



State Authority, Parental Authority, and the Rights of Mature Minors

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Abstract

When mature minors face a decision with important consequences, such as whether to undergo a risky but potentially life-saving medical procedure, who should decide? Relying on liberal political theory's account of the importance of decisional autonomy for adults, and given the scalar nature of the capacities needed to exercise decisional autonomy, I argue that mature minors with the requisite capacities and commitments have a right to decisional autonomy though they are not yet 18. I argue for this right using a 'balancing of interest' account of rights: the interest mature minors have in decisional autonomy outweighs their parents' interest in shaping their children as a means of 'creative self-extension'. But I propose two limitations on this right: requests for waivers of the rule that one must be at least 18 to decide cannot be so numerous as to make adjudication impractical; and though a competent adult's voluntary decision to refuse medical treatment should generally be respected, the state may reject a mature minor's decision upon review by an indifferent judge of the minor's capacities and reasons. The judge reviews not the substantive merits or prudence of the decision, but whether the decision promotes the interest in decisional autonomy, by asking among other things whether the decision is the minor's own, is tethered to core commitments rather than based on arbitrary preferences, and could be regarded as reasonable to the minor's 'future self'.

Keywords Liberal pluralism · Children's rights · Mature minors · Medical ethics · Decisional autonomy · Parental rights

1 Introduction

Minors can face important decisions that dramatically affect their futures, such as whether to have an abortion, or undergo risky but potentially life-saving medical treatment. Such decisions involve a substantive question: should they have the

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abortion? refuse medical treatment? But they also raise a procedural question: who should decide? I am concerned here only with the procedural question of whose decision it should be. I focus on a specific sort of decision that has drawn the attention primarily of medical ethicists rather than political theorists: the case where a minor is mature and wishes to refuse medical treatment against their parents' wishes.

Contrast the following cases. Five-year old Julianna Snow was born with an incurable neuromuscular disease and was fed through a tube. If she were to get sick again, a decision would have to be made: go to the hospital to undergo painful procedures that might not significantly delay her death or improve her quality of life, or stay at home where she would die comfortably. Her mother asked Julianna which she preferred. The mother gave Julianna some reasons to go to the hospital, but also told her that by staying home Julianna would 'go to heaven' and eventually be joined by her parents. Julianna then said she preferred to go to heaven. By law the decision whether to receive treatment was not Julianna's to make but her parents, and they decided to keep Julianna home (Cohen 2016). I take it to be obvious that Julianna, who may not have fully grasped the concept of death and surely lacked the maturity to develop deeply held and stable religious convictions, should not have the right to decide. But consider a different case: an emotionally mature and intelligent 17-year-old with leukemia will likely die within a month without a blood transfusion; but she is a Jehovah's Witness who sincerely believes that having a blood transfusion would condemn her to eternal damnation and for this reason she wishes to refuse medical treatment.¹

On a political theory of liberalism that draws on the 'harm principle', adults are given the autonomy to make decisions about how to live their lives so long as their decisions do not result in harm to others (Mill 1963).² In a liberal society, competent adults may refuse medical treatment so long as that decision is informed and uncoerced, so that it can be said genuinely to reflect the individual's will.³ As I will discuss in Sect. 5, adults have this right even if the state thinks their decision is unreasonable. If we let adults refuse medical treatment, should we also let the 17-year-old, even if their refusal is against their parents' wishes?

I approach this question by asking whether mature minors should have decisional autonomy rights. A right to decisional autonomy is a right to make decisions affecting one's future for oneself, without needing the approval of others such as one's parents. Because there are different understandings of what it is to have a 'right' to something, I need to be clear about what account of rights I rely on to develop my argument. By 'right' I refer to an interest that outweighs competing interests and therefore deserves legal or moral protection. To have a right to make decisions for oneself, on this account, one must have an interest in doing so, where an interest

¹ The facts resemble those in *In re E.G.*, 133 Ill. 2d 98 (1990), discussed in Sect. 3, except in that case the parents agreed with the minor's decision to refuse treatment.

² I rely on a Millian account of liberalism though there are others; but my argument for mature minor rights should not depend on deciding which account is best.

³ See the U.S. case *Werth v. Taylor*, 190 Mich. App. 141 (1991), drawing on *Cruzan v. Director, Missouri Dept of Health*, 497 U.S. 261 (1990); Derish et al. (2000: 110); and Greenawalt (2006).

is more than a desire: it is something that is important to one's welfare (Feinberg 1984: 33–34). For example, you have an interest in not having someone stick a needle in you to inject a vaccine when doing so violates your deep-seated religious convictions. This is an interest and not merely a desire insofar as compromising your religious convictions could impair your welfare. However, before we can say your interest is a right, we must weigh it against competing interests.⁴ The state has a compelling interest in ensuring that everyone is vaccinated so that deadly diseases don't spread, and that interest may outweigh your interest in not being vaccinated. To say that a minor has a right to decisional autonomy is to say they don't merely desire to decide for themselves but they have an interest in doing so and that interest has greater weight than competing interests.

Three sets of interests are most at stake. Mature minors have an interest in making choices about their future for themselves without undue interference from others including their parents, choices such as who to marry, what career to pursue, what religion if any to adopt, or whether to accept or refuse medical treatment. This might be an interest in their own well-being as they understand it, or in pursuing the intrinsic value of autonomy and of shaping one's own future (Grill 2020: 199–200). But that is not the only interest at stake. Parents have interests both in the well-being of their children and in shaping their children's future.⁵ In addition, a liberal state has an interest in the autonomy and well-being of its members. To decide whether the minor's interest in decisional autonomy amounts to a right, we must weigh it against these other interests.

Some theorists might decide whether mature minors should have a right to decisional autonomy not by balancing competing interests but by appealing to some other theory of rights. For example, Melissa Moschella argues that parents are naturally sovereign over their children and have a natural right to make important decisions for them until the children become adults (Moschella 2016: 48), apart from the weight of the competing interests at stake. Hegel similarly rejects a 'balancing of interest' approach and relies on a metaphysical account of the state to reach a quite different conclusion: that the state's authority trumps parental authority over their children (Hegel 1821). My approach does not require that we endorse controversial claims about natural rights or metaphysical accounts of the state's authority. Instead, it has us weigh the competing interests at stake.

The weight of a minor's interest in decisional autonomy depends on their ability to exercise it. If I am unable to choose based on a plausible conception of my own good or in a way that reflects my own commitments, the interest served by giving me the choice may not be substantial.⁶ A convincing answer to the procedural question of who should decide will therefore depend on answers to empirical questions

⁴ Tunick 2015: 130–133.

⁵ I ignore differences between biological parents, adoptive parents, and guardians.

⁶ This is not to say there is no interest in respecting choices of even young children regardless of their capacity (see Grill 2020: 215–217). But respecting a choice differs from granting a child decisional autonomy. A young child can surely decide whether to wear blue or brown shorts, or which Disney movie to watch, but that does not mean they can exercise decisional autonomy by deciding to watch any movie at all or wear any clothing they please without parental oversight.

about the capacities of mature minors to make certain decisions, questions that psychologists and neuroscientists address. It also may depend on whether the minor has developed a stable sense of self and commitments that frame what is in their interest.⁷ It will also depend—crucially, I shall argue—on the practical consideration of whether it’s feasible to make exceptions to the rule that you must be 18 to be treated as an adult.

