. The need for reprimands leads to the second condition of domination: the interference must be at will and with impunity. If there are either legal or more informal sanctions set in place over parental action, the mother is not able to interfere in her son's life as she pleases, she is instead held accountable and must justify her actions either to her son or to the community at large.<sup>15</sup>

One final point about the capacity to interfere: an act of interference can be arbitrary in the procedural sense without being arbitrary in the substantive sense. Namely, it is arbitrary in virtue of the control the parent wields over the child rather than the outcomes to which the interference gives rise. The possession of the dominating power is enough for it to be illegitimate, as the dominating agent need not actually interfere with the dominated person. Even if the dominating agent interferes only with good intentions or motives, this interference is still illegitimate if it is not forced to track the interests of the child. This is important when it comes to the relations between parents and children and underlies an essential point about the family structure regardless of the family members. If parents have the capacity to wield unchecked power and arbitrary interference over their children's development, then the relationship itself is illegitimate. It is at this point we move from the moral realm into the political. While freedom as non-domination is a useful concept when it comes to evaluating what it means to be a responsible parent, the theory is parasitic on their being just institutions and social norms in place that makes the familial relationship legitimate. Even in the case where parents are doing their best to not dominate their children in their paternalistic actions, the relationship itself is still one of unjust domination without the proper social and political structures in place.

### **DEVELOPING THE CAPACITY TO CONTEST**

Admittedly, Pettit is not very clear about what counts as tracking the interests of the person suffering the intervention. I think this is because in the case of adults, interests are too

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<sup>15</sup> Pettit, "Freedom as Antipower," p. 580.

varied and coming up with any objective standard of best interest of adults is highly contentious. In fact, it is surprisingly easier to develop an account of what is fundamentally in the best interest of all children precisely because their future interests are at present so indeterminate. While we do not know what particular interests a child will hold in the future, we do know that in order for that child to have any interests of her own (and not one's of her parents or of the state's) she must at least be able to develop the ability to contest authoritative interventions. It is the very ability to contest on the part of the child that must be tracked and developed.

The capacity for contestation is made up of parts. It is the capacity to think critically, along with the self-confidence to act according to one's reflections and at the same time structural avenues must be in place both within the family and in society so that contestations are paid due attention. Parents need to track the interests of their children even when the children cannot yet speak for themselves. An important component of this is the responsibility to ensure that children develop a voice as they grow up. Parents must ensure that their children develop the capacity to reflect on their parent's decisions and be critical of them so that in the future they will have the ability to decipher whether or not the decisions that their parents are making are truly in their best interest, or whether or not they share their parents' opinion about the good of the family in general. This means that even if parents don't know what the child will take to be her best interest in the long run, they have to intervene only in ways that will one day develop the child's capacity to contest. Not all interventions must actively develop this capacity. It is sufficient condition of their legitimacy that they be consistent with the development of the child's capacity for contestation.<sup>16</sup>

Under the conception of freedom as non-domination, all members of the family have the duty to respect the freedom of all other members of the family. As long as they are not dominating their children – and this is a hefty proviso – whatever paternalistic action the parent

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<sup>16</sup>For instance, parents may need to relocate the family for work related reasons; such a decision would be a huge interference in the life of the child and the decision is not made to develop in the child the ability to contest parental decisions. Is such an interference justified? I would argue yes if the move is consistent with the development of the child's freedom as non-domination.

takes is legitimate. If one considers freedom to be non-domination rather than non-interference, then paternalism of children is not necessarily a restriction of freedom. Though the child's actions maybe restricted, they are restricted in a way that is non-dominating since it is forced to secure the child's freedom in the future. Paternalism is legitimate for children in the same way that all interference is legitimate: it is interference that is not arbitrary. Most parents, no doubt, have some sort of plan about how they are to raise their child, according to specific religious or secular traditions and by reinforcing specific values they hope the child will also come to hold some day. As long as these ideals enable the child's freedom as non-domination and develops in the child the capacity to contest paternal (and state) authority then it is legitimate.

One may argue that children happen to be born into these relationships and so there is still the problem that they are being obligated without their consent. However, one of the greatest virtues of the non-domination model is that consent is no longer relevant. According to Pettit, consent is not what is important in thinking about the legitimacy of a power; it is rather the ability for the affected party (either the children, the parent, or the citizens of a state) to contest the "assumption that the guiding interest and ideas really are shared and, if the challenge proves sustainable, to alter the pattern of state [or familial] activity."<sup>17</sup> When thinking about state power over citizens, this can be interpreted as a rather thin notion of freedom; since there need not be any notion of prior consent, the legitimacy of the state rests on the ability for any member of the state to contest being dominated. However, when thinking about the family, the child's ability to contest is a much more robust demand.

