

RIGHTS AND WRONGS: A PHILOSOPHICAL CONSIDERATION OF CHILDREN'S
PARTICIPATION IN ELITE SPORT

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Abstract

The experiences of some children participating in the demanding and intensive world of elite sport appear to compromise one of the primary aims of both childhood and parenthood, which should be for children to arrive on the threshold of adulthood with their futures open and unlimited. A body of evidence in the medical and socio-psychological literature contends that child athletes participating in elite sport are being harmed physically, psychologically, and socially by the intensive training and competition practices required of athletes in sports such as women's gymnastics, figure skating, and others.

Participation by children in the highest levels of sport change attitudes and impels behaviours in ways that are unique in their extent and devastating in their consequences. As the varying and often conflicting agendas of athletes, parents, coaches, agents, and sporting bureaucracies come into conflict, considerations of care and regard for the athletes become downplayed or even ignored, resulting in these young athletes being harmed, and their futures compromised.

Children are characterised by their vulnerability, naivety, and inability to formulate their own life-plans, necessitating a degree of parental paternalism in their relationships with adults. This paternalism is justified by the child's dependency on others for protection, and for developing the necessary skills for self-sufficiency and self-determination secured through their burgeoning autonomy as they advance towards adulthood. Under law, parents are given primary responsibility for the health and welfare of their children, because they are ideally situated to determine their child's best interests. In sport, this responsibility is regularly transferred from the parents to the coach and other involved adults.

Unfortunately, however, children may be exploited by the very individuals who are entrusted with their care and nurturance. A further body of evidence claims the inescapability of paternalism in relationships between adults and children in elite sport has been exploited: it is disrespectful of the child's burgeoning autonomy, and jeopardises his or her right to an open future. The child's right to an open future is an autonomy right-in-trust saved until he or she is more fully formed and capable of exercising self-determination. This right may be violated in advance of adulthood by foreclosure of options.

In this thesis, I argue that elite sport children require a form of paternalism that protects their interests while at the same time is autonomy-respectful. This is actualised by a bifurcated rights system, which works towards securing non-harmful sports practices and preventing the premature foreclosure of life opportunities for elite child athletes post-sport.

Author's Declaration

I declare that the work in this thesis was carried out in accordance with the regulations of the University of Gloucestershire and is original except where indicated by specific reference in the text. No part of this thesis has been submitted as part of any other educational institution in the United Kingdom or overseas.

Any views expressed in the thesis are those of the author and in no way represent those of the university.

Signed.....

Date..... *January 15, 2003.*.....

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I take full responsibility for the errors and omissions in this work.

In memory to my own childhood, I dedicate this dissertation to my mother, Ruth Tymowski.

And because I am happy and dance and sing,
They think they have done me no injury,
And are gone to praise God and his Priest and King,
Who make up a heaven of our misery.

Blake, William. (1794) 'The Chimney Sweeper', In M. H. Abrams (ed.)
(1987) *The Norton Anthology of English Literature, 5th Ed.* New York:
W.W. Norton, p. 1329.

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1.0 Chapter One: Introduction

1.1 Introduction

When one thinks of a world or Olympic champion, it is natural to consider an adult in that role. Event titles such as “women’s gymnastics” and “ladies figure skating” are misleading when one considers that American gymnast Dominique Moceanu won a gold medal in 1996 in Atlanta at the age of 14-years, and American figure skater Tara Lipinski won the world championship at the age of 14, and then the 1998 Olympic gold medal the following winter in Nagano, Japan. Fu Ming-Xia of China was 11-years old when she won the world championship in platform diving in 1991, and the following year she won the United States International Diving Championship at the age of 12. American figure skater Michelle Kwan won the world championship in 1996 at the age of 15. American figure skater Sarah Hughes placed third at the 2001 World Championships when she was 15, and won the 2002 Olympic gold medal the following year. In tennis, players Martina Hingis, Mary Pierce, Anna Kournikova, and sisters Serena and Venus Williams all turned professional at the age of 14-years. Hingis was ranked number one in the world at the age of 16 after having won at Wimbledon at 15-years. Canadian diver Alexandre Despatie won the Commonwealth Games gold medal at the age of 13 in 1998. As all of these young athletes are below the age of majority in their countries, they are thus legally considered to be children.

The purpose of this thesis is to evaluate morally the intensive training regimes and competitions of children participating at the highest levels of sport. I will do this by identifying the appropriate moral vocabulary in and through which to evaluate the experiences of children participating at the highest levels of sport, known variously as elite, high-performance, or top sport. Moral analysis balances the rights of the child, namely freedom from harm and the right to an open future, against the rights of parents in an effort to define appropriate boundaries for paternalism—or as it is variously known—parentalism.

I focus on a discussion of the concept of paternalism within rights theory, and incorporate a discussion of autonomy, consent, and harm and their relationships in the particular context of children’s participation in high-performance sport. Paternalism is appropriate in relationships between adults and children because children are physically, legally, and often morally immature, and thus require care and nurturance, typically by their parents. In the environment of high-performance sport, however, sometimes elite sports children are exposed to paternalistic intervention that verges on or indeed becomes exploitative and abusive, and therefore morally problematic. Due to the nature of inescapable paternalistic behaviour within relationships between adults and children, high-performance child-athletes require a form of paternalism that is autonomy-respectful and which promotes their best interests in both the short and the long term. This discussion highlights some of the moral dilemmas arising from conflicts of norms and values, within and

between child athletes, parents, coaches, and sporting institutions, each of which affects significantly the best interests of the child-athlete. I argue that some child athletes are being harmed by their experiences, which abrogates their right to an open future. For parents to make the appropriate decisions about their child's participation in sport, they must balance the child's inherent vulnerabilities, incompetencies, and burgeoning autonomy with their own duties of paternalism to safeguard their child from harm and to promote the child's rights. In order to secure non-harmful sports practices, I propose a bifurcated rights system that protects high-performance sport children from physical and psychological harms, and prevents the premature foreclosure of life opportunities post-sport. The child has a right to an open future, and parents, coaches, sporting institutions and all others involved in high-performance sport have a duty to protect that right.

1.2 Background clarification and assumptions

Several assumptions are made within this thesis. First, though, sport itself requires some clarification. Sport fits within the physical activity spectrum involving play, fitness activities, recreational sport, organized competitive sport, and high-performance sport, and is structured according to skill level, gender, age, and jurisdictional authority. Organised, competitive sport at the highest levels is known variously as "elite" sport in Britain and the U.S.A., "high-performance" sport in Canada, and "top" sport primarily in Europe. These terms shall be used interchangeably within this work to refer to the highest levels of sport, such as at the world championship, World Cup, and Olympic levels. Athletes who perform at the highest level of sport performance have reached this level through talent, training, skill, technical development, and performance in competition. The motivating force for high-performance athletes is the pursuit of excellence, and athletes at this level train more intensely and compete more often than most other athletes at lower levels of competition.

Second, I assume that children participating in high-performance sport are members of families, with one or more parents. When I use the term "parent", either in the singular or in the plural, I refer to biological, adoptive, or any other type of guardian for children. Definitions of families are complicated by the increasing numbers of divorced or separated, and remarried parents. Children may have one, two, or more parents, depending on remarriage. Others may have state-ordered guardians. When I write of "families" I mean the term to refer to all varieties of contemporary families, be they heterosexual, homosexual, or others, regardless of whether they are or are not state-sanctioned couplings. The term "parent" shall be assumed to mean the primary care-giver or guardian who has jurisdiction over the child, and is capable and responsible for providing the primary goods required to create and attain a life plan. Such goods refer to the minimum threshold of primary goods that a parent is duty-bound to provide to a child. The relationship between parents and children is characterised primarily as a "moral" relationship with attendant obligations, including primary childrearing responsibility. I assume as well that the family is an important

element in the lives of most people, and that they therefore choose the family as a central and important institution throughout their lives.

Third, the children discussed within this thesis are assumed to be those 18-years and under, in accordance with the definition stated by the United Nations Convention on the Rights of the Child (1989). While there is a wide range of stages of development and competency within the first 18 years of life, the terms “child” or “children”, “adolescent”, and “young athlete” all refer to all individuals 18-years of age and younger. Further, they are all assumed to be non-emancipated children, or those under the age of majority, and as such, they should not have presumptive decision-making autonomy. Infants and younger children (preadolescent) are presumed to be incompetent in significant decision-making skills. While older more rationally developed children may demonstrate a threshold level of competency, I argue that “competency is a necessary but not a sufficient condition to justify respect for the child’s autonomy” (Ross, 1996, p. 6). I show that the approach towards autonomy-respectful paternalism is compatible with respecting the child’s right to an open future.

Fourth, this thesis is written from a western, liberal perspective. While one of the strengths of rights theory is that a rights framework—such as that presented herein—is universal, it is imperative to consider cultural differences and their impact on such a proposal. The doctrine of relativism within ethical theory holds that there are no absolute ethical truths—or values—and that all values are relative to time, place, individuals, and circumstances (Blackburn, 2000). What is “true” for one person is not necessarily “true” for another person. In its milder form, relativism holds that morality does indeed vary from culture to culture, and from individual to individual, and we ought to respect the moral views of all other people. In its extreme form, relativism accepts all moral assertions without dispute or refutation. Naturally there is extreme variation throughout the world between cultures with regard to customs, religions, moralities, and attitudes. Some share certain values, and many hold widely diverse views. The main challenge with the theory of relativism is that there can be no argument regarding the morality of others: if one views killing other people as morally acceptable, then the theory (in its absolute form) and its adherents accept such behaviour. This theory in such a form would have us accept Hitler’s value system as well as that of Mother Theresa’s as being equally acceptable, and would leave us without moral force to condemn any person or culture for doing anything morally wrong. Because our cultural mores in western society, as well as others, behave us to identify and support right action, the theory of relativism is weak. We may accept the theory in its weakest form, in that we ought to respect and tolerate cultural differences; in its extreme form, however, the theory is unacceptable. Rights theory, as evidenced in a practical form by the United Nations Declaration on Human Rights (1948), and the United Nations Convention on the Rights of the Child (1989) hold that the moral rights supported therein are universally applicable, and ought to be respected by all nations. That not all nations of the world have ratified the Convention on the Rights of the Child would suggest that not all nations feel the rights outlined by the United Nations are universal. However, the

strengths of both the Declaration of Human Rights and the Convention on the Rights of the Child are that they have been formulated and accepted by the vast majority of nations in the world, and thus they may be assumed to represent an acceptance by a diverse group of cultures with varying customs and attitudes. While not all of the rights outlined in those documents are actually respected or upheld universally in moral or legal circumstances, the documents are recognised as serving as guidelines towards right action. The chapter on rights theory gives more detail regarding this issue; it is important to note however that because of the realities of cultural diversity with differing values and beliefs, such as Confucianism, a rights approach to safeguard children in sport may not work as well as it may in western, liberal societies who value individual autonomy as paramount. I remain firm in the view that harming children is wrong on a universal basis, and that all children have the right to an open future; however, in terms of a practical solution to this issue within the environment of high-performance sport, it may not be the best approach on a universal basis.

1.3 Thesis Outline

From the increasing technical complexity of many sports, a trend of specialisation has emerged. Physical and psychological preparation for high performance sports necessitates the identification of talent at the earliest possible age, and subsequent specialised coaching for accelerated development of athletes. The intensity of training and competition, in addition to the often lucrative opportunities for financial reward, raises the question of whether these children are participating autonomously. Furthermore, at this elite level of performance, it is clear that some children are being physically and emotionally harmed by their demanding training and competition regimes. Attention to this concern has been raised in sociological and medical contexts but not in any meaningful philosophical manner.

Children participating in sport at the highest levels are exposed to paternalistic intervention and exploitation that verges on or indeed becomes abusive and therefore morally problematic. One of the major difficulties faced by researchers in this field lies in identifying the appropriate moral vocabulary in and through which to consider this issue; therefore rights theory has been selected and will be used and applied in the consideration of child and adolescent athlete's rights. Thus this work will focus on a discussion of the concept of paternalism within rights theory, and will incorporate an analysis of the concepts of autonomy, consent, and harm, and their relationships in the particular context of children's participation in elite sport. This discussion will highlight the moral dilemmas arising from conflicts of norms and values, within and between parents, coaches, and sporting institutions, each of whom affects significantly the best interests of the child-as-athlete. I argue that children have a right to be protected from harm, and that parents have a duty to protect their child's right to an open future.

In order to contextualise the problem of children's experiences participating in organised, competitive sport at the highest levels, Chapter two provides a theoretical discussion on harm. It is based on Feinberg's non-normative sense of "harm" as a set-back to interests, and the normative sense of "harm" as a wrong, characterised by its violation of an individual's rights.

Chapter Three follows with discussions of actual experiences of children within sport to contextualise the discussion and illustrate the harmful nature of certain sporting practices, and how they may foreclose children's futures post-sport. The evidence of the harm that such participation causes children lies in the medical and sociological literature, although descriptions of their experiences in high-performance sport by athletes themselves are also drawn from media sources. These descriptions are a litany of injuries, paternalism, coercion, and the very denial of childhood, all of which are about harm. The imbalanced power relationship between athletes and coaches is discussed here, which serves also to illustrate the potentially harmful nature of children's participation in high-performance sport.

There is a conflict between childhood and the adult world of high-performance sport. Legal distinctions are jurisdictionally adjudicated, and are somewhat arbitrary boundaries. Through a critical review of the literature on different conceptions of childhood, Chapter Four aims to evaluate critically the morally salient features of elite child athletes, and determine whether as a category, these children require special ethical consideration. In order to clarify the philosophical distinctions between the child and adult athlete, this chapter analyses theoretical conceptions of children and childhood, as well as parenthood and the family, and articulates a preferred conception of childhood with which to identify for the purposes of this work.

Chapter Five offers a critical account and extended analysis of the concept of paternalism within the literature. While paternalism directed towards adults is generally characterised as objectionable, it is justified when directed towards children. This chapter explores the extent to which the athlete-coach-parent complex is characterised as paternalistic and discusses whether this is morally justifiable in the context of children's participation in elite sport. Given the inherent vulnerability and immaturity of children, their relationships with adults are necessarily paternalistic, but I argue that they must be autonomy-respectful paternalistic relationships.

Chapter Six offers a further substantial analysis of autonomy, consent, and harm as they relate to children's participation in elite sport. This chapter discusses the nature of autonomy through definition of the concept, capacity to be autonomous, and the value of autonomy. It relates autonomy to modern conceptions of childhood, which generally do not accept children as being autonomous agents, and discusses the balance of parental duties to protect their children and to raise their children in accordance with their own rights to autonomy, with the child's need for protective parental paternalism while accommodating their burgeoning autonomy.

Chapter Seven describes a variety of rights theories to determine whether a rights-based moral vocabulary is the most appropriate language upon which to construct an approach to child protection through children's rights. I argue that rights theory as a moral framework does apply to a consideration of the participation and exploitation of children in elite sport, and serves to protect them.

Whereas chapter seven focuses specifically on rights in general, Chapter Eight is a detailed outline of children's rights, particularly as they are articulated in the United Nations Convention on the Rights of the Child (1989). A discussion of children's rights in sport follows, in particular the focus on the child's right to an open future. I argue that children have the right to an open future, and their experiences in childhood ought to, in every possible respect, keep their futures as open as possible. I recognise that in every choice we make, there are so-called "opportunity costs" in that other choices may be either closed or delayed. The challenge lies in determining which limitations should be accepted as part of the variety of life, and which limitations ought to be avoided because they unduly limit a child's future choices. However, insofar as it is possible, children ought to be equipped with the skills of self-sustainment and self-determination so that they may construct their own life-plans and live out those life-plans according to their own interests, and not those of others.

Chapter Nine concludes the thesis with a summary of the argument that some children are being harmed through their participation in high-performance sport and that their right to an open future may be foreclosed by such participation. This chapter also includes recommendations for policy improvements, as well as future directions for research in this area.

2.0 Chapter Two: A Theory of Harm

2.1 Introduction

Some children are being harmed by their participation in high-performance sport. The evidence of the harm that such participation causes child athletes lies primarily in the medical and sociological literature, but is also found in the media. The justification for questioning whether children ought to participate in high-performance sport at all is the harms they are incurring at the time of the intense training and competition, and also those harms which may foreclose their future, not the immorality of their participation in elite sports. Their participation in the most competitive and challenging sporting environment changes attitudes and impels behaviours in ways that are unique in their extent, and devastating in their consequences; for example, the ideal female gymnast may be seen as being tiny, child-like, waif-thin, without hips or breasts, and thus the term “women’s gymnastics” may actually be an oxymoron. These diminutive young female child-athletes are often treated harshly and disparagingly by coaches and others, leading to both physical and psychological harms (Tofler et al., 1998; Tofler, 1996). Their standard needs and interests are subordinated in favour of sport. For example, at the recent World Gymnastics Championships in China, the Canadian women’s team had their rooms searched by team officials hunting for contraband food, and the athletes were weighed several times a day (Personal interview, 2000). This did not happen to the male athletes. The harm argument is particularly compelling when one consults the litany of medical reports on the injuries suffered by young athletes while training and in competition (Tofler et al., 1998; Lord and Kozar, 1996; Tofler, 1996; Nash, 1987). These sport-specific harms will be expounded upon in the third section of this chapter.

This chapter provides a theoretical discussion of harm in order to clarify the problems of children’s participation in high-performance sport. It identifies a theory of harm as conceptualised by Joel Feinberg, which is based on his non-normative sense of “harm” as a set-back to interests, and the normative sense of “harm” as a wrong, characterised by its violation of an individual’s rights. This chapter will serve to contextualise the following chapter which will describe the catalogue of injuries, exploitative paternalism, coercion, and even the denial of childhood, experienced by some children who participate in high-performance sport, and how those experiences can both harm the children and also foreclose their futures after sport. Feinberg (1980) was one of the first to identify and specify a concern regarding the possibility of certain experiences foreclosing a child’s future, and articulated this concern as the child’s right to an open future. Thus his work is an important contribution to the literature in general, and to this work in particular. That general value is recognised by others as evidenced by its wide reference and citation. Dworkin (1983) also wrote about the justification of parental paternalism in terms of protection of the child’s future autonomy. This work shall accept and rely on Feinberg’s (1984) conceptions of harm as they

relate to the harms experienced by child athletes. His work is among the most succinct, and will be applied to ground my argument that some children are being harmed by their participation in elite sport, and their futures are being compromised. I argue that child athletes, just as children everywhere, are entitled to the right to an open future, and their participation in elite sport may be compromising that right.

In the world of high-performance sport, empirical harms of sport may be physical and psychological injuries. Moral harms in this environment certainly include these harms, but may be extended to include such further harms as a closed future, or a constrained or lost childhood, or a compromised education. The word “harm” is used frequently to explain an injustice, or damage, or even an inconvenience. It may apply to moral judgments, and value weightings of a variety of kinds (Feinberg, 1984). It may apply to things, to people, to animals, and to the environment. Each of these applications is quite divergent, and thus the precise meaning of the word “harm” as used in these examples is vague and unclear. Hence, this chapter will clarify such confusion relating to conceptions of harm.

The notion of the principle of harm may be traced back to John Stuart Mill’s essay *On Liberty*, wherein Mill argued that the only justification of interfering in the actions of individuals is the prevention of harm to others:

the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. Over himself, over his own body and mind, the individual is sovereign. (Mill, 1991, p. 14)

While this early mention of harm in his work appeared fairly simple, Mill further expanded his conception of harm to a consideration of interests (self-regarding and other-regarding), and then to a recognition of rights. He applied his harm principle towards justifying regulations and prohibitions in society. Mill’s conception of harm is quite broad, including both direct personal injury such as physical hurt and also loss of money, and also wider-reaching social harms such as the impairment of public institutions.

The *Concise Oxford Dictionary of Current English* (1995) defines “harm” simply as “hurt” or “damage.” Even this definition remains rather vague when we consider the various ways in which the term is used, as to refer to describe how one may be wronged. The variety of ways in which the term “harm” is used lends an ambiguity to the notion, which needs to be clarified so as to avoid confusion. In terms of protective legislation in public policy, it would be impossible to prohibit every kind of act that causes harm to others, and would likely apply “only those that cause avoidable and substantial harm” (Feinberg, 1984, p. 12). Thus, the harm principle requires precise definition, which allows for the formulation

of a criterion of “seriousness” to further permit an evaluation of significance of an action, and then possibly a call for intervention to prevent that harm.

Feinberg (1984) begins the clarification of the term “harm” with action: “An act of harming is one which causes *harm* to people” (p. 31). He goes on to consider a harmful act as being “one which has a tendency to cause harmed states or conditions in people. A *harmed* condition of a person may or may not also be a *harmful* condition, depending on whether it has itself the tendency to generate further harm” (p. 31). He gives the example of a blistered finger: It may, in some small way, be a harmed condition, but that depends on whose finger it is; a blistered finger on the hand of a concert pianist or a baseball pitcher may indeed be a harmed condition, but that same blister on the hand of another may not be at all harmful. There are several categories of harm: harms as setbacks to interest, harms as wrongdoing, and failures to prevent harm. Each of these will be discussed. First, however, we shall consider Feinberg’s (1984) three senses of harm to further narrow the general consideration of the subject.

2.2 Feinberg’s three senses of harm

Feinberg (1984) distinguishes three senses of harm that are in general circulation. The first sense is that of derivation or extension, in that anything at all may be harmed. For example, a car may be damaged in an accident, a farmer’s crops may be harmed by a drought, and books may be damaged by rain. While we may indeed feel aggrieved for the harm done to those who have interests in the car or the crops, we do not feel so on behalf of the actual car or crops or books; they are not the objects of our sympathies. Even when things are not necessarily objects of any particular individual’s interests in this derivative sense, there are other more appropriate words for “harm” in this sense. For example, words such as “damaged,” “broken,” “mangled,” “spoiled,” may be more accurate. These things “can be done” to a thing even if no person has an interest in that thing. While these things may certainly be “harmed” in the sense that they were damaged or slashed or mutilated, and so on, they need to have been of value to someone, or part function as part of a larger complex that is now impaired—a complex that someone has an interest in—for it to be a genuine instance of harm.

The second sense of harm, which may be considered to be a genuine sense of harm, is that from which the transferred sense derives, “namely harm conceived as the thwarting, setting back, or defeating of an interest” (Feinberg, 1984, p. 33). The term “interest” used in these descriptions refers to the sense of having a kind of “stake” in the well-being of something else; e.g. if one holds stock in a particular company, then one has a stake in its well-being, which could be considered an “interest” in the company. One’s interests are all those things in which one has a stake, and are distinguishable components of a person’s well-being; he or she will flourish or languish depending on whether his or her interests flourish or languish. The thwarting, setting back, or defeating of an interest which Feinberg considers to be a genuine sense of harm must be considered in degree, as

virtually all kinds of human conduct can affect the interests of others in one way or another, in positive or negative ways. Degrees of harm will be discussed at a later stage within this discussion.

Feinberg's third sense of harm is linked closely to the second sense, but is a variation that may sometimes be at odds with it. It has to do with wrongs rather than harms, per se. To say that A has *harmed* B is the same as saying that A has *wronged* B, or treated B unjustly.

One person *wrongs* another when his indefensible (unjustifiable and inexcusable) conduct violates the other's right, and in all but certain very special cases such conduct will also invade the other's interest and thus be harmful in the sense already explained. Even in those exceptional cases in which a wrong is not a harm on balance to interest, it is likely to be a harm to some extent even if outbalanced by various benefits. (Feinberg, 1984, p. 34)

Consider, for example, a violation of a landowner's property rights, where someone trespasses on the landowner's land. Even though the trespass does not harm the land—and may in fact have even improved the land—the landowner has been “wronged”. The law recognises a proprietary interest in the exclusive possession and enjoyment of one's land, and even though the trespasser did not harm the land, the landowner's interest was invaded. The trespass was only “harmless” in that it did not harm any other interests, particularly not those interests of any tangible or material kind. This is an example where the landowner's interest was invaded, and thus he or she was wronged, and harmed by the trespass. However, this wrong was not actually a harm to an interest, but rather an “invasion” of an interest.

2.3 Interests

Not all invasions of interest are wrongs, because some actions that invade another's interests may be excused or justified, or else they may invade interests that the other has no right to have expected. Conflicts of the interests of individuals arise constantly, and sometimes unavoidably. Thus a legal system attempting to minimise harm must develop some kind of method for establishing priority rankings of certain interests over others. “Legal wrongs then will be invasions of interests which violate established priority rankings. Invasions that are justified by the priority rules are not legal wrongs though they might well inflict harm in the nonnormative sense of simple setback of interest” (Feinberg, 1984, p. 35).

Welfare interests are related to minimal but non-ultimate goods that are very important to individuals. They are essentially “building blocks” which form a foundation upon which an individual builds his or her ultimate goals and aspirations. These are broad-based and important goals, but they follow the achievement of welfare interests, which generally, are shared by almost everyone. Interests in this category include such things as interests in one's physical health, the integrity and normal functioning of one's body, the absence of

pain or disfigurement, one's mental health and emotional stability, the capacity to form and enjoy friendships and close relationships, some kind of financial security, and relative freedom from interference and coercion. Achieving these elementary interests will allow furtherance of more ultimate aims. While these interests may seem trivial in isolation, they are the most important interests a person has. They are necessary but individually insufficient for the "good life". Setbacks to higher aims and goals do not necessarily endanger these welfare interests, although setbacks to, or invasions of, the welfare interests are serious, but not the only harm one may sustain.

Our interest in liberty falls within the category of general welfare interests. We have an interest in having the freedom to do, pursue, or possess *X* (Feinberg, 1984). When that interest is thwarted, an interest in liberty is impeded, liberty being the choice whether to do, possess, or pursue *X*. Evaluating importance is difficult when we ask how just how important is the interest of freedom to choose, or just how great an invasion of that interest may be. Feinberg proffers the following example to illustrate the absolute importance to us of our interest in liberty: if our state was turned into a ruthless totalitarian regime, and our personal liberties were completely rescinded, most people would likely be no more able to pursue the ultimate interests that constitute our good than they would if the sources of our financial income were destroyed or our health compromised. This importance illustrates our interest in liberty and how it is best conceived of as a basic welfare interest.

In order to survive, we all have interests in access to food, shelter, and other basic welfare "goods". Generally speaking, in these matters, more is better than less. That is, we would be better off with more food than we actually need so as to provide a buffer between not having enough and having perhaps too much, the dangers of each being real but quite different. Welfare interests have thresholds; these interests are not violated until they fall below tolerable baselines (Feinberg, 1984). Individuals have an interest in having sufficient money to exist at or above thresholds; however, individuals have a derivative interest in having more money or liberty than one actually requires, which would provide a buffer against possible future invasions of one's welfare interest in having enough to survive. Hence, the closer one exists to the baseline or minimum threshold of one's assets, be they money, health, or freedom, the more harmful are any encroachments of them above that minimum.

Invasions of one's liberty are as much a matter of degree as are invasions of the interest of money, suggests Feinberg, although we do not have the same convenient conventional units for measuring them. The interest we have in liberty "is an interest in having as many *open options* as possible with respect to various kinds of action, omission, and possession" (Feinberg, 1984, p. 207). These open options are possessions of liberty to alternative possibilities of action: the more alternatives one has, the more liberty one possesses. Feinberg prefers the open option theory of liberty to the theory that liberty is the absence of barriers to one's actual desires, whatever they happen to be. In the open option theory, one has greater liberty when one has a wider purview of alternatives; the absence of

barriers view does not allow for the wider scope, only for no restrictions on what one actually wants, regardless of what that may be.

If considering the value of liberty in attaining happiness or contentment, Feinberg suggests that there is no connection. One may have innumerable open options available, but still be unhappy and discontent, and one may be happy and content with no liberty at all. What this shows is even though freedom and contentment are quite different, they are both valuable, although conflicts between them mean one cannot have both. Our interest in liberty is based on our welfare interest in having a tolerable bare minimum of liberty, and that minimum ought to have alternative possibilities. Without alternatives, if all one's actions were at all times the only actions permitted, one could be content if one's desires for alternative possibilities were repressed or extinguished. However, Feinberg cautions, if that were the case, then one could not take any credit or blame for any personal achievements, and one could not be any more responsible for one's life than could a robot or trains that run in predestined grooves; furthermore, one could not develop and pursue new interests, nor modify existing interests.

There would be no point, in fact, in thinking of changing in any important way, in changing one's mind, one's purpose, one's ambitions, or one's desires, for without the flexibility that freedom confers, movements in new directions would be defeated by old barriers. The self-monitoring and self-critical capacities, so essential to human nature might as well dry up and wither; they would no longer have any function. The contentment with which all of this might still be consistent would not be a recognizable human happiness. (Feinberg, 1984, p. 212)

Even if we do not necessarily wish to change our present situation, alternative possibilities provide "breathing space," which Feinberg considers an important kind of security. He suggests there is a particular kind of comfort in knowing that if we wished to change our circumstances, we could do so, even if we have no definite plans to act upon those alternative possibilities. Furthermore, another source of the interest in liberty lies in the appreciation one may have for the richness and diversity of the world's possibilities, which present an enjoyable environment in which to live. Child athletes involved in intensive training and competition, who are also removed from a typical childhood involving conventional educations with other children their age, are often denied this kind of exposure to life choices. They are often unaware of what other possibilities exist, since they are so singularly focused on their sport.

For children, the primary base of the interest in liberty is the fundamental importance of exposure to and experimentation with varied modes and styles of life. Feinberg goes on to consider as paramount the search "among as large as possible a stock of possible careers for the one that best fits the shape of one's ideals, aptitudes, and preferences" (Feinberg, 1984, p. 212). These options may be more a vital need than a luxury for young people whose characters are still developing. For others, accumulating these open-options above the threshold minimums could be some kind of ulterior interest that would contribute to their well-being. Elite child athletes are rarely exposed to a wide

array of these open-options, and thus would certainly not be able to cannot them, and thus many elite athletes arrive on the threshold of adulthood without the requisite skills or choices that ought to be available for them.

2.3 The relative importance of the harm

Evaluating exactly the importance and value of interests is a difficult—or even an impossible—task. Feinberg (1984) argues that “it is impossible to prepare a detailed manual with the exact “weights” of all human interests, the degree to which they are advanced or thwarted by all possible actions and activities, duly discounted by objective improbabilities mathematically designated” (p. 203). Thus, drafting legislation to prohibit or minimise harms is not at all straightforward. It is usually up to the legislator him or herself calling on his or her own fallible judgment rather than any sort of empirical measure who must compare conflicting interests and judge which are the more important, which dimensions of interest are relevant, and what is involved with interest-balancing.

Conflicting interests are a genuine concern for legislating constraints regarding applications of the harm principle. The legislator needs a method of evaluating the relative worth of competing interests. But what are the inherent moral qualities of interests affected by claims of harm? How can the harm principle reveal those inherent moral qualities? The harm principle itself does not address the relative importance of harms.

Since harm is the setback of an interest, and since setbacks vary in degree, Feinberg (1984) queries where is the greater harm when quite diverse interests are assailed to the same degree? We ought certainly to protect an interest that would be harmed over another whose liability to harm is merely conjectural, and we ought definitely to consider it a priority to prevent the complete thwarting of one interest than a minor incursion to some small degree of another interest (Feinberg, 1984). While perhaps impossible to be exact about the importance and value of harms, Feinberg developed a test to determine the *relative* importance of harms in terms of their relationship to their possessors. Relative importance is a function of three different respects in which opposed interests may differ:

- i. how ‘vital’ or important they are in the interest networks of their possessors;
- ii. the degree to which they are reinforced or supported by other private and public interests;
- iii. their inherent moral quality

(Feinberg, 1984, p. 204-206)

This test is still not a guaranteed, objective standard to prioritise interests, but it provides a general framework for the delicate task of interest-balancing. Generally, a person’s welfare interests are most vital; when one person’s vital interests are pitted against another’s less vital interests, then the former’s interests ought to be considered a priority. For example, a hyper-allergenic neighbour’s interest in living in a pesticide-free environment would

supersede another's aesthetic interest in living with a dandelion-free lawn. In the sporting context, a child's interest in spending a weekend with his or her contemporaries ought to supersede a parent's desire that the child participate in a hockey tournament against the child's will.

Interests tend to accumulate and support each other, and may also be complicated. Consider the example of community interests competing against individual interests: a public walking trail in a community is incomplete, requiring pedestrians to detour along a busy road. To complete the trail requires the acquiescence of a family to allow the trail to cross a section of their land. The family objects to the development on the grounds of privacy, they do not want strangers crossing their land. The community argues that broader public interests are a priority over individual interests, as more people would enjoy access to the walking trail if it could be completed, and the invasion of the individual's interests is relatively minor so as to justify this infringement. The community further argues that it is in the economic interests of the community to attract more tourists to the region, and a completed walking trail would be an attractive feature to help in attracting visitors. They could continue this line of thinking to argue that more tourists would help the local economy, as well as encourage local residents to become more active. While these extensions of interests may be somewhat stretched, they serve to illustrate the accumulation and support of one interest to another, and also how they may become quite complicated webs, thus making interest-balancing a tricky endeavour.

The inherent moral quality of interests is also rather difficult to evaluate, as many standard interests cannot be evaluated on an objective scale. However, it may be expected that most, if not all, reasonable persons may be able to agree that certain interests may be less worthy of protection than others. For example, consider the example of an elite athlete's interest in maintaining his or her privacy over the public's interest in knowing the intimate details of that individual's personal life.

2.5 Mediating maxims

The concept of harm, as explained by Feinberg (1984), is exceedingly complex. It incorporates various normative dimensions, some more obvious than others. Because of this complexity, the harm principle usually requires application with supplementary criteria—or mediating maxims—some of which are provided by independent moral principles. One of these is the *volenti* maxim.

The notion of voluntariness relates to the axiom *Volenti non fit injuria*, a mediating maxim for the application of the harm principle. Voluntarily consenting to an action of another that sets back one's interests, or voluntarily assuming the risk—in advance—that another's action will adversely affect one or more of one's own interests, precludes any judgment of wrong, and therefore does not count as a wrong. Harms to which the "victim" freely consented are not legitimate breaches, they are "nonwrongful harms." The *volenti* maxim is also a fundamental principle of the law, in that one who consents to being injured

cannot make liable the one who causes his injury. The defence of consent or *volenti* in cases of law may be expressed in the form of assumption of risk. The plaintiff will not necessarily have agreed to being injured, but they did agree to assume the risk of injury.

Analyses of harm in even the broadest, untechnical sense, try to eliminate spurious or minor conceptions, such as temporary disappointments, minor physical or emotional “hurts, and other unpopular mindsets, such as offendedness, anxiety, and boredom. This is due to harm being, in the broadest sense, any setback of an interest, and though we may judge them to be nefarious evils of a kind other than harm, there is rarely an interest in the avoidance of such states. Feinberg cautions that even minor or trivial harms, despite their minor magnitude and triviality, are still harms, although below a certain threshold they do not count as such, at least for the purposes of the harm principle. Legal interference over trivial issues may actually cause more harm than it prevents for both the person directly interfered with and possibly also for the innocent victim, whose must be given priority in our legislative calculations, as well as for any third party interests.

In circumstances where harm or the lack thereof is a less than predictable consequence of a given kind of conduct—that is, where the action in question is neither entirely harmless nor directly and necessarily harmful, as far as may be ascertained, but does open the possibility of the danger of harm to some degree—then legislators employing the harm principle ought to consider the following:

- i. the more *serious* a possible harm, the less probable its occurrence need be to justify prohibition of the conduct that threatens to produce it;
- ii. the greater the *probability* of harm, the less serious the harm needs to be to justify coercion;
- iii. the greater the *magnitude of the risk* of harm (determined by a combination of seriousness and probability), then the less reasonable it would be to accept the risk;
- iv. the more *valuable* or useful the dangerous action, to both the one performing the action and to others, the more reasonable it is to take the risk of harmful consequences, and for extremely valuable conduct, it would be reasonable to take risks up to the point of clear and present danger;
- v. the more *reasonable* the risk of harm or danger, the weaker the case is for prohibiting the action that creates that harm or danger.

(Feinberg, 1984, p. 216)

The harm principle protects personal autonomy and the associated moral value of respect for persons. The principle incorporates interest-ranking principles that are not arbitrary, as well as principles of fairness which regulate competitions. The harm principle “enforces” the moral principles that protect individual projects that are necessary for human fulfilment. When an individual’s interests, that is, those things in which one has a stake and which are distinguishable components of a one’s well-being, are thwarted, set back, or defeated, then the individual is harmed. He or she is wronged when one or more of his or her rights is

violated by unjustifiable and inexcusable conduct. Because almost all rights violations are invasions of interests, such violations are harmful to the individual. While almost all wrongs harm, not all harms—set backs to interests—are wrongs, such as those to which the victim gives valid consent.

2.6 Conclusion

This chapter has described a conception of harm that refers to incidents of set-back interest that are the consequence of wrongful acts or omissions by others. This understanding does not include set-back interests that are produced either by justified or excused conduct (“harms” that are not wrongs), or violations of rights that do not set back interests (wrongs that are not “harms”).

A harm in the appropriate sense is produced by morally indefensible conduct that not only sets back the victim’s interest, but also violates his or her right. A right, in turn, was analysed as a valid claim against another’s conduct, and what gives cogency to a claim is the set of reasons that can be proffered in its support. There is room for normative controversy over which kinds of consideration constitute good reasons for a claim, but I have concluded, subject to certain exceptions, that any interest simply *qua* interest constitutes a proper kind of reason, among others, in support of claims against other people. A claim becomes valid, and thus a right, when its rational support is not merely relevant and cogent, but decisive.

