

THE KIDS AREN'T ALRIGHT

EXPANDING THE ROLE OF THE STATE IN PARENTING

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The kids are grown up but their lives are worn.
—The Offspring

PROponents of *private parenting* believe that “individuals should be able freely to decide whether or not they wish to have and raise children without public regulation” and that the costs of child-rearing are generally to be borne by particular parents without government support.¹ Still, proponents of private parenting are amenable to the state using its coercive power to relocate children who have been abused or neglected by their parents but only *after* they have been abused or neglected, and they are amenable to certain social programs that benefit children and those who rear them but not because the costs of child-rearing should be subsidized by the state. By contrast, proponents of *regulated parenting* believe that the state ought to play a comparatively larger role in regulating *who* may have and raise children, *how* those who have and raise children may do so, and/or the extent of the support parents receive from the state to help raise their children. One of my objectives in this essay is to argue that we should presume the desirability of regulated parenting policies in the absence of compelling reasons to favor private parenting.

There are, however, distinct views about the form regulated parenting should take. Proponents of regulated parenting might advocate for policies of *public parenting support*, *parental monitoring*, *parental licensing*, or some combination of the three. Daniel Engster, for example, defends the idea of public parenting support. For Engster, there are three features of parenting that mark it off from other activities: (1) many of the obligations correlative to parenting fall disproportionately on women, (2) parenting produces social goods (children) necessary for sustaining civil society, and (3) parenting is the mechanism through which the claims children make on others as emergent persons are realized. Because parenting involves considerations relevant to social justice,

1 Engster, “The Place of Parenting within a Liberal Theory of Justice,” 234.

social stability, and the rights of children, the costs of parenting should be shared across individuals in liberal society.² Public parenting support would, thus, involve a range of social programs, among them being paid parental leave, public childcare, and public subsidies and tax benefits to parents.³ These programs would allow parents to raise their own children while providing children with the resources necessary for safeguarding their interests.

Jurgen de Wispelaere and Daniel Weinstock, as well as some others, have alternatively defended a policy of parental monitoring.⁴ The proposal in its general form requires social workers and healthcare professionals to visit households regularly and to evaluate how the interests of children are being protected and promoted. Perhaps these visits would be more frequent when the child is younger and would become less frequent as the child gets older. Presumably, these visits would incentivize parents who desire to rear their children to do so well enough to pass these evaluations, as well as create opportunities for professionals to intervene relatively quickly when abuse or neglect takes place in a household.

Finally, some have expressed support for a policy of parental licensing.⁵ Parental licensing involves the state using evaluative tools to determine whether individuals are competent to be parents before raising children and excluding those who are judged to be incompetent from raising children.⁶ The primary benefit of parental licensing as compared to private parenting is that licensing parents would, if efficacious, protect children from abuse and neglect *before it takes place*. Another objective of mine in this essay is to argue that parental licensing, out of the regulated parenting proposals that exist, is best suited to safeguarding the interests of children along one significant dimension. In particular, parental licensing, unlike public parenting support and parental monitoring, can insulate children from being raised by those who are *objectionably intolerant*, such as racists, sexists, and homophobes. The argument I make in this essay can be summarized as follows:

- 2 Engster, "The Place of Parenting within a Liberal Theory of Justice," 236–42, 254.
- 3 Engster, "The Place of Parenting within a Liberal Theory of Justice," 255–56.
- 4 See De Wispelaere and Weinstock, "Licensing Parents to Protect Our Children?"; Archard, "Child Abuse"; LaFollette, "Licensing Parents Revisited," 338; and Engster, "The Place of Parenting within a Liberal Theory of Justice," 257.
- 5 See LaFollette, "Licensing Parents" and "Licensing Parents Revisited"; Mangel, "Licensing Parents"; Taylor, "Children as Projects and Persons"; and Cohen, "The Harm Principle and Parental Licensing."
- 6 Some believe that people should be required to obtain licenses to permissibly procreate. See, for example, Taylor, "Children as Projects and Persons"; and McFall, *Licensing Parents*. This is not what I mean by parental licensing. Rather, I mean that people should obtain licenses in order to permissibly rear—*not* give birth to—a child.

- P1. Regulated parenting is presumptively justified because child-centered accounts of child-rearing rights are true.
- P2. If regulated parenting is presumptively justified because child-centered accounts of child-rearing rights are true, then one of the means by which parenting may be regulated involves ensuring that parents are sufficiently tolerant of people with different backgrounds and ways of life because this is what child-centered accounts of child-rearing rights recommend.
- C1. One of the means by which parenting may be regulated involves ensuring that parents are sufficiently tolerant of people with different backgrounds and ways of life because this is what child-centered accounts of child-rearing rights recommend.
- P3. If one of the means by which parenting may be regulated involves ensuring that parents are sufficiently tolerant of people with different backgrounds and ways of life because this is what child-centered accounts of child-rearing rights recommend, then we have special reason to institute a policy of parental licensing.
- C2. We have special reason to institute a policy of parental licensing.

In section 1, I defend P1 by arguing, against the accepted wisdom in the philosophical literature on child welfare policy, that a special burden of justification falls on proponents of private rather than regulated parenting to justify their preferred position. In section 2, I defend P2 (and C1) by arguing that children have a right against being reared by parents who are objectionably intolerant, and that this suggests that regulated parenting policies may be directed at safeguarding this right. Then, in section 3, I defend P3 (and C2) by explaining how we have reasons to institute a scheme of parental licensing which are not likewise reasons to institute policies of public parenting support or parental monitoring. In particular, parental licensing offers the best solution to the problems that befall children who are victims of a distinctive, insidious form of bad child-rearing—child-rearing by those who are strongly homophobic, racist, sexist, and the like. I ultimately hope to persuade you that some form of regulated parenting is presumptively justified, and that it is harder than one might have initially thought to rule out the implementation of a policy of parental licensing in particular.

1. PRIVATE PARENTING VS. REGULATED PARENTING

Defenders of both private and regulated parenting assume that the burden is on proponents of regulated parenting to justify their position. Since it is assumed that private parenting is what the default position should be and that

regulated parenting requires special justification, it is easy for opponents of regulated parenting to claim that the reasons offered to defend these policies do not meet the special burden of justification they must meet. There are two arguments for why the burden of justification falls on proponents of regulated parenting to justify their view: *the cost argument* and *the risk argument*. The cost argument applies to all forms of regulated parenting policies, whereas the risk argument applies to parental licensing specifically. In this section, I show how the cost argument, when taken seriously, actually grounds a presumption against private parenting and how the risk argument cannot ground a theoretical presumption against parental licensing. To begin, I will lay out the cost and risk arguments in standard form:

The Cost Argument

- p1. Regulated parenting policies are costly and interfere with people's pursuit of their preferred ends.
- p2. Costly and liberty-constraining policies require a special justification.
- c. Therefore, regulated parenting policies require a special justification.⁷

The Risk Argument

- p1. If a licensing scheme risks jeopardizing the fundamental rights of a disproportionate number of individuals, a special justification is required for permissibly enforcing the scheme.
- p2. Parental licensing schemes risk jeopardizing the fundamental rights of a disproportionate number of individuals to rear children.
- c. A special justification is required for permissibly enforcing parental licensing schemes.⁸

In what follows, I make a series of arguments that support my responses to the cost and risk arguments. I will examine different accounts of *child-rearing rights*, or the rights parents have to control or exercise global authority over the lives of their children; offer objections against dual accounts of child-rearing rights; and argue that those accounts remaining—namely, child-centered accounts of child-rearing rights—converge on the conclusions that private parenting risks violating the rights of children to an unacceptably high degree and

7 In his defense of public parenting support, Daniel Engster offers arguments meant to show that public parenting support meets this burden of special justification. See Engster, "The Place of Parenting within a Liberal Theory of Justice." Christopher Freiman and Hugh LaFollette assume that a special burden of justification falls on proponents of parental licensing because it is costly to society and individuals. See Freiman, "Against Parental Licensing," 114; and LaFollette, "Licensing Parents Revisited," 328.

8 See De Wispelaere and Weinstock, "Licensing Parents to Protect Our Children?," 200–201. See also Sandmire and Wald, "Licensing Parents."

that regulated parenting, including parental licensing, does not risk violating the rights of individuals to rear children.⁹ By showing that private parenting risks violating the rights of children, I position myself to respond to the cost argument by showing how it leads us to the conclusion that regulated parenting, not private parenting, is presumptively justified. And by showing that regulated parenting, including parental licensing, does not risk violating the rights of parents, I position myself to refute the risk argument by showing how parental-licensing schemes do not risk jeopardizing the fundamental rights of a disproportionate number of individuals to rear children.