Freedom as non-domination confers on parents the responsibility to develop in their children the capability to one day contest the family decisions that the parents are making. As the child grows up and has objections to the decisions and practices of her parents, the parents are obligated to heed her contestations and "alter the pattern" of their paternalistic intervention. Pettit rightly argues that non-domination corresponds directly with the person's "subjective self-

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<sup>17</sup> Pettit, *Republicanism*, p. 63.

image and intersubjective status.”<sup>18</sup> As children are growing up, it is of ultimate importance that their contributions and contestations really count. Through having their own freedom guarded and developed and through being increasingly capable of respecting the freedom of their parents, children become people in their own right.

With this rough introduction of how freedom as non-domination would play out in the family, I would like to turn to two competing justifications for paternalistic intervention in children’s lives. These two justifications address the problems that arise out of future consent-based theories of justified paternalism such as Dworkin’s. The first model of legitimate paternalism is the primary goods model prominently defended by Amy Gutmann. The second model is a republican model that I will argue is a more attractive alternative.

### **PATERNALISM AND PRIMARY GOODS**

Theories that base the legitimacy of paternalism on future consent do so in order to avoid the task of delineating a class of objective goods that are independent of the explicit interests of the subject of the paternalistic intervention. We have already considered the shortcomings of such theories. So leaving future consent-based models aside, we now turn to Amy Gutmann who uses Rawls’s primary goods standard as a liberal justification for paternalism. The argument for the primary goods standard goes as follows: If there are certain primary goods that any rational adult would choose to have been provided to *them* as children, then paternalistic interventions which provide these goods are justified. Gutmann asserts that there are in fact such goods and her list of ‘the most obvious’ primary goods would contain: “adequate nutrition, health care, housing, familial affection, and an education adequate to choosing among available economic and social opportunities and to become informed, democratic citizens.”<sup>19</sup> Since there are such goods, as long as parents or the state are providing these goods their paternalistic actions are not only justified; they are necessary. Because children have a right to these primary goods, it is the paternalistic duty of the caretaker to provide them. If the caretaker refuses or is unable to

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<sup>18</sup> Pettit, *Republicanism*, p. 71.

<sup>19</sup> Amy Gutmann, “Children, Paternalism and Education” in *Philosophy and Public Affairs* (1980) p. 340.

provide the child with one of the goods listed then the state should have authority to step in and act as a surrogate. On the other hand, by fulfilling their paternalistic duties, parents gain the right to “paternalistic agency” – a right against the state and other parties not to interfere with the family.<sup>20</sup> Consequently, as long as parents are providing for their children the aforementioned primary goods, they have a right to govern their family in whichever way they see fit.

Yet the above list of primary goods is not unassailable and it succumbs to the very pitfalls that future consent theories were trying to avoid, namely the presentation of a contentious list of objective goods that every person ought to hold regardless of his or her subjective interests. This is not a knockdown reason to reject Gutmann’s theory. However, it does highlight the possibility that Gutmann’s formulation is question-begging. While most people in our society would look at this list and see nothing contentious about its items, the sorts of adults who take issue with some of these primary goods are exactly the same adults whose paternalistic power the primary goods standard is aimed at limiting. When arguing about which paternalistic measures are unjustified, Gutmann cannot hedge her bets by including in her list of primary goods the very same items that are in dispute without presenting an argument to support the inclusion.

When it comes to education, for example, Gutmann vigorously defends children’s rights to primary goods against parents who claim rights to free exercise of religion. She grounds her argument on the notion that the aim of paternalistic action is justified if it respects in the child a right to autonomy. Gutmann makes the claim that children must be educated adequately and remain healthy in order for them to one day achieve autonomy. While this claim is true it is complicated by the question of whether autonomy is a realistic or even an ideal goal for the upbringing of children. This is the question that I wish to pursue in the rest of this section.