It follows then that children have a right to an open future based on their interests in such, and when those interests are set back, the children’s rights are violated. Through their participation in high-performance sport, some child athletes are being harmed, and their rights to an open future are being abrogated. From this preliminary discussion on conceptions of harm, we turn now to descriptions of the experiences of high-performance child-athletes.

3.0 Chapter Three: Children's Experiences in High-Performance Sport

3.1 Introduction

When the issue of intense training and competition in sport for children is criticised in the academic sphere, athletes, parents, coaches and others directly involved in that environment are quick to denigrate the criticisms. They deem such commentary from the "ivory tower academics" as being uninformed and out-of-touch with the realities of high-performance sport (Cantelon, 1981). They believe that "winning is the name of the game and if winning requires the presence of pain, the possibility of long-term physiological deterioration, or abnormal social and psychological pressure, it is worth it, in the quest for the gold" (Cantelon, 1981, p. 273). It may be argued, however, that those deeply and emotionally involved in any endeavour are challenged to find the perspective necessary to make an objective, rational evaluation of that activity. Personal interest and convention may contribute to biased views of practices, and thus we must scrutinise our beliefs, choices, and actions to ensure that we are sufficiently informed, and that we are not unduly influenced by personal interest, personal experiences, or social conventions. We tend to adopt the practices with which we are most familiar, and may unquestioningly adopt or perpetuate inappropriate, outdated, or morally suspect habits. For example, corporal punishment for pupils was considered acceptable in the past, but such acts are now considered criminal in many countries, even when carried out by parents. Critical moral analysis requires scrutiny on a practical level, as well as careful and thoughtful argument.

The previous chapter outlined a theory of harm as conceptualised by philosopher Joel Feinberg. This chapter examines the experiences of children involved in the practices of high-performance sport in order to illuminate and contextualise the actual harms that I argue children are experiencing at the highest levels of organised, competitive sport. I describe briefly the nature of high-performance sport. Next, I discuss the unique nature of the coach-athlete relationship. I then discuss the actual experiences of elite child athletes in these contexts, focusing on physical and psychological harms to demonstrate the harms.

3.2 The nature of high-performance sport

High-performance sport, particularly professional sport, is an adult world: organised for adults and by adults. Children, however, have appeared in certain sports, and have become "professional" athletes, at exceedingly young ages. Despite the influence of contemporary Western liberal philosophy holding that that children are incompetent and adults are competent (as discussed in the following chapter), some children are more competent than any adult will ever be, albeit in very restricted and particular environments. They may be incredibly competent and talented in the specialised requirements of sport; however, they may typically be unaware of their own limitations, their susceptibility to injury,

and the long-term consequences of injuries to their development or effective participation. Generally, however, adults are capable of acting upon and in the world and children are not. Competence, then, is a relative and slippery concept.

At the highest levels of sport, such as at the world championships, world cup events, and the Commonwealth and Olympic Games, sport is embarked upon as a serious, full-time, competitive undertaking.

High performance sport is no longer undertaken by amateur athletes, on a part-time basis, as a hobby or fitness activity. High-performance sport is a demanding undertaking in a ruthlessly competitive international environment in which highly talented athletes dedicate one of the most crucial phases of their lives in a quest for higher, faster, further. It involves the most advanced technology, world class coaching, and a more than full-time commitment without ever guaranteeing a payoff in the end. It is not a job that just anyone can do; there are few jobs that are more demanding.

(Beamish and Borowy, 1988, p. 87)

The world of high-performance sport is stressful since the stakes are incredibly high. The winner may earn millions in cash prizes, bonuses, and endorsements, as well as further income from appearances and speaking engagements. The other athletes rarely “cash in” on such lucrative rewards. This does not mean, however, that they have not trained as hard, or as long, or as well, or that they did not enter the sport as early, or that they were not as committed or as skilled or talented as the winner.

While significant publicity is given to the highest paid athletes, many other athletes—even those at the highest levels of sport—struggle to cover all their expenses (Coakley, 2001). Athletes have to cover all their own expenses, including travel, accommodation, entry fees, and they may also have to cover various fees for their coaches, managers, and support personnel such as physiotherapists, trainers, and so on. Agents also take a percentage of the athletes’ earnings. Athletes may also have to pay investors who sponsored them in the early part of their career; in return for help at the beginning, they have to pay back a percentage of their earnings (Coakley, 2001). Some athletes may undergo years of gruelling training because they know that if they “make it big” their efforts will be rewarded. Mike Tyson made \$75 million for less than an hour of prize fighting in 1996, but Coakley (2001) reports that after paying his large entourage, investors, and so on, Tyson was left with very little. Sponsors may also make appearance demands, and tie athletes to their equipment and contractual demands for long periods of time. Athletes have to fulfil obligations of when, where, and how often they compete, and may have to spend significant periods of time endorsing products, attending social functions, testing equipment, and signing autographs. Such demands may interfere with their training, and ironically, interfere with their performance.

Thus, while many people may believe that elite athletes earn lots of money, only the very top athletes do actually do so from their competitions and endorsements. People fixate on the multi-million dollar contracts signed by some professional athletes, and the big

purses at major events, but the reality of high-performance sport is quite different, and as Beamish and Borowy (1988) noted in their study, one of the main reasons given by national team athletes for leaving international sport is the lack of money to support their careers. We turn now to consider briefly the nature of the coach-athlete relationship.

3.3 Coach-athlete relationships

Close relationships are an inherent component of the sporting environment. Many athletes develop close friendships with their team-mates, competitors, coaches, and others involved in the sport. Often, the closest relationships are between coach and athlete; these relationships are based on power and trust. Kirby et al. (2000) explains the nature of these relationships to be similar to other relationships of trust, dependency, and authority, such as those between physicians and patients, and teachers and students. The closeness of such relationships exposes those involved to special vulnerabilities of harm and exploitation, as well as influence: “situations in which coaches find themselves can introduce temptation into human relationships” (McNamee, 1998, p. 158).

The inevitable disparity in power and control between children and adults often dominates their relationships. Brackenridge (1998) writes, “With coaches holding absolute power and authority and girls (and boys) desperate to achieve success, the ingredients of the coaching situation lead to a potentially risky mix where children are susceptible to abuses of power by the unscrupulous coach” (p. 59). Adults might well be outraged to be treated in the same way that children often are, within and beyond sporting boundaries. Given that the vast majority of relationships between athletes—particularly child athletes—and their parents and coaches are often ones of control and domination, these situations necessitate moral justification. Galasso (1988) discussed the power and domination of the coach of the Dallas Cowboys, an American football team, and the irony of their training methods. The players are put in ‘think tanks’ which involves being suspended in the darkness in high-salinity floatation tanks, and being given audio and/or visual input associated with their playing positions. Galasso relates these experiences to mind control, as the team coaches and managers were controlling the athletes’ vision, hearing, and thoughts.

Coakley (1993) describes the dynamics of rigid control systems in the relationships of abused children and spouses, where the abused children and spouses try to justify the behaviour of their abusers, and make excuses on their behalf by saying that they deserved such inhumane treatment. Coakley relates this dynamic in coaching relationships, wherein coaches use control and dependency with their athletes to become significant in the lives of the athletes. This type of control may be used in any relationship where one individual is in a position of authority over another, such as a parent-child, physician-patient, or professor-student relationship. The powerless individual involved in such relationships will often

explain the dramatic impact of these controlling people in their lives, an impact which may continue well after the athlete retires from competition.

Coaches may hold tremendous power over athletes, and are highly influential over young athletes in their capacities of both instructor and judge (Lee, 1993). While the influence of such coaches is great, it has not necessarily led to the development of the athletes' self-confidence or independence. Even casual remarks may have a great impact on an athlete's self-image and self-esteem. The nature of the coaching relationship is such that the athletes and coaches often spend significant periods of time together, travel frequently, and share extended periods of time away from home. This means that young athletes may rely on their coaches for more than simply sporting guidance, but may seek their advice on personal matters, schooling issues, as well as general career guidance. Because children in elite sport spend the majority of their day, day-in-day-out, week after week, even year after year, with their coach, he or she may influence these young athletes far more than their parents or even their teachers: "you would do anything for that smile, that pat on the head" said one young gymnast (Ryan, 2000, p. 205). Ryan writes that

there is no creature on earth more desperate for approval than a girl inching toward puberty. . . . Self-conscious about her looks and sensitive about her body, in particular her weight, she is a mass of insecurities looking for an identity. She is the perfect clay with which coaches can create the ideal gymnast. (Ryan, 2000, p. 205)

This vulnerability renders the young athlete highly susceptible to abuse, a situation which parents must recognise. "Given that we impart to the trusted coach a valued child, within limits of discretionary power we run the risks of verbal, physical, or psychological abuse. Anyone who has been engaged with élite sport knows how cruel it can be" (McNamee, 1998, p. 164). When athletes are under the age of majority, then the relationship is usually triadic in nature: the parents, coach, and athlete are all involved. When parents place their child under the care of a coach, they enter into a trust relationship with that coach, termed in *loco parentis*: the good coach is presumed to treat the child in the manner of a good parent. While we would like to assume that the parents also entrust their child to the coach assuming the coach will have only the child's best interests at heart, this is not always the case. When the coach is a known tyrant, but a "successful" coach, the parents are handing over their child with the expectation that the coach will make their child a better athlete, and they are overlooking the well-being of the child for the chance at athletic success.

Coaches may have significant impacts on the lives of their athletes. They are often role models for their young athletes. Many athletes claim their lives have been greatly influenced by their coaches, although as Coakley (1993) point out, they do not often realise that influence is benign. There are different ways in which coaches may become significant to their athletes. Coaches may set good examples for their athletes, and share the kind of personal information with the athletes that they are able to use their coach as a role-model for making their own decisions. Other times, coaches have acted as advisors or advocates for their athletes in the challenges and choices the athletes are faced with in their lives, and

the coaches also teach the athletes how to cope with successes and failures. Coaches have helped athletes make sense of and take control of their lives, and have kept them out of trouble (Coakley, 1993).

The sports club has been compared to a family-like environment, characterised by both nurture and control. "Unless challenged, the sports club can become a dysfunctional, surrogate family system in which the hetero-patriarchal authority of the coach is used to render all others...powerless" (Brackenridge, 2001, p. 82). Power may be located in an institution—in this case, sport—or in an individual—the coach. In her research with survivors of sexual abuse in sport, Brackenridge quotes one of her participants: "they had all the power to open all the doors... they have your hopes, your everything in their hands and they can do whatever they want and that's what a coach can do" (p. 84).

While the coach is the powerful authority figure for the athletes, even parents can be strongly influenced by coaches. "I thought [he] was God... I was afraid of him. If you go to [him] and say you have this problem, he tells you how rotten your kid is, how she won't do anything. You get lectured and go home and tell your kid how rotten she is" (Ryan, 2000, p. 204). In many sense the coach is the gatekeeper to the sport: he or she controls many of the athlete's experiences, even the athlete's entry into the sport. The coach controls the frequency, duration, and intensity of training; determines who plays on the team by cutting and promoting athletes; in some cases he or she is responsible for sending athletes to national team try-outs, and national team coaches also further control the athletes' career by selecting Olympic and world championship teams. The coach may also determine in which competitions the athlete may participate. In 2000, a Canadian national team swim coach "forgot" to add the name of one of the swimmers to the roster for a particular event in Sydney, and even though the athlete travelled all the way down to the Olympic Games, he was not allowed to swim because his name was not on the list. The mistake on the part of his coach cost the athlete his Olympic experience, and potentially much more. Thus the power of the coach is great, and the responsibility of that power ought to be respected and taken very seriously by the coach him- or herself.

Behind every successful athlete is usually an excellent coach. Most coaches are involved because of their expertise in sport. Such competencies involve technical skills about the sport itself, strategy and tactics, in addition to knowledge of the physical and psychological demands of participation (Loland, 2002). While at lower levels of performance, many coaches are volunteers who are unlikely to be involved for prestige and profit, the high-performance coach is usually in a very different role. He or she is usually a professional who earns his or her living "maximiz[ing] the performance potential of each individual athlete and team" (Loland, 2002, p. 117). This expectation towards performance is characterised by sometimes conflicting demands. Says Loland, on the one hand coaches are expected "to produce" a winning athlete, but at the same time, they are also expected to represent moral values such as justice and fairness.

The professional coaches' conflict is two-fold. First, for a professional coach to be considered an "excellent" coach, he or she has to generally "produce" winners. Few coaches rise to the pinnacle of success without a successful athlete or team, and success in high-performance is evaluated in terms of winning. The coaches' employers demand success, as does everyone else involved, who may include sponsors, team owners, sport governing bodies, sporting officials, the media, fans, parents, as well as the athlete him- or herself. The world of high-performance sport is a demanding, cut-throat environment where the winner takes all and the loser ends up with nothing; performance is synonymous with profit, prestige, and power, and losing is synonymous with failure. This reality that the coach's success is evaluated in terms of the team's or athlete's success means that the athlete, or team, is the vehicle to the coach's achievement. As Loland writes, those involved in the athlete's support system—coaches, managers, sport physicians, equipment specialists, and others—are wholly involved in "getting 'their' competitors to the top of the final ranking", since "competition outcomes determine their future" (Loland, 2002, p. 117). Their professional survival is completely dependent on the success of the athlete. As such, athletes may be exploited, or sometimes even harmed, in the process.

Secondly, the coach is generally expected also to care for the athlete's individual well being at the same time that winning is given such paramount importance. These two expectations are not always compatible with the environment of high-performance sport. A further complication arises when one questions whether the coach has the duty—or even the right—to forbid an athlete in attempting activities that may be harmful (Ravizza and Daruty, 1988). For example, if an athlete wishes to try a dangerous move on the diving board which the coach believes is beyond the ability of the athlete, should the coach interfere. From a legal standpoint, it would likely be explained that if the athlete is legally an adult, and if the athlete fully understands the risks, and still wishes to proceed, then he or she may do so. From a moral standpoint, even if the athlete is a legal adult, the coach should still try to convince the athlete that he or she is not sufficiently prepared. In 1983, young Russian diver Sergei Chalibashvili was killed after hitting his head on the diving platform at the World University Games in Edmonton while attempting a highly technical dive that many believed was too difficult for him. If, however, the athlete is a minor, then the coach ought to interfere and refuse to allow the athlete to do the activity. Sometimes, however, it is the case where the coach pushes the athlete to try challenging activities that the athlete does not wish to do.

The coach must be aware of the temptations of coaching children, who may do anything the coach asks of them. The owner of an Atlanta gymnastics school said that when a particular move or situation requires a tremendous amount of courage, it is easier to get a child to do it than someone more mature with more concern about injuries and such things (Hanley, 1996). The expectations of the sport and of the coach must rest with the athlete's best interests being the first priority. They have the moral and legal duty to protect children in their care.

Gymnastics is one such sport where accounts of abusive coaches abound. A former national team gymnastics coach in the United Kingdom asserted that he believed ethical conduct is incompatible with training young girls to the highest levels in gymnastics, and for that reason he coached only male athletes (Personal Interview, 1998). He could not, in good conscience, become involved in such a process. The values of child protection seem to be at odds with the goal of winning. Three years after her famous vault at the Atlanta Olympics, Strug said of her coach, Bela Karolyi: "He knows how to get the most out of each child. I think a lot of his motivation is fear. When I messed up, I was more worried about what he would think than about messing up" (Raboin, 1999, p. 2A). Looking back at her experiences with her coach, she recalled "Bela had complete control of everything in your life—your workouts, your eating, your sleeping. . . . I look back now and say, "That was crazy. That's not America." But it was Bela's way or not way. And he was a coach who got you where you wanted to go" (Strug, 1999, p. 73). With such extreme practices, athletes and their parents have to trust the coaches, and sometimes this trust is misplaced or exploited.

3.3.1 Trust

Trust is a vital component of and basis for relationships, for "whatever matters to human beings, trust is the atmosphere in which it thrives" (Bok, 1978, p. 31). Interpersonal trust relationships have moral content in that "fidelity to trust is morally praiseworthy, betrayal of trust is morally blameworthy" (Goold, 2001, p. 26). Trust relationships are found in conditions where there is risk and uncertainty in decision-making, conditions most definitely found in competitive sport. A child-athletes' acute vulnerability to harm, powerlessness, and a compromised future emphasises the need for trust and the reliance on trust in the coach of such high import. This vulnerability to the coach requires an acknowledgement of their ethical obligations, yet many such obligations are, in reality, based more on contractual rather than on ethical terms. Since coaches—as moral agents—do have moral agency, they have intrinsic moral obligations to their athletes, and particularly to child-athletes. The inherently vulnerable nature of the child-athlete justifies imposing moral duties on coaches.

A trust-based relationship consists of a number of factors. It presupposes the vulnerability, reliance, and dependence of the truster, as "risk is of the very essence of trust." (Baier, 1994, p 196). Trust is an essential part of many relationships, particularly those which involve power differentials, such as between teacher and student, doctor and patient, and between parent and child. Trust is necessary in almost all relationships: "Trust is the grease that keeps the wheels of society moving" (Goold, 2001, p. 30).

Trusting parties, namely children and parents in the world of competitive sport, expect beneficence. According to Gambetta (1998), interpersonal trust is based on the specific expectation that the actions of another will be beneficial rather than detrimental. The athletes and parents expect that the coach will be concerned with the well-being and interests of the child. In addition to expectations of beneficence is the expectation of

advocacy: that the coach will act on the child's behalf in negotiations or dealings with sport governing bodies, sport officials, and others involved in the process of "producing" a champion in sport. Another expectation is that of competence. The athlete and the parents give great discretionary power over decisions in conditions of risk and uncertainty, and expect the coach to use this power in beneficial ways, on behalf of the athlete.

In competitive sport environments, vulnerability arises from the inherent nature of children being vulnerable beings, as well as from the unknown and unpredictable nature of the sporting world. Inexperience and ignorance on the child's part, and possibly on the parent's part, contributes to the state of vulnerability. There is also the power differential between the coach and the athlete and/or parents, particularly of knowledge and expertise, and from the lucrative nature of sport itself which engenders vulnerability. These imbalances of power are unavoidable in sport. The child's health, well-being, bodily integrity, and future are elements with which the coach is entrusted. Parents may even include the child's future financial well-being as an element entrusted to the coach—he or she is the gatekeeper to the child's future success in sport. Such conditions of risk, and what is at stake for vulnerable athletes, are paramount issues in the sporting environment. Uncertainty of outcomes is an inherent feature of sport.

Strong ethical codes warranted by various intrinsic and universal aspects of the coach-athlete relationship. In addition to the vulnerabilities of child-athletes mentioned above is the real danger of exploitation by coaches, parents, and even sport governing bodies. The lucrative financial nature of sport means that a lot may be at stake, and parents and coaches are the primary gatekeepers of the child-athlete's participation in this environment. The greatly superior skill and knowledge of the coach, and the power of both the parent and the coach renders trust an essential attribute of the relationship. While we would like to believe that trust rather than distrust is a prevalent element of the relationship, the magnitude of what is at stake points to establishing the rudiments of trustworthiness that are essential to deserving trust, and perhaps codifying them in an ethical code of conduct.

Trust is necessary to achieve the ends of high-performance sport; it is not simply an end in itself. Trust is necessary to adhere to demanding training regimens, to try risky manoeuvres, to compete in high-pressure environments, to reveal psychological concerns, fears, and injuries, and to rely on the coach for recommendations on all aspects of participation from diet, to training, to equipment, to attire, and to performance. For a variety of reasons, then, it must be a primary objective to engender and maintain the conditions necessary to preserve and promote trust, and to avoid abuses of trust in the coach-athlete relationship. How this may be accomplished is beyond the scope of this work. We turn now to consider the issue of consent, one of the foundations of participation in any activity.

3.3.2 Consent

The maxim "volenti non fit injuria" is generally understood as meaning "to those who consent, no harm is done". This is the principle upon which participation in sport rests. Since

some degree of injury is a relatively common occurrence in sport, and since most injuries, and their relative severity, may be forecast, most people who experience a sports injury consider it to be part of the sporting experience. For example, since basketball involves a lot of jumping, bumping, and quick lateral moves, basketball players occasionally suffer from twisted ankles. This is not an unusual injury, and for many, it is not sufficiently dangerous or injurious in the long term to warrant not playing basketball. Many runners experience relatively minor injuries such as achilles' tendon sprains, and strained muscles. Even regular knee pain is rarely severe enough to put many runners off their training. Hockey players know that the game involves checking, sometimes quite aggressive hits, but know this in advance, and consider the risks of harm to be manageable enough to participate in the sport. Almost every sport, if not all sports, has 'typical' injuries, which are considered "general knowledge" in relation to that sport, and thus those who decide to participate take on the risks of potential injury and harm of such participation.

Sufficient information and the opportunity to exercise one's freedom are required for an individual to make rationally informed, autonomous decisions. Consent is one of the most important notions when trying to determine whether harms imposed upon individuals is justifiable (Scoccia, 1990). Given that children are characteristically unaware of the full implications of their decisions, parents are usually the proxy decision-makers; however, coaches and administrators within sporting bureaucracies also make decisions affecting athletes.

As we have seen, Article 32 of the UN Convention states "the child has the right to be protected from work that threatens his or her health, education or development". These positions are in conflict with conventions of high-performance sport for children, if we accept that individuals have the right that others not impose risks of harm upon them (McCarthy, 1997). In view of this statement, then how do we deal with the treatment of young athletes in sport? Reviews of the medical literature show evidence of a preponderance of injuries in young athletes. Are the proxy-decision makers truly consenting to the risk of harm? What about the issue of sport being labour, with young athletes training 30 to 40 hours per week? Who is consenting to this situation? If the adults are, and they are since they control the purse-strings for coaching fees and equipment, at least for the early years, then is this morally appropriate? If the children are making the decisions, is it morally appropriate for them to consent to harm of this magnitude? I would argue that children do not have the knowledge and ability to comprehend the long-term implications of harm in such high-level training and competition. Parents and coaches must intervene paternalistically solely for the best interests of the child, but with a view to the child's developing autonomy. Kultgen (1995) feels that it is possible to remonstrate with an individual in ways that might be coercive, making these actions parentalistic, but acceptable. If we alert a person that the consequences of their actions may be such that they may not welcome them—in order to dissuade them from the act—then such advice would be parentalistic. Now this could be problematic for the parents and coaches who, despite the risks of harm, still want the athlete

to participate. There are benefits to participating in high-level sport, but the question is whether the benefits outweigh the risks. I would suggest not when consent of participants is lacking, or when proxy consent results in children being harmed.

Along with the issue of consent, and who is giving it, comes the issue of *withdrawing consent*. Once a child is ensconced in the sport, there are many adaptations that have to be made on behalf of the child and the family. For example, in a 1998 television documentary on children and sport in the U.K., a mother was being interviewed about her daughter's participation in horse riding. She talked about the sacrifices she and her husband had made for her daughter to participate. Financially they made huge concessions, forsaking almost all but that which was required for the sport. The father held two jobs in order to pay for coaching and equipment fees. All energies and efforts in the family were directed towards making the child a champion.

It is unlikely that young athletes truly possess the ability to withdraw their consent once they have become involved in their sport at a high level. As with all high-performance athletes, even young athletes have invested time in training, competition, and travel: time which was NOT invested in another vocation. Beamish and Borowy (1988) discuss this issue, and note that it is a myth that athletes can simply choose to leave their sport if they are unhappy or unsatisfied. Money, often considerable sums, has been invested. Family members have invested time and energy to the athlete's career. Coaches will have invested greatly in the athlete as well. And finally, there are social and national, sometimes international expectations of the athlete. Thus, withdrawing consent is a very complex issue within sport and young athletes.

3.4 Early entry

As outlined earlier, sport specialization is occurring at increasingly younger ages. Dalton (1992) reports a seven-year old child running the Melbourne marathon in 3 hours 31 minutes, and a 13-year old at 2 hours 55 minutes. With early specialization has come increased intensity in training and competition (American Academy of Pediatrics (AAP), 2000b). Media attention has focused on many of these talented young athletes, the successes—in terms of celebrity, financial, and otherwise—of whom have served as powerful motivators for other youngsters to emulate. While the probability of winning an Olympic medal, world championship, or even becoming a professional athlete is very low, many children continue to be funnelled into competitive sport, and are expected to specialise in one sport very quickly in their fledgling athletic careers. The AAP notes that in order for an athlete to be competitive at a high level, training regimens that are considered extreme for even adults are required: “the ever-increasing requirements for success creates a constant pressure for athletes to train longer, harder, more intelligently, and in some cases, at an earlier age” (AAP, 2000b, p. 154).

The drive towards earlier specialisation in sport in Canada, the United States, and Britain, and other western countries, may have originated in the 1970s, when the former

East German and Soviet Union began dominating many sporting events at the Munich and Montreal Olympic Games. Concerns with how to emulate the “production of performance” led to an investigation into the success of these nations. Gilbert (1976) identified four factors in East Germany’s “miracle system” which were replicated in the Soviet Union, Cuba, and other Soviet satellites in Europe: (1) early exposure of children to physical education and a wide range of physical activities; (2) a broad base of participants in sport and physical activity; (3) early identification of athletic talent, and; (4) intensive and specialized training for those identified (Gilbert, 1976, in Donnelly, 2000, p. 176). The early successes of female gymnasts, figure skaters, and swimming provided incentives to implement early entry into other sports as well. In Canada, hockey was one of the sports already involving talented youngsters at very young ages. It was somewhat different to the other sports in that hockey was focused solely on boys’ involvement. However, the risks and harms were similar in many respects.

Thus far, we have discussed the nature of high-performance sport, and some of the experiences of children participating in this environment. We have considered briefly the issues of trust and consent as they relate to the issues of harm and exploitation within sport, and how weaknesses in the relationships between young athletes and parents, coaches, and other adults in the sporting environment may lead to encroachments of the young athletes’ physical and emotional integrity. We turn now to examine the risks and harms experienced by young athletes training intensively and competing in competitive sport.

3.5 Risks and harms

Over the years, observations have been made that competitive sport for children may be institutionalised forms of child abuse. These are not limited to only recent reports. Throughout the last twenty years or so, a number of journalists and academics have written about their concerns in a variety of sports. Most of the discussion has focused on women’s gymnastics, figure skating, tennis, and to a lesser degree, swimming. Men’s sports have not been focused upon to the same degree, primarily because boys reach puberty at a later stage than do girls, and men’s strength peaks are far later (Rowland, 1996). Women’s gymnastics and figure skating also have technical requirements that are not easily attained by women after puberty. Such complicated acrobatic skills are disturbed by increases in body weight, height, and complicated by factors such as the development of hips and breasts, which interfere with the centre of gravity that in turn affects the height and speed of leaps and rotations.

The ideal female gymnast or figure skater—if we consider the medallists over the last decade as models—have epitomised the child-like distinctly boyish, figure. The turning point in women’s gymnastics occurred around the time of the 1972 Munich and the 1976 Montreal Olympic Games. In 1976, the average U.S. Olympic gymnast was 17.5 years of age, stood 5 feet 3½ inches tall, and weighed 106 pounds (Ryan, 2000). In 1992, these statistics had changed. The average age was 16-years, height was 4 feet 9 inches tall, and

weighed a mere 83 pounds (Ryan, 2000). Gymnasts Olga Korbut of the former Soviet Union and Romanian Nadia Comaneci ushered in a new generation of elite gymnasts, from women into girls. Korbut competed at 85 pounds in Munich, and Comaneci was only 14 years old.

Journalist Joan Ryan considered thirteen year-old Michelle Kwan's medal at the 1994 U.S. Figure Skating Championships as skating's transformation from a women's sport into a children's sport. She further described the 1994 Olympic medallists, Oksana Baiul, Nancy Kerrigan, and Chen Lu, as each embodying the image of the "ice princess", who is "light, young, and pretty" (Ryan, 2000, p. 125). Gymnast Mary Lou Retton retired from her sport at the age of 16 after winning her Olympic gold medals, having attained what is arguably the highest achievement in her sport.

Children's experiences in elite sport ranging from physical and psychological injury to child abuse to reports of deaths by young girls in competitive gymnastics have been reported in newspapers, magazines, books, and discussed in academic journals for the last few decades. In her 1995 book, *Little Girls in Pretty Boxes*, journalist Joan Ryan detailed the exploitation, manipulation, harsh coaching styles, injuries, and psychological and physical abuse endured by young female gymnasts and figure skaters. She published an update in 2000. Ryan's research is used extensively in this thesis, as hers is the first and most comprehensive investigation into these issues. In 1996, Tofler et al. published their paper, "Physical and emotional problems of elite female gymnasts shortly before the Atlanta Olympics, and the issues they raised are key to the harms outlined in my argument that children participating in elite sport are being harmed, and their futures compromised.

In 1995, the Australian government set up an independent inquiry at the Australian Institute of Sport in Canberra, following allegations from parents that young female gymnasts were being physically and psychologically abused (Colman, 1995). The findings were inconclusive. There are extreme examples from gymnastics of harm to athletes. In Romania, coach Florin Gheorghe smashed eleven-year old gymnast Adriana Giurca's head against the balance beam, and then proceeded to kick her viciously for fumbling her dismount. The child died later that evening. It took three months after her death for Gheorghe to be arrested. The coach was charged with murder in 1995, and sentenced to eight years' incarceration (Giurca, 2001). The sentence was appealed, and reduced to a charge of manslaughter and a sentence of six years; Gheorghe actually served only three and a half years in prison before being released for "good behaviour" (Raducan, 2001). Since his release from prison, he has received offers of coaching jobs from other gymnastics clubs, including one in South Africa (Raducan, 2001).

The accidents in gymnastics are not as publicised. In recent years, Sang Lan of China was paralysed while vaulting during the 1998 Goodwill Games in New York. American Julissa Gomez was sixteen years old when she broke her neck in a vaulting accident in Japan, and died following complications (Ryan, 2000). In late December of 2001, Russian gymnast Maria Zasypkina became paralysed after a training accident. The 15-year

old broke her neck after an awkward landing (BBC Sport, 2001). After a number of surgeries, she has regained some movement in her arms and legs, but her prognosis remains grim. Other athlete deaths have resulted from eating disorders tied to their sports participation, and is discussed in more detail in the section on disordered eating.

In his discussion on deviance in sport, Coakley (2001) defines the sport ethic as “a cluster of norms that many people in power and performance sports have accepted and reaffirmed as the dominant criteria for defining what it means, in their social worlds, to be an athlete and to successfully claim an identity as an athlete” (p. 146). The normative core of high-performance sport culture is constituted by the sport ethic, which is composed of four norms (Coakley, 2001). First, the athlete makes sacrifices for the game. This is about commitment, establishing sport as the individual’s first priority over all other interests. Second, the athlete strives for distinction: being an athlete means constantly pushing, striving, excelling and exceeding, aiming to win and to be the best. This drive is exemplified by the Olympic motto, “*citius, altius, fortius.*” Third, the athlete accepts risks and pushes through pain: voluntarily accepting the risks of the sport signifies courage and determination, as does training and competing while injured. With an injury that calls for complete rest for most people, some athletes continue training with painful injuries: “It’s bearable” said fourteen-year old Dominique Moceanu several weeks before Olympics on the status of the stress fracture in her shin (Hanley, 1996).

Overcoming the pain of injury was exemplified by gymnast Kerri Strug at the 1996 Atlanta Olympic Games. Strug had injured her ankle, tearing ligaments while landing a vault. Her coach, Bela Karolyi, encouraged her to try another vault, the score of which contributed to the team score. The second vault eliminated any chance of her returning to compete in the individual all-around competition slated for two days later, “a goal she’d clung to for the past four years” (Swift, 1996, p. 104). While Strug and her team-mates won the gold medal in the team event, Strug sustained a significant injury, literally sacrificing herself for the team (Swift, 1996). Strug was heralded as a hero for her self-sacrifice, and was feted by the media for her unselfish act of putting the team before herself. Whether she would have attempted the second vault at all is questionable with her injury; that her coach encouraged her to do so reflects the pressure exerted on young athletes by coaches, team-mates, and others to “take one for the team”, but sometimes at great cost to the individual athlete. Few viewers saw Strug’s vault as an example of a coaches’ inappropriate use of power over young athletes, as did Lenskij (2000). Many preferred to view Strug’s “sacrifice” for the sake of her team as an ultimate heroic and courageous sacrifice—her body for the team.

The fourth and final norm within the sport ethic is the athlete who accepts no limits in pursuing the possibilities: this norm is about the athletes’ “dream” and his or her obligation to pursue that dream, not matter what and at any cost. Athletes ignore external limits, believing that in sport, anything is possible—if the athlete is dedicated to pursuing that dream. The result of such a narrow focus may be an injured athlete who refuses to leave the sport and move on with his or her life. When an athlete is forced to leave the sport, as in a

situation where the coach cuts him or her from the team, adjustment to life beyond the sport will be very difficult. There are also situations where an athlete has been seriously injured, but refuses to leave the field, and continues competing, risking their future health. Sometimes the coach or team trainer colludes with the athlete, or even pressures the athlete to return to play, and gives him or her painkillers to make the pain manageable. This is immoral and unprofessional on the part of the coach or trainer, and I would argue that a coach or trainer, or even a parent, who engages in this type of coercive behaviour is seriously remiss in their responsibility to protect the athlete from harm.

The presence of children in the environment of high-performance sport demands a consideration of the appropriateness of such participation. Steve Nunno, an international gymnastics coach, exemplifies the idea that coaches sometimes think of the athletes with whom they work as objects to be moulded rather than as human beings. After the Olympic trials in 1992, he said that “he was so excited that he went home and started working on his 10-year olds: the future stars in Atlanta in 1996” (Kantrowitz, 1992). He referred to these young gymnasts as if they were “products” rather than human beings.

The nature of fierce competition, and the pressure of a win-at-all-costs attitude, which pervades such an arena, raises the questions surrounding what it is to be a child, and why they are part of such a demanding endeavour. High-performance sport is developed by adults, organised by adults, watched by adults, and for the most part, participated in by adults, and as such, adults must consider and justify children’s participation. Adults must also focus on the social values such sport represents, and the impact on child participants. While children’s sport, from gym class to organised community sport, does involve winning and losing, the sphere of high-performance sport focuses entirely on competition. Children learn very quickly that winning is good and losing is bad. This single-minded orientation championing winning as paramount demands that we attend to the social value of children participating in such an environment. Such a focus on winning may lead to a consideration of the ends justifying the means, which appears to be the case in children’s participation at the highest levels of sport. “Competitiveness negates [and/or] challenges notions of innocence, unselfconsciousness, and the immanent, sentimental value of children that remain central to contemporary constructions of childhood” (Cooke, 2001, p.227). We must also attend to the issue of children being introduced into competitive sport for the specific purpose of being prepared, or “hot-housed” for participation at higher levels of competition.

In the 1980s, Cantelon (1981), Kidd and Eberts (1982) and Grüpe (1988) started writing about the dangers of children participating in intensive, competitive sport programmes. Cantelon and Kidd and Eberts identified athletes as workers, and extended the concept to children, calling those participating in high-performance sport, “child-athletic workers”. Donnelly (1997) has continued this trend, also writing about the lost childhoods of these young athletes. In his work, Grüpe (1988) put forward a number of arguments for rejecting children’s participation in high-level sport. He claims that in these environments, children are not allowed to be children, and have their right to be children infringed upon;

they do not have their real needs taken into account; they have their futures put at risk; they are manipulated; they are abandoned to the “unchildlike” burden of top-level sport in an adult world, and are subjected to the “superstress” of high-level training; these children are denied important social contacts and experiences; their family life is destroyed; they may suffer impaired cognitive development; and they endure a type of abandonment upon leaving the sport environment, whether through retirement or injury (Grüpe, 1988, p. 225-226).

Successful child athletes do not necessarily grow up to continue their athletic success. Donnelly (1997) states “children who become successful adult athletes in high-performance sport appear to be survivors rather than products of the current system” (p. 401). He suggests that the problems created by children’s early intensive involvement and specialisation in sport are an issue of balance. Parents, coaches, and other adults involved need to determine the most appropriate way to nurture the talent of elite child athletes, while at the same time safeguarding their overall well-being (Donnelly, 1997). When the talent is overemphasised, the child is vulnerable to exploitation or even abuse, and is certainly susceptible to physical, psychological, and sociological harms. However, if the talent is not nurtured, the child may also miss the opportunities to become an Olympian or professional athlete. With every choice there is an opportunity cost; choosing one pursuit may preclude other options.

Children’s experiences in sport have not been entirely positive, nor have they changed dramatically since the first calls years ago that children might be harmed by their experiences in intensive training and competition in sport. Donnelly (1993) claims that the experiences of children in competitive sport have become increasingly negative in the past twenty years, as evidenced by increasing numbers of children “suffering from competitive stress and anxiety, increased aggression, parental pressure, high dropout rates and from being treated as adults (rather than children) by their coaches” (Donnelly, 1993, p. 389). His research confirms these problems, as does other research about “the sexual, physical, and mental and/or emotional abuse of such children, their long hours of involvement in training and competition, and their high injury rates” (Donnelly, 1993, p. 390). Beamish and Borowy (1988) wrote about the concept of “child athletic workers”, noting that child athletes are one of the least talked about, yet one of *the most* pressing concerns in high-performance sport today. “Athletes who are still legally minors are working doubled days of labour—at school and in sport” (Beamish and Borowy, 1988, p. 99). There are no legal protections for these young athletes, unlike children working in the entertainment industry.

Many people would likely not recognise sport as “work” or “labour” since sport may be considered to be non-serious, playful, a respite from the “real world”, and located at the opposite end of the spectrum from work. In reality, however, organised competitive sport is serious, intense, and parallels may be drawn between athletes and workers (Cantelon, 1981; Donnelly, 1997). Beamish and Borowy (1988) wrote “through their labour, Canada’s athletes are the heart, soul and backbone of a major, international entertainment industry”

(p. 96). If this is the case, that athletes are labourers, then why does Canadian labour law not apply to athletes as well? More pointedly, why are child actors protected by labour laws while child athletes are not?