I defend a qualified version of the mature minors doctrine.⁸ Against this doctrine’s critics (Driggs 2001; Hayes 2018; Partridge 2013; Ross 1995), I argue that mature minors should generally have decisional autonomy rights to make choices against their parents’ wishes even though they are not at the legal age for adulthood of 18. But I add two qualifications: (1) because the determination of whether a minor is mature will involve individualized adjudication, if the number of contested cases would be so large as to make adjudication impractical, or the consequences of the decision are not substantial, we should instead rely on existing lines demarcating minors from adults, as we do in limiting the vote to those who are at least 18; and (2) while the state normally does not review decisions of adults for their reasonability, it should review the minor’s reasons for their decision to ensure the decision promotes interests in decisional autonomy with substantial weight—a review conducted not by the parents but by an indifferent judge. ‘Indifferent judge’ is a term used by John Locke but to which I give a more specific meaning: it is a judge who leaves aside their preferences for resolving substantive issues and focuses on whether the minor meets threshold requirements of cognitive and emotional maturity, and on whether their decision is truly their own, is tethered and not based on arbitrary preferences, is not the result of obvious errors in reasoning, and could be regarded as reasonable to the minor’s ‘future self’ (see Sect. 5).

That I would subject the decisions of mature minors to such a review may lead some to wonder how I can say I defend decisional autonomy of mature minors.⁹ I have several responses. First, just as one’s capacity varies by degrees (see Sect. 2), decisional autonomy is also scalar. No decision is entirely autonomous given all the circumstances outside our control that have shaped us into the agent that makes choices, yet we still recognize many decisions as autonomous to some degree, including decisions subject to oversight or to restrictions such as those set by the harm principle. Women were granted meaningful decisional autonomy in *Roe v. Wade*, which recognized their right to choose to terminate a pregnancy in the first or second trimesters, even though in *Roe* and later rulings the U.S. Supreme Court subjected that choice to state regulations, including a review by a judge in cases

⁷ See Sect. 3, drawing on Schapiro (1999) and Terlazzo (2015).

⁸ The mature minors doctrine is recognized in the U.S. in *In re Swan*, 569 A. 2d 1202 (1990); *In re E.G.*, 133 Ill. 2d 98 (1990); *Cardwell v. Bechtol*, 724 S.W. 2d 739 (1987); and *Belcher v. Charleston Area Medical Center*, 422 S.E. 2d 827 (1992). Cf. Archard and Skivenes (2009; Derish et al. (2000); Driggs 2001) on UK law; Hayes (2018); Will (2006); and Woolley (2005), reviewing the law in the U.K., Canada, and U.S.

⁹ I thank an anonymous referee for raising this concern.

where a minor seeks an abortion but does not want their parents to know.¹⁰ Still, a demand that a minor's decision be based on appropriate reasons seems to challenge decisional autonomy in a way that a review to ensure a person fully understands the consequences of their decision does not.

A second reason subjecting the minor's decision to such a review does not preclude decisional autonomy is that the review I have in mind is *not* a substantive review of whether the decision is in the best interests of the minor. If a judge could veto a minor's decision because they disagree with it, the minor would indeed be denied decisional autonomy. Rather, it is a review of whether the minor's decision process satisfies the requirements of autonomous choice and promotes an interest with substantial weight. So understood, the reasonability review might even be said to promote decisional autonomy. There is a further reason I think my position supports decisional autonomy: one argument I make in Sect. 5 for why we should review a minor's reasons for their decision appeals to the need to ensure that the mature minor's present self respects the interests of their "future self" and so reviewing the decision can be seen as consistent with the decisional autonomy of that self broadly understood to span a lifetime.

Section 2 presents a case for adult decisional autonomy premised on liberal political theory, and a preliminary case for extending a right to decisional autonomy to mature minors based on the scalar nature of capacities. Section 3 goes beyond that preliminary case by supporting a right of mature minors using a balancing of interests approach and arguing that the reasons children in general should not have decisional autonomy rights have less force when applied to mature minors. Section 4 responds to practical objections to granting minors decisional autonomy rights. In Sect. 5 I discuss limitations on this right and explain why I would subject mature minors but not adults to a reasonability review in addition to a threshold review of maturity.

2 The Case for Decisional Autonomy

Why value decisional autonomy? One reason is that there is intrinsic value in choosing for oneself the life one lives. John Stuart Mill expresses this view in the chapter on 'Individuality' in *On Liberty*: "if a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode" (Mill 1963: 270). This is a view also expressed by leading philosophers defending a right of an individual to refuse life-sustaining medical treatment. They argue that regardless of whether we agree with the individual's decision, it should be theirs to make even if a majority think the decision is improper (Dworkin et al. 1997). A utilitarian might defend decisional autonomy differently, by arguing that we are more likely to know our own best interest and therefore advance our welfare than if others decide for us.

¹⁰ *Roe v. Wade*, 410 US 113 (1973); and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). See also Sect. 4 on decisional autonomy with oversight for people with dementia.

Jeremy Bentham takes this position in claiming no one but me can better calculate my net pleasure or pain.¹¹ This utilitarian argument might be put more precisely by saying that an individual better knows what is in their own interest than does anyone else when it comes to certain sorts of questions hinging on value judgments as distinct from technical or factual knowledge. A proficient doctor or engineer better knows what actions are in my best interest when it comes to deciding the best way to treat my ailment or repair my roof; and a person deciding to cross a bridge but unaware that the bridge is out is better off being restrained from crossing it, assuming there is no time to inform them so they can readjust their choice in light of new information.¹² But assuming that I possess, in Mill's words, 'a tolerable amount of common sense and experience', then when the question is what major life decisions will bring me fulfillment, or what life is worth living, I am the best judge of my own interests, or of what constitutes my well-being. So long as we are not coerced or misinformed, and have sufficient capacity and competence to decide, and so long as we don't harm others, choices affecting our lives should be ours to make.¹³ That is the defense of decisional autonomy for adults that I shall rely on, without further argument, in assuming that decisional autonomy has great value.¹⁴ The question then becomes, should mature minors have the same right to decisional autonomy?

It is not difficult to develop a plausible argument that they should. If mature minors fulfill the requisites to exercise decisional autonomy, then the reasons to give adults decisional autonomy apply to them. As people don't suddenly acquire these requisites on their 18th birthday, a case can be made that we should take a gradualist approach. Some minors are more capable of making certain decisions than some adults, and so why prevent them from advancing a weighty interest merely because they have not met an arbitrary requirement of having lived at least 18 years? Several philosophers who address children's rights recognize capacity not as a binary variable which either one does or does not have, but as scalar—one can possess it to varying degrees.¹⁵ Some recent scholarship on dementia relies on the scalar nature of capacity in defending 'supported decision-making': instead of assuming that anyone diagnosed with dementia cannot choose for themselves, some patients with

¹¹ Bentham (1983: 130–131); cf. Feinberg (1992: 91), conveying a Millian view: "a given normal adult is much more likely to know his own interests, talents, and natural dispositions...than is any other party".