1.1. *Against a General Right to Rear Children, Biological or Otherwise*

One might, as S. Matthew Liao does, argue that adults have a human right to rear their biological children because rearing one's biological child is an activity that enables many human beings, *qua* human beings, to lead good lives.¹⁰ This is because, by rearing one's biological child, "one is (a) creating a new life, (b) a right holder; (c) with one's own genetic material which in part determines the genetic identity of this new individual; (d) and one has the opportunity to see and shape the growth of this new individual."¹¹ Doing this, for many humans, is integral to their leading good lives as humans.¹² Liao claims that for the right to rear one's biological child to be respected, one must have "the power to exclude others from trying to be the primary providers for [one's] biological

- 9 It is easy to think that "parental rights" encapsulate reproductive rights, since to become a parent one must generally reproduce. To avoid this confusion, I use the term "child-rearing rights" to signify that the rights in question are specifically rights correlative to *raising* a child, not *creating* a child.
- 10 Some, like Hillel Steiner and Jan Narveson, maintain that parents are sovereign over the children they create unless the parents relinquish rights of control they have over their children. Such an account is implausible, though, because it is widely accepted that children have at least some rights that can prevent a parent from treating them in some ways. See Steiner, *An Essay on Rights*, 248; Narveson, *The Libertarian Idea* and *Respecting Persons in Theory and Practice*. For a more sustained critique of this kind of position, see Okin, *Justice, Gender, and the Family*, 79–88. Given the problems with the account just mentioned, I take Liao's account of a right to raise one's biological child to be the strongest account of such a right.
- 11 Liao, "Biological Parenting as a Human Right," 658.
- 12 Liao assumes that "human rights are grounded in . . . the fundamental conditions for pursuing a good life, where a good life is one spent in pursuing certain valuable, basic activities" and that "basic activities are ones that if a human life does not involve the pursuit of any of them, then that life could not be a good life. In other words, a human being can have a good life by pursuing just some, and not all, of the basic activities" ("Biological Parenting as a Human Rights," 654). Thus, Liao is not committed to the claim that those who do not rear biological children fail to lead good lives, since their lives could be spent pursuing some other basic activity or activities.

child.”¹³ Without this power, parents would presumably be insecure in their ability to see and shape the growth of their children, which is, according to Liao, part of the interest parents have in rearing their biological children in the first place. For Liao, the human right to rear one’s biological child is defeasible, as all human rights are. The right to rear one’s biological child may be permissibly restricted, for instance, if one abuses or neglects one’s child. I argue, however, that Liao’s arguments, if successful, support the conclusion that one is entitled to *some kind* of protected relationship with one’s biological child rather than the conclusion that one is entitled specifically to a protected relationship with one’s biological child *in which one has global authority over that child’s life*.

Liao treats child-rearing rights as though they are in part derivative of parents’ interests in seeing and shaping the growth of a rights holder whom they created using their own genetic material. The right that biological parents have to see and shape the growth of a rights holder whom they created using their own genetic material can be protected, however, without also treating them as if they have the right to exercise global authority over that child’s life. Consider the following case. Maria gives up her newborn baby boy for adoption and, in so doing, relinquishes her (presumed) right to exercise global authority over that newborn’s life. This means Maria cannot, for example, determine where the newborn lives, what his bedtime is, what he regularly eats, and the like. Suppose now that Maria thinks it is important for him to have a relationship with his biological mother, and the child’s adoptive parents are kind enough to allow Maria to spend time with him every week. Obviously, Maria would not be able to see and shape the growth of her newborn to the extent that the newborn’s adoptive parents can and may, but Maria would nevertheless be able to see and shape the growth of her newborn to a significant extent under these conditions. For a biological parent to see and shape the growth of her child, she need not (and should not) be the only person doing so, nor need she be the person in the child’s life who does these things the most. She only needs to see and shape the growth of her biological child to some extent that is meaningfully significant, and what this means is likely subject to change depending on specific features of particular parents and their biological children. For example, the parent whose biological child thrives because the child meets with the parent on a weekly basis would have a stronger claim to a protected relationship with that child than the parent whose biological child finds weekly visits with her parent emotionally distressing. Thus, the conclusion Liao’s arguments support is that parents have a right to protected relationships with their biological children, but this conclusion does

13 Liao, “Biological Parenting as a Human Right,” 660.

not entail that these protected relationships are ones in which the parents are entitled to exercise global authority over the lives of their children.¹⁴

I want to clarify what I mean when I say that parents have a right to protected relationships with their biological children. It is important that I do this because I subscribe to a child-centered account of child-rearing rights, as will be made clear by the end of this section. Child-centered accounts of child-rearing rights hold that parents have rights to raise their children because they protect their children's interests in the right sort of way. Contrast these accounts of child-rearing rights with *dual accounts*, which hold that parents have rights to raise children both because they—the parents—have weighty interests in raising children and because they can adequately protect their children's interests.¹⁵ Those who subscribe to a child-centered account of child-rearing rights might believe that protecting a child's interests in the right sort of way means parenting a child in a way that is suitably in the child's *best* interest. Call this *the best available parent account* of child-rearing rights. Though I am not aware of anyone who has defended this alternative position, I could also imagine someone arguing that protecting a child's interests in the right sort of way means parenting a child in a way that protects the child's interests *to a sufficient degree*.¹⁶ Such an account, I think, would qualify as a child-centered account if it was predicated on the view that, as a matter of justice, children are owed no more than an upbringing that is sufficiently in their interest without justifying this view on the grounds that the interests of parents ever count for more than the interests of children when determining who should rear a particular child.

- 14 My arguments against Liao would also work, with some modification, against an account of child-rearing rights that claims the interests that gestators have in rearing the children they gestate should figure into whether they should rear these children. See Gheaus, "A Right to Parent One's Biological Baby." The interests that gestators have with respect to the children they gestate can only ground presumptive *child-relating* rights, not presumptive child-rearing rights.
- 15 See, for example, Brighouse and Swift, "Parents' Rights and the Value of the Family"; and Liao, "Biological Parenting as a Human Right."
- 16 Anca Gheaus argues that those like Liam Shields who are proponents of sufficientarian accounts of child-rearing rights ought to subscribe to *child-centered* sufficientarian accounts of child-rearing rights. Shields himself, however, subscribes to a dual sufficientarian account of child-rearing rights, and Gheaus subscribes to a best available parent account of child-rearing rights that is child-centered. Neither defends that a child centered sufficientarian account of child-rearing rights is true, though. That it is possible for the most plausible version of a sufficientarian account of child-rearing rights to be child-centered, I think, provides us with reason to think that the merits of such an account should be explored in a more sustained manner in the philosophical literature. See Gheaus, "Sufficientarian Parenting Must Be Child-Centered"; Shields, *Just Enough*, 121–62, and "How Bad Can a Good Parent Be?"

Call this *the sufficientarian account* of child-rearing rights.¹⁷ In this essay, I do not take a stand on which of these formulations of child-centered accounts of child-rearing rights is true.

One might worry, since I subscribe to a child-centered account of child-rearing rights, that by claiming that parents have a defeasible right to protected relationships with their biological children, I am forswearing my professed commitment to recognizing the primacy of children's interests in adjudicating matters concerning them. Thus, it is important that I am clear about what it means for parents to have a defeasible right to protected relationships with their biological children. There are two ways to conceive of defeasible parental rights to protected relationships that are consistent with child-centered accounts of child-rearing rights. First, it seems perfectly consistent to claim that both child-centered accounts of *child-rearing* rights and dual accounts of *child-relating* rights are true. One might hold that to rear a child, a parent must rear the child such that she protects her child's interests in the right sort of way because exercising global authority over a child's life imposes significant costs on the child that must be justified by appeal to the child's interests alone. Simultaneously, one might hold that to relate to a child, a parent's interests may figure into whether the relationship is worthy of protection because a relationship in which a parent lacks license to exercise global authority over a child's life does not impose significant enough costs to require justifying the relationship by appeal to the child's interests alone.