Donnelly (1997) discusses amendments made to the Ontario (Canada) labour code, called "The Child Performers' Amendments to the Ontario Occupational Health and Safety Act", for child entertainers, which are clearly relevant to child athletes. In this Act, child performers are identified as "special workers" who require special care and protection over and above that required for adult performers. These legal documents provide legal protection for labouring children, and appear to be relevant to child sport labourers. Unfortunately, such legislation is useful only if enforcement is guaranteed. Otherwise, as with codes of conduct, these acts and agreements provide valuable guidelines but are certainly provide no guarantees for the safety of children, although they provide avenues for legal recourse.

3.5.1 Physical harms

Heavy training loads, early sport-specific training, inadequate rest periods, as well as the pressure to train and compete while injured increases the risk of impaired skeletal development and permanent deformity (DiFiori, 1999; Tofler, 1996). The consequences of such high intensity training and competition are injury, some of which are long-term (Mandelbaum, 1993; Rowland, 1990). The risks of injury rise as training increases in frequency, duration, intensity, and with technical difficulty, and may also be attributed to the age-related vulnerability of the immature skeletal system. Judged sports such as gymnastics and figure skating, as well as those sports with weight classes such as wrestling and rowing, impose such severe caloric restrictions "in efforts to improve performance or gain competitive advantages" that the limited nutrient intake "may instead result in muscle weakness, diminished bone density, calcium loss, iron deficiency, and menstrual irregularities" (Rowland, 1990, p. 182). Despite assertions by organizations such as the International Federation of Sport and the American Academy of Pediatrics stating that intensive training of children has no physiological or educational justification, and that diversity of movement and all-round physical conditioning should have priority over later specialisation, promising young athletes continue to be inducted into high-performance sport.

While advocates of children's organised sport promote peer socialization as one of the benefits (DiFiori, 1999), not all sports provide such opportunity, at least not during training itself. One young swimmer spoke of the sensory deprivation experienced while he was training: "you can neither hear nor [sic] see while you swim. You can see next to nothing and the only taste is chlorine! In truth, to the outsider, the only social side to swimming training is a shared mutual discomfort..." (Juba, 1987, p. 174). Juba calls the pressure ambitious parents place on their children "parental projection," since these parents

view their child as an extension of themselves and perhaps their own missed opportunities. Tofler et al. (1996) refer to this as “achievement by proxy”, which is discussed in the next section on psychological harms. The importance parents place upon swimming within the framework of their lives—both in terms of time and financially—turns into pressure on the children.

Experience suggests that harm, in some degree, is an inevitable component of almost all activities. However, in some environments, harm appears to be more prevalent than in others. Competitive sport, particularly at the highest levels of performance, seems to involve significant risk of injury—significant in both frequency and degree. Reviews of literature reveal that young athletes suffer a wide array of injuries while training and in competition. In high-performance sport, elements such as injuries, fatigue, and even bad weather, rarely interfere with an athlete’s participation except in extreme circumstances. Given the intense demands of high-performance sport, and the vulnerable nature of children’s developing bodies and minds, excessive cognitive and physiological demands may overburden a child, resulting in harm. For the most part, the effects of those harms on the shaping of a child’s identity, and on the child’s future, are difficult to predict. In terms of physical harms, reports have been made about the implications of heavy training loads and competition, as well as specific injuries, for an athlete’s future both in sport and in general activities of daily living (Tofler, 1996).

High-performance athletes are under considerable social, emotional, and economic pressure to return to competition and training as soon as possible. The emotional and economic consequences of injuries at a professional or high-performance level of sport can be devastating. Nideffer (1997) points out that there can be millions of dollars and the loss of an immeasurable amount of prestige, as well as political and personal recognition at stake, when an athlete is seriously injured. Under these conditions, the pressure all those involved with the athlete, such as the coach, parents, agents, team-mates, and others, feel to get the athlete back into the competition arena as quickly as possible, becomes obvious. Unfortunately, that pressure does not always facilitate the recovery process, and may in fact do just the opposite. The pressure from parents, coaches, team-mates, and others involved in sport can be overwhelming for any athlete, let alone a child athlete. There is pressure to specialise in one particular sport, to focus on that sport year round, to train long hours, and also to compete. Furthermore, there is continual pressure to “progress”, to continually improve and to move up in levels of competition. This stress from others as well as from the athlete him or herself may be too much for a young athlete’s developing body, and may result in acute or chronic, temporary or long term, injury. Unlike adult athletes, children and adolescents still require energy for growth, in addition to energy to train, recover, and to compete. Their young bodies are also less stable and more prone to injury than are the mature bodies of adults (Kozar and Lord, 1983).

Concentrated and intense training for young bodies is an obvious factor in the increasing number of injuries to child athletes. Coaches sometimes forget that child athletes

are not simply mini-adults, and do require particular attention be paid to their developing bodies from all perspectives—physical, psychological, and social. The American Association of Pediatrics has published a number of position papers related to children’s participation in sport. These have focused on specific sports such as soccer and distance running, and different levels of sport such as intensive competitive sport, and have also focused on specific conditions, such as the female athlete triad.

While injuries may occur in any sport, gymnastics has been rated as a high-injury risk discipline (Bayliss and Bedi, 1996). The nature of the sport for young women is that it is essentially a child’s sport, since most gymnasts retire while they are still teenagers, as did Mary Lou Retton at the age of sixteen. The careers, then, in gymnastics, are short and intense. There is little or no time to recover from injuries. Consider the pressure on Kristie Phillips, American gymnast and media darling. She was under considerable pressure to win the junior title at the 1986 U.S. Gymnastics Championships. A month before the competition, she finally had to acknowledge the wrist pain she had been ignoring for five months. The doctor explained why her wrist had been so sore: it was broken (Ryan, 2000). Despite her injury, Kristie won the junior nationals, but she still refused to take time off to let the wrist heal, coping with massive doses of pain killers. Early recognition of almost any injury may lead to more favourable outcomes, but the pressure on these young athletes results in reluctance to admit to pain or injury.

Children tend to be injured more often than do adults, perhaps because they are usually more active than adults (Leblanc and Dickson, 1997). Children are poor thermo-regulators, and are highly susceptible to dehydration and heat related illnesses (AAP, 1990). Growth itself may increase children’s susceptibility to injury, since growth spurts may interfere with balance and coordination, as well as decrease flexibility. Children are particularly vulnerable to injury because of their immature musculoskeletal systems. Excessive or repetitive loading of an immature joint may lead to premature closure of the growth plate. The growth cartilage of children is particularly susceptible to repetitive stress (DiFiori, 1999). The growth cartilage is found at the articular surface, physes, and apophyses, and is particularly vulnerable to injury at the ankle, knee, and elbow. Apophyseal injuries are commonly attributed to overuse, resulting from traction-induced microtraumas at the tendon-bone attachment (Peck, 1995). The increased traction during the adolescent growth spurt is a contributing factor to these types of injuries, in addition to strength imbalances between the growth cartilage relative to the tendon, and poor flexibility. Physeal injuries may also be caused by repetitive loading, as in vault training in gymnastics, which can damage the distal radial growth plate (Caine, Roy, Singer, et al, 1992). Physeal injuries may result in partial or complete growth arrest (Albanese, Palmer, Kerr, et al, 1989).

The spectrum of vertebral injury in young athletes ranges from stress reaction to spondylolisthesis. The sport of rhythmic gymnastics combines the athleticism of a gymnast with the grace of a ballerina, and as such, places the young gymnasts at risk for a myriad of injuries. The sport “demands both the coordination of handling various apparatus and the

flexibility to attain positions not seen in any other sport. To attain perfection and reproducibility of their routines, the athletes must practice and repeat the basic elements of their routines thousands of times.” (Hutchinson, 1999, p. 1686). These extreme stresses on the body are characteristic manoeuvres of gymnastics. They may result in stress fractures to the skeleton, with the lumbar spine being at greatest risk. The extremes of joint position can produce significant symptoms with chondromalacia (Goldberg, 1980). In their 1991 study of high-performance female gymnasts and swimmers of pre-elite, elite, national and Olympic calibre, Goldstein, Berger, Windler, et al., (1991) found 9% of pre-elite, 43% of elite, and 63% of Olympic level gymnasts had spine abnormalities, and 15.8% of all swimmers had spine abnormalities. They found that the average hours of training per week and age were associated with abnormalities, and that increased intensity and length of training correlated with previous data reveals the female gymnast is prone to spine injuries. Physicians recommend activity limitation with the onset of skeletal pain in order to avoid the permanent structural changes such as either gradual slipping of the epiphysis or growth disturbances (Bak & Boeckstyns, 1997). However, in the highly competitive, highly pressured athletic environment, this advice is unlikely to be followed.

Repeated micro-traumas to the growing epiphyses is of concern for young athletes, particularly in sports which require highly repetitive and intensive loading of extremities, such as gymnastics. In their study conducted at the European Gymnastics Championships in Lyon, France, Auberge, Zenny, and Duvallet (1984) found delayed bone age in the growing epiphyses of 73% of the boys and in 78% of the girls. The authors attributed this bone age delay to an unbalanced diet and repeated micro-trauma.

Overuse injuries in pediatric populations are on the rise, accounting for 30 to 50% of all pediatric sports injuries (DiFiori, 1999). The rise in overuse injuries to training may be attributed towards young athletes becoming more sport-specific and training nearly continuously. Competitive swimming is one of the most demanding and time-consuming sports (Bak, 1996). High-performance swimmers may practice twenty to thirty hours a week, and over a one year period, the average top level swimmer performs more than 500,000 stroke revolutions per arm. Over many years, these innumerable repetitions, combined with an increasing muscular imbalance around the shoulder girdle, seem to be the main etiological factors in the development of over-use injuries in swimming. Sport played at the professional and Olympic levels are particularly noted for injuries, which seem to be an inevitable consequence of competition (Nideffer, 1997). If one plays long enough, and trains hard enough, eventually athletes will become injured. In these conditions, success is often dependent upon the ability of the athlete to recover quickly, and at times to be able to continue to compete in spite of an injury

Stress fractures are a common overuse injury among athletes (Brukner & Bennell, 1997). Standard treatment requires rest from the aggravating activity, and return to sport is usual within six to eight weeks. The rate of resumption of activity is influenced by symptoms: when pain-free, the sport may be resumed and participation slowly increased. In their

prospective study of injuries affecting 50 highly competitive young female gymnasts, Caine et al. (1989) reported the findings as disturbing and echoing concerns registered in the professional literature. The re-injury rate was particularly alarming, and highlights the need for complete rehabilitation before the athletes return to full training and competition loads. They also found that rapid growth periods and advanced levels of training and competition appear correlated with the predilection towards injury.

The locus of concern surrounding the injuries sustained by young athletes in sport is based on the principles of harm and consent. Many of these injuries have long-term, sometimes life-long, sequelae. The questions of whether the young athletes knew the risks associated with their sport before entering into competition is significant, as well as the issue of whether the young athletes could withdraw from participation once they were ensconced into the competitive environment. Since children and adolescents—by law—cannot give consent, they could therefore not given informed consent, and thus are wronged by parents, coaches, and others who initiate and maintain the child’s participation in a harmful activity.

The medical evidence seems clear that intensive training and competition increases the risk of overuse and acute injuries in susceptible child athletes. This evidence also outlines the danger of such injuries having life-long sequelae. The significance of such evidence is clear: children training and competing in high-performance sport are being harmed physically, and such harms lead to the abrogation of the child’s right to arrive at adulthood with an open future. We turn now to consider psychological harms experienced by these young athletes.

3.5.2 Psychological harms

In a recent interview, tennis great Martina Navratilova stated that “tennis stunts your emotional growth, and you don’t know who you are because you are so focused” (*Globe and Mail*, 2002, p. S1). The psychological impact of intensive participation in competitive sport for children has been discussed by many researchers, including Rainer Martens (1993), Daniel Gould (1993), and Maureen Weiss (1993), to name only a few. Much of their work focuses on stress, burnout, and self-esteem issues related to children’s participation in organised, competitive sport.

Early sporting experiences leave a lasting impression on children. As such, parents, coaches, and others involved in children’s sport have a responsibility to ensure that these experiences are good ones so that children will remain involved for a life-time. Not only is physical activity essential to general health, but sport contributes to a child’s development both psychologically and socially: “Sport can affect a child’s development of self-esteem and self-worth. [It] is also within sport that peer status and peer acceptance is established and developed” (LeBlanc and Dickson, 1997, p. 3). Children are not good at judging their own ability, and rely on others to explain how they are progressing in skill development and in relation to their peers. As such, enormous responsibility is placed on parents and coaches

to set reasonable standards for children. When standards are set too high, disappointment and frustration may lead to children not wanting to participate any longer. In his early work about why children fail in education, Holt (1964) wrote that children fail because of fear, boredom, and confusion: “they are afraid, above all else, of failing, of disappointing or displeasing the many anxious adults around them, whose limitless hopes and expectations for them hang over their heads like a cloud” (p. xiii).

While Holt’s work focuses primarily on children’s struggles in education, his words are equally applicable in children’s sport organised by adults, wherein children are surrounded by adult organisers, coaches, and officials. Coaches and parents play an important role in developing and shaping children’s perception of themselves (LeBlanc and Dickson, 1997). The coach’s manner of skill correction, behavioural reinforcement, and way in which she or he corrects errors plays an important role in developing or impairing the self-esteem of young athletes (LeBlanc and Dickson, 1997). Thus, parents, coaches, and officials must be vigilant in the environment they create for young athletes.

Unfortunately, we know that the sporting world is not always a healthy environment for the self-esteem and self-confidence of athletes of any age, children or adult. Competitive sport values winning above all else, and as such, notions of fair play and other values are diminished. For some athletes, sport will be a nightmare, and their lives may be destroyed by their experiences (Brackenridge, 2001). While Brackenridge’s strong words refer primarily to athletes who have been sexually exploited by peers and/or authority figures in sports, her words apply equally appropriately to athletes to have been harmed in other ways. Many people believe that participation in sport is a positive, character building experience for children. Others, however, have expressed concerns regarding those experiences for children, particularly about the value of such participation, and the sequelae of relentless pressure to win at all costs.

3.5.2.1 Disordered eating

While parent, coaches, and team-mates do not explicitly teach athletes disordered eating behaviours, such behaviours may be part of the life of gymnasts, figure skaters, and various other sports (Coakley, 2001). Eating disorders such as anorexia nervosa and bulimia, in addition to a variety of other disordered eating problems rank among the major health problems in the U.S. (Yeager et al., 1992; Taub and Blinde, 1992). Risk factors for the development of eating disorders include the need to maintain strong control over body shape, which has been identified in many groups such as female adolescents, ballet dancers (Brooks-Gunn et al., 1988; Garner et al., 1987), models (Garner and Garfinkel, 1980), and female athletes in certain sports (Brooks-Gunn et al., 1988; Stoutjesdyk and Jevne, 1993; Taub and Blinde, 1992; Picard, 1999). Factors such as pressure from coaches, parents, team-mates, and the emphasis on physical appearance in certain sports, as well as high self-expectations, competitiveness, perfectionism, compulsiveness, drive, self-motivation, and intense pressure to be slim and perform have been identified as

correlates in individuals with eating disorders (Picard, 1999; Taub and Blinde, 1992). Ron Thompson, co-director of the eating disorder programme at Bloomington Hospital in Indiana notes that the characteristics that make great student-athletes also contributes to great anorexics; athletes who end up with eating disorders tend to be the 'good' athletes:

They perform well, they are extremely coachable and will do almost anything to please the coach and they are selfless individuals seeking to improve themselves and the team and willing to work hard and endure pain and hardship. You can find all of these traits in a good anorexic. (Hawes, 2001, p. 6)

The emphasis in these sports and others for athletes to have low body fat and to be lean make it relatively easy for athletes to hide their disordered eating, and they may actually even be praised and admired for their self-control and denial of appetite (ANRED, 2002). The focus on thinness and demands for self-discipline may tempt the athlete to believe that she is being "good" when she limits her food intake, and to believe if she is "good" for long enough, her performance in sport will also improve; she thus links her weight loss with becoming quicker, faster, and stronger (ANRED, 2002).

Self-worth linked to external validation is one of the frequent commonalities identified in individuals with eating disorders. Since the competitive sporting environment focuses almost exclusively on valuing individuals by their performance and success, it is not surprising that athletes—particularly the younger ones—have high rates of disordered eating (Garner et al., 1998). When athletes begin their sporting careers at very young ages, their identities become moulded by their sport. Athletes rely on their performance to define themselves, and to create their personal identities. When they do not perform well, the effects on their self-esteem and self-image can be devastating. These young athletes see themselves as gymnasts, or figure skaters, or ballet dancers only, and anything that may threaten performance—such as weight gain—may be perceived with terror and damage their fragile and underdeveloped identities (Hawes, 2001).

Young athletes who depend on others such as their coach or sport officials for their self-esteem are in danger. Young athletes obsess over what others say might improve their performance, even when it damages them. Ryan (2000) writes that gymnasts tend to be such perfectionists who conform and please, and gauge their self-worth on other people's judgments. They tend to be young girls who have experienced belittlement and humiliation, and "who believe they are as worthless as the authority figures in their lives say they are" (Ryan, 2000, p. 59). Gymnasts make few decisions on their own, and transform themselves into whatever their coaches, parents, and judges want them to be. Christy Henrich, an American gymnast, was the paragon of the "perfect" and obedient athlete. She worshipped her coach, Al Fong, and obeyed him to the point of harming herself. Jack Rockwell, an athletic trainer, recounted Christy's relationship with her coach: "Christy idolized Al. He's not a bad person, he just had a bad attitude. She'd do anything for him. (Ryan, 2000, p. 58)

Ryan (2000) described an interview with Christy, wherein she related how Fong told her to suck in her gut, that she looked like the Pillsbury Dough Boy, and frequently reminded

her of how wonderfully thin the Russian gymnasts were. When Christy began losing weight, he told her how great she looked, which reinforced her obsession with becoming thinner. When Christy became so thin and weak that she was pulled by officials from an international competition, Fong kicked her out of his gym and told her not to return until she gained some weight. Christy told Ryan that Fong simply gave up on her, and was worried about his reputation. Christy eventually left gymnastics, never recovering her strength sufficiently to be able to train and compete. She said several years after leaving the sport, "If I wasn't in gymnastics...this wouldn't have happened to me. It's the constant putdowns, the constant criticisms, the constant mental and physical abuse. It pushes you over the edge" (Ryan, 2000, p. 94). After battling anorexia and bulimia for five years, and repeated hospitalisations, Christy died, weighing less than 50 pounds. Her mother said that she felt guilty for not recognizing that Christy grew up in a world where she was always told "you're never going to be good enough" (Ryan, 2000, p. 58).

When a judge told Christy to lose weight, she obeyed immediately. While some athletes could shrug off such comments—like Mary Lou Retton did when a top American official told her he could take off half a point from her score "just because of that fat hanging off your butt"—Christy could not. She was 15 years old, weighed 90 pounds, and stood 4 feet 11 inches tall, and was terrorized by the judge who told her she would not make the Olympic team unless she lost weight. Christy became anorexic and bulimic. She alternated between starving herself, and then bingeing and purging. She also used laxatives in her desperate attempt to lose weight.

Even though research shows that disordered eating practices will actually inhibit performance, someone who is in such a belief-cycle will reject those findings. Coaches suffer from the same misconceptions about "thinner is always better," and often encourage weight loss and the drive to be thin, and obedient athletes submit to their demands (ANRED, 2002; Robinson, 2002; Ryan, 2000). This is a significant moral issue, as discussed earlier, coaches are highly influential over athletes, and they must recognise the seriousness of their comments and directives, and the compulsions of their athletes. Practices such as public weighing of athletes involve embarrassment and even humiliation for the athletes, and continue to perpetuate the dangerous view that thin is best.

Sports such as gymnastics and figure skating place aesthetic pressure on athletes, rendering these athletes more vulnerable to disordered eating as the focus is on leanness for the sake of better performance or appearance (Stoutjesdyk and Jevne, 1993). Athletes have to find a balance between maintaining strength and power to perform acrobatic feats while maintaining aesthetic beauty, conceived of in many ways by thinness. Many of them do not find the balance. Ironically, in gymnastics, balance is an essential component of the sport. Even when athletes weaken to the point of falling off the apparatus, coaches react only calling them names and accusing them of a lack of focus. Chelle Stack lost 8 pounds during the month long stay in Seoul for the 1988 Olympics, and when she fell from the bars in competition, her coach called her an idiot (Ryan, 2000). Stack drank 12-ounce bottles of

laxatives, claiming liquid works better than pills, and made herself vomit to keep her weight down. Kathy Johnson was devastated by her coach's remarks that he would keep her out of competitions if she did not lose weight. She weighed less than a hundred pounds. She stopped eating, and lost weight. When her coach gushed about how great she looked after starving herself, she thought, "I could be even thinner!" (Ryan, 2000, p. 85). Not surprisingly, she started hallucinating, fainting, and then falling while training. After landing on her head while trying to complete a double flip, she was put in a neck brace and given drugs to cope with the pain and injury. Two days later, she removed the brace, and got up on the beam. The muscle relaxants dulled her reflexes, and she fell off the beam. So off-balance, she did not put out her hands to break her fall, and shattered her elbow joint. After surgery and hospitalisation, the doctor told Johnson that she would need to exercise her elbow every hour if she ever wanted to return to gymnastics. So, every hour through the night for weeks, her mother woke her up to exercise her arm. Because she could not train during this time, Johnson returned to starving herself. Her eating disorder continued for the rest of her career.

Coach Karolyi is renowned for his thin gymnasts. Before the Barcelona Games, he restricted his gymnasts' diets—to fuel an eight or nine hour training day—with an apple for breakfast, a salad and half portion of whatever the hotel served as the main course, and unlimited raw carrots for the rest of the day (Ryan, 2000). Gymnast Betty Okino said Karolyi was deliberately trying to get his gymnasts to lose weight, allowing them less than 1000 calories per day. At the Olympics, Karolyi or his wife constantly monitored the gymnasts. Their rooms were searched for signs of food—including under the mattress and in the garbage cans—and they were not allowed to order from room service (Ryan, 2000). Ryan describes how the girls resorted to clandestine plots to secure food. Male gymnasts and other coaches felt sorry for them. They would hide food for the girls where they could find it, in the hotel hallways or stairwells, or the others would sneak into their rooms while they were away with Karolyi to hide food in their suitcases or gymbags. When all the other U.S. athletes received official "care packages" from the States, the gymnasts were forbidden by their coaches from accepting them.

That the gymnasts themselves were confused or deluded about the way they were treated is evident in the way Betty Okino describes her experiences. When others claimed the gymnasts were being abused, Okino denied it. Such denial is consistent with the dynamics of the control seen in relationships of abused children and spouses, where the abused children and spouses try to somehow understand or justify the behaviour of their abusers. She claimed that the gymnasts could eat anything they wanted at home, "although they did weigh us in [every other day], so you had to watch what you ate" (Ryan, p. 70). The consequences of eating were severe. Like many gymnasts, Erica Stokes rarely ate in front of anyone else, a behaviour promoted by Karolyi. When she and other gymnasts stayed at his ranch for training camps, they hid food from him. When they heard him approaching, they would hide their food, since he "equated eating with sloth and weakness" (Ryan, p. 74).

He once found Erica eating a peach, and exploded. For Erica's transgression, he forced the team to train two extra hours. She became bulimic.

Female distance runners are also at increased risk of disordered eating, and sports that involve weight restrictions such as rowing and wrestling reveal a higher prevalence of disordered eating (Stoutjesdyk and Jevne, 1993). The highest percentages of females scoring in the anorexic range were within the lean-type sports of gymnastics and diving. The increased risk of disordered eating coincides with the risk for developing amenorrhoea and osteoporosis, a combination referred to as the "female athlete triad". Yeager et al. (1993) noted that the triad is particularly common amongst athletes competing in appearance or endurance sports.

In 2000, the American Academy of Pediatrics (AAP) issued a press release outlining their concerns about female athletes. They noted that the number of young female athletes at risk is increasing because of the increasing number of young females in sport. The AAP also pointed out that participants in sports which judge competitors by their appearance such as gymnastics and ballet dancing are particularly at risk. The risk of pathologic eating behaviours may be higher in children who participate in sports where leanness is rewarded, and one of the sequelae of inadequate caloric intake is compromised growth. Child athletes need to increase their energy intake beyond the needs of training because of the additional demands and needs of growth. Specific nutritional requirements such as iron and calcium may also affect health if not consumed in adequate amounts. Normal bone growth may be affected by the lack of calcium, stress fractures may develop, and bone healing may be retarded. Children who do not have balanced diets may compromise their performance, their health, as well as their development. In addition to the problems of nutrition, growth may be affected by intense training. Thientz et al. (1993) have suggested that heavy training loads started before and maintained throughout puberty may affect growth rates.

Disordered eating and self-esteem problems related to appearance are not limited only to young women, but also affect children. Kostanski and Gullone (1999) found that children between the ages of 7 and 10 years reported feelings of being overweight and body-image dissatisfaction, and reported dieting. Since children have less total body fat than do adults, they are at increased risk of becoming emaciated rapidly, as well at increased risk of developing other eating-disorder related sequelae, such as convulsions, renal failure, cardiac arrhythmia, perimolysis (dental erosion), and gastric rupture (Childress et al., 1993). Furthermore, excessive dieting by young girls interferes with the onset of menarche, may seriously and permanently arrest physical growth, and delay breast development (Russell, 1993). Nutritional deprivation may also interfere with cognitive functioning and intellectual development.

Disordered eating practices do not disappear when an athlete stops training and competing. Dacyshyn's (1999) study on the retirement experiences of high-performance female gymnasts revealed that the athletes often had to cope with "the painful emotions that

resulted from dashed hopes and dreams. They were often left with a negative body image and a preoccupation with weight” (Dacyshyn, 1999, p. 222). After years of taking diuretics and disordered eating, gymnast Michelle Hilse ended up in the emergency department of the hospital with malfunctioning bowels caused by years of malnutrition. Her weight obsession began at Karolyi’s gym, and continued after she left gymnastics. She said that she has been conditioned to believe her self-worth depends on the scale reading (Ryan, 2000). Kristie Phillips believed the same thing, and became bulimic after years of training with Karolyi.

Social powerlessness and lack of control over their own lives are causative factors for women into anorexia, as well as for chronic stress and burnout in sport (Gould, 1993). High expectations of performance and achievement by the others and by the athletes themselves pressure the youngsters to seek perfection anywhere in their lives. While young athletes feel external pressure to be slim, and are warned constantly about any weight gain, they still internalise the desire to be thin, and believe others such as their coaches and parents would approve of their weight loss. The preoccupation with eating and the body illustrates the areas of their lives that these young girls and women feel they can control. That thinness is highly valued in aesthetic sports in particular, as well as in most sports generally, only further supports the drive towards slimness and into disordered eating for young female athletes.

Despite the research, and the exposes by former athletes, some people still refuse to believe that young girls in aesthetic sports have a predilection towards developing eating disorders. Kathy Kelly of USA Gymnastics believes “It’s a female thing. If it was just an athlete issue, then it would just be athletes that suffer from it” (Ryan, 2000, p. 63). She points to parents, uneducated coaches, and the mass media’s glorification of thinness. The U.S. gymnastics federation has grudgingly accepted that eating disorders exist, and has organised seminars for coaches, printed articles, created an advisory board on the topic, and has offered counselling to any senior or junior national team member who requests it. The sport officials refuse to acknowledge the links between the way the sport is taught and judged, and as such the problems will surely persist.

3.5.2.2 Stress and burnout in young athletes

The psychological benefits of competitive sport for children and adolescents have been debated over the last century (Wiggins, 1987). As the participation levels and opportunities for children to participate in organised, competitive sport have increased, so too have concerns about competitive stress and burnout increased. Stress and burnout effects are two of the most intensely investigated issues by paediatric sport scientists, and professionals involved in youth sports have called for even more research to be undertaken (Gould, 1993). The main concern with intensive sport participation is that it may lead to unhealthy anxiety disorders. Competitive sport clearly defines winners and losers, which

may threaten a child's self-worth, and causes high levels of stress (Martens, 1993). The consequences of prolonged chronic stress for young athletes include burnout and exit from sport, adverse health effects such as insomnia, lack of appetite, decreased fun and satisfaction, physical injury, and deteriorating performance (Gould, 1993).

Children's self-perceptions have a powerful influence on their continued participation in sport, and the development and progression of skill acquisition (Weiss, 1993). When children believe that they have failed in sport as a direct consequence of their own action or inaction, their self-esteem may be damaged, and feelings of incompetency and failure result (Martens, 1993). Some young athletes perceive evaluative and competitive environments as threatening, leading them to respond to potentially stressful situations—like competition—with significant nervousness and anxiety (Gould, 1993). Children's worries about failure and adult expectations, and social evaluation, may be tied to elevations in anxiety levels: the more the child worries, the higher their internal anxiety levels. A study by Scanlan and Lewthwaite (1984) found that increased parental pressure to participate was associated with increased levels of internal anxiety, and thus children who perceived their participation to be important to their parents experienced more anxiety than did the children who did not perceive parental pressure to participate. Passer (1983) found that soccer players between the ages of 10 and 15 years who tended towards high anxiety levels worried about losing, not playing well, and about coach, parent, and peer evaluations. These anxious young athletes tend to perceive evaluation and failure as major threats.

In a study of young elite gymnasts, Feigley (1984) reported that the gymnasts most susceptible to burnout were the energetic perfectionists who did not have strong assertive personal skills, and were more easily influenced by others. Gymnasts generally see smaller performance improvements than other athletes, and when they reach adolescence they tend to struggle with their increasing needs for self-determination, autonomy, and independence which have been constrained by their sporting experience which began years earlier (Feigley, 1984). They also become aware of the physical, psychological, and social consequences of their gymnastics participation, which may further contribute to burnout.

In summary, some children experience high anxiety from participating in competitive sport. Generally, the higher the level of competition, the more anxiety the athletes experience. Repeated failure and resultant lack of self-esteem may have long-term, adverse effects on their psychological well-being. It is important to note, however, that not all children perceive pressure and experience anxiety in the same way. Some children will not worry about performing in front of a group of people, whereas others will; some may not react to parental pressure to participate, and others will. Even adults react in different ways to stress, some reacting positively and others reacting negatively. These differences highlight the importance of treating each child as an individual, and for adults to be highly perceptive to indicators of stress and anxiety in young athletes. The significance of this discussion has great bearing on the argument that some children are being harmed by their participation in high-performance sport, since long-term exposure to high levels of stress have serious,

adverse consequences for children. Such experiences will certainly affect their futures in a variety of ways, including whether they continue in that sport or another, their attitudes towards sport, and also personal feelings of self-worth and self-esteem. High stress and prolonged levels of stress are surely inappropriate when we consider normative conceptions of childhood, which focus on the vulnerability of children and the duty of adults to protect them from harms of all kinds.

3.5.2.3 Achievement by proxy

That children may be harmed physically and emotionally by their participation in elite sport has been studied by child psychiatrists such as Tofler et al. (1998). Adults may sometimes submit children to dangerous situations where the risk of harm is significant. When “children and adolescents are placed in these situations for the purpose of a “higher goal” such as Olympic sports, entertainment, or the arts with little or no consideration of the potential consequences to that child” (Tofler et al., 1998, p. 806), they are being used as the means to the ends of others. The child is being used instrumentally by those purported to be their caregivers. A child psychiatrist whose research focuses on the neglect, abuse, and proxy abuse of child athletes, has described this phenomenon generally as “achievement by proxy” (Tofler et al., 1996, 1998). It is certainly typical for a parent to experience pride and satisfaction in nurturing their child’s development through encouraging their talents and abilities. While the parents may sometimes benefit financially and socially from the child’s success, such benefits ought not to be their primary objective in supporting their child’s pursuits in sport. Parents should be able to recognise when sporting activities become deleterious to a child’s interests, and make the often difficult decision to decrease the child’s participation, or even remove the child from the sport altogether. Well-rounded parents should be able to recognise their own reactions, and know how to differentiate their own goals from those of their child. “A child must never believe that the love of his or her parents is contingent on success in one field or endeavour, be it educational, sporting, career-oriented, or social” (Tofler et al., 1998, p. 808).

Within cultural contexts, parents may be expected to “make sacrifices” for their children, generally in terms of orienting their lives towards their children. They spend time with their children, and nurture their interests. They help them identify and achieve their goals, while providing guidance in accordance with the dominant values of the family and culture. When, however, the parents exploit their children’s talents, and use their children to gratify their own needs and goals at the expense of the child’s best interests, then they have exceeded the boundaries of “good parenting”, and their behaviours may be characterised as “proxy disordered behaviour” (Tofler et al., 1998, p. 806). It is wrong for any adult to place inappropriate pressure on children to achieve success in any endeavour that endangers their physical or emotional health. Inappropriate pressures would be considered those that bear the risk of harm, which are set backs to the children’s interests and abrogations of their rights, as discussed in chapter two of this thesis.

An adult assumes the role of achievement by proxy distortion when he or she places a child in a potentially exploitative situation to gratify his or her own conscious or unconscious needs and ambitions in order to attain certain goals or achievements (Tofler et al., 1998). This type of pathogenic disorder which inflicts physical or psychological harm represents a variant of child abuse. In such a case, a child may be deliberately placed in situations where they focus on only one activity, excluding all others. In such a situation, all other activities are directed towards the achievement of specific goals—such as achieving Olympic, sporting, entertainment, music, or even educational success—at the risk of the child's well-being. The adult's motivation in directing such a situation is to achieve success vicariously, and is directed by their conscious external motivation to experience the benefits which accompany those of the child. These may include fame, financial gain, career advancement, peer recognition and respect, stronger relationships with the child, social acceptance, and improved socio-economic status. The vicarious success achieved through the child may be enjoyed by an individual or even a sport governing body.

There are four stages of Achievement by Proxy Distortion described by Tofler et al. (1998). These range on a continuum from normal behaviours which may be relatively benign to the potentially pathogenic range which involves abusive behaviour. That these behaviours are on a continuum is particularly relevant for this discussion. Parents may begin their child's participation in sport as a relatively benign activity, but may become caught up in the experience without actually being aware of how the situation changes gradually from a relatively non-serious, playful experience to one which is more serious and intense. While there certainly are cases of some parents who have determined their child will become an elite athlete at a very young age, there are surely other parents who have no such views for their young children, but after the child becomes involved in the sport and their talent and interest is developed, they realise such potentials may exist.

“Risky sacrifice” is where an adult has slight distortion in differentiating between their own needs for success and achievement from the child's development needs and goals. Here the parent may take on additional work to pay for the child's sporting needs. The family may move closer to the sporting facilities, or even to another city if the child's coach transfers elsewhere. The family may even allow the child to live at the sporting facility, rather than with the family, as do many young athletes. The development of regional centres of excellence in many nations has led to an increase in this kind of family separation. In some instances, the parents may sign over legal custody of the child to the coach, as did Bill Bragg with his seven-year old daughter Holly (Ryan, 2000).

All these behaviours are purportedly for the child, and the parents rationalise such actions by feigning helplessness. Tofler gives the example of parents proclaiming “I want my child to train less but she loves it. If she insists on training 8 hours a day, 6 days a week, how can I say no? I love my child” (1998, p. 809). Children may actually collude with their parents or coaches, whose goal is to encourage “pseudoautonomy”. Here the child may say “It is MY decision to play injured, no one forces me to” so that when the child gets injured,

then neither the parents or the coach feels responsible (Tofler et al., 1998, p. 809). In an interview in 1996, gymnast Dominique Moceanu was adamant that she trained and competed in the sport for the love of it. "I love this sport, and I'm doing what I have to do for me," she says. "But some people just don't get it. I'm not losing my childhood. I have the rest of my life to have a childhood" (Starr, 1996, p. 78). The journalist wrote "Dominique believes she is living out her own dream. It is clearly also her parents' dream" (p. 78). One year later Dominique claimed that her father had been forcing her to live his dream (Langton, 1998). The parents' obligation to protect their child health and well-being is abrogated as the sacrifice demanded from the young athlete overshoots justifiable, acceptable levels.

The next level on the continuum is "objectification" which is a moderate loss of the adult's ability to differentiate between their needs and those of the child. Pressure on the child rises from the first stage, as they are increasingly isolated socially and become defined by one activity in which they have shown ability. This unidimensional identity leads to increased social isolation, and may compromise the child's developmental possibilities in other social, physical, and emotional dimensions. When 11-year old gymnast Shannon Miller asked her coach, Steve Nunno, for a Friday evening off from training so that she could go to a movie with her friends, Nunno convinced her they were trying to sabotage her gymnastics (Ryan, 2000). After winning the world championship, Nunno said of Shannon's apparent lack of emotion over the victory: "She's young, . . . If she stops to look back at what she's done, she might lose her edge. She's got the rest of her life to look back" (Ryan, 2000, p. 229). Risk-taking is rationalised by parents or coaches who are unable to differentiate their own needs and goals from those of the child. Routine risk-taking is exemplified in situations where children are encouraged or even forced into intensive training at potentially harmful levels, and may be influenced into using pathogenic forms of weight control that could potentially lead to life-threatening eating disorders (Tofler et al, 1998). In such situations, "parents, coaches, and even entire media and government systems turn a blind eye to or actively and passively encourage and support pathogenic behaviours" (Tofler et al., 1998, p. 810). The involved adults objectify the child as use him or her as the means to their own ends. Once the young athlete becomes objectified, Tofler et al., (1998) note that it becomes more difficult for adults to empathise with adolescent pain or experience, leading to the youngsters emotionally distancing themselves from their own feelings and colluding in their own objectification, a process similar in nature to the Freudian concept of "identifying with the aggressor". Claims by adults that the young athlete can "just walk away" or "leave anytime he or she wants" are frequently made. Withdrawal from sport at this level is certainly not that easy for the child. They are well aware of the sacrifices their parents have made, and their coaches "need" them, and the disappointment—even fury—these adults will react with if the child expresses a desire to leave the sport. When elite gymnast Chelle Stack told her mother she wanted to quit gymnastics, her mother refused to allow her to leave. She responded to Chelle by saying:

I put this much time and effort into this and, by God, if you think I'm going to let you quit now, you're crazy. If I have to literally go out there and get up on the beam with you, you're going to do it. If I have to beat you every day, you're going to do it.
(Ryan, 2000, p. 153)

Carrol Stack, Chelle's mother, admits to bribing her daughter to go to gymnastics practice, and she threatened her with spankings after the bribes stopped working. Carrol even refused to give her daughter medicine for the flu when she was ill as it made her tired and interfered with her training (Ryan, 2000). Such behaviour certainly appears to be compromising the child's best interests, and certainly falls under Feinberg's (1984) conceptions of harm which have been applied to this work.