¹² This is Mill's example in 'On Liberty' (Mill 1963: 294). For a criticism of Mill's position see Grill (2020: 205–206).

¹³ Mill gives a further defense: decisional autonomy will promote progress. By allowing different 'experiments in living', societies are more likely to achieve noteworthiness and life is less likely to become a 'stagnant pool' (Mill 1963: 281, 266, 267).

¹⁴ There are important defenses of paternalism and criticisms of liberal political theory that I cannot address here. In some societies familial and community interests may be given greater weight than the interest in individual autonomy (Kennedy 2019: 206), which may not be valued at all; but I am assuming a liberal society in which decisional autonomy is valued.

¹⁵ See Archard and Skivenes (2009: 18–19); Grill (2020: 203) (rejecting a "Normative Jump"); Noggle (2019: 107); Fowler (2014: 100) (addressing the distinct question of who should be treated as a citizen, Fowler would use an 'age-group cohort' and for fairness reasons treat everyone within that cohort the same); and Hannan (2019: 118–119) (subscribing to a 'gradualist' view but arguing that 'the law cannot be applied on a case-by-case basis').

dementia are recognized as having some capacity for decisional autonomy, but to make important decisions they must work with a support group of people they trust (Wright 2019; cf. Sawyer and Rosenberg 2020). Similarly, to grant mature minors a right to make medical decisions against their parents' wishes subject to judicial review is to recognize that not being a legal adult need not mean one is unable to exercise decisional autonomy. A preliminary case for decisional autonomy rights of mature minors relies on the position that rights (to make decisions, to vote, to drive a car, etc.) should be granted based on whether an individual is capable of exercising them, rather than on how old they are.

While I shall conclude that mature minors should have a right to make decisions about potentially life-saving medical treatment, we need to think more critically about the underlying rationale. A 14-year-old might be as capable as an adult of driving a motor vehicle, of voting, or of deciding which hobbies to pursue; but if a minor's right to decisional autonomy is to be enforced, we must move from the realm of morality to law, and that brings into play considerations such as institutional costs and constraints. Even if the 14-year-old has a moral right to choose which hobbies to pursue, there may be compelling practical reasons not to provide the minor a legal cause of action to override their parents' will (see Sect. 4). More fundamentally, on my view of rights a right is an interest with greater weight than competing interests, and so before we can say the minor has a moral right their interest in decisional autonomy must be weighed against competing parental interests.

I defend a right of a minor to make important decisions against their parent's wishes by addressing the above considerations. Before doing so, we should keep in mind that there are other rights that may support restrictions on parental authority. For example, Maura Priest appeals to a right not to be harmed—a right possessed by children and adults alike—in arguing that transgender youth have a right to puberty-blocking treatment (PBT) over the objections of their parents. She argues that if a transgender child is denied PBT they may suffer gender dysphoria with potentially severe consequences (Priest 2019: sec. 4). If so, the state could have a compelling interest in protecting transgender minors from such psychological harm.¹⁶ Priest declines to rest her argument on the mature minors doctrine because transgender children have a right not to be psychologically harmed regardless of their level of maturity (Secs. 1, 5.1). She recognizes that relying on this right might open the door to excessive state intrusions into parental autonomy if the conception of psychological harm is drawn too broadly. That risk would be avoided if we relied instead on the mature minors doctrine. But as Priest notes, that doctrine will not help non-mature minors who face harm. In the case of mature minors refusing medical treatment, in contrast, the minor claims not a right to avoid harm (see Sect. 3), but a right to decide what life is worth living, and so it is appropriate to rely on a right to decisional autonomy. But that right cannot be exercised by just any minor.

¹⁶ Some may contest that this is a compelling interest, arguing that PBT can have negative consequences such as later patient regret. Priest says, however, that PBT is 'completely reversible' (Sec. 2.2).

3 Should Children Have Decisional Autonomy Rights?

I now discuss how a right of decisional autonomy for mature minors might be established using a balancing of interests approach. I begin by considering three sorts of reasons why children in general might *not* have a sufficient interest in decisional autonomy to offset competing parental interests. This will help us define the scope of decisional autonomy rights that some minors *should* be granted. The first sort of reason is that children lack essential requisites to exercise decisional autonomy. I will refer to two. First are ‘capacity’ requisites: because their brains are still developing and they have limited education and experiences, children generally lack the cognitive and emotional capacities as well as information needed to exercise decisional autonomy. A second requisite are ‘commitment’ requisites. In part because of their limited life experience, children are less likely to have formed a core set of values and commitments, and as I shall discuss, the interest in exercising decisional autonomy without such commitments can be less weighty. A second reason is that parents have an interest in shaping their children as the parents think best. And a third reason is that even though some adolescents have capacities and knowledge exceeding those of some adults, practically we need to use a bright line proxy for adult status, such as ‘being at least age 18’, since we couldn’t possibly evaluate each minor whenever they claim to have a right to make their own decision. I address the first two reasons in this section and the third in Sect. 4.

The most obvious sort of reason for not giving children the decisional autonomy rights accorded adults is that children lack the capacities and other requisites of decisional autonomy. Children’s brains are not yet fully developed and equipped to make good decisions. The U.S. Supreme Court, in *Roper v. Simmons*, based its decision not to allow the execution of a person who was under 18 at the time they committed a capital offense in part on studies indicating that juveniles are less mature and accountable for their actions (543 U.S. 551 (2005), at 569. Cf. Hayes (2018: 703–704)). But this reason loses force for children who have matured to the point where they are functionally equivalent to a normal adult.¹⁷

Besides having less developed brain functioning, most minors—even gifted young prodigies with greater cognitive capacities than most adults—typically have less experiential knowledge compared to adults. Children may be unaware of the broad variety of lives that have been found to be worth living, even lives with great hardships. Partly as a result of having confronted fewer hard choices, children typically have fewer occasions to develop their own set of values and commitments that steer them in making important life decisions. This line of argument is developed by Tamar Schapiro, who says children lack a stable practical identity and established set of values and aims (Schapiro 1999). Rosa Terlazzo, who diverges from Schapiro’s

¹⁷ Opponents of the mature minors doctrine might point to studies indicating that brain growth and new neural connection formation still occurs even beyond the age of 18 (Driggs 2001: 709, citing Sowell et al. 1999; Partridge 2013; Wilhelms and Reyna 2013). But this is relevant only if that continued growth and development is essential for exercising decisional autonomy, which it might be exceedingly difficult to establish—cf. Sect. 5.