Second, even if one subscribes to child-centered accounts of *both* child-rearing and child-relating rights, it is possible to claim that parents have rights to protected relationships with their biological children on grounds consistent with both Liao's arguments and child-centered accounts of child-relating rights. What one might mean when they say that parents have a defeasible right to protected relationships with their biological children is this: a parent, if she has a defeasible right to a protected relationship with her biological child, is at liberty to disregard the limits that the child's adoptive parents attempt to impose on the way the biological parent may relate to her child when these limits prevent the biological parent from relating to her child in a way that is,

17 One might worry that such an account would license, in some cases, changing child custody so that a child is reared by worse parents so long as those parents are sufficient because, after all, children are owed no more than sufficiently good parents. But I can imagine a proponent of such an account arguing that having sufficiently good parents is different from but related to having a sufficiently good upbringing (which is what children are entitled to), and very few upbringings in which a child is relocated to a worse living situation qualify as a sufficiently good upbringing. And those who say this, I imagine, would largely evade the force of such a worry.

depending on which formulation of child-centered accounts of child-rearing rights is true, either in the child's *best* interest or *sufficiently* in the child's interest. By contrast, those who are not situated in protected relationships with children would *not* be at liberty to disregard, in the relevant contexts, the limits that a child's parents impose on the way that child may be related to. And we may presume, in the absence of reason to believe otherwise, that parents have rights to protected relationships with their biological children because the interests Liao claims parents have in these relationships give us some reason to believe that they, more so than others, will relate to their biological children in ways that are conducive to the interests of these children being protected in the right sort of way. We may use these interests to presume that one has child-relating rights without also being forced to presume that one has child-rearing rights because, as I noted before, presuming child-relating rights imposes significantly less costs on children than presuming child-rearing rights. These rights to protected relationships are defeasible because depending on which formulation of child-centered accounts of child-relating rights is true, a biological parent relinquishes her right to relate to her child when she fails to relate to her child in ways that are either in the child's best interest or sufficiently in the child's interest.

So far, I have argued that individuals lack a right to rear their biological children (though they may have a right to some kind of protected relationship with their biological children). Now, I turn to an account of child-rearing rights that takes as its foundation the interests, unrelated to biological relatedness, that adults have in being party to a parent-child relationship.¹⁸ Harry Brighouse and Adam Swift argue that the parent-child relationship "cannot be substituted by other forms of relationship."¹⁹ This is because the parent-child relationship

18 Ferdinand Schoeman has also defended an account of child-rearing rights that highlights the importance of respecting the interest that parents have in parenting. See Schoeman, "Rights of Children, Rights of Parents, and the Moral Basis of the Family." His view, however, has been criticized on the grounds that it fails to take seriously enough the interests of children and that it fails to fully explain what makes the goods of the parent-child relationship distinctive from the goods of other relationships. See Hannan and Vernon, "Parental Rights"; and Brighouse and Swift, "Parents' Rights and the Value of the Family." Loren Lomasky has also defended an account of child-rearing rights that emphasizes the interests parents have in staking "a claim to long-term significance through having and raising a child." Lomasky, *Persons, Rights, and the Moral Community*, 167. Again, there are ways in which Lomasky's account fails to give the interests of children their due consideration, particularly when he mentions how the state should permit parents to determine how (and whether) their children are educated. See Lomasky, *Persons, Rights, and the Moral Community*, 174–75. This is why I take Brighouse and Swift's account to be representative of the strongest version of the view that the interests of parents should factor into whether or not they may permissibly rear a child.

19 Brighouse and Swift, *Family Values*, 86.

generates an asymmetrical, intimate relationship between parent and child in which the child is especially vulnerable to the parent because the child relies on the parent for the protection of the child's interests and because the child cannot exit the relationship. Moreover, the love that a child feels for her parents is spontaneous, unconditional, and outside of the child's rational control, particularly in the early years of childhood, and parents take great satisfaction in being party to such a love. And finally, parents have a nonfiduciary interest in occupying the fiduciary role as a child's guardian, given the virtues and capacities occupying such a role helps parents to develop.²⁰ Taken together, these distinguishing features of the parent-child relationship generate for individuals a conditional, limited right to rear children.²¹ This right is conditional and limited in the sense that it tracks the fiduciary responsibilities that parents have to their children.²² For Brighouse and Swift, it is enough that an adult is capable of minimally meeting the needs of a child to enjoy the right to rear children. Parents need not be perfect parents to enjoy the right to rear a child since the substantial interest they have in experiencing a parent-child relationship weighs against the substantial interest that a child has in experiencing the same.²³

I will now present an argument concerning Brighouse and Swift's account of child-rearing rights that is similar to the argument I presented concerning Liao's account. As was the case with Liao's arguments, Brighouse and Swift's arguments in defense of a fundamental right to rear children support the conclusion that individuals are entitled to *some kind* of protected relationship with children—not a protected relationship with children *in which they have the authority to rear those children*. Indeed, many who do not rear children are party to the spontaneous, unconditional, and arational love of children who are vulnerable to them: the extended family members of particular children, the caretakers of particular children, etc. And many who do not rear children are able to develop the virtues and capacities associated with doing so by establishing and continuing long-term, caring relationships with particular children. As Anca Gheaus writes,

20 Brighouse and Swift, "Parents' Rights and the Value of the Family," 92–96.

21 Brighouse and Swift, "Parents' Rights and the Value of the Family," 96, and *Family Values*, 86.

22 Brighouse and Swift write that "what children need, above all, is a spontaneous, intimate relationship with an adult who loves them, one who acknowledges the intrinsic goods of childhood while caring about their well-being, and respecting their individuality, enough to give them the huge amounts of attention, and the loving discipline, that are required for them to develop into the adults they are capable of becoming." Brighouse and Swift, *Family Values*, 85.

23 Brighouse and Swift, *Family Values*, 94–95.

Adults' weighty interest in rearing children can be satisfied by establishing beneficial intimate and caring, although not globally authoritative, relationships with children, relationships which are protected from outside interference. Such relationships can satisfy adults' interest in self-knowledge and self-development: maintaining a long-term intimate and caring relationship with a child comes with great responsibility for how the child's life goes, and for the child's development. Not just parents but all parental figures exert great influence of this kind over children; by dint of being in an intimate relationship with an adult, a child becomes particularly vulnerable to that adult in material and emotional ways when strong attachments are formed. Protected relationships with children are also likely to display the experiential value of the parent-child relationship, since children can love and trust other adults with whom they stand in caring relationships. Most of the interest that Brighthouse and Swift ascribe to adults can be satisfied by long-term and secure association with children, although, perhaps, not to the same extent that it is satisfied within the parent-child relationship.²⁴

Again, an argument that purports to show that the interests of parents are integral to the child-rearing rights of these parents in fact shows that the interests of individuals are integral to rights to protected relationships with children—relationships in which these individuals do not necessarily possess the global authority to control children's lives. And as was the case with the rights to protected relationships that Liao's arguments lend credence to, the rights to protected relationships with children that Brighthouse and Swift's arguments lend credence to can be understood in terms that are consistent with both dual and child-centered accounts of child-relating rights. If it is possible, as I suggested before that it might be, for child-centered accounts of child-rearing rights to be endorsed in tandem with dual accounts of child-relating rights, then it would be possible to recognize that people have child-relating rights consistent with Brighthouse and Swift's arguments without conceding that child-centered accounts of child-rearing rights are false. And if one subscribes to a child-centered account of child-relating rights, one might use Brighthouse and Swift's arguments to ground the rights that individuals have to protected relationships with children in the following way: Liao's arguments show us that there is some set of interests an individual has antecedent to relating to her biological child that gives us reason to believe that the individual's relationship with that child fits with the child's interests in the right sort of way. By contrast, Brighthouse and Swift's arguments show us that there is a set of interests an individual has once

24 Gheaus, "The Best Available Parent," 455.

they have begun relating to a child that gives us reason to believe that the individual's relating to that child fits with the child's interests in the right sort of way. Because the individual in question relates to a child such that she has the strong interests in continuing to relate to that child that Brighthouse, Swift, and Gheaus identify, we have some reason to believe that she, more so than others, will relate to the child in question in ways that are conducive to the interests of the child being protected in the right sort of way.

At this point, I have concluded that individuals lack rights to rear their biological children (even if they have rights to protected relationships with their biological children) and that individuals lack rights to rear children (even if they have rights to protected relationships with particular children). All that is left to ground the child-rearing rights of those who have the right to rear children is the interests of the children they rear. As noted before, these accounts of child-rearing rights are called child-centered accounts. Peter Vallentyne and Anca Gheaus defend versions of the best available parent account of child-rearing rights that I described earlier.²⁵ And again, I could also imagine someone arguing, *contra* Vallentyne and Gheaus, that children have no more than a moral right to be reared by the parent for whom custodial authority over a child is *sufficiently* in the child's interest. In either case, what explains the right that individuals have to control the lives of their children is that their doing so fits with the interests of their children in the right sort of way. These child-centered accounts of child-rearing rights accord with most peoples' intuitions about child-rearing rights. Most people believe, for example, that parents who routinely abuse and neglect their children relinquish their right to exercise global authority over the lives of their children precisely because these parents fail to stand in the right relation to their children's interests by abusing and neglecting their children.