The final stage of the achievement by proxy distortion is that of "potential abuse", where the adult has lost most or all of their ability to differentiate between their own needs and goals for success and achievement from those of the child. The child has become the adult's "meal ticket". At this stage, the child has been instrumentalised into an objectified and exploited means to the ends of the adult's goals, which are pursued without consideration of the short- or long-term physical and emotional well-being of the child. While it may appear that a parent, coach, or other adult involved with the child is aware and cognisant of the needs of that child, it may not always be the case (Tofler et al., 1998). For example, they may mistakenly blame a child's severe injury in practice as being due to the child's daredevil nature, where it is actually a case of the child having been conditioned from a very young age to ignore pain and to take risks. After Brandy Johnson injured her foot in training, United States Gymnastic Federation officials told her and her coach that she had to compete at the World Championships in 1989, regardless of her injury. She trained and competed, and despite her injury, managed to win a silver medal in the vault. After returning home, x-rays revealed a fracture, and her foot was casted for a month. Brandy said that had it been up to her, she would never have competed given the amount of pain she was in (Ryan, 2000). French gymnast Elodie Lussac suffered a career-ending injury after falling off the balance beam. She had complained repeatedly the day before to her coach that an earlier injury had not healed, but was ignored. She was pushed to compete despite her complaints, and ended up with a severe injury (David, 1998).

3.5.3 The use of performance-enhancing substances

Another disturbing trend in youth sport is the increasing use of performance enhancing substances—banned, illegal, and other—generally considered a problem only in adult sport. Olivier (1996) reports the 14-year-old South African athlete Liza De Villiers testing positive for an anabolic steroid and a stimulant. A 14-year old U.S. female swimming star also tested positive for steroid use and was suspended (Hanley, 1996). Melia et al. (1996), Yesalis et al. (1997), Schwelinius et al. (1992), and Skowno (1992) describe the use of steroids among school children involved in sport. Faigenbaum et al, (1998) report

preteens using anabolic steroids. Tymowski (2001c) discussed the deliberate use of caffeine and creatine by middle- and high-school students to improve their athletic performances. Two teenage Russian rhythmic gymnasts tested positive for Furosemide, a masking agent, and had their 2001 World Championship and 2001 Goodwill Games medals revoked (Slam! Sports, 2002).

While the use of performance-enhancing substances by athletes appears to be a relatively recent phenomenon, in reality such usage has been present in sport for a long time. Ungerleider's (2001) examination of training methods in the former East Germany revealed systematic and institutionalised drug use by athletes, primarily in the sport of swimming but also in athletics (track and field). He found that the state colluded with physicians, trainers, and coaches in giving massive doses of anabolic steroids to athletes as young as 12-years old. While these athletes achieved tremendous sporting success, many of them suffered permanent physical and psychological damage. In the late 1990s, a number of coaches, doctors, and sporting officials admitted to conducting medical experiments with the young athletes by administering steroids and other performance-enhancing substances to them. The formidable institution of East German sport forbid athletes or even parents from questioning training methods, and when questions were asked about the substances or the frightening changes occurring in their bodies, the athletes were usually silenced by threats of being dropped from the team, or worse. During the trials, athletes who testified against the doctors and coaches endured threatening phone calls and death threats. With the permanent physical effects of steroid use such as deepened voices and virile features apparent, judges and defense attorneys openly mocked the witnesses. Because of the steroid use, some of the athletes have died, others suffer from cancer and ovarian cysts, and many of the women have either been unable to conceive, have had numerous miscarriages, or have given birth to deformed babies. Others committed suicide.

Another issue relating to the use of substances to enhance performance is that of the use of what are known as "stopper" drugs to delay puberty. In sports like gymnastics, figure skating, and diving, the onset of puberty may disrupt, even end, an athlete's career. The centre of gravity changes as an athlete grows, and spatial orientation, as well as hand-eye coordination is affected. While some athletes adjust without any trouble, others cannot cope with the onset of puberty. Sudden breast development, the widening of hips and thighs, and the growth spurt with its accompanying weight gain may lead to technical problems, and the mood swings and concerns about self-image may also contribute to emotional distress. To deal with what Ryan described as "a race against time and nature" (2000, p. 66) for elite female gymnasts, anecdotal reports claim that athletes are given birth control pills before they reach puberty, or other drugs such as Lupron, a hormone-suppressing substance to delay puberty. The window of opportunity for an elite gymnast is very narrow, from about the age of 13 to puberty (Ryan, 2000). While there is no empirical evidence to support these claims, given the wide reports of such practices, it is possible that

unscrupulous coaches, parents, and doctors may be involved with giving young girls drugs of this nature. It is not uncommon for doctors to prescribe Lupron for girls whose parents wish to slow the pace to maturity (Qaadri, 2002). Doctors claim that such measures “preserve the childhood years” for girls whose bodies are maturing too quickly” (Qaadri, 2002). Parents request this puberty-delaying medication for various reasons. Some “mourn the loss of innocence, others fear the possibility of sexual attention—even predation—of their daughters” (Qaadri, 2002, p. R5). Thus, if such medication is available, and its therapeutic utility is at the discretion of the prescribing physician, then surely it is possible that it may be used to delay puberty in young athletes as well.

While some substances may be used to delay growth associated with puberty, others may be used to stimulate growth. Anabolic steroids and human growth hormone have been used to treat children diagnosed with delayed growth or unusually short stature. Genetic manipulation is the next potential scientific therapy which may impact sport, and the implications of that practice may be endless, and also undetectable. As with almost all drugs and doping methods, these modalities carry their risks, some known, others unknown, particularly those on the cutting edge of technology.

Drug abuse is not limited to illicit or banned substances. Gymnast Kristie Phillips trained with a broken wrist, and coped with the pain by taking twelve Advils and six anti-inflammatory Naprosyns every day (Ryan, 2000). Another gymnast, 11-year old Elizabeth Traylor took six to eight Advils a day, and sprayed her knees with an anaesthetic to dull the pain. Many gymnasts use painkillers and anti-inflammatories as part of their training; Brandy Johnson said no gymnast arrived at the gym without them. That many of these substances are unavailable to children through both cost and accessibility speaks to the issue of others securing the drugs for them. Particularly in the case of pain killers, parents are surely aware that their children rely on heavy dosages to keep them participating. Such knowledge of harmful behaviour contravenes their duty to protect their child from harm.

3.5.4 Sexual abuse and harassment in sport

Harassment and abuse of girls and boys, women and men, has not been openly acknowledged in sport until fairly recently. Over the last decade, exposés of abuse and harassment of athletes by their coaches have been chronicled on television, in newspapers, and in books (Brackenridge, 2001; Kirby et al., 2000; Robinson, 1998). In Canada, it was not until National Hockey League player Sheldon Kennedy revealed that he had been sexually abused as a boy by his coach, Graham James, that the issue of sexual abuse of athletes was openly acknowledged (Robinson, 1998). These exposés, in addition to convictions such as that of Paul Hickson—former British Olympic swimming coach—of 15 sexual offences, including two rapes, of teenage swimmers, led gradually to the development of programmes such as the Canadian Hockey Association’s *Speak Out!* Workshop, and the United Kingdom’s Child Protection in Sport workshops.

The issue of sexual harassment and abuse of children in sport is an important area, and certainly one that applies here. While this thesis will not consider it in detail, it clearly falls within the nature of this discussion of physical and emotional harms. Coaches and parents, some of whom are coaches, have been charged with various kinds of offences toward child athletes, and thus this issue is related to the harms experienced by children in sport (Brackenridge, 2001). A detailed discussion, however, is beyond the scope of this work. What is obvious, however, is that children have the right to be protected from such harms, and parents, coaches, and other adults involved in sport have the duty to protect children from these and all forms of harm. The sequelae of such experiences are often long-term, and thus such abrogations of the child's right to an open future are relevant and applicable.

3.6 Parents

The objective of high-performance sport is a continual drive towards excellence, exemplified by constant improvement of athletic achievement. This drive, along with the concomitant demands of intensive workloads and competition, has led to the earlier and earlier entry of athletes into sport during their childhood. This introduction is instigated by adults, as "children would never think on their own accord of subjecting themselves to such an organised form of sport aimed for long-term performance, and to the organization of their daily, weekly, and yearly schedules as is required by the preparation to achieve top performance" (Grüpe, 1988, p. 225). Ryan (2000) supports this view that adults instigate the child's entry into sport, and continue to support the child's progression towards higher levels of participation and competition. She says

Almost every successful child athlete rides to the top on the shoulders of a parent undaunted by sacrifice and extremes—whether this means sending a child far away to train, mortgaging a home to foot the bills, taking a child out of school so she can train longer hours, abusing her physically or verbally for not performing, or even giving up custody. (Ryan, 2000, p. 146)

Due to the necessary involvement of parents in their children's participation, parents are linked inextricably to children's sport. This involvement varies on a continuum from "under involved" to "over involved" (Hellstadt, 1987). For coaches, parents can be either valuable sources of support, or overwhelming sources of stress and frustration (Tutko and Richards, 1971). Parental involvement affects not only athletes. Lackey (1986) found that parental stress is capable of ruining a good season or even a coaching career. Sport psychologist Robert Heckel, who works with child athletes, believes that parental ambition, and not the child's ambition, is often the driving force behind a child's sport career: "A lot of times we find the typical stage mother, who feels unfulfilled, frustrated and who is going by God, to live through her child" (Hanley, 1996). Some parents believe they can buy success. Recalls Christy Ness, a figure skating coach, talking about parents: "they wanted their children to succeed at all costs. They thought they could buy it" (Smith, 1997, p.116).

The motivation behind most parents is the best interests of their child. However, at times their methods do not reflect this motivation. Sometimes children require state intervention to protect them from their parents, the very people who ought to protect and nurture them. There are many cases of parents who have failed to provide for their children, to protect them from harm, or have even exposed them to harm. The establishment of child protection agencies, and the development of laws against child abuse attest to the reality that some children come to harm under the purported “care” of adults, and that society needs to protect children. In some countries such as Canada and the U.S., the criminalisation of intentional failure to pay child support by parents recognises the serious harm that may come to children who are not being provided for. Such legislation seeks to prevent harm and to punish those who deliberately cause it. Such legislation, however, is aimed at existing children. The bounds of liberty are sufficiently broad that legislation cannot prevent or restrict procreation by parents who already have a record of failing to provide for their children, or even records of child abuse (Dresser, 2002). While there may be a danger that such restrictions could lead to future wealth-based restrictions on an individual’s freedom to have children, the fact remains that children require protection and nurturance, and if not provided for by their parents or guardians, there are few options available for those children. Despite legal sanctions to fulfil the obligations of parenthood, there is no way of legislating responsible parenting, for parents are afforded great autonomy in childrearing.

Definitions of childhood often include the description that “children” do not work; in practice, however, this is not always the case. Consider the following examples of children who “work” in high-performance sport. By the time tennis protégée Martina Hingis had reached the age of 18, she had already earned \$7 million dollars. That sort of lucrative return on what some may consider the “investment” of a childhood may lead parents to pressure their children in inappropriate ways.

When she was 17-years old, U.S. gymnast Dominique Moceanu went to court to request a restraining order against her father, and shortly thereafter went back to court to have the order made a permanent injunction. Two months earlier, Moceanu had petitioned the courts to be considered a legal adult, so that she could have legal and financial independence from her father, Dumitru Moceanu. Her parents built a huge \$4 million gym with money generated by her public appearances and competitions since she turned professional at the age of ten (Nissimov, 1998b). After questioning her parents about her trust fund—to which only they had access—she charged her father with misappropriation of her earnings. Being declared an adult in the eyes of the law meant that she could demand an accounting of her trust fund although under Texas law, parents have the right to their children’s earnings. According to the terms of the fund set up by parents, she could have access to that money only at the age of 35. She also claimed that he stalked, threatened, and abused her, and alleged that he had been trying to find someone to kill her friend, Brian Huggins, and her coach, Luminita Miscenco.

Dominique has earned more than an estimated \$2-million since she began competitive gymnastics, which she charged her father has squandered. In court, she testified that she has always been afraid of her father who is an obsessively controlling man with a violent temper. She reported that she had never had a childhood, and that her father had slapped her in the face for offences such as gaining weight or sneaking candy. She said her parents have always yelled at her, and she lived in fear of her father for the way he treated her. "It always had to be about the gym. . . . I would think, 'Don't you guys know anything besides gymnastics? Can't we go out for ice cream? Can't you be my mom and dad instead of me being your business?'" (Langton, 1998). Her father claimed that he had never pressured her into pursuing gymnastics, and that she had everything a child can possibly have, including a new Mustang convertible—she traded in her Mercedes (Nissimov, 1998a).

Dominique Moceanu has set a number of records in her short career: in 1993, at 12, she became the youngest gymnast ever to win the U.S. National Championships; in 1995 at the World Championships she won a silver medal on the beam and placed 5th overall; in 1996 she won a gold medal at the Atlanta Olympics; in 1998 she became the first non-Russian to win the all-around competition at the Goodwill Games. She published her autobiography at the age of 14, describing how her parents swung her from the clothesline as a toddler to prepare her for a career in gymnastics. Her father said that he had promised himself that his first child would be a gymnast. When she was three years old, her father was already 'badgering' coach Bela Karolyi to take her on in his gymnastics school, but he refused. When Dominique was nine, Karolyi agreed to take her on, and so the family moved from Florida to Houston. At the age of fourteen, many young girls are still contemplating their futures; Dominique had already written her autobiography, detailing her path to the pinnacle of athletic success: an Olympic gold medal. Dominique has been compared to Nadia Comaneci, the first gymnast to score a perfect "10," both in terms of her physical appearance but also her talent. Her choreographer, Geza Pozsar, said admiringly of the similarities between Dominique and Nadia Comaneci, 1976 Olympic champion, "these girls are not pussycats. Both are fighters—mean fighters" (Starr, p. 78). With these family problems, Dominique "has had to make the overnight transition from overprotected, tightly controlled gymnastics prodigy to independent young adult" (Swift, 1998, p. 101).

In 1985, 17-year old Mary Lou Retton had also petitioned the courts to be declared a legal adult so that she could invest her earnings after winning a gold medal at the 1984 Los Angeles Olympics. She had also been a gymnast. Her parents never opposed her request, which was granted by the court shortly after the petition was filed (Moceanu leaves home, 1998).

Families may be destroyed by the obsessions of parents to "make" their child a champion. Wendie Grossman pushed her two identical twin daughters in figure skating to the point where the two children fell out with one another, and did not reconcile until a decade after they had left figure skating (Ryan, 2000). The two girls competed with each

other, and not long thereafter, against each other. The parents' focus on results pressured the two girls, and they began measuring their own self worth, and their parents' love, by their figure skating results. One of the girls, Karen, left skating when she was 13-years old, burned out from the pressure of trying to fulfil her parents' expectations. When her sister, Amy, repeatedly failed her compulsory figures necessary to move up to the next level, her mother recalls "we were devastated" (Ryan, 2000, p. 158). Since she was unable to continue in singles skating, her parents sent 14-year old Amy off to California to train with a pairs coach. She was withdrawn from a regular school programme, attending two to three hours of tutoring at the rink instead. After five months her partner left, and so she returned to her parents. She found a new partner, and progressed to a career best of the bronze medal at the national championships. Shortly thereafter she was diagnosed with a degenerative disk caused by the throws and lifts in pairs skating, and had to retire from skating at the age of 17. She and her sister had little to do with each other, despite attending the same school, and did not become friends for another ten years.

3.7 Coaches

Few coaches rise to the top of the ranks without a ride on the coattails of a winning athlete. Almost always, the competency and calibre of coaches is judged on the success of his or her athletes. Coaches have a significant influence over children's self-esteem and ability perceptions in sport (Smoll and Smith, 1989). An earlier study was Smith et al. (1979) found that coaches' behaviours have a direct influence on the psychosocial development of children and adolescents. While good coaches may use this influence to bolster self-esteem and motivate young athletes to continue participation in sport, over-eager coaches may push their youngest athletes too far, too fast.

A winning record validates controversial coaching methods. Bela Karolyi, Romanian coach of Nadia Comaneci, Mary Lou Retton, Dominique Moceanu, and many other top gymnasts, is revered for his "production" of champions" but is also condemned by others as abusive (Ryan, 2000). He is noted for his self-promotional behaviour on television, "done for the benefit of the judges and, one supposes, the little girls watching on TV who might one day aspire to train in Karolyi's gym" (Swift, 1996, p. 104). Swift reports that while he hugs his "tiny girl gymnasts" in front of the cameras, he does not hug his gymnasts "when they practice till the tears fall" (Swift, 1996, p. 104).

Young athletes are vulnerable to injury and exploitation, and the well-being of young athletes often rests entirely in the hands of their coaches. This is frightening, particularly when one hears of coach Bela Karolyi's views on medical treatment. A USA Gymnastics official told Ryan (2000) only on the condition of anonymity, that Karolyi's gymnasts would often have to "sneak" medical attention and treatment because "Bela would get angry if they were hurt" (Ryan, 2000, p. 209). Apparently Karolyi had a deep mistrust of medical trainers. He felt that they "babied the athletes or scared them with too much information about their injuries" (Ryan, 2000, p. 209). He told the national gymnastics federation to ensure their

medical trainer did not speak to the athletes about their injuries, preferring to relay whatever information he felt they ought to know himself. He justified such “gate-keeping” by rationalizing the doctors were overly concerned with liability issues, saying: “I take the liability because I’m the one who must get the technical and physical performance from the kids as soon as possible. If I’m not doing it, nobody else is going to do it” (Ryan, 2000, p. 209).

Gymnast Kristie Phillips trained for three years with a fractured wrist because Karolyi did not consider the injury serious enough to warrant complete rest. Ten years later, the wrist is nearly fused (Ryan, 2000). Another gymnast went to a doctor recommended by Karolyi because of heel pain. “Without having the gymnast take off her shoe, the doctor miraculously diagnosed the heel as a bruise” (Ryan, 2000, p. 209). Kim Zmeskal injured her wrist and went to see a doctor recommended by Karolyi. It was shortly before a gymnastics competition. The doctor also diagnosed her injury as a sprain. Zmeskal eventually sought a second opinion, and an x-ray revealed a fracture of the distal radius, which is a common gymnastics injury. At the time, Karolyi said on national television that Zmeskal’s injury was psychosomatic. “If Bela wants a kid to be injured so she doesn’t go to a meet, she’s injured. ... If he wants a girl not injured so she can compete, she’s not injured” (Ryan, 2000, p. 210). After Chelle Stack fell off the beam several times during a meet, Karolyi called her performance “the most embarrassing thing I ever been through in my thirty-five-year coaching career” (Ryan, 2000, p. 210). Stack had broken her toes earlier while jumping off the beam, and Karolyi had ordered an injection of Novacain to deal with the pain. He expected her to perform on the beam, dismounts and all, at an international competition, with broken toes, numbed by pain medication. That she did not suffer a more serious injury is more likely due to luck than anything else. Such stories—and there are many, many more—told to journalist Joan Ryan by these young gymnasts are clear examples of how children may be harmed by all-powerful coaches who put performance before the health and welfare of the athletes. The young athletes are being exploited, the rights of the children are clearly being abrogated: this coach’s treatment of his young charges is heinous. Unfortunately, his winning record continues to be used as justification of his maltreatment of children.

Karolyi’s questionable treatment of young athletes extends to influence his adult charges as well. Karolyi’s former coaching assistant, Steve Newman, claimed to have had no idea that he might be damaging his young athletes by calling them idiots and imbeciles (Ryan, 2000). Karolyi is credited with introducing twice-daily, 6-days per week training workouts for gymnasts, and for implementing a more structured and less forgiving system of training (Ryan, 2000). His systems and coaching methods were emulated far and wide, “spawning a new generation of American coaches who screamed, taunted, and demanded absolute subservience” (Ryan, 2000, p. 215-6). The mother of a gymnast who had switched gyms when Newman moved to work for Karolyi said that Newman became a tyrant only after he switched. Gymnast Danielle Herbst said of her experiences with Steve Newman:

My coach's desire to win seemed stronger than mine at times. . . . In times of pressure, which not a day passed without . . . I was yelled at, screamed at, and had things thrown at me . . . Somehow, my coach had convinced himself, and constantly reminded me, that I was a fat imbecile, a bloody idiot, no good and worthless.

(Ryan, 2000, p. 216)

She trained with him from the age of ten until she was thirteen, at which time she dropped out of gymnastics suffering from burnout. She told Ryan that Newman's insults remained with her into adulthood.

Parents are not ignorant of this abuse. That they allow their children to be abused falls into the "achievement by proxy" pathology identified by Tofler et al. (1998). One mother, told Ryan that her young daughter was always trying to please the coach, and that she—the mother—thought it was disgusting to see the way these men—"with their huge egos"—dealt with the little girls. She did not remove her child from the tutelage of coach Newman, however. This mother is as culpable for what happened to her daughter as the coach was, since she observed the way he treated her child and the other little girls, but she did nothing. One of Newman's former gymnasts, now a gymnastics coach herself, said looking back:

He succeeded in what he was trying to do—we were great at competitions. But I think it's harmful. As children, we don't have our own value system. We don't know who we are. We're listening to authority figures to tell us who we are. If somebody tells you something so many times, you're going to believe it.

(Ryan, 2000, p. 218)

Coaches who confuse abuse with discipline are found in figure skating as well. ABC Television reporter Jurina Ribbens said that "The root of a lot of evil in this sport is coaches who are fulfilling their goals through their skaters" (Ryan, 2000, p. 218). An Olympic figure skater told Ryan how her coach screamed at the young girls, hit them, and pulled their hair: It wasn't abuse, but rather viewed as "discipline". Olympic Silver medallist Nancy Kerrigan's coach, Evy Scotvold, said that no person is capable of attaining his or her absolute best alone: "Everybody needs somebody behind them pushing. . . . You hope that you can get your athletes to understand that you're not being mean and hard, that you do these things out of love and caring" (Ryan, 2000, p. 220). This sort of statement has been heard by abusers before, attempting to justify their behaviour. Brackenridge (2001) mentions one sexual abuser trying to justify his behaviour by claiming "I was protecting her interests" (p. 176).

Coaches and parents may collude, either consciously or unconsciously, in their attempts to make athletes "stars". Gymnast Kristie Phillips blames her suicide attempt and her eating disorder on elite gymnastics, where the confluence of a parent's ambition, a coach's unrelenting demands and her own blind loyalty nearly destroyed her (Ryan, 2000). Kristie's mother, Terri, has no regrets about Kristie's eating disorder or suicide attempt. She defends Kristie dropping out of school to attend early morning workouts as having been necessary to be on Karolyi's elite team. Terri still believes that training nine hours a day is

not excessive for a child who wants to be the best: “If they live away from home and the parents are paying a price, then they need to be in the gym for however long they need to be there” (Ryan, 2000, p. 119). Mother and daughter differ dramatically in their views of Kristie’s coach. Kristie said that

he’s in it for himself. He doesn’t care about the gymnasts. He doesn’t care what they go through, what they suffer through, what he makes them suffer through. He cares about the fame and fortune he’s getting out of it... When we’re at competitions and when we’re on TV and he has a microphone on, he’s a different person. He’s massaging our necks, smiling and laughing and patting you on the back. This is what the public sees of Bela. But it’s really the exact opposite.
(Ryan, 2000, p. 119)

Terri dismisses Kristie’s allegations of mental abuse by Karolyi, and says that if she had another talented daughter, she would send her to Karolyi as well, because he is the best gymnastics coach in the world. She says that children have to be mentally strong to become champions, and that Karolyi’s humiliation of the athletes and his verbal tirades were necessary. Terri said that she was sometimes appalled by Karolyi’s tactics, but she never objected. He was the best coach money could buy—she paid \$180,000 U.S. over six years—and if he needed to belittle and humiliate little girls to produce champions, who was she to argue (Ryan, 2000).

At the elite level of sport, the stakes are high. Sport governing bodies do not wish to interfere with “winning” coaches. Even when allegations of abuse are made, or even when such abuse is widely known, “it may seem safer for officials to keep quiet in order to safeguard the possibility of medal successes” (Brackenridge, 2001, p. 168). Karolyi has been portrayed in the media, and by stories told by some of his former athletes, as a coach who exploited and abused his young charges. That parents, and even some athletes have justified his tactics is testament to a number of issues; first, no other coach has “produced” as many world champions and Olympians as has Karolyi, and this appears to justify his methods; second, children are easily influenced by adults and those in positions of power, and Karolyi’s strong personality has convinced them that his methods are best, and that their experiences were worthwhile. If they were to deny the value of those experiences, they might invalidate much of their lives and their identities that were moulded in and by gymnastics. When only one individual or even a few individuals on a team have made allegations of abuse towards a coach, team-mates and others involved—even the victim’s parents—may remain silent, align themselves with the coach, or spurn the victim in order to protect themselves and their sporting careers. These strong reactions to such allegations may also be due to “elements of hero-worship, infatuation and even love from the athletes towards a coach” (Brackenridge, 2000, p. 169). These sorts of reactions contribute to making it very difficult for athletes and others to reveal instances of abuse.

3.8 Conclusions

When one considers the dedication and drive required to achieve the pinnacle of success in high-performance sport, one has to be concerned about the development of such precocious talent in children. Talented, high-achieving children are at risk of neglect, exploitation, and abuse by the very individuals charged with their care and protection. This speaks to the desperation of some individuals to achieve athletic superiority and the accompanying lucrative rewards at any cost. This chapter has examined the experiences of children involved in the practices of high-performance sport. I have argued that children are being harmed through their intensive training and competition. The inherent vulnerability and powerlessness of children render them susceptible to exploitation by others, particularly by coaches and even their own parents. Because of the authority and power of the adults under whose care children are entrusted, the young athletes cannot protect themselves, and they may suffer long-term harm from these experiences. Furthermore, their right to an open future is being compromised. This chapter has contextualised the nature of the problems of children's participation at the highest levels of sport, and has described in detail the kinds of harm that they are experiencing. In the next chapter we turn to a theoretical consideration of the conceptions of children and childhood.

4.0 Chapter Four: Conceptions of Children and Childhood

4.1 Introduction

Talented children participating in high-performance sport are often treated as adults rather than as children since their athletic success leads others to view them as athletes first. While watching an elite gymnast at the Olympic Games perform a spectacular series of flips and leaps across the balance beam, it is sometimes difficult to remember that she is a child, particularly when one considers that she has been training at least six hours a day, six days a week, for the last eight years, since she was four years old. Her ferocious intensity and concentration is not often seen in the face of a child participating in sport. After being bombarded by months of intensive media coverage of the athletes, watching the figure skaters on the winner's podium at the Olympic Games receive their medals seems incongruous when one is reminded that the gold medallist has just turned 15-years old (and is therefore legally still a child), and that she will turn professional after the Games. In order to be competing at the highest levels of sport, we know that these young athletes have been competing internationally for a number of years, in addition to many years of intensive training. This has involved separation from their families and considerable travel to foreign countries, as well as a life separate from other children their own age who are not involved in sport. Few young athletes competing at this level have gone to regular schools in their neighbourhoods, and they have missed ordinary childhood experiences such as growing up with their brothers and sisters, and even going to birthday parties—not to mention having missed celebrations of their own birthdays. Additionally, participation at the Olympics in recent years has become increasingly characterised by unparalleled security, with thousands of police officers and machine gun-toting soldiers guarding heavily fortified athletes' villages and other venues. Such issues demand a consideration of whether these types of experiences are appropriate for children. In turn, such a query invites questions surrounding conceptions of children, and the nature of childhood. If the environment of high-performance sport seems incongruous with modern views of appropriate environments for children, then we must ask what is it about our notions of children and childhood that do not mesh with such experiences.

In this chapter, I will explore conceptions of children and of childhood in order to formulate a response to the questions raised about their participation in high-performance sport. An important distinction that ought to be made before entering this discussion is that between a *concept* of childhood and a *conception* of childhood. A *concept* of childhood necessitates that children be discernible from adults by a set of unspecified criteria, whereas a *conception* of childhood is a specification of those distinguishing criteria (Archard, 1993). Thus, for me to have a concept of childhood, I would have to recognise that children are distinctly different from adults, and would treat them accordingly. A conception of childhood would require that my treatment of children and the way in which I speak to them reveals a

particular view of the differences between adults and children. We may share the concept of childhood, but could have different conceptions of childhood.

I shall begin with historical views of childhood, and move to a consideration of contemporary views. While there exists a robust literature in the area of sociology on the subject, there has been relatively little written from a philosophical perspective. David Archard, John Kleinig, and Tamar Schapiro are among the few philosophers who have considered this particular area, although others have discussed the notion of children's rights from a philosophical position (Aiken and Purdy, 1998; Ekman-Ladd, 1996; O'Neill, 1988). This discussion will focus on the philosophical conceptions of children and childhood put forth primarily by Archard, but will discuss Kleinig's (1982) notion as well. It will also include discussion from sociological and historical literature as well in order to formulate a broader consideration of the subject.

4.2 Historical conceptions of childhood

Human beings are broadly divided into two general categories: children and adults. There are many other sub-categories within these divisions, such as infancy, adolescence, middle-age, and old age; however, the distinction between adults and children remains the most discrete and most meaningful. Historical views of children have shown the child's role to be generally one of inferior status. Children seem to have been conceived of as property belonging to the child's parents or guardians, as in that objectified status, were treated much like possessions. Throughout history, children have been treated very cruelly, by today's standards. They have been sacrificed to the gods, bartered in exchange for goods, sold as slaves, treated as indentured servants, used for sex, and exploited as labourers. Such treatment of children was not relegated to any particular class, but was seen from the lowest classes to the highest (Radbill, 1980). While child sacrifice was outlawed hundreds, if not thousands, of years ago, infanticide remains in certain cultures. Girl children in certain cultures are not as valued as are male children, and in countries such as China and India, infanticide is still practiced. In other countries, sex-selection in-utero is now possible with the advent and widespread use of ultrasound machines, and as such, abortion of female foetuses may be considered the "new" form of infanticide.

Beginning in about the sixteen century, the identification of what has been recognised as a more distinct notion of childhood began. In his *locus classicus*, *Centuries of Childhood* (1962), Philippe Ariès, a French theorist and historian, formulated a history of the conception of childhood, what he referred to as a "sentiment" of childhood, or an awareness of the particular nature of childhood. His thesis had a profound impact on social history, and is the most commonly discussed work in any treatise on childhood, be that from a social, historical, moral, legal, or political perspective. The thesis focused on the concept of childhood, and maintained that only in modernity could an adequate understanding of childhood be acquired.

Ariès gleaned much of his information and formulated many of his theories relating to children and childhood from artwork and literature through the centuries. His work puts forth very much a Western European perspective, and has been criticized as such, in addition to criticisms of his work as having a rather limited perspective since it relied so exclusively on artwork depicting children. However, despite the criticisms, Ariès was one of the first authors to attempt to document the history of conceptions of childhood, particularly in Europe, and thus his work remains an important contribution to the area.

Ariès introduced two theories of childhood. The first, and most widely held theory considered children to be creatures who required coddling, and that childhood itself ended shortly after infancy. The second theory perceived the innocence and the weakness of childhood, and thus the duties of adults to “safeguard the former and strengthen the latter” (Ariès, 1962, p. 316). This second theory was held primarily by the small community of lawyers, priests, and moralists. Ariès notes that without their influence, children would have remained “simply the *poupart* or *bambino*, the sweet, funny little creature with whom people played affectionately but with liberty, if not indeed with licence, and without any thought of morality or education” (Ariès, 1962, p. 316). The child became part of the adult world after the age of five to seven, being briefer in the lower classes than the upper. The concept of a longer childhood was created and supported by the educational institutions and practices which the moralists and pedagogues of the seventeenth century guided and supervised. Ariès attributed the modern concepts of both childhood and education to these same moralists and pedagogues.

Following the earliest years of childhood, when the child still promenaded on a “leading string” and spoke his or her “jargon”, and prior to full adulthood, a special intermediate stage—albeit an ambiguous one—was introduced. It established vaguely the concepts of adolescence or youth: that of the school or college. This stage was recognised in the sixteenth, seventeenth, and eighteenth centuries, when the schoolboy or scholar was understood to be in the age of adolescence. At the same time, a vocabulary relating to infancy appeared: the word “bébé” was adopted for the very little child. Girls were not usually educated other than in domestic matters, although this was not to be underestimated as by the age of ten, some girls were able to run entire households. However, they were not taught to read or write; the lack of these skills must certainly have limited them in their domestic duties of running large households. Both conscription and the military service were introduced at this last stage of childhood in the nineteenth and twentieth centuries, ending the exclusivity of education for this period. While one might assume that this opportunity was limited to those in the upper classes, Ariès notes that many young nobles actually ignored education and colleges, instead going straight into the army. He mentions too that there were fourteen-year-old lieutenants in the army at the end of Louis XIV’s reign, and that some boys joined the army at the age of eleven.

As childhood was not portrayed until about the twelfth century, Ariès believed that medieval art “did not know” childhood. This he attributed to there being no place for

childhood in the medieval world. When the children began being portrayed, they were depicted simply as little people, adults on a smaller scale, without the distinguishing features common to children. Some painters even gave the naked body of children the musculature of an adult. In contrast, Greek art of the Hellenistic period seemed to have been the only art that portrayed children in a realistic way. Romanesque art then took over, and rejected the special and particular features of childhood. Ariès begins his study of childhood with pictorial representation, makes claims about the concepts based on images and, to some extent, on literature. He makes sweeping conclusions based on his survey. As child prodigies behaved with the courage and displayed physical strength of doughty warriors, according to the literary historian Mgr Calvé, Ariès writes “This undoubtedly means that the men of the tenth and eleventh centuries did not dwell on the image of childhood, and that the image had neither interest nor even reality for them.” He continues with the suggestion that “in the realm of real life, and not simply in that of aesthetic transposition, childhood was a period of transition which passed quickly and which was just as quickly forgotten” (Ariès, 1962, p. 32). In the thirteenth century, several images of children represented the emergence of the modern concept of childhood, and continued in frequency and representation to the modern day, although slowly. It was not until the seventeenth century, however, that portraits of children themselves and alone, began to appear with any frequency. Ariès suggests that this may have come about by the expectation that many children would survive to adulthood, as previously infant and child mortality rates were extremely high; thus children moved from anonymity in paintings and pictures to having distinct identities. The literary scenes of childhood which he surveyed, Ariès proclaims, “reflected the discovery of infancy, of the little child’s body, habits and chatter” (Ariès, 1962, p. 47).

For many years between the sixteenth and eighteenth centuries, schools did not make any distinctions according to age amongst the students. Ariès suggests that this may have been due to the disregard of schools to educate children, perhaps because they lacked the very concept of ‘childhood’: the medieval school was “a sort of technical school for the instruction of clerics, ‘young or old’... [Thus] it welcomed equally and indifferently children, youths, adults, the precocious and the backward, at the foot of the magisterial rostrum” (Ariès, 1962, p. 317). By the end of the eighteenth century, however, the mentality towards education began to change. Ten-year old children continued to be educated beside twenty-year old men: essentially, people went to school whenever they could, regardless of their age. During the Renaissance, education was spread over the entire span of human life, without relegating it to children or youth. The special nature of childhood was recognised by “men of authority, reason, and learning” who devised special institutions for the systematic education of childhood. The new concern for education recognised that “the child was not ready for life, and that he had to be subjected to a special treatment, a sort of quarantine, before he was allowed to join the adults” (Ariès, 1962, p. 396). This group was also held responsible for the segregation according to social class: the higher social classes with the privileged extended classical education, and the lower classes with an inferior, practically-

oriented vocational type of instruction rather than “education” per se. The latter state continues to this day, according to Ariès, with the lower classes tending not to focus as much attention and importance on education, seemingly to prefer early entry into working life. Child labour and the early entry into adult life retains this characteristic of medieval society.

Children’s clothing, as seen in the artwork and as described in literature, varied greatly with class. Once the infancy stage was over, the lower class did not appear to make many distinctions between children’s and adult’s clothing. The upper classes, however, dressed children somewhat differently, with a particularization for children’s clothing noted especially for boys. Girls tended to be dressed as miniature adult women at an early age.

Work is one of the elements which typically—in modern times—differentiates the worlds of the child and of the adult. Historically, however, children have often been exposed and indeed, immersed, in working. In the last few centuries, children, valued for their diminutive sizes and relative powerlessness, were often sent down mineshafts and up chimneys. They worked in dangerous conditions for minimum wages, if any, for long, arduous hours. They were treated as slaves and often were forced to endure what many would consider unbearable conditions. In 1842, child labour was outlawed in British mines, and the modern conception of childhood in Western liberal societies saw the world of work as an inappropriate environment for children. Notions of childhood stressed the innocence and frailty of children, and viewed childhood as a period of preparation for adulthood, and thus children were banished from labour into the classroom. This was not the case for children everywhere. Even today, children in third world and developing countries are forced to work. Their earnings are valuable and are usually essential contributions to pitiful family wages.