position in some ways, nevertheless reaches a similar conclusion that there are reasons other than diminished capacity for not giving children the same decisional autonomy rights that we give adults. Drawing on the work of Cheshire Calhoun and R.E. Goodin, she emphasizes the importance in making decisions of commitments and ‘settling’. I might develop a commitment to animal rights, for example, a commitment that helps to define who I am and leads me to develop strong interests. I then may settle on important decisions, such as a choice of career, or where to live, based on that commitment. While you might not think my choice is optimal, what is in my best interest depends on commitments I have already settled on and which I best know. The fact that decisions an adult makes must be evaluated in the context of their already-formed commitments is, for Terlazzo, a reason to reject paternalism for adults. But children are less likely to have settled on commitments.¹⁸

I want to expand on Terlazzo’s account by referring to some decisions as ‘tethered’. By this I mean they are not a mere arbitrary preference but are grounded in commitments that are themselves integrated with other commitments so as to constitute one’s whole way of life. Tethered decisions have a stability that those based on a preference randomly selected or chosen in the mood of the moment do not. The latter tend to fluctuate. An important decision affecting my future based on a momentary preference might not be justified to my future self, for whom the earlier choice may seem arbitrary and oppressive. The interest in making such choices carries less weight than the interest in making tethered decisions that reflect core commitments, and a choice based on a mere desire rather than an interest may have no weight at all. Overruling a tethered decision rooted in a set of core commitments one has chosen to live by is more paternalistic and objectionable as it challenges my very identity.¹⁹ For non-mature minors, paternalistic intervention would not challenge core commitments as it would for adults, or for mature minors whose decisions *are* tethered to core commitments and values.

A second rationale for denying children decisional autonomy rights is that significant decisions affecting their lives *ought* to be under the control of their parents. It is important to distinguish two distinct reasons why, because only one has weight when it comes to mature minors. First, parents generally have the greatest interest in their children’s welfare, and where a child lacks the capacity to make important decisions for themselves their parents may be best suited to ensure that welfare. This rationale supports John Locke’s argument for parental authority in his *Second Treatise of Government*. Locke argued that children are not born *in* the full state of equality, though they are born *to* it, and until they develop their reason they are temporarily subject to parental authority. For Locke, age and reason loosen the bonds of parental authority, which are like ‘swaddling clothes’, til they ‘drop off and leave a man at his own free disposal’, which for Locke occurs at the age of 21 ‘and in some

¹⁸ Terlazzo says this is especially true in wealthy, Western democracies where children are taken care of and aren’t forced to settle on careers early in life (Terlazzo 2015: 317, 322). Terlazzo thinks that children don’t need to settle on commitments to have an identity and self-respect, and so we don’t need to pressure even older children to choose their career (315–316).

¹⁹ Here I rely on the intuitive appeal of this claim, which is developed further in Tunick 1992: 55–61.

cases sooner' (Locke 1690: Pars. 55, 59). This reason, though, is not really distinct from the first sort of reason I already considered—that children lack the capacity to make autonomous choices. Locke just tells us who steps in to look after children until they are able to look after themselves. Parents are good choices because, one hopes, their natural affections and unconditional love for their children (Mills 2003: 505) mean they are most inclined to do what is best for them (Chen 2007: 651).

Colin Macleod presents a distinct reason why, apart from the need to stand in given a child's reduced capacities, it is a good thing for children to be shaped by their parents: the parental interest in 'creative self-extension'. Passing on your own ideals to your children and shaping their identity—extending one's self to one's children—'can be a profound source of satisfaction' (Diekema 2004: 244; Macleod 2010: 142; cf. Galston 2011; Moschella 2016: 23–24).

Locke's reason to limit decisional autonomy rights of minors loses its force when the minor is mature. Even though parents still care about the well-being of their children, once the children are mature neither the parents nor the state have a claim to decide what is in their best interest—the minors can now decide this for themselves. But the parental interest MacLeod identifies of extending one's self to one's children still remains even when the minor is mature.

There are limits to parental authority even over minors who are not mature. Locke presents his account of parental authority in the *Second Treatise* when he discusses a state of nature prior to the existence of political society. Though Locke does not dwell on the point, once we form a government a new source of authority to which we consent governs and can override parental authority. If a minor is not mature and their parents are not suited to act in the child's best interest, as when the parents are abusive or unreasonable, or deferring to parental authority would harm the child, the state can step in as *parens patriae*. For example, while adult Jehovah's Witnesses in the U.S. have the right to refuse life-extending blood transfusions for themselves, they do not have the right, as parents, to deny such treatment to their children, even for religious reasons (Chemerinsky and Goodwin 2016; Woolley 2005). The state may override parental authority in this and similar cases to prevent harm.²⁰ Parental authority over non-mature minors might be limited not only to prevent harm but to ensure the positive development of children²¹; or to promote a greater public good, as when governments in the U.S. require children to be vaccinated (*Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (vaccinations of adults); *Viemeister v. White*, 179 NY 235 (1904) (vaccinations of school-aged children)); or set standards for private or home-schooling to ensure children are prepared to become productive and self-sufficient citizens (*Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972)). In such cases the state rightly intervenes insofar as the interests in public safety or the child's welfare rise above parental interests in creative self-extension.

²⁰ Cf. the U.S. case of *Commonwealth v. Nixon*, 718 A. 2d 311 (1998): parents refused medical treatment for their child and instead relied on prayer, the child died as a result, and the parents were found criminally liable. Cf. Priest (2019: sec. 5.1); Will (2006: 235, 281–282).

²¹ Cf. Gheaus (2018), arguing that children have a right to a flourishing childhood that entails a moral right not to be subjected to monopolies of care in the hands solely of their parents; and Feinberg (1992), arguing that children have a right to an open future.

When it comes to *mature* minors, Locke's justification for having parents decide what is in the child's best interest no longer has force. But we still must ask whether the mature minor's interest in decisional autonomy is outweighed by the parent's interest in creative self-extension.

The Supreme Court of Illinois addressed this implicitly in *In re E.G.*, a case similar to one I introduced in Sect. 1, and reviewing the court's reasoning is instructive. Ernestine, aged 17 and a Jehovah's Witness, refused to consent to a blood transfusion which was needed to treat her leukemia. The case didn't involve a conflict between child and parent, as E.G.'s mother also refused to consent; rather, the state disagreed with both minor and parent. The state filed a neglect petition, and E.G. testified that her decision was her own and that she resented having it ignored (133 Ill. 2d 98, 103 (1990)). Justice Ryan adopts the mature minors doctrine: if E.G. was a mature minor, which would need to be determined by the trial court on remand, she could have a right to refuse treatment.²² But Justice Ryan noted that the mature minor's right to decide must be balanced against the state's interest in preserving life and protecting third-party interests (111). For Justice Ryan, the most significant third-party interests are those of the parents or guardians, and he declared that if they opposed the mature minor's refusal to consent, this would 'weigh heavily against the minor's right to refuse' (111–112). To anticipate the argument I now develop, I believe this part of Justice Ryan's opinion is misguided: a mature minor's interest in decisional autonomy is not outweighed by the interest of their parents in still controlling the future of a child who has, in Locke's words, 'dropped off their swaddling clothes'. The reason Macleod identifies for giving parents authority to override decisions of their children—that extending oneself to one's children is a profound source of satisfaction—while important, is not more weighty than a mature minor's interest in deciding for themselves what constitutes a worthwhile life.