Proponents of dual accounts of child-rearing rights might, nevertheless, resist the conclusion that child-centered accounts of child-rearing rights are true. Denying that the interests of those who rear children figure into determining who should rear children, as proponents of child-centered accounts do, might force us to accept potentially unsavory conclusions. Proponents of the best available parent account of child-rearing rights, for example, have been criticized on the following grounds. The best available parent account licenses changing child custody when a child's current parents provide a minimally good upbringing if doing so would be best in terms of the child's interests. It also licenses "reshuffling custody of babies at birth so that children are reared by those other than birth parents who are at least minimally good . . . if doing

25 See Vallentyne, "The Rights and Duties of Child-rearing"; and Gheaus, "The Best Available Parent."

so would be best in terms of the child's interests or would enhance equality."²⁶ Since many people find these implications of subscribing to the best available parent account implausible, they might be reluctant to concede that child-centered accounts of child-rearing rights are true. But there are a few things to say in response to this concern.

First, I argued above that the arguments offered in defense of dual accounts of child-rearing rights—such as those offered by Liao, Brighthouse, and Swift—do not support the conclusion that the interests of those who rear children figure into determining who rears children. This gives us reason to believe that we should not think the conclusions arrived at by proponents of the best available parent account are as implausible as they at first appear. Presumably, these conclusions appear as implausible as they do because it is assumed that parents have interests strong enough to generate rights to rear children, but parents do not have interests strong enough to generate such rights so we should not think these conclusions are so implausible. Second, while the best available parent account licenses changing child custody and reshuffling custody of babies at birth if doing so is in the best interest of children, it seldom recommends that people should, in fact, change child custody and reshuffle custody of babies at birth. Children have strong interests in continuity of care, which often recommend that they continue being reared by those parents who have been adequately rearing them.²⁷ Moreover, there are many practical considerations that make it infeasible to change child custody such that it is in the best interest of the children involved and to reshuffle custody of babies at birth such that doing so is in the best interest of the children involved. And third, the criticisms of the best available parent account of child-rearing rights do not apply, at least with the same force, to a sufficientarian account of child-rearing rights. If children are owed, as a matter of justice, no more than an upbringing that is *sufficiently* in their interest, then changing child custody and reshuffling custody of babies at birth would be licensed if doing so helped ensure that children are given sufficiently good upbringings. These conclusions are far less implausible than those rendered in the case of the best available parent account and might actually strike many as quite intuitive. This might provide us with reason to seriously consider and further explore the possibility of a sufficientarian, child-centered account of child-rearing rights.

1.2. In Defense of Regulated Parenting

Now, I can respond to the cost and risk arguments I laid out at the beginning of this section. My responses to these arguments depend on two claims. The first

26 Shields, "Parental Rights and the Importance of Being Parents," 121.

27 Gheaus, "Sufficientarian Parenting Must Be Child-Centered," 192.

is that private parenting risks violating the rights of children. This is entailed by the truth of child-centered accounts of child-rearing rights. If child-centered accounts are true, then leaving socioeconomically disadvantaged parents without the resources to protect their children's interests in the right ways risks violating the right that children have to be reared by parents who can protect their interests in the right ways. While proponents of public parenting support, a form of regulated parenting, are able to offer a direct way to respect the rights of children born to socioeconomically disadvantaged parents, proponents of private parenting are not because they are resistant to state subsidization of the costs of child-rearing for parents. Even if proponents of private parenting support policies aimed at improving the material conditions of parents as adult citizens and in so doing likewise improve the material conditions of their children, the protection of children's rights in this state of affairs would be merely incidental, rather than the policy's aim. And insofar as the state should aim at protecting the rights of individuals, particularly those like children who are distinctively vulnerable and at the mercy of others, we should be critical of private parenting. Moreover, if child-centered accounts of child-rearing rights are true, then allowing children to be reared by unfit parents would violate the right that children have to be reared by parents who protect their interests in the right ways. Proponents of private parenting, unlike proponents of parental monitoring or parental licensing, are unable to offer a direct way to protect the rights of children in this regard. Again, this suggests that private parenting unacceptably risks violating the rights of children.

The second claim my responses to the cost and risk arguments rely on is that regulated parenting, including parental licensing, does not risk violating the rights that individuals have to rear children.²⁸ This is entailed by recognizing that, as I have argued, individuals have no right to rear their biological children, nor do they have any interests weighty enough to justify a right to rear children

28 Someone like Margaret Somerville might argue that it is *children* who have rights to be raised by their biological parents, and a parental licensing scheme would risk violating *these* rights. Somerville argues that we cannot assume that children would consent to being adopted by another family if they were able to consent given the testimony of those adopted children who feel "a profound sense of loss of genetic identity and connection" upon finding out that they are adopted. See Somerville, "Children's Human Rights to Natural Biological Origins and Family Structure," 42. Kimberly Leighton points out, however, that this sense of loss is likely to be less distressing, if not nonexistent, if we did not privilege the importance of biological relatedness in the family as we do. See Leighton, "Addressing the Harms of Not Knowing One's Heredity." So rather than privileging child-rearing within the biological family, we should challenge our preconceptions of what families are and should be at the sociopolitical level to protect children from feelings of loss of genetic identity and connection.

generally. Since these rights do not exist, regulated parenting policies cannot be said to jeopardize them. Even under a parental licensing scheme in which some who would, in fact, make good parents to a child are denied the opportunity to rear that child because they did not pass the licensing test, the prospective parents adversely affected by the scheme would not have their rights to rear children violated because no such rights exist. So long as these prospective parents are permitted to maintain long-term caring relationships with particular children (in which they do not exercise global authority over these children's lives), these prospective parents would have their rights to protected relationships with children respected, which are the only rights they can plausibly be claimed to have. And if one were to insist that individuals are entitled to protected relationships with their biological children specifically, then we may instate a policy that grants individuals rights to regularly visit with their biological children in tandem with a parental licensing scheme. Of course, these rights would only be enforced on the condition that doing so is consistent with the interests of the children when the parents in question are deemed unfit to raise their biological children.

With these two claims in mind, I now offer my responses to the cost and risk arguments. If private parenting unacceptably risks violating the rights of children and regulated parenting does not risk violating the rights of individuals to rear children, then it is private parenting and not regulated parenting which is costly and liberty constraining in the ways that are relevant to claiming that a presumption exists in favor of one of these views. Private parenting risking the rights of children imposes significant costs and constraints on children's liberties. Regulated parenting, by contrast, is aimed at mitigating these costs and constraints. The costs and constraints on liberty that regulated parenting imposes on people are those that are justified because rights are protected by imposing these costs and constraints. Moreover, liberties constrained by regulated parenting policies are not liberties that individuals are *entitled* to. Public parenting support would limit how much of one's income one could keep for oneself, but we routinely recognize that people are under an obligation to forgo this liberty when doing so helps protect the rights of others. Parental monitoring would limit the liberty of parents to exclude others from associating with their child, but parents are not *entitled* to this liberty when another's association with their child is important for the child (more on this in the following section). And parental licensing would limit the liberty of individuals to rear children (biological or otherwise), but, as I have argued, there is no fundamental right to rear a child. Thus, my response to the cost argument is that taking the principles motivating the argument seriously requires that the special burden of justification fall on proponents of private parenting—not proponents of regulated parenting—to defend their preferred position.

To refresh, the risk argument is an argument specifically about parental licensing. It claims that because parental licensing risks jeopardizing individuals' fundamental rights, we should think a special burden of justification falls on proponents of parental licensing to defend their preferred position. Jurgen de Wispelaere and Daniel Weinstock call attention to the fact that parental licensing schemes would inevitably produce many false positives.²⁹ That is, those enforcing the scheme will sometimes prohibit people who would be perfectly fine parents from rearing children simply because no licensing scheme is accurate all of the time. De Wispelaere and Weinstock take it for granted that individuals have a fundamental right to rear children, so they interpret the existence of these false positives as evidence that parental licensing risks jeopardizing individuals' fundamental rights. However, as I have argued, individuals have no fundamental right to rear children. And if they have no such right, then it cannot be claimed that such a right is in jeopardy when a parental licensing scheme is instituted. Thus, no special justification needs to be offered to permissibly enforce a parental licensing scheme.