The family of today is dramatically different from that of a century ago, and even more so of the family several hundred years ago. Notions of the home, the child, and the family were very different from today’s versions, not surprisingly. Sociologist John Holt (1975) views the family of which we speak now, “Mom, Pop, and the kids,” as a modern invention. Even this notion is undergoing dramatic change as single parents, same-sex parents, and other permutations of ‘primary-care givers’ evolve. Holt believes that, at its very best, “the family can be what many people say it is, an island of acceptance and love in the midst of a harsh world” (Holt, 1975, p. 37).

From his work, Ariès appears to favour the modern conception of childhood as being a particular and separate world. While this conception is now widely accepted, it has not always been this way. Children are now viewed as separate from adults, and childhood as a separate world from adulthood. Earlier societies appear to have possessed different conceptions of childhood, which does not necessarily mean, as Ariès claims, that they did not have a concept of childhood. His thesis seems to hold the assumption that since they did not hold the present day conception of childhood, they did not have a concept of childhood. This is not the case, since they essentially had *different* conceptions of childhood

which informed their concept. They still considered children as differing from adults, but marked that difference in a different place than is done today. We turn now to consider contemporary conceptions of childhood.

4.3 The concept of childhood

Children are recognised throughout the world as being special, different from adults, and are often treated as such. They are not simply scaled-down or miniature versions of adults, but are human beings in their earliest stages of life, the nebulous period of which is termed 'childhood'. The word "child" is equally as vague as "childhood", referring broadly to people in all of their first and most of their second decade. The dichotomy of childhood and adulthood is sometimes trichotomised by adding infancy to the continuum, as all three stages vary greatly. The stages of childhood development have been more specifically categorised, varying between cultures. There are various legal and normative determinants of childhood which add to the diverse characterizations of childhood. There are, of course, many other conceptions of children and childhood. Victorian novels such as those by Charles Dickens often portrayed childhood as a virtual nightmare, as a dreadful stage that one was fortunate to survive. Dickens described the difficult, dangerous, and often loveless lives of children, particularly in the lower classes of eighteenth century England.

Throughout history, conceptions of children and childhood have also differed, in addition to the aforementioned permutations. There appears, however, never to have been such a focus on the period of childhood as there is today. It is certainly not an invention of modernity, although Ariès pointed out that conceptions of childhood changed dramatically during modernity; however childhood is very much an issue of our time. Childhood itself has become the focus of widespread examination and evaluation in many fields of study, rather than simply being seen as an element of the family, or of education, or even of society as a whole.

We all have general understandings of what a child is, or represents, in our respective societies, necessarily so due to all of us having been one regardless of where or when, or to whom we were born. When we put forth the conception of childhood we must consider it from a variety of perspectives, in relation to other presuppositions surrounding the term. For example, in our Western liberal democratic society, a child is not necessarily understood, accepted, and treated in the same way as is a child in a third world country, or in another political, economical, or cultural environment. Nor would the conceptions necessarily be the same at different times in history, as the later discussion will illuminate. The length of childhood, or how long one remains a child, varies, as does the nature or qualities which distinguish children from adults, and also the significance or importance of all of these differences (Archard, 1993). The implications of those variations are significant when we wish to examine other related issues, such as the treatment of children because of

normative commitments. For example, the education for children, or the lack thereof, will be affected directly by what society feels is appropriate for its citizens.

While the distinction between the concept of childhood and conceptions of childhood are relatively clear, and we can be relatively certain that most, if not all, societies have always recognised the concept of childhood, conceptions of childhood differ more dramatically. A variety of claims have been made regarding the duration of childhood (the length), its nature or the qualities distinguishing childhood from adulthood, and its significance in relation to these differences (Archard, 1993). Three basic respects in which conceptions of childhood may differ between societies and cultures have been identified by Archard (1993) as boundaries, dimensions, and divisions.

4.3.1 Boundaries of childhood

The point at which childhood ends is the boundary of childhood. That there is an end means there must be a beginning as well. These boundaries have been contested in a variety of contexts. The issue of when personhood begins is certainly pertinent to discussions of abortion, but is not a crucial component of this discussion which focuses on identifying the differences between childhood and adulthood. Conceptions are not absolute, and thus the upper limits of childhood, and when the child becomes an adult, are vague and open to variance. Many cultures have an age of majority which stipulates that boundary, and thus the law draws the important distinction of when an individual becomes legally responsible for his or her actions (Archard, 1993).

In modern times, we assign “age” to people, a number which matters from the time of birth, and we tend to categorise people in relation to those chronological boundaries. For instance—depending on the jurisdiction—at 6-years of age one begins formal education, at 16 one may become licensed to drive a car, at 16 enter the army, at 18 one may marry or vote, and at 18, 19, or sometimes even at 21, one may buy alcohol. The age of majority is 18-years in many nations, and the United Nations defines a child as one under the age of 18-years. Thus an 18-year old is considered an adult under these definitions. This is paradoxical, as it is possible for an individual to be a parent, married, and a soldier on active duty defending one’s country, and yet be classified legally as a “child”. In the United States, individuals who are found guilty of murder committed below the age of 18-years may even be sentenced to death. This is in contravention to the United Nations Declaration on the Rights of the Child (1989). The early years of the educational system tends to be organised fairly strictly according to chronological age: rarely may a five-year old be allowed to start school when the age has been set at six; children in each class are almost always very close to the same age. Notions of “social promotion” have shown the importance placed on keeping children with their cohort rather than separating them according to ability and progression.

In addition to chronological age, biological determinants affect age considerations of individuals. The medical community classifies the human body in terms of physiological age, which includes evaluations such as skeletal or bone age (Malina, 1989). These may differ from the established chronological age. For instance, girls are increasingly reaching puberty at an early age (Qaadri, 2002). Causes of early puberty may be genetic, but more often they are being attributed to environmental contaminants and obesity. Estrogen-like chemicals found in hormone-treated beef, sunscreens, pesticides, plastics, and nail polish, and the increased numbers of fat cells found in obese individuals act as estrogen factories, all factors which may hasten the onset of puberty (Qaadri, 2002). When a child reaches early puberty, she may have a physiological age which is advanced of her chronological age. This may be manifested by the development of breasts, widening thighs and hips, a growth spurt, and the onset of menstruation. Other factors may also contribute to advanced bone age. For example, one of the components of the female athlete triad (American Association of Pediatrics, 2000c) is decreased bone density, which may lead to osteoporosis. Thus the bones may be identified as being at a more advanced bone age than chronological age. For instance, in an article entitled "Young athletes with old bones", a 15-year old ballet dancer complaining of shin pain was discovered to be in the early stages of osteoporosis. She presented with a classic case of the female athlete triad (Stedman, 1999).

Sport age is another classification of age introduced by Kirby (1986), applicable mainly within the world of high-performance sport. She found that chronological age is not a useful indicator when considering the average chronological ages of children who are at their performance peak in different sports. For example, in gymnastics and figure skating generally peak at far younger ages than do women in rowing or basketball. Kirby notes that these average peak ages are so noticeable and marked that some sports recruit athletes retiring from sports with younger peak ages. For example, a number of divers are former gymnasts, and some gymnasts have become coxswains. Kirby's concept of sport age allows for a more accurate comparison of athlete development between sports which allows for a consideration of performance development in relation to the age of the athlete when peak performance is expected (Kirby, 1986). Sport age is a gender-sensitive concept, since the chronological age of a male and female gymnast would be meaningless in trying to assess their relative performance levels. Sport age would allow a more accurate assessment to compare performance potential, and may also be used as a mechanism for identifying and assessing periods of highest risk of sexual abuse of young athletes in a variety of sports (Brackenridge and Kirby, 1997).

Normative boundaries may be established by cultures in rites of passage and initiation ceremonies which may signal the end of childhood and the beginning of adulthood. These may be at the time of puberty, or later. Variations of such ceremonies include the Bar'mitzvah, circumcision or female genital circumcision (or "mutilation", as it has become increasingly viewed), and marriage. With children, notably girls, reaching puberty at far younger ages than in the past is an important consideration with regard to such ceremonies,

as a rite of passage from childhood at the age of eight is far more significant than at the age of 13-years, for instance.

That different conceptions of childhood have different boundaries is an important part of criticisms levelled at Ariès. An important distinction may be made between failing to mark a distinction between childhood and adulthood, and marking such a distinction in the wrong place (Archard, 1993). Non-modern societies may be charged with failing to include as children those persons typical Western liberal societies deem as being children. For example, in the normative rites of passage in some cultures mentioned earlier, puberty attained at the age of eight or nine for girls, and slightly older for boys, signals the end of childhood, whereas in most “modern” societies, persons at those ages remain well within the boundaries of persons who are considered to be children, and are treated as such. Ariès saw these cultures as lacking a concept of childhood for failing to recognise these differences, whereas Archard considers those cultures rather as having different conceptions of childhood.

4.3.2 Dimensions of childhood

There are several perspectives from which childhood may be examined, particularly in identifying differences between childhood and adulthood (Archard, 1993). For example, moral or juridical perspectives could judge person incapable—by virtue of their age—of being held responsible for their actions. From an epistemological or metaphysical perspective, individuals could be seen as being deficient in adult reason and knowledge, by virtue of their immaturity. From the political perspective, such young persons could be viewed as incapable of contributing towards and participating in the organisation and management of their communities. Such dimensions are valued by our societies and play an important role in moderns conceptions of childhood (Archard, 1993).

Two further important examples of dimensions of childhood described by Archard (1993) which do not allow for a consistent and absolute definition of childhood are procreation and self-sustainment. While a child may be physically capable of procreation at puberty, he or she is not necessarily an adult from the epistemological or metaphysical viewpoint. Even though a girl of ten may be physically capable of bearing her own children, she may be entirely incompetent to independently sustain herself and her child in modern society. One way of dealing with such inconsistency is to consider a child to cease being a “sexual” child while remaining a “legal” child to the age of majority.

In contrast, another way of dealing with this inconsistency is to consider a particular dimension as being consistent with all others, so that “the point at which a given conception deems childhood to end has a notional or virtual status” (Archard, 1993, p. 25). Thus, the boundary of a given conception of one aspect of childhood may be extended to another dimension. For example, when a child give birth to a baby in Canada, she is understood to be the mother of that child and is therefore legally competent to make decisions regarding

the welfare of that baby. By generalising from one criterion for adulthood being attained by a child to assuming then that all criteria have been fulfilled is risky, even dangerous.

Confusion between whether an individual is an adult or a child sometimes exists in particular environments. Highly talented and accomplished child athletes and other child prodigies are often viewed as adults, simply because of their astounding athletic talents and accomplishments. Skater Jaimee Eggleton said that sport forced him to grow up very fast: “You learn how to deal with politics and with people. So you’re beyond your years that way, but you’re very immature in others” (Smith, 1997, p. 236). Many athletes have been so focused on their sporting careers that they have not experienced and learned what Smith calls “worldwide street smarts”. When the athlete leaves his or her training environment, “all of a sudden they’re in the real world and bang. It’s hard for them. It’s hard for them to fit in with everyday, normal people” (Smith, 1997, p. 236).

This may happen to other child prodigies outside sport, such as musicians. These children are then treated as adults rather than as children (Roberts, 1986), which may be harmful as they often still require guidance and protection. Violinist Midori, a former “wunderkind” who continues to perform at the highest levels, recalls being told by the press when she was still very young that child prodigies never succeed when they grow up, “Imagine a child being told she’s going to fail. It was pretty terrible” (Anson, 1997, p. R3). Clearly they failed to recognise the kind of damage such statements could inflict on a child. Midori started taking lessons at the age of four, and performed with the New York Philharmonic in 1982, when she was only 11 years old. Midori was a child working in the adult world, and adults were unsure or ignorant of how to perceive and behave towards her.

Ukrainian figure skater Oksana Baiul’s experiences after the Olympics turned her into what journalist Christine Brennan calls “sport’s most poignant cautionary tale” (1988, p. 195). She won the World Championships at the age of 15, and went on to win the gold medal at the 1994 Olympic Games, which earned her millions of dollars in endorsements and bonuses. She turned professional right after the Olympics, and continued earning millions of dollars. She was only 16-years old, and an orphan, with no adult guidance (Brennan, 1998). After her triumph in Lillehammer, “Baiul went on a joyride through life. She moved to America, got rich, bought a \$450,000 house in Connecticut, dyed and cut her hair, bought new clothes, did photo shoots, changed her hair color again, left her coach, dumped her old friends, hung out with new friends—and occasionally practiced her skating” (Brennan, 1998, p. 194). Kristi Yamaguchi, 1992 Olympic gold medallist, said that when she got out of hand, her family was the first to bring her back to reality; “unfortunately, Oksana doesn’t have that source of family” (Brennan, 1998, p. 194). After she left the intense demands of training and competing at the highest levels of her sport, she began living dangerously. She suffered a serious injury seven months after her Olympic triumph, but refused to take time off to heal. She continued performing in skating shows, but her performances suffered. She fell in every show, and within a year of winning her Olympic medal, “skaters and coaches wrote her off. As a competitor, they said, she was finished”

(Brennan, 1998, p. 196). She soon became an alcoholic, and had a nervous breakdown. She lost control of her life, jeopardising her skating and her future—all by the age of 17. The spiral continued, and she continued to risk her health and career. Fortunately, after being charged with drunk driving at 19 (and being two years below the legal age drinking age in Connecticut), she ended up in a rehabilitation centre. Counselling helped her mature and cope with the pressures and stresses of celebrity with its fame and fortune. She had been viewed and treated as an adult and not as the child who desperately needed care and nurturance, and she was not yet mature enough to handle the demands of her sudden life change.

Tennis player Jennifer Capriati experienced similar trials. She turned professional at the age of 13, and was overwhelmed with the sudden fame and fortune—and accompanying pressure and stress—of earning millions of dollars for her performances. She also lost control of her life; after being charged with drug possession and shoplifting, she dropped out of tennis. After several years of counselling and guidance, she was fortunate in being able to return to her accomplished tennis career. Like Oksana, Jennifer was viewed and treated as an adult before she was competent and reasonable enough to cope with the pressure and demands of the adult world. Sport psychologist Julie Anthony, also a former professional tennis player, believes that the increasing trend in women's tennis towards developing younger and younger champions is actually developing "idiot savants" (Kennedy, 1997). Anthony commented that

Tennis has become big business, and these kids are under pressure to play more tournaments and bring in more money. You wind up with children travelling all over the world looking very sophisticated, often supporting their parents, when in fact they are still children and very vulnerable. (Kennedy, 1997)

That children are working contradicts modern conceptions of childhood, but that their work supports their family is a further incongruity. At 16, Martina Hingis earned \$10 million from her clothing contact with Sergio Tacchini, and her earnings paid for the house she shares with her mother (Kennedy, 1997). At 19 years of age in 2000, Hingis earned \$4 million in prize money, and the same in endorsements (Wertheim, 2001). Winning a Grand Slam event on the professional women's tennis tour can earn players astronomical amounts of money. The youngest American (she has since changed her nationality to French) to turn professional, tennis player Mary Pierce earned \$610,000 for winning the French Open in 2000 (Duncan, 2000). In the doubles event, Pierce and Hingis each won close to \$100,000. At the age of 25, Pierce's career earnings are estimated at \$5.5 million, and she may earn an additional \$20 million in sponsorship deals.

Very few adults ever earn that kind of money, let alone children. However, some elite athletes do earn such vast sums for victories, and many earn additional money from sponsorship deals. In 1999, baseball player Roberto Alomar signed a four-year contract with a professional team for \$20 million (Duncan, 2000). Such lucrative winnings and endorsements may certainly influence parents into enter their children into sport at younger

ages, and pressure the youngsters to succeed. Melanie Molitor, mother of Martina Hingis, says in response to such allegations, "People say that I ruined Martina's childhood and that I only want the money and to satisfy myself...that's not true. I pursued this so Martina could have a chance in life" (Kennedy, 1997). There is no question that Martina was set for a career in tennis; she says of her mother, "Since I was in her stomach, she was thinking I was going to be a great tennis player. . . . in the beginning she wanted it more than I did" (Kennedy, 1997). By the age of two, Molitor was hitting tennis balls to Martina, who was playing with a sawed-off wooden racquet. At 12, Hingis won the under-18 junior division of the French Open. While she was generally viewed as being very well adjusted to the world of professional tennis since turning pro at the age of 14, and admired for her poise and grace with the media, the public was reminded that she was still a child playing in an adult world. At the French Open in 1999, she had a very public temper tantrum after losing to Steffi Graf, and had to be escorted back onto the court for the awards by her mother. After that tournament, Hingis parted briefly from her coach-mother but returned to her after a period of what many would consider normal teenage rebellion. Unfortunately, Hingis had to endure the world's attention, and its attendant stress and pressure while trying to work out the relationship with her mother. Many teenagers experience similar angst, yet only a few have to go through it with such media attention. Journalist Stephen Brunt commented upon Hingis' return with her renewed confidence,

Back to being a pro, to being the best and to being unflappable and steady and the same player week to week to week. Maybe that little glitch was childhood. Maybe it was adolescence. Maybe it was the last time that Hingis will ever seem like a kid.

(Brunt, 1999, S1)

Brunt suggests that "In the real world, it probably ought to be viewed as remarkable that Hingis and the other child-athlete bread winners on the women's tennis circuit don't all grow up to be axe murderers" (Brunt, 1999, S1). Brunt believes that no other sport "feeds on the young" the way tennis does. He comments that no other professional sports have 15-year old athletes, although he acknowledges the "kiddie corps in gymnastics" but comments that "they're not doing it for money and they're not being trotted out around the globe, week after week, often as the meal ticket for their entire family" (Brunt, 1999, S1). The Women's Tennis Association chief executive officer, Bart McGuire, admits that there are some issues with such young children earning these unbelievable amounts of money:

If you have both parents who have given up their jobs and are living off the earnings of a player on the tour, the pressure gets to be a concern. . . . Implicit in the relationship is the fact that if you don't practise for a few days, we don't eat.

(Brunt, 1999, S1)

The results of such situations are sometimes frightening. When the livelihoods of parents, coaches, and other adults depend on the performances and achievements of children, the young athletes' interests, health, and welfare may be compromised. Parents sometimes lose all perspective, and seem to forget or ignore that their children are children first, and athletes

second. Confusion over appropriate parenting may lead to exploitation and abuse of their own children.

In an article about tennis player Mary Pierce entitled “Turning professional? It was my father’s decision”, journalist Andrew Duncan recounts how, in 1993, Pierce’s “despotic” father was forcibly removed by seven men from the Roland Garros tournament in Paris because of inappropriate behaviour (Duncan, 2000). Her father is called “the ultimate tennis dad from hell” for having “threatened, bullied and physically beat her to “develop” her talent” (Duncan, 2000, p. 10). He was banned by the Women’s Tennis Association from attending all future matches. Signs with his photograph were posted at tournaments, reading “This man is banned from the grounds. Stop him from entering if possible. However, if sighted he must not be challenged but control must be informed” (Duncan, 2000, p. 10). After her parents divorced, Jim Pierce sued for part of Mary’s winnings, and called her a “prima donna bitch without integrity”, and was stabbed in a fight with her minder. Pierce claims, however, that she bears few emotional scars or stitches from the years of physical and emotional abuse she suffered from her father while growing up and becoming a tennis star (Powell, 2000).

Powell (2000) calls the abusive behaviour of fathers “Tennis Dad Disease”. He says Jelena Dokic, another young player, is somehow surviving despite the actions of her father—also her coach—who also suffers from “Tennis Dad Disease”. Like Jim Pierce, Damir Dokic has also been banned from a number of tournaments such as Wimbledon and the U.S. Open for inappropriate behaviour such as fighting, drunkenness, and shouting and swearing at umpires and other match officials. He can neither coach nor spectate at these and other tournaments, and has also been denied Olympic accreditation. After an article appeared in the *Australian Tennis* magazine suggesting that her father needed psychological help to control his volatile temper, her father sent Jelena to Belgrade to apply for a Yugoslav passport (*Independent*, 2000). He claimed it was too dangerous for his family to continue living in Australia. The family left their native Yugoslavia in 1994 for Australia, where they became Australian citizens, and now they are reapplying for Yugoslav citizenship. Anecdotal reports abound of other so-called “tennis dads from hell”, who pushed their children from very young ages. Jennifer Capriati’s father is said to have made her do sit-ups in her cot! (Barnes, 1997).

Another example of confusion over conceptions of children: a former elite level gymnast and now gymnastics judge spoke out at a recent conference on talented children in sport in Toronto in 2001. She told of the lack of athlete representation for female gymnasts within the governing body of the sport, as the athletes were considered too young to travel unaccompanied across Canada to meetings in Ottawa. The irony is that these young athletes are sent all over the world to gymnastics competitions by the very governing body which objects to their attending and participating as athlete representatives for their sport, among the governing officials of their sport.

A conception of childhood determines the criteria which are considered significant in differentiating between children and adults. Such criteria form the basis for a relatively clear boundary to childhood. The selection of these criteria are dependent on broad value-judgment (Archard, 1993). For instance, if rationality is identified as the distinctive and unique attribute of human beings, then it follows that the acquisition of reason is considered a fundamental criterion of maturation. It may also be the case that prevailing social priorities inform the differentiation criteria between childhood and adulthood. Thus, in a society where basic survival and reproduction is paramount, then the ability to be self-sustaining and earn a living, and bearing children would be clear criteria for marking maturity.

4.3.3 Divisions of childhood

The third element of Archard's (1993) view on how conceptions of childhood differ from adulthood is in its divisions. The broader notion of childhood may be sub-divided into a number of different stages. Most cultures, if not all, identify the period of infancy characterised by complete dependency and extreme vulnerability. Most contemporary cultures recognise the great importance of these very early years, although Ariès' views of infancy—on the modern conception—see this stage extending from birth to about the age of seven-years. Non-Western cultures view weaning as a stage of great significance since it tends to make the point at which the infant becomes replaced as “the object of great maternal attention” since weaning often occurs during the next pregnancy of the mother (Archard, 1993, p. 26). The stage at which a child learns to speak is considered a milestone in other cultures. For instance, Roman law identified three phases of childhood: first, *infantia* was the stage when the infant was unable to speak; second, *tutela impubers* was the stage before puberty, when the child had a tutor, and; third, *cura minoris* followed puberty but preceded adulthood, when the child had not yet attained the age of majority and still required a guardian (Archard, 1993).

Archard (1993) believes that there are two distinct ways in which to understand childhood. One is a broad view that accepts childhood to be an all-encompassing term which covers the period from birth to adulthood. The terms of infancy, adolescence, and others may be used by a culture to form sub-categories within this broad period. The other view, somewhat narrower, is that childhood is the middle ground between infancy wherein the individual is entirely helpless and dependent for his or her very survival on others, and adolescence where the individual lies just before the threshold of competence and self-sufficiency, or adulthood. This view sees infancy as a relatively long period, perhaps up to the age of about six or seven years. The in-between period of “childhood” proper views the “child” on the continuum after infancy, but before adolescence (Archard, 1963).

Adolescence, first recognised during the nineteenth century (Ariès, 1962), is a key period in the modern conception of childhood. It may be argued, in opposition to what Ariès believes, that there was earlier recognition of “youth” as an age of apprenticeship for

adulthood. Archard believes that adolescence, with its characteristic psychological qualities and social significance, is a particularly modern construct. The term refers to those individuals in the period just before adulthood, who have moved beyond the early stages of infancy and childhood.

The stage of childhood may be understood as the middle years between infancy and adolescence, roughly between the ages of six and twelve. The earliest years, right after infancy, characterise an individual who is beginning to think about him or herself and the world in important new ways as he or she begins to gradually acquire qualitatively higher cognitive competence. The latest part of childhood is the stage where the individual is at or close to puberty. Here the child is more accurately described as a young person who is looking towards the next phase of development.

In summary, conceptions of childhood vary according to where its boundaries are set, the way its dimensions are ordered, and how divisions are managed (Archard, 1993). Such conceptions will determine the thoughts about and treatments of children within the notion of childhood. The identification and adoption of any one conception over another is dependent on prevailing social beliefs, assumptions, and priorities. Sometimes the way in which boundaries, dimensions, and divisions of childhood interrelate may cause difficulties. There can be discrepancies, views may be ambiguous, and the weight of each area may be unbalanced. For example, a society that values winning in sport above all else may exploit and abuse its children through a confusion of divisions. Conceptions of childhood would circumscribe appropriate ways for children to be treated, and when the child enters into some realms of adulthood, people may forget that the sports star earning millions of dollars in prizes and endorsements, and being heralded as a hero by the world's media, is actually a child. The result is that the child may be harmed by such confusion.

The conceptions of childhood as outlined above are based on the concept of childhood, that adults and children are different. Understanding the difference between the concept of childhood and the conception of childhood means that one understand that there may be different criteria in different societies which inform conceptions of childhood through varying values, priorities, and assumptions. The three basic aspects: boundaries, dimensions, and divisions in which conceptions of childhood may differ, determine how a culture thinks about the extent, nature, and significance of childhood. They represent the prevailing beliefs, assumptions, and priorities a society or culture holds about its children, but clearly affect societies' understanding and treatment of adults as well, since conceptions of neither adulthood nor childhood can be understood as social isolates. The dynamics of conceptions of childhood in any society may cause difficulties, revealed in practical utility, or normative commitments. Some individuals may reach the thresholds of each aspect at different times: the physiological ability to procreate will most likely precede the political capacity to vote. When cultures mix, as they do in our increasingly multicultural society, conceptual variation will challenge the prevailing society's laws and customs.

4.3.4 Institutional and normative notions of childhood

Different claims and understandings of conceptions of childhood have evolved over time and with various cultures. John Kleinig has divided the concept of childhood into two components, institutional and normative, whereas David Archard holds there to be three components to conceptions of childhood: its boundaries, dimensions, and divisions.

The institutional concept is a legal or quasi-legal one usually defined in modern societies as chronological age; in other societies, it may be defined by rites of passage or puberty. Chronological age defines childhood in modern societies. It is understood in terms of age, and that under normal circumstances through the normal course of physiological development, children will grow up into adults. This notion is similar to Archard's (1993) separation of childhood into its boundaries.

The normative concept of childhood is connected to certain capacities, particularly the acquisition of fundamentals such as knowledge and experience, and the possession of certain moral interests or reasonable expectations which may inform an individual's predicted behaviour at particular phases of development. Under the normative perspective, children are matched against a range of evaluative criteria such as physical, emotional, and intellectual maturity. Evaluation of these criteria are clearly subjective, and the implications of normative divisions are not as apparent as are institutional or chronological age divisions.

That children are often cared for with great love and tenderness is not denied by Kleinig (1982). However, he puts forth that their inherent powerlessness and dependence has made them particularly vulnerable to oppression from others. Children do not have the same rights, freedoms, privileges, and immunities taken for granted by adults; they are denied freedom of movement; are compulsorily schooled and expected to obey adults under whose care they fall; they may be physically and otherwise assaulted within broad guidelines; they have little freedom or autonomy in their dress, nutrition, or activities; with whom they associate is closely directed by parents, educators, or other guardians deemed (without consultation) *in loco parentum* by some adult. Kleinig asks how one could justify this state of affairs. This question, however, is beyond the scope of this work and thus must wait for a further investigation. We shall focus instead on conceptions of childhood.

4.4 Modern conceptions of childhood

Conceptions of childhood are based on two elements. First, one must understand that children are different from adults. Second, one must also understand that there are a variety of criteria that inform that difference. Conceptions of childhood may differ from one society to another, and some conceptions may be contradictory; therefore there is no one particular clear and consistent conception of childhood. Modern conceptions of childhood are based on the values, priorities, and assumptions of a society, as well as what may be viewed as myths or cultural ideologies (Archard, 1993). The result of such combinations is

that the difference between the “real” conceptions of childhood and the symbolic conception of childhood becomes difficult to identify.

4.4.1 Creation and separation

The variety of theoretical understandings and cultural representations of children presents a spectrum of conceptions of children and of childhood. Modern conceptions—modern in that they have been put forth only in the last several hundreds of years—are still evolving and changing. As cultures become more intertwined, conceptions become further amalgamised. Both literary and scientific conceptions, the latter the most recent, being only developed in any coherent manner within the last century, have viewed and presented the child as a distinct, separate being from the adult. It is the particular nature of children, with their constituent elements, which separates them. They neither work nor play with adults, and they do not participate in the adult worlds of government and politics. While they are “innocent” there is a sharp distinction with the “knowing” adult, and between the behaviour demanded of children and expected of adults (Archard, 1993). In other cultures, this distinction is not always as clear.

Children in non-Western worlds are not necessarily exempt from responsibilities of contributing to their own, their family, and their community’s existence, and their tasks are not unrelated to their size and abilities. Understandings of children and adults may not differ as dramatically as they do in typical Western nations. One particular understanding of such difference is illustrated in notions of work and play. In Western nations, modern understandings of children are those of individuals who play and do not work. Work and play exist on two ends of a continuum; play is synonymous with childhood, and work is synonymous with adulthood. Many societies expect their children to work, albeit in a relatively simple way. Older siblings are expected to supervise younger ones, as well as tend to animals. Children may carry water or gather firewood for cooking fires, chase away birds from crops, or run errands. As the child grows and develops, the tasks increase in magnitude. In Western societies, children typically do not work, although some families may encourage their children to help around the house, performing chores such as taking out the garbage and cutting the lawn. Children who grow up on farms often help to run the farm, with parents gradually increasing the complexity and demands of the tasks. While almost all work that children perform may be considered “forced” labour since rarely are children in a position to give their consent, and adults typically control all aspects of their lives (Donnelly, 1997), these sorts of tasks are generally considered a healthy contribution to the children’s development as children learn to take on responsibility for themselves and their families. Such a view changes when we turn to the issue of child labour. Child labour implies that children are being exploited or over-worked in environments that may be deleterious to their health and welfare, and they may be deprived of their rights to education (Donnelly, 1997).

Child labour has attracted growing attention from such organisations as the United Nations, the American Academy of Pediatrics, among others. Free the Children is a

relatively new group in Canada founded by Craig Kielburger when he was a child himself. These organisations have raised the profile of issues of child labour, leading to increased awareness and concern about the negative effects children experience. For example, in recent years investigations of sport-giant Nike have revealed their garments and shoes are often made by children and women working in dangerous “sweatshops”, and young children have been found to be making soccer balls for Adidas in third world countries. In the *World Labour Report* (1992), the International Labour Office has described some of the harms experienced by child labourers. These include bone and postural problems associated with spending long hours in awkward positions while weaving carpets, embroidering, and heavy lifting. Their eye-sight is often damaged by working 12 – 14 hours at tasks that require close attention, such as embroidering, sewing, or other fine work. The hot and dirty working environments are often contaminated with pollutants from manufacturing processes. Sometimes safety guards are removed from machinery, if indeed there were any to begin with.

Like Ariès, Archard observes the most important feature of the modern conception of childhood to be that childhood is a separate world from adulthood. Different behaviour is expected from children than is expected from adults; they are treated differently from each other, and each have different roles and responsibilities. That children in high performance sport DO work and play with adults is somewhat problematic and inconsistent with this notion of childhood. Sociologist Peter Donnelly (1997) has argued that children’s involvement in high-performance sport ought to be viewed as sport labour, as the problems are similar or equivalent to those of child labour. While not all the problems experienced by children may be as harmful and damaging as those in child labour, some of them are, while others have many similar characteristics of such risky and dangerous practices. Also, many more children are involved in child labour than are in high-performance sport, although this does not negate the importance of child protection in any environment. Donnelly (1997) suggests the application of child labour laws to sport might address and move towards resolving many of the problems associated with the health and welfare of children in high-performance sport. This issue is addressed elsewhere in this work.

Returning to the notion of the separateness of childhood and adulthood, it seems quite clear that there is a generally accepted view that children are very different beings from adults. What separates the twentieth century view from earlier ones is the breadth and depth of the knowledge we have now about the nature of children. “What the present age knows all about is what it is to be at the stage of an in the state of childhood” (Archard, 1993, p. 30).

Over the last one to two hundred years, children have been examined in the disciplines of psychology, biology, medicine, educational theory, and sociology, among others. Childhood as a stage of development is the dominant notion of childhood. Developmental psychologists view childhood as one stage on the continuum polarizing the child with the adult, understanding the child as a sort of “unfinished” or “incomplete” adult

who moves towards “completion” having attained full adult capacities and characteristics (Archard, 1993). Traditional concepts of childhood tend to consider childhood as a primary stage, something one “outgrows” along the journey to adulthood. It may be seen as almost a type of pathology when thought of as “unfinished”, preceding adulthood which is viewed as the “finished” stage of being. Moving from childhood to adulthood is associated with the acquisition of distinctive rights, as well as capacities such as autonomy and self-determination, and is usually seen as an important and significant milestone in an individual’s life. Children are everything that adults are not: they are lacking in the skills, capacities, and powers that adults possess.

Whereas childhood may be understood as the absence of adulthood, an adult is generally considered to be one who is not a child, not possessing the childhood insufficiencies of physical, emotional, and intellectual maturity. The “ideal” adult, according to Archard (1993), is one who has certain cognitive abilities and capacities, one who is rational, physically independent, autonomous, has a sense of their own identity, and is aware on a conscious level of its beliefs and desires. Thus the adult is able to make free and informed choices for which he or she is held personally responsible. These capacities and dispositions allow an adult to be able to work for a living, be legally accountable for his or her actions, make sexual choices, and participate in choosing a government for the surrounding community (Archard, 1993). The adult must leave behind all that is childlike in order to survive and fit within the adult world, as such things are inappropriate to adult life. Adulthood is conceived of as the culmination of the development process, and the “complete” stage of life.

That an adult must leave childhood and all things “child-like” behind when moving into adulthood is a reflection of the nature of the adult world. This illuminates what is bad about the real world; “It is good to be an innocent in an innocent world; it is a matter for regret but not self-condemnation that one cannot be an innocent in our world” (Archard, 1993, p. 31).

The significance of childhood in our Western society is more prominent than ever before, and this recognition warrants the worlds of children and adults to be separate and distinct. Never before has childhood lasted as long as it does today. With seemingly increasing views that the world at large is a “big bad place” with great potential to harm, children are more coddled and protected. For instance, the vast majority of children are driven or bussed to school; very few children walk to school, even in urban centres. The notion of the “good parent” is one who knows where his or her child is at all times, and thus rarely does one see children playing unsupervised. Schools have become increasingly vigilant about the safety and protection of students; exterior doors are often locked from the outside (but may be opened from within) as soon as classes start. Students may not be picked up by anyone not designated by parents on a special form for that purpose. Babies are foot-printed as soon as they are born for identification purposes. Parents are encouraged to maintain folders with recent photographs and fingerprints of their children in

case they go missing. Adult-organised, after-school programmes have grown in number to meet the demands of parents for adult-supervised activities for their children. Some of these programmes are academic in nature, whereas others are focused on a specific activity such as sport or art. Even at university, anecdotal reports from faculty members claim a marked increase in parental involvement with their children's affairs than seen in the past, and an apparent weakness of students to be autonomous and self-sufficient. Ironically, however, is that while childhood has been extended in length more than ever before, and children are increasingly coddled and protected, children are also been encouraged to grow up as quickly as possible.

That children are being "hurried" to grow up fast is related to the changing world of adult society (Elkind, 1988). The last two decades have seen trends towards divorce, single parenting, two-parent working families, and blended families as the middle-class norm. Elkin suggests that the conception of children as growing and in need of adult nurture, protection, and guidance has become the source of parental anxiety and guilt. Parents are now facing pressures in their careers which may conflict with having and raising children. Other conflicts for parents may include new partners, loyalties to children from previous marriages, attempting to achieve and maintain an acceptable standard of living, and pressure to raise their children in accordance with the notion of children as in need of parental nurture. Even though many parents are living what he calls the "new lifestyle", Elkind suggests that these parents have remained invested in more traditional values of parental nurturing, and thus feel residual guilt about leaving their children in nurseries and daycare centres with strangers, particularly in the child's earliest years. Traditional values hold that young children ought to remain with at least one parent if they are to actualise their complete intellectual, personal, and social potential. In order to deal with this guilt, parents who have neither the time nor the energy for childhood but nevertheless love their children, have reconceptualised childhood as a period wherein the child is "competent to deal with, and indeed as benefiting from, everything and anything that life has to offer" (Elkind, 1988, p. xiii).

The desires of parents to enhance the child's intelligence and give him or her a "leg up" on the competition has seen fetuses being regaled with music (preferably Mozart) and are read to daily (sometimes through a "Pregaphone", an invention which amplifies the parent's voices for the foetus), infants are spoken to not in "baby talk" but in regular adult language, and young children are shuttled between school, music lessons, art lessons, extra-curricular tutoring, and an array of sports. In the school system, students are increasingly attending school longer each day, and homework is being levied even in pre-school. Every minute of their days are accounted for, as an idle child may "get behind" in the race towards adulthood. To best foster self-determination and creativity, It could be argued that children ought to be free to follow their own inclinations, but such organised and busy schedules of the modern child hinder their freedom to exercise their own resourcefulness and imagination. Physical, conceptual, and moral boundaries restrict the roving of children,

justified by the prevailing ideologies of care, protection, and privacy (James et al., 1998). These boundaries require children to be “organised” and “directed at all times, under the supervision of adults. In the modern world, these adults are rarely the child’s parents but tend to be teachers, tutors, and coaches. When children spend approximately seven hours a day undergoing formal education, followed by several hours of extra-curricular activities, and if their weekends are filled with yet other activities like art classes and sports competitions, they end up spending very little time with their parents. One of the elements within modern conceptions of childhood is the notion that children and parents ought to spend more time together, yet in reality it seems they are actually spending less and less time together. The elite child athlete tends to spend even less time with their parents with the requisite travel, training, and competition demands of their sport. Some tend to spend all or most of their time in the company of adults, rather than with children their own age. For example, Martina Hingis has been coached by her mother, with whom she lived, trained, and travelled. The world of professional tennis has little if any room for children, and thus from at least the time she turned professional, Martina has lived in an adult world.