Suppose a mature minor is faced with the decision of whether to undergo a risky and painful procedure that might extend his life for as much as ten years—but with a substantial probability that the quality of life would be low. However, if the procedure goes badly it could cause him to suffer a paralyzed, conscious death in the pediatric ICU within a week, a prospect that understandably terrifies him. Without the procedure he might live for just a year but would die in a comfortable environment.²³ Suppose that the minor's decision relies on a rational calculation of expected costs and benefits. Drawing on the evidence available of the likely success of the treatment, the likely length and quality of life that would result, and the pain and suffering he'd endure from the procedure, he might articulate a reason for refusing treatment based on what legal philosopher Kent Greenawalt calls 'ordinary secular criteria' (Greenawalt 2006: 810) that an indifferent judge could assess in terms of its consistency with the available evidence and the minor's conception of a life worth living. If minors have the requisite capacity to reason through this dilemma—if they have shed their 'swaddling clothes' and are in effect an adult—and their decision is not wholly unreasonable, and does not harm others, they should make the decision

²² Since E.G. was now 18, there was no need to remand.

²³ A similar scenario is presented in Derish et al. (2000: 109–111).

for themselves, subject to scrutiny by the state, even if they can't convince their parents to approve, because they are the ones with the greatest interest at stake: their entire future hangs in the balance.²⁴

One might object that in refusing medical treatment mature minors will be harming their family members and others who love them. But this objection rests on a casual use of the word 'harm' that we should resist. The mature minor's decision might hurt their loved ones, but to hurt someone is not to harm them. Drawing on Joel Feinberg's analysis, to harm is to set back interests that are regarded as rights (Feinberg 1984: 33–35), and there is no right not to be hurt (45–59) or not to suffer grief. One might object that if refusing medical treatment leads to certain death, the decision harms the minor. But the cause of death is the underlying disease, not the decision; and in any case, in a liberal society decisional autonomy may be exercised even if a decision harms oneself, so long as it does not harm others.²⁵

One might press the objection further: a weighing of the minor's interests against those of their parents might still favor the parents even if they are not technically harmed. But that objection was, I think, effectively undermined by Jeremy Bentham and David Hume. They argued that in cases where an individual is condemned to live a life of lingering misery, the pain he shall suffer by continuing to live far exceeds the pain those who care for him will endure by his death (Bentham 1962: 2:4; Hume 1799: Par. 15).

4 The Practicality of Granting Mature Minors a Right to Decisional Autonomy

Section 3 presented some compelling reasons for limiting children's decisional autonomy when they are young. But, I argued, as children develop their capacities for judgment, and core values and commitments, the case for parental authority diminishes. I also claimed that a mature minor's interest in decisional autonomy can outweigh the competing interest of parents in controlling the future of their children. We should not entrust children to make important choices affecting their future if they lack the capacity and other requisites to do so, but mature minors presumptively have these requisites. There remains, though, a formidable objection to establishing decisional autonomy rights for minors: it would be impractical for the state to determine whether every minor claiming a right to make decisions against their parents' wishes meets the requisites. This is precisely why the state sets up bright-line rules defining adulthood. In this section I respond to that concern.

²⁴ Some U.S. courts have allowed minors to refuse medical treatment: see *In re Swan*, 569 A. 2d 1202 (1990), discussed in Will (2006: 167–168) (allowing 17-year-old to refuse intubation); and Driggs (2001: 687–688) (allowing 15-year-old to refuse immunosuppressant drugs for his liver transplants)—but in both cases parents agreed.

²⁵ Chen (2007) agrees with the mature minors doctrine except if a decision causes harm. She counts harm to self as harm (668) without acknowledging the important distinction in liberal theory between harm to others (not permitted) and harm to self (permitted).

Perhaps the most powerful objection to the mature minors doctrine is that it is too difficult to determine which minors are mature. But it is important to properly identify the difficulty. Driggs argues that we cannot make this determination in principle: the evaluation of maturity is a 'subjective and arbitrary process' (Driggs 2001: 715–716). Yet she also concedes that the rate of development varies for each individual (p. 716), which implies there are measurable criteria of maturity. Judges and ethics boards routinely determine competence using non-arbitrary criteria (Derish and Heuvel 2000: 113, 117–118). U.S. courts have denied minors the right to refuse potentially life-saving medical treatment when there was insufficient indication that the minor was forming their own judgments rather than deferring to their parents' wishes, or when the minor's reason for refusing treatment showed a lack of maturity, as when a 16-year-old with Hodgkin's lymphoma refused treatment because she was 'very fearful' of the hospital and of waking up with 'tubes sticking out of her' (See *In re Cassandra C*, 316 Conn. 476 (2015); and *Application of Long Island Jewish Medical Center*, 147 Misc. 2d 724 (1990)).

The real difficulty is practical: if courts were asked to determine competence whenever a minor seeks to make a choice that their parents or the state deny them, courts might be overwhelmed. To avoid this, governments draw lines based on age so that being a certain age is a proxy for being competent to decide. Lines have been drawn throughout history, sometimes for historically contingent reasons. In Northern Europe in the 9th–10th centuries the test for being an adult was tied to the ability to bear arms, which was set at 15 and later raised when horses came to be used in battle and the increased weight of arms required a strength not typically acquired until 21 (James 1960: 26–28, 33; cf. Will 2006: 238).

Lines based on age may also be arbitrary, in the sense that there is no compelling reason to make the boundary between minor and adult 18 as opposed to 17 years and 11 months. But sometimes we need a fixed though imperfect line because it would be impractical to make an individual determination. Whether a fixed line is justified will depend on the feasibility of making individual determinations. Consider the rule in the U.S. that one must be at least 18 to vote. One might object to drawing this line on the ground that the requisites for competent voting include a basic knowledge of government and public policy issues that some 16-year-olds have and some adults sadly lack. But even leaving aside the formidable objections to imposing a voting competency test, which would call to mind literacy tests of the past that were used to prevent African-Americans from voting, the practical difficulties of granting a hearing to every minor who claims they are competent to vote would be so great that an age-based proxy is reasonable. In contrast, where the number of situations in which a minor will want to assert an important decisional autonomy right is small, case by case determinations would be possible without overwhelming the courts. It is rare for a minor to refuse potentially life-extending medical treatment contrary to the wishes of their parents, and so adopting a mature minors doctrine in this specific

context would not be impractical.²⁶ While such cases may be rare, they will be of great importance to mature minors who have an interest in deciding their future.