Taking all of this in stride, I submit that proponents of regulated parenting need not offer some special justification to defend their preferred policies against a presumption in favor of private parenting. Indeed, if anything, proponents of private parenting must offer some special justification to defend their preferred policies against the presumption in favor of regulated parenting. Regulated parenting, in other words, is presumptively justified, whereas private parenting is not. At this point, you might wonder which regulated parenting policy proposals are best to adopt. For the remainder of this essay, I will argue that we have reasons to institute a scheme of parental licensing which are not likewise reasons we have to institute policies of public parenting support or parental monitoring. To do this, I must explain why a certain kind of person is unfit to rear children. This is now what I turn to.

2. THE PROBLEM OF OBJECTIONABLY INTOLERANT PARENTS

Regulated parenting is presumptively justified in my view because it, unlike private parenting, aims at helping parents treat their children in ways consistent with child-centered accounts of child-rearing rights. Child-centered accounts of child-rearing rights tell us that those who are entitled to exercise global authority over a particular child's life are those who are able to protect their child's interests in the right sort of way. In order to know, then, who is entitled to exercise global authority over a particular child's life, we must know if they

29 De Wispelaere and Weinstock, "Licensing Parents to Protect Our Children?" 200–201.

are capable of protecting their child's interests in the right sort of way. The aim of this section is to show that individuals who are *objectionably intolerant*—that is, they subscribe to prejudicial dogmas such as racism, sexism, and homophobia to such an extent that their ability to direct caring attitudes toward, for example, Black people, women, and/or gay people is significantly impaired—are unable to protect their children's interests in the right sort of way. I am concerned with the child-rearing rights of *objectionably intolerant* individuals because the forthcoming arguments draw issue with racists, sexists, and homophobes being *significantly* impaired in their ability to direct caring attitudes toward Black people, women, and gay people, respectively. It seems conceivable, especially if the child-centered account of child-rearing rights we subscribe to is sufficientarian in character, that those whose ability to direct caring attitudes toward members of the aforementioned groups is only slightly impaired (weakly intolerant individuals) or moderately impaired (moderately intolerant individuals) would not threaten the interests of children so much that the rights of children would be violated, whereas those whose ability to direct caring attitudes toward members of these groups was *significantly* impaired *would* so threaten the interests of children. I will return to this point later on, after having presented the arguments against individuals who are objectionably intolerant having a right to rear children.

First, I lay out Samantha Brennan and Colin Macleod's argument about how "strongly homophobic" individuals, specifically, are unfit to rear children. Then, I spell out a problem that Riccardo Spotorno identifies with Brennan and Macleod's argument and argue that this problem is only apparent, not actual. Even if it was actual, the solution Spotorno proposes is not the only available solution. After providing an overview of Spotorno's solution, I offer an alternative. The following discussion will produce three arguments, each of which may be consistently endorsed with the others, in defense of the claim that certain individuals are unfit to rear children because they are objectionably intolerant of certain backgrounds and ways of life.

Samantha Brennan and Colin Macleod offer a *precautionary argument* in defense of the claim that what they call "strongly homophobic" individuals are unfit to rear children. Brennan and Macleod argue that (1) children have an interest-based right to being provided with affective care, (2) those who rear children have a corresponding duty to provide their children with affective care, (3) strongly homophobic individuals cannot provide gay children with affective care, (4) because there is a nontrivial chance that the child of a strongly homophobic individual could be gay, strongly homophobic individuals are unreliable providers of affective care to children, and (5) 1–4 entail that strongly homophobic individuals are unfit to rear children.

According to Brennan and Macleod, affective care “involves manifesting love, affection, and emotional support to children; being attentive to their emotions, concerns, and enthusiasms; and being moved and concerned by threats to their well-being in ways that are transparent to children themselves.”³⁰ Brennan and Macleod offer three reasons to think that children have an interest-based right to affective care from those who rear them. First, affective care promotes the welfare of children; children who are not loved by their parents fare worse than those who are. Second, affective care is one of the social bases of self-respect, meaning that it is in significant part through being loved by our parents that we see ourselves as valuable and meriting respect. And third, affective care facilitates intrinsic goods of childhood, such as innocence, trust, and intimacy. If children are denied affective care, then they will lose out on many intrinsically valuable goods. Taken together, these interests are arguably weighty enough to generate a right on the part of children to the affective care of their parents and a duty on the part of parents to provide their children with affective care.³¹

Strong homophobia, on Brennan and Macleod’s understanding, “consists in belief in the moral wickedness or depravity of gay sexuality and identity” which “gives rise to attitudes of contempt, disgust, disrespect toward gay people.”³² The reason that strong homophobes—henceforth, homophobes—are unfit to rear children is that they would be unlikely to provide affective care to gay children, and there is a nontrivial chance that a homophobe’s child could be gay. If homophobes are contemptuous of gay people, they are not in a position to manifest love to their gay children or to be moved by the distinctive threats to well-being that gay children face. Indeed, many gay children with homophobic parents do not complete high school, end up homeless, develop substance abuse problems, and take their own lives precisely because their homophobic parents are inadequate affective caregivers.³³ And if there is a nontrivial chance that any child could be gay, homophobes run the risk of violating the right their children have to affective care since any of their children could be gay. But by the time a homophobe learns that a child of theirs is gay, the child will have already developed significant attachments to them, and it will be exceedingly difficult for other adults who are not homophobes to step in and situate themselves in a loving relationship with the child, which would make the homophobic parent’s withdrawal of affective care particularly troublesome for her child.

30 Brennan and Macleod, “Fundamentally Incompetent,” 236.

31 Brennan and Macleod, “Fundamentally Incompetent,” 236–37.

32 Brennan and Macleod, “Fundamentally Incompetent,” 237.

33 Brennan and Macleod, “Fundamentally Incompetent,” 238.

Thus, by exposing their children (who could grow up to be gay) to the risk of having affective care withdrawn from them at a crucial stage in their development, homophobic parents threaten the rights their children have to affective care and are therefore unfit to rear children.

Riccardo Spotorno argues that Brennan and Macleod's position renders an incomplete conclusion. Homophobes and racists alike commit a moral wrong by regarding others as morally inferior to them because they possess certain arbitrary characteristics, so we should expect that homophobes and racists face comparable consequences in terms of their claims and liberties for committing a comparable moral wrong.³⁴ While Brennan and Macleod's argument "rules out a moral right for homophobes to parent because there is always a nontrivial probability that their children will be gay, it fails to rule out a moral right for racists to parent because they can ensure that they have white children and it is virtually impossible that white children will become black."³⁵ So Spotorno takes it upon himself to construct an alternative account of why homophobes are unfit to rear children, which likewise renders the conclusion that racists are unfit to rear children.

I do not think the "problem" Spotorno identifies with Brennan and Macleod's argument is even a problem at all. We can see this by considering the following: suppose that Adam and Eve, two homophobic adults, want to adopt a 15-year-old boy named Straight. Straight is unequivocally, unquestionably a heterosexual. Brennan and Macleod's position would not rule out a moral right for Adam and Eve to be Straight's parents, even though Adam and Eve are homophobic, because there is no chance that Straight could turn out to be gay. This suggests that, on Brennan and Macleod's view, homophobes and racists do, in fact, face comparable consequences in terms of their claims and liberties for committing a comparable moral wrong. The wrong Brennan and Macleod are zeroing in on is not the wrong that homophobes and racists commit simply because they are homophobes and racists, but the wrong that homophobes and racists commit because they fail to direct affective care to their children in virtue of being homophobes and racists. And for *this* wrong, racists and homophobes face comparable consequences. Indeed, if there were a nontrivial chance that white children could grow up to be Black, Brennan and Macleod's position would indict racist child-rearing for the same reasons

34 Just as I use the term "homophobe" to designate "strong homophobe," my use of the term "racist" should be interpreted as designating "strong racist," or a racist who believes in the moral wickedness or depravity of members of a certain racial group that gives rise to attitudes of contempt, disgust, or disrespect toward members of that racial group.

35 Spotorno, "Homophobes, Racists, and the Child's Right to Be Loved Unconditionally," 7.

it indicts homophobic child-rearing.³⁶ Thus, the problem Spotorno identifies with Brennan and Macleod's position is merely apparent.