Elkind suggests that Western society’s new conception of children is epitomised in the metaphor of the “Superkid”, and thus parents feel these “Superkid” children can be hurried along with impunity. This is the notion of “child competence” which is being encouraged: the younger the child learns to speak, to read, to speak another language, to recite their times tables, and so on, the better. Child stars are headlined, and thousands wish to emulate their accomplishments. For instance, a six-year old girl was profiled in a *Sports Illustrated* magazine for becoming the youngest female ever to earn a black belt in karate (Alyssa Ann Rosati, 2001). While her favourite move is “the tornado kick”, we are reminded that she is a child with her comment that her lucky breakfast is “Powderpuff Girls” cereal.

Entrepreneurs have hurried to fill the demand of parents for both adult-supervised activities to protect their children, and also activities which support the notion of child competence. Elkind (1988) suggests that in some ways, these entrepreneurs have even exploited parental guilt and anxieties. Advertising tells parents that “children deserve every advantage” to help them survive in the increasingly competitive world, and asks parents “don’t you owe them that much?” Such a conception of childhood with its unrelenting pressure towards child competence does not benefit children, and unduly stresses them (Elkind, 1988).

The modern view of childhood as an extended stage prior to adulthood has demanded its own separate world (Archard, 1993). Such a view underpins society’s practices and institutions, such as the disparate attribution of rights and responsibilities. The notion of children’s rights is relatively new, with calls for the recognition of such rights going back only thirty years or so. The chapter on children’s rights covers this area in great detail. In the past, adults were seen as having rights and responsibilities, whereas children were not. For the most part, children’s rights still tend to be moral rights rather than legal rights,

although this is changing. While the United Nations has stipulated very clearly the kinds of rights children ought to have in its Convention on the Rights of the Child, such a document is not legally binding towards any nation, and serves more as a guideline. Archard cautions that it would be wrong to think that because a child inhabits a different world that it must also have a distinct set of characteristics which fit him or her for a different kind of life, since it may well be that children have separate natures because they are set apart and raised to act and think of themselves as different and separate from adults. He points out that “It is the separation of worlds that explains the separateness of natures, and not the latter which justifies the former” (Archard, 1993, p. 31).

The sources of the view of childhood as a separate stage are both scientific and cultural. The science of psychology pursued the study of childhood, and concluded that it was essentially a stage in human development (Archard, 1993). After the normal course of events of childhood, maturity is attained by all persons, and is considered a valuable accomplishment. The attainment of the normative status of adulthood is a biologically driven process through the child learns from experience and environment.

Whereas childhood is viewed as a stage, adulthood is the culmination and goal of the developmental process undergone by children. While childhood is separate and distinct from adulthood, the two concepts necessarily inform each other: “The needs and interests of childhood, and the value accorded to them are relative to those of adulthood” (Archard, 1993, p. 36). Adulthood is seen to be attained when all elements of childhood are left behind. An adult is one who has achieved maturity, physically, intellectually, and emotionally, and is “defined by the possession of properties which clearly and distinctly separate it from childhood” (Archard, 1993, p. 36). Maturity is understood in two ways, first as a desired end state of childhood, and second, as a description of physical age. Even though adulthood is seen as the end of childhood, it is not a distinct concept with strict boundaries. It is a process of “continual becoming, a never-completed maturing” (Archard, 1993, p. 36). There is no guarantee that an adult will achieve the qualitative state of maturity, as sometimes the characteristics of childhood are retained, and may appear in various degrees at various times throughout an individual’s life.

The modern Western conception of adulthood as a state of being along the continuum originating in infancy, and progressing through childhood, and it is defined opposite childhood. Archard notes that if adulthood is defined as a process of continual becoming, then it is not possible to set a clear demarcation between it and childhood since, “if adulthood is a never-realised goal towards which one is forever maturing childhood is not obviously an inferior stage which is left behind at once and completely” (Archard, 1993, p. 37). In sum, the dominant notion of childhood remains a separate world, away from which adults strive towards maturity in every dimension. That treating an adult as though he or she were a child is considered *prima facie* wrong in most circumstances illustrates a further dimension of childhood, and that is it is somehow conceived of as an inferior stage which is left behind as soon as possible, and forever (Schapiro, 1999).

4.4.2 Ideals: Childhood as innocence

Christianity imbued a confusing and somewhat contradictory image of childhood. Children are considered pure and nearest to God, whereas adults are seen as furthest from him (Archard, 1993). The child is pure and innocent of evil, whereas the adult who wishes to become pure again must reclaim the state of childhood. The notion of purity in these ideals are based on ignorance: “the innocent do not sin because they do not know how to. The child cannot be tempted because it has no understanding of wrongdoing” (Archard, 1993, p. 37). Thus, the notion of purity and innocence of the child is somewhat empty. Polarized with this view of the child as moral purity is the view of the child as having inherited the inherent sinfulness of man: the child is born with Original Sin. The child, under this conception, is seen as inherently bad, correctable only by a rigid disciplinary upbringing.

Literature has illustrated the model of the innocent child as polarized with that of the evil child. Children are angelic and innocent, uncorrupted by the world they have entered, and have a natural goodness and clarity of vision. The Romantics, particularly Blake and Wordsworth, celebrated the original innocence of childhood in their prose, with Blake contrasting evil with the innocence in his *Songs of Innocence* and *Songs of Experience*. The view of innocence slipped (Archard uses “deteriorated”) later in the Victorian period into an air of sentimentality and nostalgia. Charles Dickens juxtaposed the frailty and vulnerability of children against the harshness and brutality of English life, particularly so for the poor. Archard (1993) views the English literary exploration of childhood as being an exploitation of childhood, in that it has been used as a symbol for what is considered to be missing from, and degenerate about, adulthood. The innocence of childhood is a false one, based on nostalgia, sentimentality, and a regretful sense of loss on the part of adults. Incompetence ought not to be confused with innocence.

Jean-Jacques Rousseau believed that all creatures are born good, but as they enter the world, humanity corrupts them by interfering with their inherent goodness and spreading evil. Rousseau wanted to be rid of all concepts of original sin and argued that instead of trying to beat children into goodness, it might be a better idea to recognise and value the special and intrinsic values they hold. Through *Emile*, Rousseau promoted the child to the status of person. He raised the issue of the child’s particularity, that a child was a specific class of being with needs and desires and even rights, separate from other beings, namely adults. Rousseau seems to have paved the way for contemporary society’s concern about children as individuals. Rousseau brought attention to the needs of children, and persuaded many to believe that childhood was worthy of the attention of intelligent adults. He encouraged an interest in the process of development, rather than just being concerned with the end product. The education of children was also part of the interest in progress which was predominant in the intellectual trends of the time.

At the turn of the twentieth century, Freud introduced what became highly influential views on children. He believed that they are not innocents, but rather libidinous creatures whose aberrant sexuality ought to be channelled in appropriate directions. Freud believed

also that anomalous adult behaviour can be explained by experiences from childhood. Freudian theory posits the child within the conception of childhood as a stage of becoming.

The twentieth centuries' views of children have changed dramatically, although current conceptions have legacies rooted in the past. Children are recognised for their particularity, and not merely as collections of negative attributes or incomplete persons awaiting completion when they reach adulthood. It is important to understand the significance of the reality that children have to live in a world which has been created by adults. Sociologists have urged parents and educators—those charged with raising societies' children—to do so while ensuring their state of pristine innocence remains unspoilt by the violence and ugliness that may surround them (James et al., 1998). Also instilled in the adult-child relationship is the notion of responsibility, which must be reconciled with Rousseau's advocacy of freedom for the child. If it is the case that childhood innocence ought to be nurtured at all costs, then society must develop publicly recognisable standards regarding the treatment of children. All adults, regardless of whether they are parents or educators, must assume responsibility for children at the point where they recognize the child's intentionality and competence. This means that routine mistreatment of children can no longer be tolerated, however, children cannot simply be left to their own devices either (James et al., 1998). Archard captures the modern conception of the child as "an innocent incompetent who is not but must become the adult" (1993, p. 41). Human development precedes regardless of ideals relating to maturity. The modern conception of the appropriate place for the child is as a separate and distinct ideology, one where the child cannot and does not share the rights and responsibilities of the adults. Children have been moved into the forefront of society's values and priorities, and are recognised as an investment in the future in terms of the reproduction of social order.

4.5 Parenthood

The role of a parent is to be the guardian or caretaker of one's children. As caretakers, parents are expected to protect their children's health (Blustein, 1982). They ought to develop the physical, emotional, and intellectual competences necessary to rational action, and are expected to nourish the child's self-esteem and self-confidence. Parents must prepare their children to take advantage of and responsibly exercise their rights and liberties as citizens, and, insofar as they are able, provide them with an environment conducive to maximising the educational, occupational, and other opportunities available to them in society (Blustein, 1982). Once children become adults, Jane English (1997) suggests that the relationship between parents and their children ought to be characterized by friendship based on mutuality. "The quantity of parental sacrifice is not relevant in determining what duties the grown child has" (English, 1997, p. 176).

Children are not possessions or chattels of their parents. Parents should not use or objectify their children in any way. Kant argued that it is as rational beings that people exist

as ends in themselves. It is impermissible to treat a person as the means to the ends of others, and so it is impermissible for parents to treat their children as a means to their ends – to produce a high-performance athlete, for example. Treating a child as a commodity is to treat it with disrespect; it could be seen to be “using” it as the means to one’s own ends. In Kantian terms, it is inappropriate to “use” a person, to treat “beings worthy of respect, as if they were worthy merely of use”. When a parent trains their child from a very early age, before the child becomes self-determining, and the experience of such training forecloses the child’s opportunity to formulate his or her own life plan, then the parent has wronged the child. Not only is it morally wrong to use a child as the means to the parents’ ends, but Gibson (1995) suggests that it is morally wrong to have a child as a means to one’s own ends. She claims that for a parent to have a child because of a desire to be the parent of a future prime minister or film star is to have a child for wrong, “selfish” or self-regarding reasons. To try to bring these desires into existence by deliberately forcing a child to follow a specific path—competitive sport for instance, in order for them to become a high-performance athlete—is to further compound the harmful consequences of such desires. Parental love is not supposed to be conditional upon the child having particular skills or talents, or characteristics. Children ought not to be evaluated in terms of their “instrumental value”; they ought to be valued regardless of their physical or psychological traits. Anderson (1990) writes “the most fundamental calling of parents to their children is to love them. Children are to be loved and cherished by their parents, not to be used or manipulated by them for merely personal advantage. Parental love can be understood as a passionate, *unconditional* commitment to nurture one’s child, providing it with the care, affection, and guidance it needs to develop its capacities to maturity” (Anderson, 1990, p. 33).

Reasons for having children may be judged morally desirable or undesirable, depending on the extent to which these reasons “enhance or detract from the possibility of forming a particular kind of relationship with that child” (Gibson, 1995, p. 238). She views one of the most important objectives of the parent-child relationship to be the nurturance of the child’s sense of his or her own value, regardless of his or her value to any other person.

4.5.1 Children and childhood as investments

When parents enrol their children into organized, competitive sport at a very young age, and then pressure the child to achieve performance results to maximize their chances of success in professional sport, they will likely be overwhelmed with disappointment and frustration if the child is not interested in being an athlete. They may even use the argument that “Since we paid for your skating lessons, drove you to the rink all those years, and made such sacrifices, you owe it to us to continue...and become a star and make lots of money...” This kind of demand serves only to alienate affection between child and parent, as it shifts the justification for love to debts owed. The tuition paid, the time spent, the sacrifices made, “are depicted as investments for a return rather than done from love, as though the child’s life goals could be “bought” (English, 1997, p. 177).

Determinants of a child's future include genetic factors, but these do not take into account interests and the child's individual personality and characteristics. Even if one or both parents are athletes, and raise their child in a sporting environment, there is no guarantee that the child will be interested sport, or in pursuing sport in a competitive manner. When parents have formed a life plan for their child, they will naturally restrict opportunities which are not part of their preconceived expectations. For example, for an elite child gymnast, music lessons or art classes are rarely possible with a 35 or 40 hour per week training schedule.

When a child is raised specifically for his or her athletic prowess and earning potential, the child is commodified and treated as the means to the ends of the parents. Parents who believe that their child will become the next tennis sensation or hockey star, and therefore pay little or no attention to the child's education, and do not encourage the child to pursue other interests, are being negligent in their parental duties to prepare their child with the widest possible future. Children are not investments, and parents should not look at the time or money they spend on their children as a kind of financial investment, with the expectation that some day that time or money will pay off. When the expectations for performance objectives are high, the value of the child seems to be measured in terms of their sporting success, rather than for who they are as persons. Children need to be loved and valued for who they are, not for their skills, talents, or even their appearance.

For some athletes, the sacrifices they made in their youth do end up with rewards. However, rewards do not always come in the form of money. After her final Olympic performance in 1996, American gymnast Kerri Strug is "enjoying what most elite gymnasts never do: a long-term financial return on the investment of a childhood" (Ryan, 2000, p. 243). She went to university, she has started running, and spends her weekends making paid appearances or volunteering with charitable organizations. Not all athletes are as fortunate. If they did not pay attention to their education in their early years, then college or university is not always an option. Parents who focus their child's life in such a narrow direction restrict or foreclose the child's life to an open future.

Children are not their parents' chattels. While the parents "produced" the child, the child is not a "product" in the same way a material possession may be considered. The interests of both the child and the parents may also be divergent, and sometimes even conflict. A child is also not simply "just" a child; life begins as an embryo, which is then born as an infant, and then progressively becomes an individual with its own rights and demands. The embryo begins life as wholly one with the mother, and moves towards not only a separate being, but potentially even an adversarial one. The parents are guardians of the child, and they are also providers of life prospects. Ruddick (1979) proposes that parenthood is now largely a matter of choice, rather than a biological or cultural fate for women. He suggests that their "productive aims may be reproductive, in the service of continuing some aspect of their own lives through their children" (p. 125). Somehow we

need to manage parents' desires and children's needs within a framework that can direct parental actions with a minimum of regret, resentment, or legal enforcement.

4.6 Conclusion

This chapter has discussed the various views of historical and modern conceptions of childhood. It has relied heavily on David Archard's thoughts on children and childhood. His philosophical conceptions have focused on philosophical differences between the worlds of children and adults, and thus serve as a valuable foundation for the consideration of children's participation in the adult world of high-performance sport.

In sum, there is no universal conception of childhood, although almost all cultures have a concept of childhood in that they view children as being different from adults. The dominant modern notion of childhood in western nations has been created by different theoretical understandings and cultural representations. Childhood is a period of incompetence, defined by limited cognitive capacities, irrationality, physical dependency, and deficiencies in the capacities, skills, and powers of adulthood. It is a stage of human development located on the continuum between the wholly dependent stage of infancy and the completely independent sphere of adulthood, seen as the culmination of development. Whereas adults are thought to be autonomous, to have a sense of identity, are conscious of their beliefs and desires, and are able to make free and informed choices for which they can be held personally responsible, children are not. The child is viewed in a negative series of inabilities and insufficiencies. The significance of childhood in the modern Western world is more discernible than for our previous societies, or perhaps for other cultures. The extent of childhood in our time is also longer than that at any other time in history, being a distinct, extended stage before adulthood. Our culture's practices and institutions have deeply embraced, normalised, and institutionalised this view of childhood, and to this kind of embeddedness we may characterise the underpinning of differential attributions of rights and responsibilities to children and adults.

The modern conception has been influenced by literature over the last two hundred years or so, and science for roughly one hundred years. The concept of childhood is shared, as it recognises children as having a unique nature and inhabiting a separate world. The passage of childhood to adulthood is often viewed in a nostalgic and wistful manner, as in order to reach and survive in the adult world, children have to leave behind much of what defined their world. The modern child then is an innocent incompetent who is not yet an adult, but must become one through the realities of physical development and the ideal character of maturity.

This chapter has discussed a number of the problems faced by children who necessarily inhabit the adult world. In high-performance sport, the inherent nature of children as incompetent and vulnerable to abuse and exploitation may be overlooked or ignored. It is imperative that those working with children in all environments recognise the needs of children, and react to care for and protect children from all kinds of harm.

Sometimes they may even require protection from themselves, as children do not always have the experience and knowledge for their own personal protection. We turn now to consider the philosophical notion of paternalism in the next chapter.

5.0 Chapter Five: Paternalism

5.1 Introduction

This chapter on paternalism follows the chapter outlining conceptions of children and childhood, which served to contextualise the nature of children in the environment of elite sport within society's more general conception of children. In this chapter, I will consider the varieties and understandings of paternalism, and outline several justifications of paternalism, such as harm and consent. Within high-performance sport, athletes in general and child-athletes in particular are treated paternalistically by parents and coaches and also by others involved in the sport. That paternalism serves ostensibly to protect children from harm and to promote their interests, including the promotion of their future autonomy. This is an important discussion relating to children's participation in high-performance sport. As outlined in the previous chapter, children are by their nature vulnerable to harm, and require protection from others. While paternalism is often considered inappropriate for adults, it is an integral component of the child-adult relationship. In the world of elite sport, however, paternalism interventions may become exploitative and abusive, which is morally problematic. I propose a form of autonomy-respectful paternalism for elite sport children that will promote their best interests in both the short and the long term.

When someone interferes with the decisions or actions of another person, to either promote that person's interests or to protect him or her from harm, and without the person's consent, then that individual is being treated paternalistically. Often the individual being paternalistic has some kind of power or authority over the individual who is being "paternalised". For example, a coach may make a decision for an athlete that the coach believes is in the athlete's best interest. Parents treat their children paternalistically, which alludes to the origin of the term "paternalism" – to treat another in the manner of a parent.

Paternalism may be justified when individuals are unable to make rational and autonomous choices for themselves. Not only is paternalism directed towards children justified, but children are generally thought to actually require paternalism. As discussed in the chapter on children and childhood, children are characterised by their temporary state of incompetency and irrationality. They are still developing their cognitive capacities to make good decisions with the information they have of themselves and of the world around them, and are learning to be self-sustaining and self-determining. As they learn about themselves and about others, and the interaction of the two worlds, their emotional inconsistency sometimes results in unpredictable and widely ranging decisions, some of which may be harmful and autonomy-restricting.

5.2 The nature and scope of paternalism

Present political and philosophical circumstances in western liberal democracies are such that paternalism of any kind is considered abhorrent. When governments attempt to curtail the freedom of citizens, and even when such interference is in the interests of individuals but against their will, intrusion is resisted. The American Constitution declares explicitly that life, liberty, and the pursuit of happiness are among the most important aspects of citizenship. The view that the value of individual liberty is absolute is reflected on the New Hampshire license plates that read "Live Free or Die". While the United States declares those values quite overtly, freedom has long been one of the most important values for people all over the world, and many have struggled to retain autonomy over their own lives. This struggle from undue interference by the state continues today in many nations in the world. For example, as in China where, among other individual liberties, religion is controlled by the state, and citizens may attend only state-sanctioned places of worship. When one's freedom or liberty is curtailed, it would seem an egregious abrogation of one of the fundamental states of maturity, adulthood, or citizenship.

Paternalism is a liberty-limiting principle, the application of which would result in an abrogation of an individual's autonomy. The justification of paternalism may be on the basis of either preventing harm or furthering the good of, or benefiting, that individual whose freedom is being encroached. The only reason where state power may be used over any individual in a society would be where that individual's actions may cause harm to, or impede the liberties, of others. This interference may be understood as being coercive (Carter, 1977), and not in accordance of the wishes of the individual (Kultgen, 1995). In the child liberation movement, many would argue that children deserve to be treated autonomously, while beyond that movement others believe that children necessarily need to be treated paternalistically, that the very nature of the parent-child relationship is that of a paternalistic one. This faction would argue that the authority of the parents is in the best interests of the child, not simply some kind of arcane or dictatorial privilege. That adults are treated paternalistically, though, is frowned upon, or put down entirely. It is a deprecatory accusation to charge another with acting paternalistically, and few would dare confess to paternalistic proclivities.

Current views are that it is not appropriate to treat others paternalistically; however, some believe that it is *never* right to do so, while others believe that there is a place for paternalism in certain kinds of relationships, and indeed, that it may even be morally required at times (Kultgen, 1995). The conflict lies between the basic moral principles of autonomy and beneficence. While paternalism is generally considered as the usurpation of a person's choice of their own good by another, the most fundamental element of paternalism is that it is founded upon the principle of beneficence, generally understood as the obligation to maximise benefits over risk, and not to harm others. Paternalistic intervention is intended to benefit another person, and to be in their best interests, typically without their consent. However, while paternalism has such altruistic aims, it seems to be

held in contempt by many, and both demands and requires moral justification. These seemingly contradictory factors may explain the difficulty and disdain with which paternalism has been viewed, but also suggests that there must be something inherently valuable with this concept, or otherwise it would have long been discarded. Many regard action predicated on good intentions to be morally acceptable, however, Gert et al. (1997) disagree. Even when an action taken is based on the most benevolent desires for another, it does not necessarily make that act a moral action, just as an act of paternalistic intervention based on such benevolent desires does not justify itself. Quite simply, an analysis of paternalism reveals that “morality requires more than good intentions” (Gert et al, 1997, p. 195). Thus, both kinds of interventions may well be based on good intentions (the principle of beneficence) but this is not sufficient for moral justification. While many paternalistic interventions may be morally unjustified, there are also cases where paternalistic interventions are not only justified, but may actually be a moral requirement (Gert et al. 1997). In defining paternalism so as to be morally acceptable, then, an adequate definition must involve beneficent action and justification, although the definition must also account for unjustified paternalism. The definition needs to be able to distinguish between justified and unjustified paternalism, and also be able to exclude actions which are not paternalistic.

Arguments against paternalism usually focus on the importance of individual autonomy, and the imperative of respecting that principle. Philosophical analyses of paternalism have been conducted to determine if ever there are justifications of restricting the freedom of others, regardless of how benevolent or altruistic the motives of the paternalistic intervention may be. Justifications of paternalistic acts are always warranted, and generally demanded. Staunch liberals would argue that there are no situations wherein an adult’s freedom may rightly be broached, even when it may be in their interests.

Other liberty-limiting principles include the harm principle such that a person’s liberty may justifiably be restricted to prevent harm to others caused by that person; the principle of legal paternalism which justifies a restriction of a person’s liberty to prevent that individual’s immoral behaviour, and; the offence principle which justifies the liberty restriction based on the prevention of offence to others caused by the individual (Feinberg, 1983).

The concept of paternalism has long been treated with contempt, particularly because of the issues of control surrounding it, the notion of one’s locus of control lying with another. Many view paternalism with disdain, disregarding that paternalistic intervention is intended to benefit another, with the other’s best interests at the forefront of the intervention.

Philosopher and libertarian John Stuart Mill was one of the first to put forth the concept of paternalism in his essay, *On Liberty*, although he did not label it as such. He was an ardent anti-paternalist, decrying undue interference in the affairs of individuals. Mill outlined two qualifications on individual freedom. The first is the Harm Principle, which allows for intervention by the government or other citizens into an individual’s affairs if that individual’s actions may cause harm to others, or impede their liberties. While interference in the affairs of competent adults is considered preposterous—Mill considered the value of

individual liberty to be absolute—he made allowances of interference for the treatment of children, and others not “in the maturity of their faculties.” This is his second qualification, that individual freedom applies only to mature, rational, or competent adults. He believed that children require others to care for and protect them against both their own actions and external harms.

Mill justifies what is now considered as weak paternalism, a defence of interfering with the liberty of another against their will for their own interests, if they are considered incompetent. Children are a unique group of human beings, in a unique period of human life, in what Locke refers to as the “imperfect state of childhood”, and their treatment by parents, guardians, and the state brings about a different perspective of paternalism and its applicability towards them. Their wholly dependent state, particularly in their early years, on others makes the application of paternalism towards their population unique and almost always, if not indeed always, justified. The applicability of paternalism towards children will be discussed further on.

5.2.1 Paternalism and moralism

It is important to note the distinction between paternalism and moralism. Some believe that a measure of paternalism but not moralism to be compatible with liberalism. Mill did not appear to recognize such a distinction. He wrote interchangeably of interferences intended to secure a person’s “moral good” and those originating in beliefs about what is morally ‘right’. Hart (1963) views positive morality as comprising the moral traditions of a particular society, without regard to their defensibility; however, in contradistinction, critical morality is “enlightened” in that it rests on rational beliefs as to matters of fact, and accepts that all human beings are entitled to equal consideration and respect. The harm principle, is a principle of critical morality, since harming others is, paradigmatically, to deny them equal consideration and respect (Hart, 1963). Hart believes we can say the same thing for a principle of strong negative paternalism. As far as harm may be concerned, there is no significant difference whether it is inflicted upon others or upon oneself. The harm principle is concerned with harm in the sense of damage as well as in the sense of harm as an injury or as a wrong (Kleinig, 1983). Hart espouses the principle of strong negative paternalism in the first sense, as damage. The individual who endangers him or herself does not violate any rights. The strong paternalist intervenes in the actions or activities of another without considering their will, thereby giving the other’s interests priority over their autonomy.

Thus, there are no decisive distinctions drawn here between morality and paternalism so far as the moral standing of each is concerned. Kleinig says that defenders of strong paternalism may also, *ipso facto*, need to be prepared to defend a limited measure of moralism.

5.2.2 A reconceptualisation of paternalism

Early definitions of paternalism by Dworkin (1988) and Feinberg (1983) appear to have been influenced by John Stuart Mill, particularly in terms of the orientation of coercion towards protecting others from harm. Recognition, however, of the intentions behind promoting the interests of others and the protection of them from harm—despite the apparent lack of explicit consent—has led to a reconceptualisation of paternalism (Kultgen, 1995).

There is some debate over the usage of the term “paternalism”. Some would argue that it is an exclusionist term, with such a strong emphasis on the “father” perspective. The Latin origin of the word alludes to the father figure, and the relationship as being as a father would relate to a child. As the term now refers more generally to “parental” attitudes, Kultgen (1995) has suggested that it ought to reflect that duality of parenting rather than referring to only the “pater” figure, and thus prefers “parentalism” to “paternalism.” Kleinig (1995) notes that the term “paternalism” is inherently sexist in that it sometimes characterises circumstances where women are singled out as the special object of enforced benevolence. Protective exclusion of women from certain occupations which were heretofore considered inappropriate for the “weaker sex” was paternalistic in a sexist sense. Kleinig (1995) differentiates between “paternalism” and “parentalism” in that the latter is quite straightforwardly enforced benevolence, rather than any other kind of understanding of paternalism, such as sexist understandings where women may be treated paternalistically by men. The term paternalism is well established in philosophical literature, and also by general convention. It does convey the hierarchical ancestry of the concept.

Feminist ethicist Sue Sherwin argues that this usage of “paternalism” may be considered a special case where gendered language ought be maintained. It directs our attention to the origin of the concept, establishing the link between the privileges of a father in a patriarchic family who “use their supposedly superior knowledge and judgment to make decisions on behalf of other family members” (1992, p. 138), and those in authority, such as physicians, who “appeal to this model in claiming that their greater knowledge and understanding of the human body (and mind) constitutes justification for making authoritarian decisions about their patients’ well-being, just as fathers claimed their inherent superiority served as justification for imposing their will on other family members” (Sherwin, 1992, p. 138-9). Sherwin notes that this power implicit in the hierarchical arrangements of the patriarchal family may be easily abused, as “it is often distorted into rationalizations of the father’s self interest” (p. 139). She extends this warning to carefully limit the power inherent in the patient-physician relationship, which may be just as easily abused, just as the power-imbalanced coach-athlete relationship may be exploited. Thus, the case may be made to retain this word “paternalism” because of the historical orientation of the term towards such heavy-handed treatment, as from a father. Traditional relationships of

domination and subordination which are seen as paternalistic would include that of teacher-student, doctor-patient, coach-athlete, and necessarily, parent-child.

John Kultgen (1995) premises his work on the basic relationship between people being one of care. He differentiates between intimate relationships in the personal sphere, such as those between friends, family, and 'intimates', with those in the public sphere, such as relationships between institutions, legislation, and professional practices. In opposition to many other moralists, he argues that it is sometimes necessary, or even obligatory, to intervene in the lives of others even though there is a *prima facie* objection to paternalistic actions because of the encroachment or usurpation of the autonomy of the recipients of such intervention. He is careful to acknowledge that while paternalistic intervention may indeed be morally dangerous, it may also be just as perilous to not intervene when another's welfare is at stake.

Feinberg (1986) cautions us not to confuse paternalism with other things that may also be called "paternalistic". First, he views it as a "quite respectable proposed legitimising principle...which does after all purport to be solicitous of the interests of the persons it would protect" (1986, p. 4). We must not to confuse it with attitudes, practices, and rules that are not even remotely benevolent. For example, an athlete who has to ask the coach for permission to go to the toilet or who is required to produce a physician's note for absences is being treated as a child, and not for their own good. These rules manifest the untrustworthiness assumed by the coach of his or her athletes, and the lack of respect given them. Furthermore, Feinberg emphasises the highly benevolent and non-demeaning nature of paternalism. The analogy is a particular parental restriction meant to protect children—not from themselves but from others. When a coach continually tells an athlete to wear clothing of a particular style because she does not like the way the athlete dresses, this is not paternalism. The coach is attempting to change the way the athlete dresses for her sake, and not with the athlete's wishes as a primary concern. Again, the coaches' actions may be considered disrespectful as she is attempting to change the athlete's behaviour for her own purposes, but not necessarily for the athlete's benefit.

However, despite paternalism having such altruistic aims and the intention of benefiting another, it both demands and requires moral justification. These seemingly contradictory factors may explain the contempt with which paternalism has been perceived, but also suggests that there must be something inherently valuable with this concept, or otherwise it would have long been discarded. A further complication arises from the many and varied conceptions of the term. I shall attempt herein to survey the leading conceptions of paternalism, and to discuss their justifications.

Certain professions, such as medicine, have a convention of treating people—patients in this example—paternalistically, believing paternalism to be the most appropriate manner in which to manage treatment, purportedly always with the patient's best interests in mind. The principle of beneficence refers to the obligation that health care professionals have toward their patients to seek the well-being or benefit of the patient (Gert et al., 1997).

In a similar vein, the coach holds the same kind of obligation of a physician in that he or she ought to seek the well-being or benefit of the athlete. The doctor-patient relationship is thus similar to that of the coach-athlete relationship, that between a professor and a student, as well as the parent-child relationship, that upon which the term originates. In these relationships, one of the pair is the "powerful" with knowledge, and the other individual may be viewed as the "powerless" one who needs the knowledge of the other. It is an unequal, imbalanced relationship in terms of power and process, and thus one greatly susceptible to exploitation.

Current views on paternalism range from the liberal notion that it is not appropriate to treat others paternalistically, to some believing that it is never right to do so, while yet others believe that there is a place for paternalism in certain relationships, and indeed, that it may even be morally required at times. John Kleinig (1984) defends the concept of paternalism against strong liberal antipaternalist arguments. He accommodates the central liberal sources of aversion towards paternalism, and argues that it does indeed have its merits, and may be justified. Kleinig views paternalism as representing "an attempt to ensure the good of individuals, where, in contradistinction to patriarchalism, that good is conceived as sufficiently independent of the good of others or some social whole to constitute *on its own* a focus of attention" (1983, p. 3-4).

Paternalism is not a doctrine that Kleinig puts forth as a substitute for persuasion or education; rather, he views it as a strategy of last resort. Paternalism, like punishment, is justified but is something for which there are strong moral reasons for seeking to eliminate its very existence. He *de facto* denounces paternalism, saying

it would be a better world were such paternalism not necessary, just as it would be a better world were punishment not sometimes called for. Paternalism is not something to be evangelistic about. It is not a substitute for persuasion and education, but a strategy of last resort. Like punishment, it is something that, though justified, we would like to see less of, something for which there are strong moral reasons for seeking to eliminate the need for.

(Kleinig, 1983, p. 70)

However, despite these views, he does conceive of allowances for paternalism in certain situations, which will be discussed further along.

The term "paternalism" is characterised by the relations between people, or between institutions (such as the state or government) and people or groups of people. Kleinig discerns the intention as being clearly focused on familial relationships, such as the existing relationships between parent (or father) and child. A paternalistic relationship is one in which parents act on the presumption that they know better what is best for the child, and that they know better than the child itself what is best for it. Paternalism is considered a distasteful and insulting practice, with no redeeming features; indeed, adults and older children (referred to oxymorically as 'mature minors' by Onora O'Neill) regard paternalism directed towards them to be insulting and offensive, as it presumes incompetence on their behalf: "to treat them as young children is to derogate their capacities and standing"

(Kleinig, 1983, p. 4). Competent adults would rather make their own decisions based on their own individual value systems, and on their personal conceptions of the good. This definition though would regard paternalism as being directed towards young children as being acceptable. Unlike Gerald Dworkin (1988b), Kleinig feels that paternalism does not need to be either coercive or restrict one's liberty of action. The next section expounds on these views.

5.3 Paternalism, liberty of action, and coercion

The perceived immorality of paternalism is founded on its interference with the freedom and self-determination of individuals. A definition of these concepts and an assessment of their value are necessary before evaluating the morality of paternalism. Individuals are free when their actions and options are unrestricted (Häyri, 1998). Restrictions may be imposed by the actions—as in *active* paternalism—or inactions—as in *passive* paternalism—of others, or from natural causes over which no one has any power. In the first sense, I am free to leave my house so long as no one has locked me in, or threatened me if I were to attempt to leave. In the second sense, I may walk to work along public paths so long as these are in existence. In the third sense, I am free to walk outside in any weather, although safety and comfort may determine appropriate clothing for climatic variations. The opposite of freedom—constraint—may be understood as a restriction of my options. I may be constrained in my actions if someone locks my front door that prevents me from leaving my house, if there are no public paths along which I may walk, and there is a typhoon outside which restricts my freedom to walk outside. When one is positively required to do something, for example to give a urine or blood sample in the case of an athlete in certain arenas of sport, to wear a helmet while riding a bicycle or motorcycle, to carry a whistle, wear a life jacket, and have a bailing device while boating, then one's liberty of action is infringed upon, particularly because there is a threat overhanging refusal to acquiesce. For example, if one refuses to wear a helmet on a bicycle or motorcycle, or to wear a seatbelt while driving, among other regulations, one may receive a fine. The requirement for an individual to actually *refrain* from doing something, for example, not to walk in certain protected areas, not to practice very dangerous elements in a sport, and not to consent to potentially useful but risky training methods for performance improvement, precludes people *from* action, and is thus considered to be passive paternalism (Kleinig, 1983, p. 6).

Kleinig's (1983) argument that paternalism does not have to be either coercive or restrict one's liberty of action is illustrated in the following examples. First, though, he explains that coercion is understood, for these purposes, as: "X coerces Y to do a if and only if X gets Y to do a as the result of a threat to interfere with Y (or one of Y's interests) or to withhold from Y something that Y has reason to expect" (Kleinig, 1983, p. 5). The main point here is that something is elicited that would not have been given without threat. In a situation where a cyclist must wear a helmet or risk being fined, specific behaviour is

required with the threat of a fine being the cost of not acquiescing. This paternalistic helmet requirement is coercive. Another example of paternalistic limitations of liberty without coercion is the situation where athletes are given food vouchers to a cafeteria which serves only healthy food. They are not being threatened for refusing to eat healthy food, but their liberty to eat junk food is restricted. The motivation behind this action is for athletes to eat healthy food, and is thus paternalistic in nature, but not coercive. When a coach locks up the track bicycles during the lunch break to prevent the novice riders from fooling around on them, and possibly injuring themselves, the coach is not being coercive; she is simply limiting their freedom in a paternalistic manner. If an athlete is awarded a significant lump sum of money by the sport governing body to cover annual training and competition expenses, and the money is spread out over a one year period with monthly sums given to the athlete, the athlete is not being coerced but her liberty of action to spend all the money is impeded. The sport governing body is hesitant to give the money as one lump sum as in the past, athletes have used all the money in the first few months of the year, and were hampered in their training for the rest of the year without any money. This is paternalistic action on the part of the sport governing body to noncoercively limit the athlete's liberty of action, thereby promoting what they consider to be the athlete's best interests. In the United States, the national body governing collegiate sport (National Collegiate Athletic Association) restricts the hours certain student-athletes may train, purportedly to prevent their training from interfering with studies. Such paternalism is supposedly in place to promote the best interests of the student-athletes. Ironically, many college level gymnasts do not participate on varsity teams because of the twenty-hour rule; they prefer to train with private gyms where there are no time restrictions, and they may thus train well beyond the twenty-hour weekly maximum.

Each of these examples involves some restriction on one's liberty of action. There are, however, other examples of paternalism that do not fit into this account. Consider the example where a young gymnast is about to perform the final vault in an important team competition. If she misses the vault, the team loses the competition; if she performs well, the team wins the gold medal. The young athlete asks the coach how important her vault is to the team's standing. Knowing that the gymnast would be highly stressed if she knew the entire team's standing depended on her vault and that added stress and pressure would likely cause her to falter, the coach tells her that the vault does not really matter, and to relax. The gymnast flies down the runway, hits the vault, and scores well enough that her team wins the gold medal. This case involves paternalistic deception without any obvious limitation on liberty of action. While withholding or falsification of information usually does constitute some kind of constraint on liberty of action (Kleinig, 1983), the paternalism in this case is different.