When pitted against each other, parental rights to paternalistic agency are secondary to the children’s rights to primary goods since parental rights are derived solely from upholding paternalistic duties. Gutmann examines the case of Amish parents who remove their children

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<sup>20</sup> Gutmann, p. 343.

from compulsory school after completion of the 8<sup>th</sup> grade. Gutmann sides with the child's right to an adequate education that will prepare her for "choosing unprejudicially among all conceivable conceptions of the good."<sup>21</sup> However, she concedes that, empirically, the state of the public educational system is currently so flawed that it too is deficient in developing this capacity: "The success of the Amish challenge to a primary goods standard of paternalism is therefore contingent upon the failure of a professedly liberal state to provide children with the resources and opportunities to choose among an adequate range of good lives."<sup>22</sup>

Gutmann concedes that given the low standards that our state currently sets in the public educational system, very few children are being prepared to become autonomous adults. Few children, regardless of their religious upbringing, end up choosing among an adequate range of good lives. Therefore the state, in its negligence, has no clout to chastise the Amish parents for limiting their child's freedom in similar ways. But Gutmann runs into trouble here because she conflates Berlin's two concepts of liberty and pits them against each other. As she describes the states responsibilities, the liberty that the state owes to the Christian Scientist or the Amish parents is the negative liberty of non-interference, while the liberty that the state owes to the children is the positive liberty of self-master or autonomy. If the state is negligent in providing the education or healthcare necessary for the child to develop freedom in the positive sense, it has little grounds to accuse the parents for being negligent in providing the same. With two different concepts of freedom in dispute, one is left to one's intuitions to decide which is more important. Gutmann gives priority to self-mastery, even if it is unachievable with the current educational system. But self-mastery is a hefty achievement, whether a person is young or old, religious or secular and has little to do with the current public school system in the US. Furthermore, it is questionable whether it is an appropriate goal of education to develop in the child the ability to choose among all conceivable conceptions of the good life without prejudice. Such an ability is a difficult if not impossible achievement. No matter what our upbringing or

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<sup>21</sup> Gutmann, p. 351.

<sup>22</sup> Gutmann, p. 356.

education entails, it develops in us prejudices and values that affect our life choices; and this is not necessarily a regrettable fact about our human condition. It is to some extent our prejudices and our particularities that make us who we are. Ideally, we should therefore not be detached from these particularities, but should be able to step back and reflect on them and decide if we are truly at home with them or whether we would prefer to shed some of them. Rather than focus on freedom as autonomy or self-mastery, Gutmann should focus on developing in the child the freedom of non-domination. Many of the same capabilities are shared between self-mastery and non-domination, but non-domination is more achievable. With non-domination the child is to develop the ability to contest the dominating power rather than choose without prejudice among all life options. Even if self-mastery were achievable, non-domination ought to be the ideal form of political freedom.

There are shortcomings to the primary goods model that do not simply rely on the dubious conception of autonomy or self-mastery. Even if the account was able to convincingly defend the child's positive freedom against her parents' negative freedom, it is mum when it comes to protecting the child in cases where the parents' actions may still be seen as unreasonable even though her primary goods are being provided. A child may be receiving all the primary goods that she deserves and still suffer domination by her parents. A female child growing up in a patriarchal household may receive all the family affection, nourishment, education, and love that she deserves and still not be free because certain life and occupational choices become unavailable to her due to her gender. An argument that only takes into account whether or not the child is receiving primary goods cannot detect whether such inter-relational patterns of injustice emerge over time. On this point, I take Pettit's condition of non-domination a step farther. One of Pettit's conditions for domination is that the interference is more or less intentional; but I think that people should be protected from all domination whether it is intentional or not. Often the most nefarious forms of domination are when the dominator is unaware of his or her capacity to interfere or is unaware of the actual interference taking place.

Freedom as non-domination is a better candidate to justify paternalism within the family since it deals with the informal ways in which freedom can be constrained unfairly. For this reason, and for the reason that it standardizes the conception of freedom across agents, I think freedom as non-domination is preferable to justify paternalism.

### **CONCLUSION**

The notion of freedom as non-domination centers on the ability to contest rather than the ability to consent. Paternalism is therefore legitimate if it does not hinder the ability of the child to contest present and future paternalistic measures. Children may end up endorsing an identity they did not choose. But this need not be a bad thing. What is troublesome is when the parents who enjoy unchecked power can act in ways that never develop in the child the ability to reflect on whether or not the paternalistic actions were really in her best interest. With freedom as non-domination, children still have the opportunity to endorse retroactively their parent's paternalistic actions, but they endorse it under the condition that they are capable of rejecting it.

This is indeed not a neutral position to hold; it privileges freedom above all other values. It actually remains loyal to the two exceptions that Mill thought justified paternalism. When thinking about freedom in this manner, the two exceptions collapse onto each other. Paternalistic action is justified when it develops the child's capacity to never be dominated by another. We are basically ensuring, through paternalism, that the child will never become a slave. With freedom as non-domination, paternalism is not the restriction of freedom, even if it may be a restriction of action. Paternalism, like any coercive act, is justified only when it respects the freedom of interfered person. It does not matter whether the interfered person is a child or an adult, or whether the person is guided by religious or secular convictions.