Nevertheless, I will lay out the alternative position Spotorno offers as a remedy to this apparent problem. Spotorno claims that children have a right to be loved unconditionally. That is, children have a right that the affective care directed to them by those who rear them is not conditioned on their possessing certain characteristics. The racist parent who provides an abundance of affective care to her white child fails to love her child unconditionally, since if the child were Black the parent would not provide that same affective care. Spotorno grounds the right to be loved unconditionally in the value of self-respect: those who are loved unconditionally by their parents are better able to grasp that they are valuable irrespective of certain contingent features they possess, whereas those who are not are more likely to mistakenly believe that their value is shaped by these features. Even if a white racist is capable of providing her white child with an abundance of affective care, the child would have her interest in self-respect threatened to the extent that she is aware her parent would not provide her this affective care were she Black. The interest that children have in recognizing their own value, according to Spotorno, is so weighty that it grounds a right on the part of children to be loved unconditionally and a duty on the part of parents to unconditionally love the children they rear. Thus, racist and homophobic parents alike are unfit to rear children because they are incapable of loving, or at least unlikely to love, their children unconditionally.³⁷ It is worth noting that while Spotorno himself only addresses how racists and homophobes wrong the children they rear, his account would also indict sexists, ableists, xenophobes, and the like for the very same reasons.

So far, I have surveyed two accounts of why certain kinds of objectionably intolerant individuals are unfit to rear children: one explaining why homophobes specifically are generally unfit to rear children, and another explaining why the gamut of objectionably intolerant individuals is unfit to rear children. Now, I develop a third account—an account explaining why the gamut of objectionably intolerant individuals is generally unfit to rear children. This account, while it does not indict all objectionably intolerant individuals as unfit to rear children in every imaginable circumstance, does indict those objectionably intolerant individuals who live in most parts of most multicultural societies as unfit to rear children. Some may take an interest in this third account because

36 For defenses of transracialism, which might someday make such a state of affairs seem less implausible, see Overall, "Transsexualism and 'Transracialism'"; and Tuvel, "In Defense of Transracialism."

37 Spotorno, "Homophobes, Racists, and the Child's Right to Be Loved Unconditionally," 10–15.

they are unconvinced by Spotorno's and desire an account like his that, unlike Brennan and Macleod's account, explains why we may, not only in principle but often in fact, object to racists rearing children. Others may take an interest because they think that in addition to Brennan, Macleod, and Spotorno's arguments, this third account gives due consideration to an interest children have in being raised by sufficiently tolerant parents, an interest that Brennan, Macleod, and Spotorno overlook.³⁸ Either way, this third account offers a novel contribution to the burgeoning literature on children's rights.

It is clear to me that children have weighty interests in being able to continue associating with particular individuals, adults and children alike.³⁹ These interests are especially weighty when a child's continued association with another is crucial to the child's well-being. For example, many believe that children of divorce should still associate with the parent who lost custody of them and not just because this association is beneficial to the parent. Such an association is also presumably beneficial to the child, both because the association facilitates valuable goods to the child (e.g., quality time with a loving adult) and because the association is valuable in itself. Call those whose association with children is crucial to their well-being *important associates*. Children often have many important associates in childhood: their parents and siblings, teachers and mentors, neighbors, family friends, the family members of their peers, and, of course, friends. And while, no doubt, parents have the moral authority to impose reasonable time, place, and manner restrictions on the way their children may associate with important associates, I hold that parents lack the moral authority to determine whether their children may continue to associate with

38 An anonymous reviewer suggests that the third account I provide is not meaningfully distinct from Brennan and Macleod's account. Brennan and Macleod argue that parents are under duties to provide affective care to their children. And I argue that parents are under duties to respect the associational rights of children. But plausibly, providing affective care to one's child requires that one respect the associational rights of one's child. This does not pose a problem for my argument. Plausibly, providing affective care to one's child requires that one feed one's child. But the parent does not *merely* wrong her child by failing to provide the child affective care when she does not feed her child. She *also* wrongs the child by violating the child's right against neglect. Similarly, a parent does not *merely* wrong her child by failing to provide the child affective care when she prohibits a child from associating with someone the child is entitled to associate with. She *also* wrongs the child by violating the child's associational rights.

39 Anca Gheaus argues that those who would be beneficial associates to children have rights to associate with those children, and that the children's parents are under an obligation not to prohibit such associations because they are beneficial to children. Gheaus, "The Best Available Parent," 456. In a similar vein, David Meyer draws on United States case law to sketch the beginnings of a theory of children's associational rights. Meyer, "The Modest Promise of Children's Relationship Rights."

these individuals *at all*. To forbid a child from continuing to associate with an important associate is, I claim, to violate an interest-based right that child has to continue associating with such individuals.

I suspect many will accept that there are cases in which an adopted child may have parents who divorce and that the child should be able to continue associating with both parents even if only one is awarded full custody. If you believe an adopted child whose parents divorce should be able to continue associating with the parent who lost custody of them, and you can imagine some extraparental figure (i.e., an adult who associates with a child but is not the child's parent) who associates with a child in a manner that is relevantly similar to the way that the non-custodial parent associates with her child, then you should think that the child should be able to continue associating with the extraparental figure. One might be inclined to argue, at this point, that it is impossible to imagine an extraparental figure whose association with a child is relevantly similar to the non-custodial parent's association with her child because the extraparental figure is not the child's parent, and she must be to be considered one of the child's important associates. But to claim this is to likewise claim that a neighbor who provides a child with refuge from abuse and neglect by her parents is not an important associate of that child, which is absurd. And if you think the parent who won custody of the child in the divorce, by forbidding the child from ever again associating with the parent who lost custody, would violate not only the rights of the non-custodial parent to continue associating with the child but also the rights of the child to continue associating with the non-custodial parent, then you should think that a parent forbidding a child from ever again associating with the extraparental figure in question would violate the rights of the child to continue associating with the extraparental figure.

If we accept that children have certain associational rights, the argument for why the objectionably intolerant are unfit to rear children is straightforward. There is a nontrivial chance that a child will associate with an individual who is gay, or Black, or what have you, and have an extremely weighty interest in continuing to associate with that individual.⁴⁰ The objectionably intolerant are at high risk of preventing these important associates from continuing to associate with their children. If someone is at high risk of arbitrarily prohibiting her child from continuing to associate with important associates, then she reveals herself as unfit to rear children, given her willingness to deprive her child of

40 An anonymous reviewer notes that in a case where a strongly anti-Semitic family lives where no Jews live, the parents in that family would potentially be considered fit to raise children on my account. While this is true, it is also the case that in most parts of most multicultural societies, no such comparable conditions obtain, so most parents would be exposing most children to intolerable risks when the parents are objectionably intolerant.

important social, emotional, and relational goods. Therefore, objectionably intolerant individuals are generally unfit to rear children.

Someone might point out that, in some cases, the problem with objectionably intolerant parents rearing children is not that they would prevent their children from associating with certain important associates *altogether*, but that they would prevent their children from associating with certain important associates *as equals*. Consider the following case: Elizabeth is a white woman with a young daughter, Mae Mobley. One of Mae Mobley's important associates is her Black caretaker, Aibileen, whom Elizabeth employed to look after Mae Mobley. Elizabeth, however, is a racist, and while she does not prevent Mae Mobley from associating with Aibileen altogether, she encourages Mae Mobley to regard Aibileen as morally inferior because Aibileen is Black and Mae Mobley is white. Thus, Elizabeth prevents Mae Mobley from associating with Aibileen as *an equal*, and even though she is not barring Mae Mobley from associating with Aibileen *at all*, this nonetheless seems to speak against Elizabeth's fitness to rear Mae Mobley because she potentially deprives her child of important social, emotional, and relational goods by preventing her child from associating with an important associate as her equal.⁴¹

To evaluate whether preventing a child from associating with an important associate as her equal violates that child's rights, it will be useful to revisit and modify our case concerning the adoptee whose parents divorce. Suppose that one of the parents of the child is awarded full custody and that the other is granted visitation rights, but the parent who is awarded full custody encourages their child to view the parent who is granted visitation rights as morally inferior. Perhaps the reason the divorce precipitated was that the parent who is granted visitation rights cheated on the parent who is awarded full custody, and this is why the parent who is awarded full custody encourages their child to view the parent who is granted visitation rights as morally inferior. If you have the intuition that the parent who is awarded full custody violates their child's rights when preventing her from associating with her parent who is granted visitation rights as her equal, then you should likewise think that Elizabeth violates Mae Mobley's rights when she prevents Mae Mobley from associating with Aibileen as her equal. But I suspect fewer people would have this intuition than those who intuit that preventing a child from associating with an important associate *at all* violates the child's rights. This might be because preventing a child from associating with an important associate deprives the child of *any* of the goods bound up in that relationship, whereas preventing a child from

41 This case is inspired by Elizabeth, Aibileen, and Mae Mobley of Kathryn Stockett's *The Help*.

associating with an important associate *as her equal* deprives the child of perhaps many but not all of the goods bound up in that relationship. And if you subscribe to a child-centered account of child-rearing rights that is sufficientarian in character, it may (but need not) strike you as plausible to say that a child may be prevented from associating with certain important associates as her equals so long as the way she associates with them sufficiently benefits her. Because of this complication, I tentatively suggest that the associational rights of children *might* be violated when they are prevented from associating with their important associates as their equals because I suspect proponents of child-centered accounts of child-rearing rights may reasonably disagree about whether a rights violation occurs. Nevertheless, I more confidently assert that the associational rights of children *are* violated when they are prevented from associating with their important associates altogether because proponents of different child-centered accounts of child-rearing rights would agree that this constitutes a rights violation, given how most recognize that there are at least some cases in which an adoptee would be entitled to associate with both of her parents *somehow* after they divorce even if only one of her parents has full custody of her.