Kleinig (1983) accepts that paternalism does not require coercion or interference with liberty of action, and suggests that perhaps paternalism does not require freedom to be compromised either. Gert et al. (1997, 1976) hold this view, considering that it is not the

constraint of freedom, but rather the violation of a moral rule that is required for paternalism. However, since their argument embodies a *non sequitur*, and its conclusion is false, one could reject their argument that the loss of freedom is not involved in paternalism. They do show a few instances where this may be the case, but from only a few instances one cannot conclude generally that paternalism may be practiced without any loss of freedom. The moral rules to which Gert et al. (1997) refer are based on their framework of morality, which is related to everyday moral practices. These practices are not always clear or consistent, so for the sake of consistency, they formulated a moral system that they believe to be free of aberrations and ambiguities, inevitably introduced by local beliefs and practices. The ten moral rules that they assert to be the *general* moral rules connected with human nature and rationality include admonitions to individuals not to harm others unless they have adequate reasons to do so (Do not kill, Do not cause pain, Do not disable, Do not deprive of freedom, and Do not deprive of pleasure), and then five further admonitions not to act in ways would might result in someone suffering those harms (Do not deceive, Do not break your promise, Do not cheat, Do not break the law, and Do not neglect your duty). These moral rules are explained in a later section on conceptions of paternalism

There are other freedoms, such as freedom of thought and expression, and freedom to be left alone, which may be quashed by paternalistic actions in the very situations where no interference with liberty of action has occurred (Kleinig, 1983). For example, consider the case of a long distance swimmer who is crossing a large body of water. The swimmer relies entirely on her coach to tell her where she is, and how much further she has to swim. When the swimmer begins to tire, and becomes demoralized, the coach deceives her by telling her she is almost there. The swimmer renews her efforts, and continues. Again, later on when the athlete asks how much further now, the coach once again lies to her, telling her again that she is almost there when really she has a long way to go. In another example, a coach tells an athlete that if she continues training hard, she will probably make the elite team for the big championship at the end of the season. The coach knows that there is no chance of this athlete making that team, but feels that if he tells her this, she will give up, and not continue training for the rest of the season. So, with the goal of making the team in mind, the athlete commits to training even harder, believing that she may qualify for the elite team if only she works hard enough. Both athletes here have been deceived by their coach. The coaches have imposed their wills on the athletes, making them believe certain things. While the coaches were well-intentioned, they violated a moral rule. The athletes were not in control as the coaches had given them false information, upon which they based their actions; their autonomy was not respected. Both athletes had been denied information that concerned their interests, and as Kleinig (1983) would argue, information which they had a good (if not overriding) reason to possess.

Given these examples, it appears that there is a constraint on freedom in acts of paternalism, although not necessarily a coercive constraint or interference with a liberty of action. Kleinig (1983) suggests then that we may speak of an "imposition" since regardless

of other issues within conceptions of paternalism, a paternalistic act imposes upon another: “the paternalist exercises some measure of control over some aspect of the life of another—be it a thwarting of the other’s desires, a manipulation of the other’s beliefs, or a channelling of the other’s behavior” (Kleinig, 1983, p. 7). When an individual imposes his or her will on another, the autonomy of the other is being abrogated. Conceptions of autonomy are discussed in detail in the following chapter.

There are some persons—or some persons may be in certain states—towards whom one cannot act paternalistically. For instance, it has been suggested that one cannot act paternalistically towards infants because infants do not believe that they can make their own decisions on any matters, and indeed, may not actually believe anything about themselves at all (Gert et al., 1997). This argument may be extended to individuals in a comatose state whose views could not be known before entering into this condition, and who need some kind of action on their behalf before they cease to be comatose. If an individual does not believe anything about him or herself, then it would be inappropriate to consider any action on his behalf as being paternalistic. An act can only be paternalistic if the individual is capable of making his or her own decisions about the situation (Gert et al., 1997).

Individuals who are not capable of making autonomous decisions may be considered “incompetent” to do so. Children fall into this category. Criticisms of the argument of incompetency argue raise the issue of the widely divergent capacities of children, ranging from complete incompetence at infancy to advanced competence in adolescence. In the advanced stages of cognitive development, cognitive skills and experience are broadened, and thus competence varies dramatically throughout childhood. Thus, children ought not to be considered as a homogenous group, but rather as a group of individuals with burgeoning competencies who ought to have their individual abilities respected. Knowledge and experience tend also to be task or situation-specific. A child suffering from a chronic illness may have considerable knowledge about his or her particular condition, and may be able to make informed, rational decisions relating to that particular issue, perhaps more competently than an adult who lacks that specific experience and knowledge. Thus, because a child may be competent in some areas and not in others does not preclude them from having those limited competencies respected and being allowed to participate in some degree about decision-making issues related to themselves.

When we care for another and want to promote his or her interests as best as we can, then we ought to help the other to achieve and live an authentic existence, even if this help conflicts with his or her interests (Kultgen, 1995). Within a consideration of paternalism, respect for autonomy does not necessarily require that we comply entirely with the wishes of the other person, that we allow the other to live as he or she chooses, “as long as he observes minimal restrictions having to do with the well-being of others” (Kultgen, 1995, p. 8). In an authentic caring relationship, what Kultgen refers to as “authentic solicitude”, one deliberately tries to promote the others’ true or objective well-being. Respecting the

autonomy of the other may be evident in the active preservation or enlargement of the others' autonomy, and in honouring his or her wishes, but valuing the others' autonomy may also be evident when one forces the other to make decisions when he desires irresponsibility.

One who cares for another should realize that autonomy is not the only objective good; there are other goods as well. If we accept that the caretaker ought to respect autonomy, then he or she must weigh it in relation to other goods in determining what is best for the other person. Therefore, if parentalism (the term Kultgen prefers to paternalism) of any sort is to be justified, "it must be parentalism that (intelligently and effectively) promotes the optimal balance between autonomy and other objective goods for the recipient" (Kultgen, 1995, p. 8). When other types of parentalism are not justified, it may be due to their diminishing of both the sum of autonomy and of other objective goods, not only because they diminish autonomy alone.

5.4 Soft and hard paternalism

There are two main streams of thought regarding paternalism. There are absolutist, anti-paternalists like Mill who regard the value of individual liberty as absolute, and that the only reason for which state power may be used over any member of society would be if that member's actions cause harm to others. This absolutist position considers all forms of control—even benevolent—as being immoral. Others such as Dworkin and Kleinig hold that there are acceptable instances of paternalism predicated upon beneficence which may be justified by preventing harm or promoting some benefit. The demarcation line between acceptable and unacceptable forms of paternalism may be drawn between autonomy-respecting and autonomy-violating types of caring control over others (Häyri, 1998). Autonomy-respecting paternalism would include soft paternalism, which is not constraining, and does not require any moral justification. Weak paternalism seems at first to be condemnable as it restricts liberty, however, because the controlled decision-making is impaired in some way, the interference is justifiable. Hard and strong paternalism are both autonomy-violating, and are thus genuine violations of personal autonomy, and thereby unjustifiable.

5.4.1 Soft paternalism

Soft paternalism is a benevolent intervention in the affairs of another that does not involve restrictions of liberty or violations of autonomy, and allows for the protection of an individual from non-voluntary choices. In his differentiation between hard and soft paternalism, Dworkin (1988b) explained that by soft paternalism, he meant first, that paternalism is sometimes justified, and second, that the person toward whom another is acting paternalistically must necessarily be incompetent in some way. In contrast, hard paternalism is that which is sometimes justified, even when the action is entirely voluntary.

The first set of considerations regarding soft paternalism are based on rationality and competence, and the second considerations relating to hard paternalism are based on consequences of danger and harm (Dworkin, 1988b). Feinberg (1986) compares the motivating spirit of soft paternalism as lying closer to the liberalism advocated by Mill than the protectiveness of hard paternalism. Examples of this kind of caring action would be warning labels on certain kinds of sporting equipment such as roller blades or track bicycles which do not have brakes attached, or containers containing dangerous or harmful products, such as poison, or truthful and nonsensational health education. Feinberg explains soft paternalism as accepting state intervention to prevent self-regarding harmful conduct “*when but only when* that conduct is substantially nonvoluntary, or when temporary intervention is necessary to establish whether it is voluntary or not” (1986, p. 12). Soft paternalism is justified only when an individual is acting non-voluntarily, or when the paternalist needs time to determine whether or not the individual is acting voluntarily. While this weaker kind of paternalism does interfere with an individual’s self-determination, it generally does not need justification.

5.4.1.1 Active and passive paternalism

Active paternalism is where an individual (X) requires another (Y) to do certain things, in order to secure his or her (Y) good (Kleinig, 1983). For example, society requires that children attend formal education until a certain age, regardless of their wishes, so that when they will be equipped with the basic skills with which to become productive members of society. Active paternalism is more difficult to justify, although they both require justification of some kind. In passive paternalism, an individual is required to refrain from performing certain actions. For example, the state prohibits the use of narcotic drugs, swimming at dangerous beaches or near dams, driving over the posted speed limits, or of committing suicide.

5.4.2 Hard paternalism

Hard paternalism is an interference by another in an individual’s actions that involve at least initial restrictions of liberty or violations of autonomy. Such intervention, in the strictest interpretations of what constitutes a violation, violates people’s self-determination (Häyri, 1998). It imposes its own values and judgments on individuals, “for their own good” (Feinberg, 1986, p. 12). Hard paternalism allows as justification for criminal legislation the necessity of protection of “competent adults, against their will, from the harmful consequences even of their fully voluntary choices and undertakings” (Feinberg, 1986, p. 12). Dworkin considers hard paternalism to be interventions that are sometimes justified, even when the person’s actions are entirely voluntary (1988b). He gives the examples of preventing a person from selling their body parts to others, or of selling themselves into slavery, even when that individual wishing to engage in such practices appears to be

behaving “freely”. Another example in sport would be the associated bans of an athlete engaging in blood doping or using blood-boosters or plasma expanders (products which are considered “controlled substances” in the eyes of the law) for sporting benefit. If one may reveal the individual to have been coerced into becoming a slave, or of being under the influence of another in seeking such a state of affairs, then intervention in their actions would be considered as soft paternalism, and would not require considerable arguments for justification; the challenge of justification lies where the person seems to be fully rational and cognizant of the situation, and persists in wanting to become the slave of another, and to live their life in servitude. Generally speaking, in western liberal democratic societies, it would be highly unusual to find an individual who wishes to enter into a life of indenture. If, in the unlikely event, they truly wish to do so, one cannot stop them on these grounds. However, as Dworkin explains, if this is the case, then we would have to find other reasons for stopping the person from committing his or her life to such servitude, such as an appeal to the idea of what it is to live the good life and to be a good person – neither of which would allow for a person to become a slave to another (1988b). The justification for paternalistic intervention would thus be argued on the grounds of maximizing some other good.

Direct paternalism has as its direct objective the interests of the person whose good is being secured: “X, in order to secure Y’s good, imposes only upon Y” (Kleinig, 1983, p. 14). For example, all drivers and passengers are required to wear seatbelts as mandated by law, or be fined. *Indirect paternalism* would be where the direct object of paternalistic intervention is not the person whose good is being sought, although they are being imposed upon: X imposes on Z in order to secure Y’s good (Kleinig, 1983). Consider the example of indirect paternalism as the governmental regulations of the sale of food and drugs on the grounds that the public could be harmed if there were no regulations. Hard paternalism may be subdivided into *strong* and *weak* paternalism.

5.4.3 Strong paternalism

Strong paternalism cannot be justified in that the individual being paternalised is competent and capable of making their own informed decisions. In this type of paternalism, “X imposes upon Y without considering Y’s capacity to choose that good for him- or herself” (Kleinig, 1983, p. 14). Advocates of strong paternalism wish to control what they consider to be self-destructive, immoral, or irrational behaviour. They wish to do so even when there does not seem to be any clear impairment of decision-making ability, and also when there do not appear to be any particularly strong evidence that the actions are anything but completely voluntary. The legal mandate of a state that drivers and passengers in motor vehicles must wear seatbelts or else face punishment, or that motorcyclists wear helmets, are paradigmatic examples of strong paternalism. The state is not interested in the wishes or desires of the individuals involved; they justify their intervention based on the interests of those individuals, not on their autonomy. In these examples, the paternalistic interventions are protecting bodily integrity, which may be strong justification for such interference.

Dworkin (1988b) calls these “safety cases.” They require either specific actions on the part of others: people have to buy or use specific things, for example, lifejackets, helmets, seatbelts, infant seats in motor vehicles, and so on, or else they may forbid individuals from buying things such as heroin, explosives, guns, etc. (these bans are jurisdictionally variant). There is no strong reason to think that individuals who do not wish to act in these ways, or who do wish to obtain restricted or illegal items are incompetent, even if we do wish to doubt the reasonableness of weighing the inconveniences with the risks of harm. Dworkin believes we are justified in compelling individuals to adhere to safety requirements since the cost is relatively trivial compared to the harm which could be experienced.

The second set of cases Dworkin (1988b) puts forth to test justification of hard paternalism are “collective decisions”. He gives the example of communities putting fluoride in the water supply; another would be the adding of vitamin D to milk to enhance calcium absorption. This set of cases differs from the safety cases in that people are not actually required to drink the water or the milk; however, it is made easier for those who do wish to do so, and more difficult for those who wish to avoid doing so. From an economic standpoint, it is cheaper and more effective for the community at large to implement such collective decisions. However, it creates problems for the minority of people who do not wish to participate in such schemes. Dworkin suggests that some balancing of interests might be appropriate here; some people will be in the majority over some decisions, and in the minority for others. The restrictions here on the minority are not motivated by paternalism, but by the interests of the majority. Since the majority is acting so as to promote their own interests, they are not deliberately interfering with the minority. Thus, concludes Dworkin (1988b), in the final analysis the minority are not being deliberately paternalised, and so these collective decisions are really not cases of paternalism at all.

The third set of cases Dworkin considers are the “slavery cases”, in which “people are not allowed to enter into certain voluntary agreements that would result in great loss of liberty or serious risk of bodily injury” (1988b, p. 110). These are difficult cases for soft paternalism because the individuals being paternalised are competent, and they are being denied entry into fully voluntary agreements. We feel that they should not be allowed to enter into such agreements which would result in great loss of liberty or even serious risk of bodily injury. Dworkin notes that there is a presumption that these kinds of choices are not entirely voluntary, given what we know about human nature; however, even when we appeal to the wrongness of such a contract on the promotion of individual autonomy, we are still not able to justify the restriction against entering into such agreements. Individuals may define their personal autonomy in this very manner, as Dworkin suggests an individual could say: “I want to be the kind of person who acts at the command of others. I define myself as a slave and endorse those attitudes and preferences. My autonomy consists in being a slave” (1988b, p. 111). The argument can realistically rest only on a conception of the good, and the restriction on entering into an indentured life would be based on the imposition of this conception of the good life on another.

Häyri (1998) puts forth three arguments to justify strong paternalistic intervention in these situations, although none of these is particularly strong. First, the principle of utility is suggested for benevolent control on behalf of the foolish decision-makers and also for others. The doctrine of utilitarianism requires the maximization of happiness in the form of pleasure, preference fulfilment, or need satisfaction, and the minimization of unhappiness. According to this view then, justification exists when the paternalist has good reason to believe that the welfare of the individual or even the universal well-being of humanity is better served by benevolent control. This model is limited for two reasons. One, the well-being of others is not a justification for *paternalistic* intervention. Häyri (1998) points out that it is the *harm* principle that legitimises interference here, not paternalistic considerations.

The second argument put forth to justify strong paternalistic interventions refers to morality of the actions. In this situation, the freedom of an individual could be breached based on the *offence* principle, in that others may be morally offended by the actions in question. Proponents of this justification argue that one's actions, even in the privacy of one's home or other private location, are inherently wrong, and thus ought to be stopped or controlled. Supporters of this moralistic belief feel that there are certain actions that ought to be forbidden, even if they do no harm or involve anyone else; they are simply wrong and thus ought to be controlled. This argument is weak, since it relies on intellectual calculation or emotion, and certainly not on the notion of harm.

The third defence of strong paternalism is that it is irrational to act in certain ways, regardless of the morality or immorality of these actions, and without concern for their effects on others. The support of constraining and violating the autonomy of others lies with the idea that everyone is, to some degree, irrational, and it would be prudent to somehow collectively ensure that our lack of reason would not lead us to engage in action that we might later, in a more rational light, regret. This argument is also weak because if it relies on incompetence of the agent, then it would not be strong paternalism but weak, and thus interference would be justified. If this incompetence based on irrationality was a temporary rather than a permanent state of affairs, then justifications would still lie in weak paternalism. The nature of human beings is such that even when we have full knowledge of a situation, and are able to evaluate the options of our decisions, our emotions may sometimes lead us to act irrationally or imprudently, but this does not justify paternalistic intervention by others. It is the degree of voluntariness that is the deciding factor between strong and weak paternalism.

5.4.4 Weak Paternalism

Weak paternalism is justified by the incompetence of the person being paternalised. It consists of limiting another's freedom without their consent or against their will in order to support their interests when they are themselves incompetent: "X's imposition is premised upon Y's incapacity to make that choice" (Kleinig, 1983, p. 14). It allows for the protection from harm of an individual caused by conditions beyond his or her control. Those individuals

in this special category would include all incompetent people, for example, children, the mentally challenged, and the mentally ill; these individuals are seen as lacking in knowledge and control over their actions, or act under undue influence. Paternalistic acts towards these individuals is justified on the basis that since their autonomy “has not been fully developed or will never be fully developed or has been temporarily or permanently lost, seeming violations of their self-determination are not necessarily immoral, because the interventions can actually support their autonomy instead of suppressing it” (Häyri, 1998, p. 454).

Ten (1971) give four justifications of weak paternalism. His first justification is the same as that discussed above; where special categories of persons who are incompetent are involved, weak paternalism is justified. His second instance would be where there is a lack of knowledge that would prevent an individual from making fully informed decisions. If their actions were not checked, then they may act without full cognisance of the dangers involved. He gives the example of an individual intending to take a medication without full knowledge of its harmful side effects. Mill’s famous example justifies paternalistic intervention in the case of an individual whose deficiency of knowledge leads him to danger. In this case, a man is about to walk across a bridge that someone else knows to be on the verge of collapse. The man is unaware of the impending collapse which may harm or kill him, and therefore is not consenting to put his life in danger. The other individual interferes with the man’s action, and this interference is justified on the grounds that the man’s conduct was not expressing his genuine choice. The third instance would be where there is a lack of control of the agent involved. Temporary incompetence due to grief, distress, even inebriation, would render the person unable to appreciate the full significance of the consequences of their intended action, and would therefore justify paternalistic interference. The fourth situation where paternalistic interference could be justified is where a person’s decision-making abilities are impaired because of undue influence. This may come from the explicit use of coercion, or less conspicuous pressures from religion, economic factors, traditions, customs, etc. Ten gives the example of the tyranny of custom that led individuals to duel for reasons of honour; in such situations paternalistic intervention may have been legitimate.

Kleinig (1983) suggests that it might actually be inappropriate to consider weak paternalism an instance of paternalism at all. We turn now to consider how paternalistic intervention may be defined.

5.5 Defining paternalistic intervention

All people are required to make moral decisions and judgments on a daily basis. Almost every interaction with another person involves moral matters in some way. For example, whether we treat others with respect, tell the truth, or harm or refrain from harming them all involve moral decisions in one way or another. When we consider such highly controversial moral issues such as abortion and euthanasia, it seems to suggest that there

is little consensus on any adequate account of morality. However, such controversial issues generally exist in the minority. Many moral matters on which people make moral decisions and judgments are uncontroversial to the extent that individuals may not even be aware of making conscious decisions about them. Furthermore, many people do not hesitate to agree that certain acts are condemnable, such as harming another individual simply because he or she is disliked, or unjustifiable deception, breaking promises, lying, cheating, breaking the law, or not doing one's duty (Gert et al, 1997). Thus, it would seem that there is not as much overall moral disagreement as some might believe.

A set of moral rules was formulated by Gert et al. (1997) to prohibit causing harm or prevent actions that generally result in harm to individuals. They propose that an explicit, clear, and comprehensive account of morality would clarify the uncontroversial nature of many decisions in the medical field, but their account is actually based on the moral system that is already implicitly used by many people in their daily decision-making. Thus their formulation of moral rules would apply also to the world of sport for everyone involved, regardless of whether they are athletes, coaches, referees, or even parents.

This proposed moral system consists of two sections: (1) rules prohibiting acting in ways that cause, or significantly increase the probability of causing any of the five harms that all rational persons want to avoid, and (2) ideals encouraging the prevention of any of these harms. These moral rules are explicated as the following.

- I. The first 5 moral rules prohibit directly causing the five harms.
 1. Do not kill. (includes causing permanent loss of consciousness)
 2. Do not cause pain. (includes causing mental pain, for example, sadness or anxiety)
 3. Do not disable. (more precisely, "do not cause loss of physical, mental, or volitional abilities")
 4. Do not deprive of freedom. (includes freedom from being acted upon as well as depriving of opportunity to act)
 5. Do not deprive of pleasure. (includes future as well as present pleasure)

- II The second 5 moral rules include those rules which when not followed in particular cases usually—but not always—cause harm, and which always result in harm being suffered when they are not generally followed.
 6. Do not deceive. (Includes more than lying)
 7. Keep your promises. (Equivalent to "Do not break your promise")
 8. Do not cheat. (primarily involves violating rules of a voluntary activity, such as a game.)
 9. Obey the law. (equivalent to "Do not break the law")

10. Do your duty. (equivalent to "Do not neglect your duty")

(Gert et al., 1997, p. 34)

In the moral rules, the term "duty" is understood in reference to requirements of a person's role in society, such as in their job. It is not understood in the manner usually used by philosophers, as a synonym for "what one morally ought to do." Violations of these moral rules may be justified or unjustified. A rule is not broken every time someone is harmed. Thus, is it important to determine whether actions are justified violations of a moral rule, unjustified violations, or indeed, and kind of violation at all.

Gert et al. (1997) consider how paternalism may violate their system of moral rules, and whether paternalistic intervention may be justified. Their definition of paternalism requires that all paternalistic action must be predicated on good intentions, and that is must be justified for it to be considered morally acceptable. They believe that an adequate definition must also consider both justified and unjustified paternalism. The aim of providing a definition of paternalism as being the impetus for a more helpful discussion of what is generally considered to be paternalistic behaviour. This definition ought to encompass the clear cases and exclude behaviour which is not commonly considered to be paternalistic. They put forth the following definition of paternalistic behaviour:

P is acting paternalistically toward S if and only if:

1. P intends his action to benefit S;
2. P recognizes (or should recognize) that his action toward S is a kind of action that needs moral justification;
3. P does not believe that his action has S's past, present, or immediately forthcoming consent; and
4. P regards S as believing he can make his own decision on this matter

(Gert et al., 1997, p. 196)

Kultgen (1995) considers an action to be parentalistic if the intervention in an individual's life is intended to benefit that individual, but without regard for his or her consent. Unlike Gert et al. (1997), however, Kultgen does not require the recognition of the one interfering in the actions of the other to recognise that the interference requires justification. He views an intervention (Action A) as being paternalistic if and only if:

- (a) P believes that A is an intervention in S's life;
- (b) P decides to perform A independently of whether S authorizes A at the time of the performance;
- (c) P believes that A will contribute to S's welfare; and
- (d) P performs A for this reason.

(Kultgen, 1995, p. 62).

Gert et al.'s definition is based on the assumption that P's beliefs are at least rational, though the beliefs need not be true. For example, if an individual's beliefs are irrational—say he thinks, for instance, that flowers are competent to give consent. It would be implausible to maintain that he is acting paternalistically toward the flowers when he waters them, even though he actually believes that the flowers would prefer to remain dry (Gert et al, 1997).

The first requirement in their definition, that P's action towards S is paternalistic if P intends his action to benefit S, is straightforward. Sometimes P's action may be only partially paternalistic towards S, as they may benefit S but also benefit others, even P. For example, a parent enrolls his son in a swim club because he thinks it is important for his son to learn to swim well, and he thinks his son might also learn valuable life lessons from belonging to a swim club, such as team work and dedication. He also thinks that he might meet some people in the community through his son's participation on the swim team. He is not much concerned that his son does not like swimming. Thus, the parent's intervention is classified as paternalistic since it is intended to confer benefit to his son, although he may also experience benefits from the son's participation.

The second requirement for paternalistic intervention is that P ought to recognize that his action toward S is one that requires justification. If he is unaware that his action is such that it requires moral justification, then it is not paternalistic. This action would be paternal or parental but unless it is a violation of a moral rule, then the action is not paternalistic. For example, if a mother registers her daughter for swimming lessons before the family goes on a boating trip, it would be a parental action. Her action intends to benefit her child, but it is not violating a moral rule and thus does not require moral justification. If the mother registers her husband for the same swimming lessons, and insists that he go, her actions would be paternalistic. She would be depriving him of his freedom to watch television on Monday nights, and his right to self-determining actions, and she would be required to morally justify her acting on his behalf. She might justify her action on the basis that it is just as dangerous for her husband not to be able to swim as for her young daughter, and she is aware that he will not register himself for the lessons as he is lazy and would rather watch television than learn to swim, and thus she acts on his behalf to promote his interests.

The third requirement for an action to be paternalistic is that P does not believe his action has S's past, present, or immediately forthcoming consent. From the previous example, the wife knows that her husband will resent her having registered him for swimming lessons, and that he will be attending against his will. He would not have consented to registering for the lessons. She hopes that one day he will thank her when they are on their boating holiday, but she knows that he may never thank her. However, she knows it will not be in his interests (or the family's interest) to drown, and thus she behaves paternalistically towards her husband. A discussion on the justification of paternalism based on consent is held in the next section.

The fourth requirement, that P regards S as believing he can make his own decision in this matter, is again explained through the previous example. The husband believes he will be safe enough if he wears the life jacket on board the boat. The wife knows that he will be unlikely to wear it all the time, and thus even though he insists that he will be fine in a life jacket, the wife ignores him and registers him for the swimming lessons anyhow. While ultimately it is his decision, she knows that he thinks he knows what is best for him, but she feels that she ought to over-ride his preferences based on what she considers to be his interests. She also makes this decision based on what is best for her and for the family. If he were to drown it would be traumatic for the entire family, and would affect them all negatively. Thus, the interests the wife is promoting are not his alone, but are shared. Competence to make informed decisions has significant bearing on this requirement for an action to be construed as an act of paternalism. A discussion on the issue of competence is found elsewhere in this work.

One of the main arguments to support the ban of drugs and doping methods in sport is that athletes who engage in such behaviour will be harmed. This interference with athletes' self-determination is paternalistic, as the ban is premised on the idea that the athletes who take such substances may be harmed by that behaviour, and as such, ought to be prevented from doing so by sporting authorities. Some athletes support such action, but many athletes feel such actions—despite the concern for their health—violates their right to self-determination. These authorities justify their paternalistic interference on the basis of the harm principle: they act paternalistically so as to prevent harm to, and thereby promote the interests of, the athletes. Another sporting example of paternalism would be a situation where the coach tells a sick athlete to go home and not train for a few days. The athlete disagrees with the coaches' directive. The coach overrides the athlete's view, and insists he leave practice. The coach in this situation recognizes that the athlete is sick, and will benefit from rest; the coach overrules the athlete's protestations that he can make his own decision, as he feels the athlete is incapable of making the best decision, and the coach justifies his intervention on the basis of promoting the athlete's interests. A further example would be where an athlete requests a letter of recommendation from the coach to attend a national team try-out. The coach refuses to give the athlete the "entry ticket", which is the letter of recommendation, as he believes it is not in the athlete's best interests to go to the try-outs. The athlete argues that he is the best judge of his abilities, and that it will be a good experience; the coach overrules his desire and justifies it on the basis that the athlete will not have a good experience (the coach knows the athlete is not prepared, and will likely suffer a blow to his self-esteem if he were to be attend). The coach knows that the athlete will not agree with his decision, and believes that he is the best judge of the situation, but refuses to give the athlete the admission letter based on his own judgment of what is best for that athlete.

Thus for an action to be considered paternalistic by Gert et al. (1997), it must violate their moral rules. They caution though that one must separate performing the kind of action

which does require justification in order to be morally acceptable (violating a moral rule), from failing to act in a way that while being morally encouraged does not have to be justified (not following a moral ideal). An action can only be called paternalistic when it requires moral justification. The actions that require moral justification are those that break the moral rules. Extending from this definition of paternalism put forth by Gert et al. (1997), the following statements may be made: “a paternalistic attitude is an attitude that indicates a willingness to act paternalistically, and a paternalistic person is a person who is more inclined than most to act paternalistically. A paternalistic law is a law that is intended to benefit the person whom it deprives of freedom” (p. 196). Paternalistic laws, such as those requiring the wearing of seatbelts in motor vehicles and helmets on motorcycles, differ from paternalistic actions. Paternalistic laws are typically legislated in order to protect or benefit those who are being deprived of freedom by those laws, and thus violate the moral law of depriving individuals of freedom. Paternalistic actions are usually far broader in their breaching of moral rules; for example, paternalistic actions would break the moral rules against deception, causing pain, depriving of pleasure, in addition to the deprivation of freedom. One must avoid using paternalistic laws as paradigmatic for paternalistic actions, as it may lead to defining paternalism as involving the deprivation of freedom (Gert et al., 1997); their definition of paternalism does not necessarily involve the deprivation of freedom. The deprivation of freedom is sometimes considered a requisite for an act to be considered paternalistic.

In his principle and highly influential work, “Paternalism”, Dworkin characterises paternalism as “the interference with a person’s liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests, or values of the person being coerced” (Dworkin, 1988a, p. 20). He explained that his rough characterisation of paternalism as interference with others’ liberty for their own good, but notes that the class of persons whose good is involved is not always exactly the same as the class of the persons whose freedom is being restricted. He gives the example of professional licensing, where the practitioner is being interfered with directly so as to benefit the client whose interests are presumably being served. By disallowing the defence of consent by the victim to certain types of offences, the “would-be aggressor” is affected at the cost of protecting the willing victim. The juxtaposition of the two values of freedom and benevolence are what make Dworkin’s (1988a) account of paternalism as interesting as it is: he accepts the abrogation of Individual freedom in the name of benevolence.

In his subsequent work on paternalism, Dworkin (1988b) responded to the critics who felt that his definition of paternalism as interference with a person’s liberty of action was overly restrictive. He agreed that a broader definition was warranted, and reworked his definition of paternalism to include the notion that paternalism must involve a violation of an individual’s autonomy, which he conceives of as being distinct from that of liberty. Curtailing the freedom of another may be accomplished in several ways. First, an individual may deprive another of his or freedom by controlling their behaviour. For instance, a coach may

refuse to allow an athlete to miss a practice to attend her graduation ceremony. By overruling the athlete's desire to go to her graduation controls her behaviour, and thus curtails her behaviour. Another aspect in which the freedom of the athlete has been taken away by the coach in this example is the issue of control. The coach is not allowing the athlete to control her own life.

Dworkin (1988b) says that there must be usurpation of decision-making in one of two ways: either a person is prevented from doing what he or she has decided to do, or he or she is interfered with in the way in which he or she comes to make the decision. He notes the implication of such a view is that there might not be any particular methods of influencing others which are necessarily immune to being used paternalistically. For example, Dworkin explains that even though some people prefer to make their decisions impulsively, to insist that they listen to rational arguments—promoting their interests—would be paternalistic. What we have to determine in situations when deciding whether acts are paternalistic, is if the act in question could be considered as an attempt to substitute one person's judgment for someone else's to promote the latter's benefit. Thus, a person acts paternalistically towards another if his or her act is intended to avert some harm or promote some benefit for the other, if his or her act is in opposition to the current preferences, desires, or dispositions of the other, or if his or her act is a violation of the other's autonomy (conceived of as separate from liberty).

Dworkin (1988b) considers the violation of a person's autonomy to an attempt to substitute one's judgment for that of another, and when this is done to promote the interests of the other, it is a paternalistic act, a violation of a person's autonomy. Consider the example of two tennis players. One refuses to play tennis with the other because the latter becomes upset with the frequency with which he loses to the other. So, for the good of the other, and against his wishes, the first player refuses to play with the other. While the first tennis player is not necessarily interfering with the liberty of the other, Dworkin views this situation as a case of paternalism as by refusing to play tennis with the one who becomes upset at losing, the first player is acting paternalistically because his refusal to play is predicated on the good of the other. Gert et al. (1997) would not view this as an example of a paternalistic act since there is no moral rule being broken, and the act does not require moral justification: the tennis player is simply acting with a paternalistic attitude. Refusing to play tennis is not paternalistic: there is no moral rule being broken, and thus the refusal does not need any kind of moral justification. The second player may not want to be treated this way, which is what makes this refusal to play a paternalistic action; it is the attitude and the reason for the refusal that makes it so, and not the act itself. Paternalistic deception is another example of paternalism that does not involve an attempt to control behaviour or to apply coercion. For example, a coach may lie to an athlete to prevent him or her from giving up too soon in what appears to be a certain loss. The athlete is told that there is more time left in a match than there really is, and thus the athlete perseveres because she thinks there is sufficient time to score. If she really knew there were only a few minutes remaining, then

she would probably stop trying, and so the coach deceives the athlete because it is in her best interests to continue playing.

Brock defines paternalism in a similar way as does Dworkin, although he admits that it is not a precise definition: "Paternalism is action by one person for another's good, but contrary to their present wishes or desires, and not justified by the other's past or present consent" (Brock, 1983, p. 238). Childress (1982) defines paternalism in the following manner: "paternalistic action is non-acquiescence in a person's wishes, choices, and actions for that person's own benefit" (p. 241). He differentiates between active paternalism and passive paternalism as in the former, the agent refuses to accept a person's wish or request that he not intervene, while in the latter, the agent refuses to carry out a person's wishes or choices. He recognizes that active paternalism is more difficult to justify than passive paternalism, but both still require justification. Thus, Brock, Dworkin, and Childress all agree that paternalism requires justification, and differ with Gert et al. only in the requirement "that the only actions that need moral justification are violation of moral rules" (Gert et al., 1997, p. 201).

Brock (1983), Childress (1982), and Dworkin (1988b) believe that paternalism involves acting in opposition to the wishes of the person toward whom one is acting. While Gert et al. (1997) agree that these are among the paradigm cases of paternalism, they also think, along with Brock and Dworkin, that this is an inadequate way to characterise paternalism because it is possible to act paternalistically toward someone even if you do not know whether your action is contrary to his wishes. Not all actions that are contrary to the wishes of a person require justification. While Childress acknowledges the difference between refusing to accept a person's wish or request not to intervene, and refusing to carry out a person's wishes or choices, he thinks that both need justification. Gert et al. (1997) think that an action only counts as paternalistic when refusing to comply with a person's wishes involves violating a moral rule. Usually, this involves intervention, but it could involve not carrying out a person's wishes when one has an obligation to do so. An example to illustrate that acting paternalistically does not require violation of a moral rule is as follows: a coach who knows that if given the chance, the divers will try out the high diving board despite not having the requisite skills to do so, removes the access ladder. The coach has not violated a moral rule by removing the athletes' opportunity to use the high diving board. He has no obligation to allow the athletes access, and may actually have a duty of care to prevent them from harm. The coach has interfered with the athletes' self-determination and has violated their autonomy. While Dworkin would consider this example a case of paternalism, Gert et al. would not. Dworkin would likely view the coach's behaviour as violating the autonomy of the divers, while Gert et al. would view the behaviour as non-paternalistic since he did not violate any moral rule toward the divers. Gert et al. would call this paternal behaviour, which is done to benefit the athletes, without breaking a moral rule. They may also consider this type of protective action to be a duty of the coach, who may have a duty of care to protect athletes from harm, despite the fact that the athletes are

adults. The coach is being neither deceptive nor coercive in his action; he is coaching in an appropriate manner according to the expertise and skill level of the athletes in question.

Kleinig (1983) is one of the few philosophers who extends his discussion of paternalism to include animals as well as humans. Animals may just as well be the object of paternalistic impositions as are humans. What is interesting and important in his inclusion of animals in this discussion is how in many ways, animals are similar in nature to infants, young children, and adults who are not considered “competent” to make reasonable or rational decisions, or to give informed consent. Alan Soble (1976), for example, considers paternalism to apply only to competent beings, and not to those considered as being non-competent. Soble’s concern with this issue is addressed by Feinberg’s (1986) distinction between strong and weak paternalism, or sometimes between hard and soft paternalism. Paternalistic action directed towards individuals who are incompetent may not be cases of paternalism at all. Kleinig, however, asserts “the dissimilarities in justificatory structure required for strong and weak paternalism do not *ipso facto* make it pointless or misleading to see them both as forms of paternalism” (p. 9). Still, there may be cases where weak paternalism may be inappropriately thought of as paternalism at all. Kleinig notes that it is not “the wisdom of whatever it is that has elicited the imposition, but with whether whatever that is genuinely represents the person’s will” (p. 9). Thus, in Mill’s example of interfering with a man about to cross an unsafe bridge described in Section 6.6, the issue is not the danger involved, but the ignorance of the man to have the knowledge that the bridge is unsafe: it is not his decision to undertake the risk of crossing an unsafe bridge if he is not aware of the risk. He is not making an informed decision. Kleinig is wary of this example though, as it is not always the voluntariness aspect of decisions with which we may seek to interfere, but also the wisdom of the conduct is an issue of justifiability. In sport, while athletes who are considered legal adults are able to provide consent for participation in inherently risky activities, it could be argued that an athlete who has a significant stake in the outcome of an event may be psychologically unable to provide “informed” consent as he or she may be overly influenced by the activity. They may consent to participate in an activity that they might not normally agree to, but the outcome of the event is of such magnitude that they may not be acting rationally. For instance, an athlete who is already injured may agree to participate in a competition, despite the risk of further injury, because of the immediate outcome of that event, rather than the long-term consequences of playing injured.