One might think that if I defend a right of mature minors to make life or death medical decisions, surely I must defend their right to make decisions on lesser matters against the wishes of their parents, but that does not follow from my argument. First, a minor's interest in making an arbitrary choice with no bearing on their welfare may not outweigh the parental interest in creative self-extension. Even if it did, if mature minors could claim a legally enforceable right to disobey *any* exercise of parental authority, such as a curfew, or a restriction on seeing friends the parents think are a bad influence, courts would be overwhelmed. There are "transaction" costs to providing hearings with due process and judicial review, and as a threshold matter the value of the mature minor's interest in challenging their parents' authority should at least be equivalent to those costs, which could be substantial when considering the need for a judicial hearing, exams, and testimony from experts.²⁷ While morally it may seem senseless to use an arbitrary, binary cutoff between children and adults given that capacity is a scalar variable and some children are better equipped to decide than some adults, practically we need such cut-offs, and a crucial part of my argument is that because cases where mature minors wishing to make life or death medical decisions against their parent's wishes are rare, it is feasible to do the morally right thing.²⁸

5 Limits to Mature Minors' Decisional Autonomy Rights

That there are compelling reasons to leave a decision which affects no one more than the mature minor in their hands and not in their parents' does not mean we must grant mature minors the same degree of deference we grant adults. In this section I lay out some limitations on the right of mature minors to decisional autonomy beyond the limitation that bright line rules demarcating adults as at least 18 may often be practically necessary.

First, for the interest in decisional autonomy to be a right it must outweigh competing interests including interests in public safety. In the case *In Re J.J.*, a 14-year-old boy refused medical treatment for his gonorrhoea, preferring instead to rely on faith healing. The court ordered medical treatment: even though it recognized the

²⁶ In contrast, governments might need to use a proxy out of practical necessity if many children wanted to be vaccinated against their parent's wishes, which may be the case during the Covid-19 pandemic (cf. Hoffman 2021).

²⁷ Review processes for disputes between health care provider and patient or family about treatment decisions vary by state in the U.S. but, generally, if they cannot be resolved informally a state agency may be informed and seek an order that results in an evidentiary hearing reviewed by a judge. Healthcare professionals may interview the minor and present their findings to the court. For examples of the process in the U.K., see Griffith (2016).

²⁸ Fowler convincingly argues that it might not be moral to use capacity criteria rather than age to decide who may vote, since letting some people vote and others not though they are of the same age could symbolically undermine a commitment to liberal equality (Fowler 2014: 97–99, 103); but such considerations don't come into play in the context of making medical decisions.

ability of minors to make important decisions before they reach 18, J.J.'s refusal created a substantial risk to the community (582 N.E. 2d 1138 [1990]). Decisional autonomy of both adults and minors can rightly be limited by the state in order to prevent harm to others.

A second limitation is that decisions of mature minors, in contrast to those of adults, should be subject to a review of the minor's reasons, in order to ensure they promote interests in decisional autonomy with substantial weight. This review—which I'll call a 'reasonability review'—is conceptually distinct from a threshold review to ensure the minor is mature and meets the requisites for decisional autonomy. Even if a minor passed a threshold test for maturity, that would not mean their particular decision promotes those interests. For example, the commitment requisite for decisional autonomy may be met if a mature minor demonstrates stable core commitments; but the interest in decisional autonomy may not be advanced unless the minor's decision is tethered to those commitments. In some cases a threshold test may be inconclusive without reviewing the minor's reasons for their decision. A threshold test may reveal a less developed brain, but some studies suggest this may impact one's ability to decide autonomously only when one is emotionally aroused and subject to peer pressure (Steinberg 2013), and a review of the minor's reasons for their decision could establish whether a decision was made under such pressure. It may therefore be convenient to combine reviews of threshold requisites and reasons for the decision in a single hearing.²⁹ But my aim is not to spell out procedural details and I expect there would be several suitable approaches. In using the term 'reasonability' we must keep in mind that I refer to a review not of the substantive merits of the decision but to reasonability in a specific sense of whether the reasons for the minor's decision meet various criteria for decisional autonomy (see below). Considerations that the review takes into account such as capacity and commitment factors that might conceptually be regarded as part of a threshold review of maturity may have nothing to do with a decision's substantive reasonability.³⁰

Before sketching the sort of reasonability review I have in mind, I address why it is that decisions of mature minors but not adults should be subject to one.

Suppose that a competent adult, as opposed to a mature minor, voluntarily refuses a blood transfusion because they have the demonstrably false belief that all blood carries HIV (Greenawalt 2006: 807). Assuming this choice will not cause harm to others, in a liberal state the refusal should arguably still be permitted even though it is unreasonable. Kent Greenawalt takes this position, appealing to the value of decisional autonomy: it is better for society if its members have an absolute right to refuse such treatment even if the result is to give effect to a 'few stupid

²⁹ While Archard and Skivenes offer good reasons why the same judge should not decide both whether the minor is mature and whether their decision is prudent (9–10), the reasonability review I propose is distinct from an evaluation of whether the decision is prudent or in the child's best interest.

³⁰ An anonymous referee notes that a decision may fail the review I propose on grounds that it was not made competently or was coerced, yet happen to be reasonable in content. On my balancing of interests approach we would not recognize a right of a minor to make that decision if doing so would not promote weighty interests in decisional autonomy. However in this case the state might intervene if the parents insist on an unreasonable outcome that goes against a minor's best interests.

choices’—otherwise there would be ‘too many debates about the boundaries of reasonable choice’, and the status of patients’ wishes would be left uncertain (805). Even if we regard a choice that could end one’s life as harming oneself, liberal theories of the state permit individuals to voluntarily harm themselves. An exception might be made if the person acquired the false belief by being manipulated, perhaps by someone with malicious designs. Some forms of paternalism are consistent with liberalism if they promote genuine decisional autonomy by ensuring that an individual’s decision was not manipulated or coerced.³¹

Not all liberals will agree that adults should be free to make wholly unreasonable decisions. Even Mill qualifies his defense of decisional autonomy (see Sect. 2) by saying it applies “if a person possesses any tolerable amount of *common sense* and experience.”³² Yet the state doesn’t typically subject decisions of adults to a competency let alone a reasonability review.³³ There are strong practical and principled objections to the state doing so. The practical objection is the now familiar one of a lack of institutional resources and high transaction costs. It isn’t feasible to review the reasonability of every major decision adults make. The principled reason appeals to the value of decisional autonomy—of individuals determining for themselves what counts as their own well-being. Adults will often make decisions based on their core commitments (Terlazzo 2015: discussed in Sect. 3). To challenge the decision might be to challenge the commitments one has built one’s life upon, which is not something a liberal state should do. Adults may take on commitments that are misguided, so that we, or their future selves, might question the value of their ensuing life: but in a liberal society that values decisional autonomy individuals must live with that possibility.

That decisions of adults, as opposed to mature minors, are more likely to be tethered to core commitments upon which they have built their life is an important principled reason for not subjecting adult decisions to the same ‘reasonability review’ to which I think we should subject decisions to refuse medical treatment made by mature minors, and so I want to expand on this point with an illustration. In his novel *The Remains of the Day*, Kazuo Ishiguro has us reflect on the life of Stevens, who settles on many important decisions by relying on his commitment to follow in his father’s footsteps and become a ‘great butler’, and in particular to serve Lord Darlington (Ishiguro 1988). Some of his decisions, made in pursuit of this overriding goal, foreclose others that might have led to a happier and more fulfilling life, such as courting Miss Kenton. Stevens’ commitment to serving Darlington is so important to him that at a prominent conference Darlington hosts, Stevens opts to carry out his butler duties, involving trivial matters such as tending to the sore feet of one of the guests, rather than be by his father’s bedside

³¹ See Tunick 2019: 82–83, 105–106.