The foregoing discussion has produced three accounts of why objectionably intolerant individuals are unfit to rear children. A strongly homophobic parent, for example, may be said to be unfit to rear a child because (a) her child may grow up to be gay and will need affective care from her that she is unwilling or unable to provide, (b) she is incapable of loving or unlikely to love her child unconditionally, and/or (c) her child may have an interest in a continued association with someone who is gay at some point, and she is likely to put an end to this association. Notice how these arguments need not also indict weakly or moderately homophobic parents as unfit to rear children, especially if it turns out that a child-centered sufficientarian account of child-rearing rights is true. If such an account is true, then children are entitled to be reared by parents who protect their interests to a sufficient degree. If children are entitled to be reared by parents who protect their interests to a sufficient degree, and if it is possible that those who rear children could be weakly or moderately homophobic without (a) being unwilling or unable to provide affective care to their children, (b) being incapable of loving or unlikely to love their children unconditionally or (c) being likely to put an end to their children's association with important associates who are gay, then it is possible that weakly or moderately homophobic parents could nonetheless be entitled to rear their children, provided that their doing so is consistent with their (a) providing a sufficient amount of affective care to their children, (b) being capable of loving and likely to love their children unconditionally, and (c) being unlikely to put an end to their children's

association with important associates who are gay. And if this is true, then the most we can say, at least without further argument, is that *objectionably* intolerant parents lack rights to rear children consistent with child-centered accounts of child-rearing rights.

If regulated parenting is presumptively justified on the grounds that it meets the demands of child-centered accounts of child-rearing rights, and if child-centered accounts of child-rearing rights support the conclusion that objectionably intolerant parents are unfit to rear children, then it follows that whatever forms of regulated parenting policies we institute, at the very least *may*—if not *must*—be designed to protect children from objectionably intolerant child-rearing when feasible. Now, I argue that we have special reason to institute a scheme of parental licensing, given that certain objectionably intolerant individuals are unfit to rear children.

3. THE PROMISE OF PARENTAL LICENSING?

If private parenting were presumptively justified, proponents of regulated parenting would have to explain why the costs imposed on individuals by regulated parenting overcome this presumption. Regulated parenting is presumptively justified, though, so no such an explanation is necessary. And if there were a special presumption against parental licensing, then proponents of regulated parenting who support a policy of parental licensing would have to explain why the costs imposed on individuals by parental licensing overcome this presumption. However, no such presumption exists against parental licensing, so no such explanation needs to be given. In order to argue, then, that a presumption exists in favor of a child welfare policy regime that includes a parental licensing scheme, it would suffice to show that parental licensing is better suited than public parenting support and parental monitoring at protecting the rights of children, at least along a particular dimension.⁴²

42 Robert S. Taylor argues that licensing parents as a way to ensure that parents are capable of raising children without governmental assistance enshrines the value of liberal neutrality. By subsidizing the costs of child-rearing through social programs, the liberal state shows favoritism toward those who value a certain life project: parenting. The liberal state does not subsidize the costs of the childless pursuing their preferred life projects. Therefore, the liberal state fails to treat different ways of life neutrally by subsidizing the costs of child-rearing and ought to institute a scheme of parental licensure aimed at ensuring parents are able to support their children financially to meet the demands of liberal neutrality. Taylor, "Children as Projects and Persons." If Taylor is right, then we have more than just the reasons I have given to think that a regulated parenting policy regime should include a policy of parental licensing, in addition to some reason to think that there might be a special presumption against public parenting support.

To be clear, I am under no delusion that a philosopher, from his armchair, can authoritatively prescribe the specifics of a policy regime. The considerations that go into determining whether a particular policy is worth implementing are extremely complicated. So I should not be thought of as arguing that child welfare policy regimes that do not include a scheme of parental licensure are necessarily unjustified, morally speaking. Rather, I am arguing that it is far harder than opponents of parental licensing have thought up until this point to rule out parental licensing as a policy that the state may permissibly implement. This is because there exists no special presumption against parental licensing and because parental licensing is best suited to protecting the right that children have to be reared by sufficiently tolerant parents.

In the preceding section, I argued that children have an interest-based right to be reared by individuals who are not objectionably intolerant. And before I explain how parental licensing is the regulated parenting policy best suited to protecting this right, I want to explain why public parenting support and parental monitoring would, on their own, likely be deficient policies in this regard. Let us start with public parenting support. To refresh, proponents of public parenting support endorse policies like paid parental leave, public childcare, and public subsidies and tax benefits to parents.⁴³ It is hard to see how policies like the ones just mentioned protect the right that children have not to be raised by the objectionably intolerant. If anything, the public parenting support policies just mentioned would provide objectionably intolerant parents with more resources to provide for those children, if any, who are not adversely affected by their objectionable intolerance, but would fail to insulate those children who *are* adversely affected by their objectionable intolerance from its ill effects.

Samantha Brennan and Colin Macleod, as well as Riccardo Spotorno, suggest that the state may mount advertising campaigns directed at parents on the importance of, in Brennan and Macleod's case, accepting one's child if they come out as gay and, in Spotorno's case, unconditionally loving one's child.⁴⁴ Such a policy, I think, can be classified as a policy of public parenting support because the state, by mounting these campaigns, is subsidizing a service that encourages parents to be better child-rearers. I suspect such a policy is likely to be effective in the sense that, over time, children of objectionably intolerant parents would be treated better by their parents than they otherwise would have been. Such a policy would not, however, be effective in the sense that it would protect children from being reared by objectionably intolerant parents

43 Engster, "The Place of Parenting within a Liberal Theory of Justice."

44 Brennan and Macleod, "Fundamentally Incompetent," 239–40; Spotorno, "Homophobes, Racists, and the Child's Right to Be Loved Unconditionally," 17.

who lack the moral authority to rear them in the first place. And if there is a policy that is effective in this *latter* sense, as I will later argue parental licensing is likely to be, then we would have reason to implement such a policy rather than, or in addition to, the kind of policy Brennan, Macleod, and Spotorno advocate for, given that it more directly faces and remedies the problems associated with children being reared by the objectionably intolerant.

Parental monitoring, I argue, is also ill equipped at protecting the right children have to not be reared by objectionably intolerant parents. As a reminder, parental monitoring involves social workers and healthcare professionals visiting households with some degree of regularity and assessing how the interests of the children of the household are protected or promoted by the parents of the household.⁴⁵ While parental monitoring may be effective at identifying objectionably intolerant parents once children are old enough and feel secure enough reporting information to social workers about their parents that is relevant to determining whether or not their parents are objectionably intolerant, I suspect it would not be effective at identifying objectionably intolerant parents in the early years of childhood. Parents would have ample opportunity to conceal things about themselves that might lead a social worker to think they are objectionably intolerant when making a home visit. They would also have ample opportunity to coach their young, impressionable children into giving answers that paint the parents in a favorable light to questions that a social worker may ask. In the vast majority of cases, the best it seems parental monitoring could do in terms of protecting children's rights to not be reared by objectionably intolerant parents is to identify the objectionably intolerant after their children have developed significant attachments to them, and place the children of these parents under the care of others who have the moral authority to rear the children. At that point, however, the child would have to suffer not only the harm of being reared by an objectionably intolerant parent but also the harm of being separated from parents to whom she has already, for better or for worse, developed significant attachments. And if a policy can avoid both of these harms, as I will now argue parental licensing can, then we would have reason to implement such a policy rather than or in addition to a policy of parental monitoring because it is able to avoid these harms.⁴⁶

Proponents of parental licensing advocate for public officials to determine standards for parental competency, evaluate whether particular individuals meet these standards, and prevent those who do not meet these standards

45 De Wispelaere and Weinstock, "Licensing Parents to Protect Our Children?"

46 Andrew Jason Cohen criticizes parental monitoring policies and favors parental licensing policies on similar grounds. See Cohen, "The Harm Principle and Parental Licensing," 834 (esp. n20).

from rearing children. We typically think that an activity may be licensed when it is potentially harmful to innocent others, requires a certain level of competence to engage in safely, and when the competence necessary to safely engage in the activity can be determined through a moderately reliable procedure.⁴⁷ This is why, for example, the state may license individuals who want to operate a motor vehicle: driving is potentially harmful to innocent others, it requires a certain level of competence to drive safely, and there exist moderately reliable procedures through which we can determine whether individuals are competent to drive. It is uncontroversial, I think, to claim that parenting is a hazardous activity that is potentially harmful to innocent others—that is, children. And, as I established in the previous section, part of being minimally competent with respect to permissibly rearing children is not being objectionably intolerant.