³² Mill (1963: 270), my emphasis. With his bridge example, given earlier, Mill suggests also that an individual’s liberty to choose might be restricted if based on false information.

³³ Competency hearings may be conducted regarding medical decisions, contracts requiring informed consent, custody disputes, where mental competence is an issue in a criminal trial, or if a person may pose a threat to themselves or another, for example.

as his father nears death. Being a butler defines who Stevens is and gives his life meaning. As Lord Darlington is influential in international politics, having hosted the likes of Churchill and Ribbentrop, Stevens proudly sees himself in his own modest way as making the world a better place. But Stevens' core commitment to serve Lord Darlington turns out to be misguided. Lord Darlington, we learn, was encouraging a British policy sympathetic to the Nazis because of his antiquated sense of honor, appropriate perhaps a few decades earlier but dangerously idealistic with the rise of Hitler. When, later in his life, Stevens visits the former Miss Kenton, now Mrs. Benn and soon-to-be grandmother, his heart is breaking. Knowing what he now does about Lord Darlington—truths he long willfully denied—he surely feels deep regret over his choices. He copes by focusing on the days remaining rather than on the past, still committed to being a great butler for his new master Mr. Faraday. Adults have to accept that they may make decisions their future selves will regret. The tremendous value of decisional autonomy is not without its costs. But as Ishiguro suggests in another work, 'there is certainly a satisfaction and dignity to be gained in coming to terms with the mistakes one has made in the course of one's life' (Ishiguro 1986: 133).

I do not think Stevens' career decision to become a great butler was unreasonable according to the criteria of reasonability I will discuss below. Yet some of his decisions were regrettable, framed by an overarching commitment that in hindsight was misguided. Even if they *were* unreasonable, competent and informed adults should be free to make even unreasonable decisions if truly consented to and if they do not harm others. But mature minors may still be developing a stable set of core values and commitments, so that their decisions may not be fully tethered. A paternalistic inquiry into the reasonability of their decisions would not be as unsettling to someone yet to have fixed on deep-seated commitments in the way it would be to an adult like Stevens (see Sect. 3). The point is not that Stevens should never have questioned his commitments, but that as an adult it is his and not the state's responsibility to determine the life worth living for him; and for practical reasons the state simply can't question everyone's decisions. But it is not impractical for the state to inquire into the reasonability of relatively rare decisions on life and death matters that mature minors make against their parent's wishes, to ensure they are tethered and otherwise promote interests in decisional autonomy that are weightier than competing interests.

The reasonability review I have in mind is conducted by an indifferent judge. While there is no guarantee a particular judge will be indifferent, judges at least are trained to be impartial and can bring a detachment that we could not expect from parents; and their decisions are subject to appellate review.

The reasonability review is distinct from a review of the substantive merits of the decision—of whether the decision is prudent or in the 'best interests' of the minor. The premise of a right to decisional autonomy of mature minors is that they, not their parents or the state, should determine what is in their best interest. The judge conducting the reasonability review would veto a decision not because they think the

decision is imprudent, but because it fails to satisfy the requirements of an autonomous choice and to promote substantial interests in decisional autonomy.³⁴

I don't intend to provide an exhaustive list of criteria for a reasonability review; nor do I claim to adequately defend the criteria I now suggest. My more modest goal is to illustrate how a reasonability review that focuses on whether interests in decisional autonomy are promoted is distinct from a substantive review of a decision's prudence that *would* be incompatible with the mature minor having decisional autonomy. An indifferent judge might ask:

(1) Does the minor decide based on reasons of their own, or do they defer to the authority or will of others? The interest in decisional autonomy is advanced only if the decision is made autonomously and so if, for example, a minor refuses medical treatment because 'this is what all my friends think I should do', the minor fails the test. Similarly, an interest in decisional autonomy is not advanced if the minor makes their decision arbitrarily, by flipping a coin, or if their reason is simply 'this is what I prefer'. One might object that a decision based on a pure preference with no other rational ground is still autonomous and that there is value in being able to make such choices. But the interest in making such choices is less weighty than the interest in making choices that reflect our core values and commitments.

(2) Are there obvious errors in reasoning? For example, if the minor makes important decisions based on whether their future life would have net positive utility, and they refuse medical treatment because they would suffer significant discomfort but only for a week, the calculation would have improperly discounted the future, and a judge could say this was not reasonable. The judge, here, vetoes the decision not because they disagree with the result but to ensure the minor's decision genuinely reflects the minor's will.

(3) Is the decision tethered? Consider the decision of the 17-year-old Jehovah's Witness who refuses potentially life-saving medical treatment because of her religious beliefs. Whether or not we think that such a decision when made by an adult is unreasonable, when proffered by a minor a religious reason may not be tethered. One's views about religion often change throughout early adulthood well past when one is 18. A Pew Research study found that half of American adults change their religion at least once, and of those who do, over half do so after the age of 18, and a substantial percentage after the age of 24 (Pew 2009). Jonathan Will argues that if a minor can show with 'clear and convincing evidence that they both understand the medical aspects' of the decision to refuse treatment for religious reasons, and that 'their religious beliefs are central to their conception of well-being' (Will 2006: 237; cf. 283), the state can support the minor's decision even if it goes against the parents' wishes. He notes the insufficiency of the inquiry the U.S. Supreme Court relied on in *Wisconsin v. Yoder*, where a 15-year-old Amish child was merely asked a few yes/no questions about whether she agreed with being homeschooled in accordance with Amish religion and traditions (Will 2006: 286). I agree that the scrutiny of a

³⁴ According to Archard and Skivenes, this is *not* how courts in the UK using the "Gillick-competent" test typically evaluate medical decisions of minors. Instead they invoke their own idea that prolonging life is obviously always in the best interests of the child (pp. 8–9).

mature minor's reasons should be more rigorous. But I leave open the possibility that even if a minor's religious beliefs are central to their conception of well-being, that conception may not be stable, and the decision not tethered. The interest in making such decisions carries less weight when we balance interests. Of course, that a decision is tethered now is no guarantee it will remain tethered later in life: people change their careers, religions, philosophical outlooks, and other commitments. This possibility is one motivation for invoking the final criterion in the reasonability review that I propose.