Now, do moderately reliable procedures exist to determine whether prospective parents are objectionably intolerant and therefore unfit to rear children? I think so, and such procedures are largely part and parcel of parental licensing proposals that have been made in the past. Hugh LaFollette defends a parental licensing scheme that denies licenses to prospective parents who are evaluated psychologically and determined to be significantly more likely than not to abuse or abandon their children.⁴⁸ Similarly, Andrew Jason Cohen suggests that psychological examinations can be used to determine whether parents have the mental fortitude to deal with the pressures of parenting, and to deny parental licenses to those who lack it.⁴⁹ It strikes me that it is most likely during a psychological evaluation that one could determine whether an individual displays objectionably intolerant attitudes toward, e.g., gay people, especially if but not only if the evaluator makes use of an instrument used to measure homophobia in psychological subjects. One such instrument is the Index of Homophobia (IHP), a twenty-five-item questionnaire comprising statements (e.g., “I would feel uncomfortable if my neighbor was homosexual”) with which psychological subjects are meant to strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree. A subject’s responses to the statements correspond to values that are inputted into an equation that generates a score falling between 0 and 100, and those who receive an IHP score between 75 and 100 are classified as “high grade homophobics.”⁵⁰ In addition

47 LaFollette, “Licensing Parents,” 183.

48 LaFollette, “Licensing Parents,” 190–92.

49 Cohen, “The Harm Principle and Parental Licensing,” 835.

50 Hudson and Ricketts, “A Strategy for the Measurement of Homophobia,” 361. Hudson and Ricketts also write that “on the average, an individual’s IHP score will fall within a range of plus or minus 9.5 points of their true score about 95% of the time.” Hudson and Ricketts, “A Strategy for the Measurement of Homophobia,” 363. Moreover, Costa, Bandeira, and

to psychological evaluations for prospective parents, Robert S. Taylor has suggested that public officials consult “records of past criminal activity, institutionalization for mental health problems, and so on” when determining whether to grant someone a license to parent.⁵¹ In this same spirit, I suggest public officials conduct background checks to determine whether prospective parents have been, to give two examples, convicted of a hate crime or successfully sued for employment discrimination. These background checks might also be used to determine if prospective parents are affiliated with organizations that would give us reason to believe they are objectionably intolerant. An example of a proverbial “red flag” in this regard would be prospective parents who are active members of the Westboro Baptist Church.⁵²

So, I submit that there exist moderately reliable procedures—not all too different from those that have been advocated for by past proponents of parental licensing—for determining whether parents are objectionably intolerant and therefore unfit to rear children. Even if these procedures would fail to catch many prospective parents who are objectionably intolerant, they would still catch some, and that would be enough to justify implementing a parental licensing scheme that uses these procedures since I showed earlier that there are neither presumptions in favor of private parenting nor against parental licensing to be overcome. Even if we can only protect some children from having their right to be reared by sufficiently tolerant parents violated through the use of these procedures, that is still much better than not preventing any from having that right violated. And if some individuals who would make sufficiently tolerant parents are inadvertently deemed by the licensing scheme to be unfit to rear children, that will not violate their rights since, as I argued, people do not have a right to rear children in the first place.

Public parenting support, on its own, can only mitigate the ill effects of children being reared by objectionably intolerant parents, whereas parental licensing can protect children from being reared by objectionably intolerant

Nardi rate the IHP very highly among existing instruments used to measure homophobia because it reliably predicts levels of homophobia in psychological subjects in diverse populations, contexts, and cultures. See Costa, Bandeira, and Nardi, “Systematic Review of Instruments Measuring Homophobia and Related Constructs,” 1329.

51 Taylor, “Children as Projects and Persons,” 570.

52 The Westboro Baptist Church is an unaffiliated Primitive Baptist Church in Topeka, Kansas, that is classified by the Anti-Defamation League and the Southern Poverty Law Center as a hate group, in large part because of the many homophobic pickets the church’s members participate in across the United States. See “Westboro Baptist Church,” Anti-Defamation League, February 8, 2017, <https://www.adl.org/resources/profiles/westboro-baptist-church>; and “Westboro Baptist Church,” Southern Poverty Law Center, <https://www.splcenter.org/fighting-hate/extremist-files/group/westboro-baptist-church>.

parents *at all*. And parental monitoring would inevitably subject the children of objectionably intolerant parents to the harms of both being reared by objectionably intolerant parents and being separated from parents, no matter how unfit, to whom the child already developed significant attachments, whereas parental licensing could protect children from *both* of these harms. With respect to protecting the right that children have to be reared by sufficiently tolerant parents, parental licensing is best suited out of the available regulated parenting policies to achieve this goal. This provides us with special reason to think that a regulated parenting policy regime should include a policy of parental licensure. And for those who think that enforcing a parental licensing scheme would threaten the rights that individuals have to protected relationships with their biological children, we could simply amend the policy proposal such that individuals who are deemed unfit to rear children and are subsequently denied the opportunity to rear their biological children are granted visitation rights with respect to their biological children on the condition that granting these rights is consistent with their children's interests.

My arguments have significant implications for how philosophical debates concerning child welfare policy should be conducted. Those who oppose parental licensing who are proponents of private parenting will have to reconceive their arguments to account for the fact that regulated parenting is presumptively justified, whereas private parenting is not. And those who oppose parental licensing who are proponents of different forms of regulated parenting must revise their arguments in the following ways. They will have to either account for the fact that there exists no presumption against parental licensing because it does not run the risk of violating peoples' rights to rear children or they will have to offer a defense of the right to rear children that does not suffer the problems I have pointed out in this essay or some other right and explain how this right is jeopardized by a parental licensing scheme and not by policies of public parenting support or parental monitoring. Or if they are unable to, they will have to either show that children have no right against being reared by objectionably intolerant individuals or they will have to show how either or both public parenting support and parental monitoring are best suited to protecting rights undergirded by weightier interests than the interests undergirding the right against being reared by objectionably intolerant individuals and that parental licensing jeopardizes these rights. In other words, my arguments make it considerably more difficult for opponents of parental licensing to establish a successful case against it.

The reason I think it is so important to shine light on how difficult it is to make the case against parental licensing is that I cannot shake the feeling that parental licensing could redound to the benefit of a great many children, and

it is imperative for this reason that we remain open to it as a policy possibility. It is no secret that many are unfit to rear children. And it is no secret that many who are demonstrably unfit to rear children nevertheless are permitted to do so. If parental licensing has the potential to protect children from the havoc these people could wreak on their lives, we should certainly remain open to it in the absence of reasons to think such a policy is objectionable in principle. Just as I think it would be hasty to conclude from the armchair that a scheme of parental licensing must now be instituted given the arguments I have made, I think it is hasty for opponents of parental licensing to conclude from the armchair that a scheme of parental licensing must *never* be instituted given the practical difficulties we anticipate facing when implementing such a scheme.⁵³ At the very least, I hope to have made the case for parental licensing seem far less implausible than critics of the policy seem to have thought it was up until this point.⁵⁴

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- 53 Christopher Freiman offers a battery of practical objections against parental licensing. Freiman, "Against Parental Licensing," 118–21. And while I agree with him that his objections would rule out the possibility of parental licensing if there were a special presumption against parental licensing, they fail to rule out the possibility of parental licensing given that there is actually a presumption *in favor* of its inclusion in a regulated parenting policy regime.
- 54 I am grateful to Chris Freiman, both for writing the essay that inspired my own and for offering me feedback on an earlier version of this piece. I also owe a huge intellectual debt to Bob Taylor and Andrew Jason Cohen, both of whom mentored me at different stages of my academic career and played a significant role in shaping my views about parental licensing. Thanks also to David Boonin, who read and provided feedback on all too many earlier versions of this piece. Finally, I want to thank Andrew Jason Cohen, Tom Crean, three anonymous reviewers, and an associate editor at *JESP* for reading and offering feedback on earlier drafts of this essay.

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