(4) Is the decision one that the minor's future self could regard as reasonable? To introduce this idea it may be helpful to draw on an analogous idea: that the constitutional provisions—or more broadly, the legal and moral imperatives—that are enforced within a political society should be justifiable to its members by appealing to 'public reason' (Quong 2017: Sec. 2). A liberal society is characterized by the 'fact of pluralism': citizens hold a diversity of comprehensive doctrines as to the meaning, value, and ends of life. According to one theory of liberal pluralism, laws to which we subject our fellow citizens should be justifiable by reasons that are 'publicly accessible', which means accepting the reason does not require that we endorse a particular comprehensive doctrine.³⁵ It won't do to justify a ban on pork with the reason 'God prohibits the eating of pork': that relies on a particular comprehensive doctrine that others might not accept and so the reason is not publicly accessible. Enforcing this ban would therefore require the oppressive use of state power. I propose that we draw on an analogous idea in reviewing the reasonability of a mature minor's decision. While a mature minor's medical decisions needn't be justifiable to fellow members of society, they should be justifiable to the minor's future self, for whom an unreasonable decision could be oppressive.

Deciding not to court a woman because one's career was more important, as Stevens did, may be something one's future self regrets but still could regard as reasonable. Refusing a medical procedure because one fears eternal damnation, though, may not be. If the decision were made by an adult this would not matter—adults have a right to act on whatever they believe without the state challenging their core values and commitments, so long as they do not harm others. But for mature minors, whose decisions are less likely to be fully tethered, it is not impractical given the rarity of cases where mature minors want to make important medical decisions against their parents' wishes, to ask whether their future self would have been able to accept the decision as reasonable. In this way the present self respects the interests of its future selves. Invoking this consideration is different than substantively reviewing the decision for its prudence: the judge rejects the minor's decision not if it fails to be in the minor's best interest, but if the reasons given do not advance the interest in decisional autonomy of the minor's self understood broadly to span a lifetime. That interest is especially weighty when, as are some medical decisions, the decision is irreversible.

³⁵ Rawls (1987: 4–5). Cf. Quong (2017: sec. 3): "controversial claims about religion, morality, or philosophy cannot be part of public reason".

While my objective is not to defend detailed guidelines for a reasonability review, I would like to make some observations and point to some issues concerning this last prong, which may be the most contentious.

This last prong of the reasonability review can be linked to the previous consideration of whether the minor's decision is tethered. To declare a minor to be mature is to regard them, as we regard adults, as able to determine for themselves what is in their best interest. As discussed in Sect. 3, what is in my best interest may depend on commitments I have already settled on; but a decision untethered to stable commitments might seem arbitrary, and the interest in making such a decision may have little weight. The last prong of the reasonability review might be structured to reflect the importance of stable commitments to decisional autonomy. Recall again the mature minor who refuses a life-saving blood transfusion because she is a Jehovah's Witness. One might argue that if her religious convictions seemed stable, and her decision fully tethered to a set of core values and commitments, a judge should conclude that her future self could likely share these values and commitments and find the decision acceptable; but that if her decision were not tethered in that way, then not knowing the future self's core commitments and values, we couldn't assume that the future self would find it acceptable. In that case, one might argue, the judge should instead use a 'reasonable person' proxy for the future self, which might entail asking whether the decision is supported by publicly accessible reasons. But one might also plausibly argue that a reasonable person proxy should *always* be used for the mature minor's future self, on the ground that even if the present minor's decision were tethered to stable commitments at the time, these commitments might change and the decision might become untethered, in which case a future self might not be able to regard the present self's decision as acceptable.

Using a 'reasonable person' proxy to determine if the future self could accept the present minor's decision would raise some challenging questions. Should the indifferent judge regard as reasonable a mature minor's decision that is based on a utilitarian calculation of costs and benefits but not one based on a religious belief in the doctrine of eternal damnation, on the ground that the latter is not one the future self could accept? One might object that both reasons appeal to a comprehensive doctrine that a reasonable future self may not accept.³⁶

The reasons given by the Jehovah's Witness and the utilitarian seem distinguishable, but not because the religious reason is less likely to be tethered. J.S. Mill was a confirmed Benthamite utilitarian until, when he was 20, he had a mental crisis and found that philosophy woefully inadequate. A 17-year-old utilitarian might, a decade or two later, become a staunch Kantian who believes in the infinite worth of human life no matter how miserable that life is (Cf. Grill 2019: 130). Rather, a decision based on either a utilitarian or Kantian framework is scrutable in a way a decision based on a conception of eternal damnation is not. The demand that a mature minor's reason be accessible to their future self is a demand not that they would find the reason most persuasive, only that they could see it as a reasonable basis

³⁶ Cf. Quong (2017: 7.5), noting an objection that public reason has an in-built bias against religious doctrines.

for a decision even if they disagreed with the decision. If a mature minor's decision were based on utilitarian reasons and their future self becomes a Kantian, the Kantian might still appreciate the force of the utilitarian rationale, while opposing it, and in that sense find the decision justifiable. Kantian or utilitarian views overlap with ideas that are familiar to us in everyday practical reasoning—showing respect for others, weighing benefits against costs—but the idea of eternal damnation is not accessible to anyone who doesn't share certain religious beliefs.

That response may not satisfy those who don't see why Kantian or utilitarian morality provides an acceptable basis for a decision while a belief in eternal damnation does not. But while there would surely be disputes as to what a reasonable-person proxy of the 'future self' could accept as reasonable, a judge could still non-controversially rule out a number of reasons a mature minor might give for refusing medical treatment, such as 'I don't like tubes sticking out of me'. The indifferent judge might rule out decisions that are based on definite cognitive errors or demonstrably false beliefs that are refuted by reliable scientific evidence, because such decisions might not be acceptable to their future self and therefore not promote a weighty interest in decisional autonomy.³⁷ A judge could also ensure that some of the pressures and limitations in decision-making that adolescents and young adults are more likely to succumb to do not govern a mature minor's decision and would not lead them to make a decision their future self might regard as unreasonable.

While I leave unresolved some issues concerning its implementation, my objective has been to make the case for a reasonability review in *some* form. Drawing on a balancing of interests framework, I have argued that the review, distinct from a review of substantive merits, and applied to mature minors but not adults, should ensure that decisional autonomy interests of mature minors, that take into account the interests of their future selves, are sufficiently weighty to offset parental interests in creative self-extension. Given the scalar nature of capacities for decisional autonomy, some minors are more capable than some adults of making important decisions concerning their own lives, and morally it seems wrong to deny them the right to decide merely because they fail to meet an arbitrary cutoff of not having lived 18 years. However, if mature minors could claim a legally enforceable right to disobey any exercise of parental authority, courts would be overwhelmed. A crucial feature of my argument is that because cases where mature minors wishing to make life or death medical decisions against their parent's wishes are rare, it is feasible to do the morally right thing. While it is not practical to conduct a reasonability review of adult decisions, and for principled reasons we ought not to, it is feasible to employ a reasonability review of the decisions of mature minors to ensure not only that the minor is mature but that their decision will promote weighty interests in decisional autonomy. The review can address any lingering concerns that even

³⁷ While I am not arguing that the indifferent judge reviewing a minor's medical decisions using a 'reasonable person' proxy for the future self should be guided by a particular conception of public reason, it is worth noting that Rawls includes the non-controversial conclusions of science among the 'plain truths now widely accepted' that provide the content of public reason (Rawls 1993: 224–225).

young adults might make unreasonable, untethered decisions that could irreversibly harm their future selves.

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