5.6 Justifications of paternalism

Moral prescriptions attempt to guide moral action. Morality may even attempt to set requirements for action which overrides the self-interest of the persons to whom it is directed. The warrant for such a demand must be justified. Paternalistic acts are a kind of moral action, an interference in the affairs of another, based on the intention to promote the interests of that other, or, on beneficent principles, and thus the intention of the interference in the affairs of another may be considered morally acceptable. While acts of paternalism

are sometimes considered absolutely immoral, others accept that there are types of paternalism that may be justified. Gert et al. (1997) consider the only actions which require moral justification are those which violate moral duties, which they have outlined elsewhere. Dworkin (1988a; 1988b) and Brock (1983) disagree with this claim, as they believe that some actions which do not necessarily violate the moral rules do require justification.

The moral rules that Gert et al. (1997) have put forth as an account of morality do more than simply guide one towards solving moral problems. Their account of morality, and other accounts of morality, alert us to the presence of a moral problem, for example, paternalism. If one is aware that violating a moral rule requires justification, then one may be able to direct behaviour towards avoiding breaking any moral rules. This avoidance is not always possible, however, and not always necessarily desirable, as in the case of paternalism. They give the following examples to differentiate between justifiable paternalistic intervention, and that which is not justifiable. They give the example of an individual who pulls another from the path of a speeding car that he does not see. Because this action involved unconsented touching—a violation of his personal freedom—the action requires justification. If the justification was that I believe that he would have consented to my action had I been able to ask him, and if this confirmation will be given right away, then my action is not paternalistic despite satisfying all the other conditions of paternalistic behaviour. If I know, however, that he is trying to commit suicide because he is temporarily depressed, and I believe that he will thank me later when he recovers from his depression, then my action is paternalistic, although it may be justified. Only situations where it is impossible to ask for consent prior to acting that immediately forthcoming consent prevents the intervention from being counted as a case of paternalism. Another example from Gert et al. (1997) involves the “Surprise party”. Deception is often required in such situations. If a person deceives the other—and the other loves surprise parties, and they are immediately delighted when surprised—then the deception is not considered as being paternalistic. However, if the party organiser (and the one doing the deceiving) is not quite sure that the person loves surprises, but feels that it would be beneficial because he would realize how many people care about him—and even if they would initially be upset but by the end of the party would enjoy it, then such deception would be paternalistic. These examples differentiate between paternalistic and non-paternalistic actions.

Human relationships are complicated. There are many such relationships that involve hierarchies of authority. For example, doctors and patients, teachers and students, professors and graduate students, parents and children, bosses and employees. For a variety of reasons these relationships are usually not equal but are hierarchical. One person or group of persons is the authority, and the other individual or group is not. That this is the case is not the issue contested herein; what is under discussion is a defence or justification of paternalism in these relationships. Different theories of paternalism, outlined earlier, attest to the difficulties in finding a cohesive, agreed upon conception of paternalism. Many of those conceptual differences will influence the justifications. For example, Regan

develops a conception of personal identity which proposes that for differing moral purposes, different stages of the same self may be treated as different persons. This would provide the foundation for claiming that, in preventing a person from harming a later self, one is simply preventing harm to another, much like Mill's view. While it is certainly more difficult to justify paternalism in terms of the treatment of adults, it is not as difficult in relation to children. Both situations will be discussed.

One of the possible justifications for breaking this moral rule against paternalistic behaviour is the reasonable probability of harm which may come to an individual if one does not interfere. Another possible justification could be that of consent. Various philosophers have attempted to justify paternalism on appeals to promoting or maximising good consequences, or on the basis of consent—prior, present, or future—among others. When one acts paternalistically towards another, the motivation behind the intervention is to benefit the one being paternalised. On this basis of beneficence, the consent of the person would justify the intrusion. However, when one consents, the intrusion ceases to be paternalistic. The next section will discuss justification of paternalistic behaviour, beginning with harm, moving then to consent, and finally, to the argument from future selves.

5.6.1 Justification on the grounds of harm

The general understanding of paternalism is that a paternalistic act involves interference in the affairs of another in order to protect or promote their interests, without their full understanding or consent. Because a paternalistic act bypasses an individual's moral authority over themselves, it requires justification. Paternalism may be justified if there is a reasonable probability of harm coming to an individual without the interference of others. In Mill's classic example of a man about to cross a dangerous bridge, interference is justified. The man will be harmed if the bridge were to collapse, and since he is ignorant of the bridge's condition, he is not making an informed and reasoned decision to cross. Thus, paternalistic restraint on his liberty is justified, at least to ensure that the man was aware of the risks of crossing the bridge. Since the man was ignorant of the risks, some would not classify such intervention by another as paternalistic at all, in the same way that some believe intervening in the affairs of someone who is incompetent is not an instance of paternalism, since paternalism requires a violation of a person's autonomy (Gert et al. (1997).

5.6.2 Other-regarding conduct:

If the man was informed, and it was clear that he was competent to fully comprehend the dangers associated with his planned crossing, then his actions ought not be hindered. However, as Mill outlined, if the man's actions were to harm another, then paternalistic interference would be justified. The harm to others principle justifies paternalistic acts if the action is predicated on protecting a person from the choices of

others. For example, if the man attempted to cross the bridge, after having been informed of the associated dangers, and wanted to take a small child across with him, then once again interference is justified. According to Mill, the man, being fully informed and having accepted the risks of crossing was at liberty to put himself at risk, but by putting another in harm's way, his actions could then be intercepted. The child is not competent to give informed consent to being harmed, and thus paternalistic action is appropriate. If he was attempting to cross the bridge with a fully rational but uninformed adult, then we would also be justified in preventing the crossing on the basis of the harm principle, as (soft) paternalism justifies intervention of "involuntary choices" (Feinberg, 1986, p. 12).

While it is always wrong to harm another, sometimes it is justified. For example, a doctor may have to harm a patient temporarily in order to secure the patient's long term good. When harm to another is not adequately justified or excusable, that action is morally blameworthy, and morally indefensible (Feinberg, 1984). Some children who participate in high-performance sport are harmed physically and psychologically (Cahill, 1993; Coakley, 2001; Dacyshyn, 1999; David, 1999). This harm cannot be justified. In addition to the physical and psychological harm suffered by some children in this environment, the child's right to an open future may also be compromised by their participation in high-performance sport. Training a child to become an elite athlete teaches them an exceedingly narrow band of skills, with a singular focus that is not easily transferred to other careers, particularly if the child has never known a life without their sport. Thus not only does the very participation in elite sport restrict a child's future, but it may also harm them directly. These specific harms were discussed in detail in chapter three.

5.6.3 Self-harming conduct:

When a fully informed and competent adult wishes to put him or herself at risk of harm, the justification of paternalism becomes more difficult. All things being equal, everyone ought to try to maximize goods such as happiness, and minimize harms, such as pain and suffering. We could argue that any person who wishes to put him or herself at risk of harm, or to harm him or herself directly is not acting rationally, reasonably, and we may question their competence. Mill argues that an adult has such a prerogative; competent adults are free to live their lives as self-determining beings, and thus paternalistic acts—even those which might benefit that individual—cannot be justified. The objective of maximizing good and minimizing good in this explanation is not a utilitarian view. Utilitarianism directs action with only these imperatives. The moral principles of beneficence and nonmaleficence accept these objectives but do not make them the sole objectives in guiding moral action. There is a general desire for people to act in ways which promote their interests, and which will benefit themselves. Kleinig (1983) suggests that the justificatory problems surrounding paternalism could be clarified if several sets of distinctions are taken into account. These include positive paternalism—a deliberate act on behalf of another in order to secure some kind of positive benefit for them—which is justified on the basis of

promoting their interests. His negative paternalism is justified by the notion of protecting people from self-caused harms. The rationale for imposing upon another to protect them from harm, or to restore them from some kind of harmful condition, is to act in a negatively paternalistic fashion.

As in the above example, Mill would accept paternalistic intervention into self-harming conduct if it were to ascertain whether the individual was indeed rational and competent to make autonomous decisions. The practical difficulty with this determination is the accuracy of an evaluation of competency. It is sometimes difficult to determine a person's competency, and often time becomes a factor in determining competency before harm is done. When it is reasonably clear that the action is seriously and permanently self-harming, the difficulty of such determination is increased. A person who is temporarily incompetent may also be paternalised, with the justification being that they were not able to make an informed decision. For example, a person who is inebriated or in a drug-induced haze and is in possession of a weapon may justifiably be interfered with if they attempt to harm their person, since they are unable to comprehend their actions or the consequences of their actions. They would not be acting autonomously.

State intervention in prohibiting certain behaviours, such as taking drugs, is often justified on the basis of preventing harm. The likelihood of harm in taking heroin is high, and since legislation and enforcement of prohibition is relatively feasible, utilitarian morality demands—and justifies on the basis of harm-reduction—state intervention in such a self-harming activity. This discussion may be greatly expanded, and while arguments exist that the use of illicit drugs is other-harming as well, this example is exceedingly basic. Self-regarding and other-regarding behaviour is sometimes very difficult to disentangle. Individuals are part of families and communities, and as such, self-regarding behaviour almost always affects those intimately and even more remotely related to the individual engaged in self-harming actions.

That preventable harm—both personal harm and harm to others—is considered an evil is a justification of paternalism (Feinberg, 1986). “If society can substantially diminish the net amount of harm to interests caused from *all* sources, that would be a great social gain” (Feinberg, 1986, p. 25). However, the problem with paternalism, cautions Feinberg, is that hard paternalism is offensive, since “it invades the realm of personal autonomy where each competent, responsible, adult human being should reign supreme” (Feinberg, 1986, p. 25). Thus the harm principle may be a strong justification of paternalistic interference in the lives of others, but it must be used carefully. While we may wish to promote the interests of others, we must be very wary of enforcing imposed prudence on others.

5.6.4 Consent

The Roman legal maxim, “*Volenti non fit injuria*”, understood generally to mean “to one who consents no harm is done” (Feinberg, 1983) would appear to absolve another of violating a moral rule against paternalism. The consent of that person would render the

action no longer a violation, and further, with consent, the action would no longer be paternalistic. Feinberg here refers to harm in the context of a moral wrong, not in the general sense of physical or psychological damage.

According to Rosemary Carter (1977), paternalism is a problem in the general area of rights. Her conception of a paternalistic action “is one in which the protection or promotion of a subject’s welfare is the primary reason for attempted or successful coercive interference with an action or state of that person” (Carter, 1977, p. 133). This interference is a violation of a person’s right to non-interference. Because she does not put forth “a developed and convincing theory of rights” within this work on paternalism, she depends on certain conjectures, such as “the conditions under which *prima facie* rights fail to be actual rights” (Carter, 1977, p. 134). She considers the condition of when the *prima facie* right is alienated by its possessor so as to be relevant to the justification of paternalism. Actual consent is the foundation upon which she builds as being a necessary and sufficient condition for this justification. She puts forth two related ways of alienating the right to non-interference: prior and subsequent consent, which she contends as being a hypothetical and acceptable justification for paternalistic actions: “(1) the possessor of the right can consent in advance to interference under certain specified circumstances; or (2) he can subsequently approve of interference” (p. 134). Carter expands further on her consent requirements in that a paternalistic act will only be justified if one of the two types of consent is given:

1. prior to the interference the subject explicitly consents to the paternalistic intervention; or
2. subsequent to the interference the subject
 - i. explicitly consents to the action; or
 - ii. is disposed to consent either upon request, or upon the receipt of a relevant piece of information

(Carter, 1977, p. 136)

Carter claims that it is an analytic truth that there can never be a justified violation of an actual right, and that a paternalistic act can only be justified when a person’s *prima facie* right of non-interference is “not an actual right” (p. 134) at all. The two kinds of situations where this could result would be (1) where the person has given prior consent to interference, and (2) subsequent to an interference, where the person specifically consents to that interference, thereby alienating “his right to non-interference for that particular act” (p. 135). An example of the first would be the case of a dieting friend who requests that one prevent him from eating a piece of cake at the party later that day. An example of the second would be where the friend thanks the other the following day for having hidden the cake the previous evening, as had he seen the cake, he would have eaten some, and he really did not want to do that. While Carter’s (1977) conception of paternalism is developed with the justification of consent as part of the formulation of paternalism itself, Brock does not consider consent as being sufficient to justify paternalism. He sees the person being

paternalised as resisting the interference, and as such, “consent appears an unlikely candidate for justification of paternalism” (p. 238).

Giving free and informed consent to someone else’s act is understood as a way of surrendering or waiving the right that that action would otherwise abrogate (Brock, 1983). The requirements in basic moral principles that regulate paternalism of free and informed consent, or of hypothetical consent in the absence of specified conditions, seem acceptable only on the condition that moral rights (whose violation is to be avoided) are assumed present (Brock, 1983). Since we can—and sometimes do—give consent to what does not promote our good, consent cannot be a necessary condition for justification of paternalistic action.

Some philosophers use an appeal to promoting or maximizing good consequences as a way of justifying coercive interference with another person’s actions (Van De Veer, 1979). While Van De Veer requires the element of coercion in his conception of paternalism, he dismisses Carter’s argument, viewing the appeal to consent in order to justify paternalistic intervention as being far more complicated than Carter suggests. First, the presumption that a person has the right not to be coercively interfered with has to be considered, perhaps in that this right may be “non actual” if the person gives permission or consent to the interference. Since, for an intervention to be considered an “interference,” it would seem that consent was absent at the time of the paternalistic intervention. Second, Van De Veer considers believes that the idea of prior consent—prior to the intervention—as put forth by Carter, is also problematic. Her explanation and his concerns about prior consent are discussed next.

5.6.4.1 Prior consent

The story of Odysseus and the Sirens provides an example of people’s preferences for preferences. Odysseus gives the crew of his ship consent to tie him to the mast, and then to ignore his protestations when he demands to be freed while the Sirens are attempting to lure him and his ship onto the rocks. Odysseus knew that a time would come when he would want to go to the Sirens, but he knew also that he had an overriding desire not to do so, so he had a preference to override the preferences he knew would be forthcoming, which he knew too would not be in his best interests. Thus he gave prior consent to have his crew ignore his behaviour in a specific situation so that his preferred preferences—to pass safely by the Sirens and sail on to his destination—could be realized. Paternalistic interference in this case helps the person engaged in this temporary behaviour to achieve their larger preferences which they desire above their indicated behaviours. His prior consent justified the paternalistic intervention. Without the paternalistic intervention of his crew, Odysseus would not have been able to overcome the lure of the sirens, and he foresaw this problem, and circumvented it with his prior consent. In sport, we may see an equivalent example of an athlete giving prior consent to the coach to be “induced” into pushing him or herself to physical limits; this induction may come in the form of the coach

yelling and screaming at the athlete to “push, push, push”, and shouting at the athlete to not give up in a session. Under so-called “normal” circumstances, few individuals would consent to another treating them in that manner; however, they may do so in sport in order to attempt to push themselves further, faster, or higher.

The question in the former example lies in whether the acts which would restrain Odysseus, to which he gave prior permission, are really acts of paternalism at all. According to Carter’s definition of paternalism, coercive interference is a necessary condition of paternalistic action. Since prior consent precludes coercive interference, then how is prior consent a justification, since according to her definition, prior consent would preclude an act from being a case of coercive interference and thus not a case of paternalistic interference.

Coercive interference must be differentiated from cooperative interference. In the case of coercive interference, “the settled preferences of a subject of interference are in opposition to the interference; therefore, it is perceived by him as a threat to make him worse off, on balance” (Van De Veer, 1979, p. 636). Cooperative interference is not perceived as a threat: “he may rightly believe that it is the most effective way to maximize his own satisfactions in the long run, given his own less than perfect ability to exercise self-control in particular types of circumstances” (Van De Veer, 1979, p. 636). Prior consent, then, does not justify paternalistic interference as it precludes the intervention from being considered paternalistic at all. It may well be interference, but it is not an instance of paternalism.

5.6.4.2 Hypothetical, future-oriented, anticipated, or presumed consent

Hypothetical, future-oriented, anticipated, and presumed consent all essentially point to the same idea: that consent will be obtained at a later time from that of the interference in the affairs of another. This kind of future-oriented consent clashes with the principle of protecting the rights of others to fully informed agreement. There can be no guarantee that there will never be an instance where an assumption of agreement turns out to be wrong. Subsequent, future, or anticipated consent to paternalistic intervention can be seen as an expression of gratitude or thanks, or approval of what was done—at a later time than when the action has taken place (Kleinig, 1983). While some philosophers such as Carter (1977) believe that the expectation of receiving consent after an action has taken place will justify the paternalistic intrusion, others do not accept future-oriented consent—even when that consent is virtually certain—as either justifying paternalism, or making the action nonpaternalistic. Gert et al. (1997) believe that the only way consent obtained beforehand would be considered nonpaternalistic is if one *would* have received consent for that action, had one been able to ask for it. They think that even a belief, including a justified belief, that the person being interfered with without their consent will immediately thank the other individual for doing something to them *without* their consent, does not alone make an action nonpaternalistic. For example, one of the reasons that obtaining a valid consent from a patient is because almost all medical interventions which are not emergencies would be

paternalistic if the patient had not consented. Most medical interventions involve some kind of pain being caused, or a deprivation of freedom, and thus require the patient's consent as justification. "When such actions are done for the benefit of the patient and with his valid consent, all medically appropriate treatments are strongly justified. The very same intervention with the same benefit but without the patient's consent may not be" (Gert et al., 1997, p. 204).

Some of the concerns relating to an attempt to justify paternalistic intervention include the state of competency of the individual being paternalised. If they are temporarily incompetent—such as in a state of inebriation—and intervention to prevent them from harm is required, then this intervention is not paternalistic, since they are incapable of making a reasonable, informed decision. If they are permanently incompetent, then again, the intervention is not a paternalistic one. If the individual lacks the information he or she requires to make an informed decision—such as Mill's bridge scenario—then again the interference is not necessarily paternalistic since the individual was making an "ignorant" decision, and may not have made such a decision if he or she was in possession of all relevant information.

There are two further divisions of the concept of future-oriented consent. These are actual consent, and anticipated consent. Actual subsequent consent is consent given by the person subjected to the paternalistic action or interference after it has occurred. Anticipated consent is justified on the grounds that we are able to anticipate the subsequent consent of the person, even if some circumstance prevents this consent ever being given to us. This future-oriented consent is often used by parents in an attempt to justify paternalistic interventions. The "some day they will thank me" approach is based on the idea that one day the child will look back, and be thankful that his or her parents forced them to do something that at the time they may not have wanted to do. However, this is certainly not always the case. The issue of parental decision-making on behalf of their children is discussed elsewhere. However, it is unacceptable that people with vested interests deem themselves suitable judges of what is ethical. Children do not have moral obligations to their parents to become high performance athletes, or indeed, to take on any kind of career at all.

5.6.4.3 Subsequent consent

Subsequent consent is approval from the one being paternalised after someone has intervened in their affairs, or acted on their behalf. Approval after the act, however, is not consent. It is simply that: approval of a prior interference. This kind of approval after intervention cannot retroactively rescind an earlier violation of a person's right to autonomy. That right stood at the time of intervention, and was abrogated when the other interfered, and so even approval after that act cannot change the earlier rights infringement. Anticipating that the other will later approve of the intervention may help to reassure the one acting paternalistically in determining the expected value of the paternalistic act, but it cannot override the actual rights violation. In sport an example would again be the coach

who is shouting and screaming at the athlete to push him or herself further and faster; generally few individuals would acquiesce to such treatment. In sport, however, the athlete may later approve of the coach's techniques ostensibly aimed at improving athletic performance.

5.7 Children and paternalism

The term 'paternalism' originates or is based on the way in which parents treat children, generally a relationship of adult domination and child subordination. Justifications of paternalism often rest on the incompetence and vulnerability of children, and not on the 'need' of parents to dominate them, as suggested in the power differential between the two. Arguments against paternalism usually rest on some kind of defence of the imperative of respecting autonomy. This may be appropriate in the case of paternalism directed towards adults, but is not as strong when applied to children. Generally, paternalistic interventions are based on need; children, particularly in their early years, are entirely dependent on others for all their needs. Paternalistic interventions are justified in the face of incompetence and danger. Parents and guardians necessarily make choices for children who are either incapable of making choices, or whose choices may be risky (refusing to attend school) or are potentially dangerous and irreversible in effect (falling into a river and drowning, eating poison).

Sometimes our personal relationships, such as those between husband and wife, and between parent and child, clash with the demands of morality. We may give up basic rights within intimate, personal relationships, but do so within the bounds of trust and care and not of moral rules. For example, due to the intimate nature of personal relationships between consenting adults, physical interaction occurs that one would not allow with others. Within these relationships, talk of rights and duties would lead those involved to question the intimacy of the relationship, and thus such talk does not usually intrude into close relationships between spouses, parents, children, or even with close friendships.

Parenthood is a unique relationship, quite different from relations between spouses and close friends. Parents control the freedom of their children, restricting and proffering access to opportunities that they deem appropriate. Parents make decisions and retain control of all kinds regarding their children, relating to education, recreation, and sometimes even employment. For instance, parents may garner the wages of their children, if they work. For example, a child actor or child athlete who earns income is not legally in control of that money, although certain actor's guilds and unions may hold back certain percentages of the child's income in trust funds that become accessible when the child reaches the age of majority. Otherwise, the parent controls the child's access to earning opportunities and also to their income.

It is presumed that parents care for their children, and seek to promote their interests. This is the nature of 'parenthood'. The child-parent relationship is not one of partnership—certainly not in the earliest stages of a child's life—because the parent and

child are not equal in terms of being rational beings, of competency, knowledge, or in terms of power. Jane English (1997) suggests that the relationship between parents and their grown children ought to be characterized by friendship based on mutuality, more of a friendship than a dependent relationship.

One of the concerns regarding the unfettered application of paternalism by parents and other adults towards children, is that unfortunately, they may be misguided in their concerns, and sometimes they may not always have the best interests of the children at heart. This is one of the major concerns with promoting paternalism by parents and coaches who are involved with children participating in high-performance sport. In this environment, these adults may have vested interests in the children's participation, which may lead to their exploitation. Thus, one of the problems with the presumption that parents always have their child's best interests at heart lies within the nature of high-performance sport. How can these parents and coaches, who have vested interests in the children's success in high performance sport, deem themselves suitable judges of what is appropriate for their children; they become overwhelmed by the so-called rewards, i.e. fame and fortune, and may no longer be considered competent in protecting their children. Thus, an application of paternalism as the sole means of directing appropriate moral action in the care and nurturance of children is limited.

5.8 Conclusion: Autonomy-respectful paternalism

While there are certainly legitimate concerns regarding the profligate application of paternalism, there are clear and justified uses as well. One of the strongest moral arguments for the legitimisation of paternalism is that it is based on the principle of benevolence, and an ethic of care. Without a consideration of concern for the interests of another, paternalism would not exist, and in a world of inescapable and meaningful relationships, we ought to promote rather than to discourage care and concern for the interests of others. Paternalistic interventions are premised on actual or allegedly benevolent control over other individuals. This control is action intended to promote the good of another, but may contrary to their present wishes or desires. Paternalism is not justified by consent, as consent precludes an intervention being an instance of paternalism. Parents may be justified in acting paternalistically towards their children "if and only if they believe that the expected value of the action for the child will be more significant than any alternative, and they have reason to trust their own estimation of that benefit, despite the opposition of anyone, including the child, who is the recipient of the intervention.

Within high-performance sport, child-athletes are treated paternalistically by parents and coaches and also by others involved in the sport, which is entirely appropriate. In the world of elite sport, however, paternalism interventions are sometimes exploitative and abusive. I propose a form of autonomy-respectful paternalism for elite sport children that will promote their interests in both the short and the long term. This chapter has considered the varieties and understandings of paternalism, as well as several justifications of paternalism,

such as harm and consent. The discussion on settled preferences highlighted the unsettled preferences of children who are still in the stage of determining their needs and desires. In order for children to arrive on the threshold of adulthood with their futures wide open, they need autonomy-respectful paternalistic protection to safeguard their futures until they become competent to make preferences about their life plans.

There are several categories of autonomy-respecting paternalism, which include soft paternalism. This category does not require moral justification as it is not constraining since the person for whom one is acting paternalistically is in some way impaired or incompetent. Hard paternalism involves at least initial restrictions of liberty or violations of autonomy, and is sometimes justified even if the action is completely voluntary. Weak paternalism is hard paternalism which involves restrictions of liberty but is morally justifiable as the individuals being paternalised are incapable of acting in their own best interests. Strong paternalism is hard paternalism that is autonomy-violating paternalism, and as such, constitutes genuine violations of self-determination, or individual autonomy that cannot be justified. We turn now to consider autonomy, and the relationship between it and paternalism.

6.0 Chapter Six: Autonomy

6.1 Introduction

A powerful reminder of the paramount importance of freedom to citizens of the United States is the proclamation “Live free or die,” which is printed on the licence plates of the state of New Hampshire. The concept of autonomy is based on the idea of choice. Individuals value highly the freedom to make their own choices about their lives, and to live as autonomous agents free from the interference of others. Interference with an individual’s decision-making, or constraints on his or her actions, often results in moral indignation, particularly when that interference or those constraints claim justification on the grounds of paternalism. Thus, restrictions of individual liberty always require justification. All things being equal, individuals prefer to have the freedom to make their own choices concerning their own lives. In arguing their case for liberty, others have argued that absence of coercion is a necessary, albeit an insufficient, condition “for individual self-realization and social progress, and for such specific goods as individual spontaneity, social diversity, and the full flowering of various moral and intellectual virtues” (Feinberg and Gross, 1977, p. 3). Most individuals are quite aware of the preciousness of our own personal liberty, and can be expected to suppose that personal liberty is equally valued, and equally worth respecting, in other individuals.

The notion of autonomy is derived from two Greek words, *autos*, meaning “self”, and *nomos*, meaning “rule” or “law”. Autonomy means self-rule or self-determination, and thus one who is autonomous is someone who thinks and acts independently, rather than being controlled by others. The autonomous person is the creator, the author, the director, the captain, of his or her own life. Autonomy may be contrasted with heteronomy, which is derived from *heteros*, meaning “other” and *nomos*. An individual is heteronymous if his or her will or desire is under the control of another. Failure to be autonomous is not always necessarily due to the control of another, as there are other kinds of constraints that may interfere with a moral agent being self-determining.

In our western democratic societies, the notion of liberty is held in high esteem. This helps explain why the view of the human agent as one who is self-determined and self-expressive is so strongly held and defended, and why personal autonomy is held within the realm of inviolable sanctuary (Feinberg, 1986). The concept of autonomy also implies a value in being able to control one’s own resources and in leading a self-directed life. A moral agent has the capacities and dispositions of reason and rationality to guide personal decision-making, and the freedom to choose amongst options. Making one’s own choices and decisions are viewed as essential components of mature, independent, and responsible adulthood. Individuals are considered to be acting autonomously when they themselves make decisions that affect their lives, and then act in accordance with those decisions. These individuals are thus considered “autonomous agents” and their acts are “autonomous acts”.

For an action to qualify as being autonomous, it must be: (i) intentional; (ii) based on sufficient understanding; (iii) without controlling influences that determine action (Beauchamp and Childress, 2001). The first requirement, that an action be intentional is not a matter of degree; either an act is intentional or it is not. The second and third requirements, however, are not as clear. An act may satisfy generally the requirements of understanding and not having been influenced or controlled, and thus actions may fall somewhere along a continuum, being autonomous by degrees. On the one end autonomy may be fully present, and on the other end it may be wholly absent. Children are a group who begin as entirely dependent on adults for survival, without any capacity for autonomy, to exhibiting varying degrees of autonomous action in the later stages of childhood and adolescence. The elderly may exhibit the same kinds of autonomy but in reverse to children, becoming less autonomous rather than more. Beauchamp and Childress (2001) explain that for an action to be autonomous within this framework “it needs only a substantial degree of understanding and freedom from constraint, not a full understanding or a complete absence of influence” (p. 59). They suggest that in reality, people’s actions are rarely, if ever, fully autonomous. Thus, “to restrict adequate decision-making by individuals to the ideal of fully or completely autonomous decision-making strips their acts of any meaningful place in the practical world” (p. 59). Consequential decisions ought to be based on substantially autonomous, but not necessarily fully autonomous actions by individuals. The determination between substantially and fully autonomous actions may be difficult to determine, and may even appear to be arbitrary. Thresholds delineating substantially autonomous decisions may be carefully held against fixed objectives, such as meaningful decision-making and consequences. Beauchamp and Childress hold that appropriate criteria for determining substantial autonomy are best addressed in particular contexts.

While we accept that moral autonomy generally applies primarily to adults, children and adolescents—in their progressive development towards adulthood and its competencies—begin learning self-direction and decision-making early on in their lives. One may be competent to make self-regarding decisions in certain spheres of life earlier on than in others. For example, a child may be able to make simple decisions about appropriate clothing and food before he or she may be able to do so in other aspects of his or her life.

Autonomy has assumed increasing importance in contemporary philosophy, principally in the field of ethics. Applied ethics, and particularly bioethics, holds the concept of autonomy as fundamental in determining how best to guide action and solve moral problems. The basic premise of the principled approach championed by Beauchamp and Childress is that problems may be appropriately identified, analysed, and resolved by referring to a set of four principles, each of which corresponds to a *prima facie*, or conditional, obligation. The four principles do not constitute a general moral theory, but rather provide a framework for identifying and reflecting on moral problems. These principles are the principle of respect for autonomy, which is the norm of respecting the decision-making capacities of autonomous persons; the principle of nonmaleficence, the

norm of avoiding the causation of harm; the principle of beneficence which involves a group of norms for providing benefits and balancing benefits against risks and costs; and the principle of justice, the group of norms for distributing benefits, risks, and costs fairly. This principle-based approach deals with several *prima facie* principles of obligation. These principles sometimes conflict, which then requires an assessment as to which principle has overriding weight or significant in any particular set of circumstances. The principle of respect for autonomy in this biomedical context requires that health-care professionals not interfere with a patient's autonomy, but more generally, it remains that respect for autonomy maintains the requirement that others not interfere with an individual's right to make his or her own decisions. The principlist approach is certainly not the only approach in this particular field of applied ethics, but is the dominant one to guide moral action.

Not all agree with the promotion of autonomy to the heights it has been elevated. MacIntyre (1981) and Sandel (1984) have both presented their dissatisfaction with the principle of respect for autonomy as part of communitarian critiques of liberalism in ethics and political philosophy. They argue that our individualist culture neglects the importance of community and shared values, and that individual rights, freedom of choice, and independence disregard the moral importance of commitments and obligations that arise from our shared history and community ties. Bioethicist Daniel Callahan (1994) has criticised the field of bioethics for its individualism, and its great emphasis on autonomy, overshadowing a concern for the common good, or public interest. Supporters of liberalism, such as Joel Feinberg (1990) have argued that liberalism does include a conception of the common good, in addition to a number of shared interests such as mutual tolerance, respect, public service, patriotism, charity, and cooperation.

Autonomy involves respect for other individuals since the very nature of life and community necessarily involves relationships, all of which ought to be based on the fundamental notion of respect for others. Certain relationships such as those that are oppressive or dependent may impair autonomy. The authority of states, religious organizations, and other communities that legislate individual and group actions may diminish autonomy. However, if moral agents freely choose to accept the direction of an authority, institution, or community, then there is no fundamental inconsistency within these relationships. Oppressive socialisation can interfere with the development and formation of autonomy "by forming an agent's desires, beliefs, emotions, and attitudes through thwarting the development of the capacities and competencies essential for autonomy, and through various restrictions and limitations on the range of options for action" (Beauchamp and Childress, 2001, p. 61).

While certain relationships as those outlined above may impair autonomy, authentic human relationships ought to respect and even promote autonomy. Fried (1974) considers authentic human relationships to be those that manifest four fundamental characteristics: lucidity, autonomy, fidelity, and humanity. These four rubrics converge towards the integrity of interpersonal relationships. In a human relationship, a person is to be treated without

deceit or violence. The characteristic *humanity* stresses that each person is a unique individual with a correspondingly unique biology, as well as individualized needs, weaknesses, strengths, and life plans. Humanity means attention to, and respect for, this “full human particularity” by those who enter into relations with the individual. *Autonomy*, or self-determination, implies the need and the capacity to deliberate about personal goals, and the liberty to act accordingly. A relationship that fosters autonomy is notable for the absence of fraud, force, and the tendency to use another human being as a disposable resource. Even if a person is fully informed, he or she cannot be coerced or forced into action against his or her will, as this would violate that individual’s right to autonomy. Fried suggests there to be a no more controversial notion than that of liberty. “The intuitive notion is of liberty to dispose of one’s self, that is of one’s person, one’s body, mind and capacities according to a plan and a conception fully chosen for one’s self” (Fried, 1974, p. 102).

6.2 Historical development of autonomy

The etymological derivations of the term “autonomy” is from the Greek *autos* (“self”) and *nomos* (“rule,” governance,” or “law”), combining to refer to the self-rule or self-governance of independent city-states. Within philosophical and political literature, this early conception of the self-governance of city-states has been extended to the modern conception of “autonomy” which has been applied towards individuals, and has been used in various contexts to refer to “self-governance, liberty rights, privacy, individual choice, freedom of the will, causing one’s own behavior, and being one’s own person” (Beauchamp and Childress, 2001, p. 58).

One of the foremost moral philosophers, Immanuel Kant, contended that there are unconditional categorical imperatives of morality, which focus on how we ought to act; he called these imperatives “commands of reason”. He formulated his Categorical Imperative as a formula for universal law. The general conception of his primary Categorical Imperative may be understood to be that individuals (moral agents) ought to act in such a way that they, as rational beings, could will those acts to be universal laws. Kant believed strongly that human beings are moral agents who legislate or will for themselves universal laws. Crucial to his conception of moral agents is that they are rational beings who are capable of, and do, act independently—or autonomously—of their particular desires as sensuous human beings. He understood human dignity to consist largely in autonomy, which he understood as the ability of each person to determine individually his or her personal conception of the good life. Dignity is associated more with the power of a person to consider and adopt his or her own views than it is with any particular conception of the good life. Kant believed that moral agency presumed autonomy of the will. He thought that we ought to attribute some sense of autonomy to the moral agent since moral agents are those possessing the capacities and dispositions to make their own decisions according to categorical imperatives. These moral agents act according to a sense of duty; as rational

beings, they behave in accordance with their actions being a universal law. The moral agent acts morally because he or she understands that it is a duty to act so, that there is a moral obligation to act in such a manner.

While Kant conceived of autonomy as moral autonomy, others have conceived of it rather as personal autonomy. Personal autonomy emphasizes the importance of personal preferences and personal options, and the agent's deliberate and reasoned choice amongst those options. Kant's conception of moral autonomy was duty-based, and oriented towards a moral obligation to act rightly in the universal sense. He saw right action as rational choice in accordance with the precepts of morality. Kant's autonomy is thus the ability to know what morality requires of a moral agent, and it serves to direct the moral agent to act on objective and universal rules of conduct, sanctioned only by reason. Desires are not legislated by reason, and thus the agent who acts upon desires and not on reason is heteronomous.

A society which promotes autonomy in its citizens is considered a liberal society, in that it promotes freedom and self-determination of and for its citizens. A liberal society is one which remains neutral on any particular substantive view about the ends of life or what constitutes the good life (although by promoting autonomy it is judging autonomy to be valuable). This liberal society does not prescribe any particular variety of the good life, other than that the good life is one which is self-determined, but ensures equal respect in that citizens deal fairly with each other and the state deals equally with all. Negative liberty is "the claim that the liberty of a person is strictly a function of the restraints that the agent faces in the carrying out of her decision (however the concept of a restraint is construed)" (Christman, 1991, p. 343). Negative liberals claim that the state ought to protect individual freedom without formulating and prescribing the goals and purposes championed by free people. The person him or herself does not factor into the freedom of that agent: the freedom is a constant. Those espousing positive liberty "insist that the person and her capacity to formulate her desires, values, and goals is a crucial element in the calculation of the freedom of the agent" (Christman, 1992, p. 343).

The autonomy of an individual precedes the autonomy of a group. Group rights have the potential to extinguish the abilities of individuals within those groups to make their own life choices, therefore in such cases the individual must be supported against the group. There are times, however, when group rights may supersede individual rights, as in the case where national security might be compromised by individuals who claim personal rights to privacy might overrule the state's right to protect all citizens. For example, individual identity cards with fingerprints and photo identification may be required to be carried at all times by citizens so as to prevent crimes.

To guard their longevity and future, some groups are authoritarian and prevent others from exercising their autonomy. For example, the Amish have an interest in preventing individuals within the community from leaving, as it may mean ultimately the demise of that community. In order to guard and mould the shape of the children's lives within the community, the Amish do not allow their children to pursue "higher learning"

beyond grade eight, as that learning and knowledge about the world at large could potentially destroy their community. The Amish have a concept of life almost entirely separate from the world and its values.

The Amish believe that compulsory school attendance after grade eight takes away from their community both physically and emotionally during what is considered the formative adolescent stage of development, and indeed, threatens to undermine Amish community and religious practice as they exist in the present. The Supreme Court of the United States ruled that the Amish may withdraw their children from school after the eighth grade, as the compulsory school-attendance law violated the rights of the Amish under the Free Exercise of Religion Clause of the First Amendment (Feinberg, 1980). Amish parents are able to foreclose the futures of their children, contrary to the best interests of their children. These children will not be able to make an informed choice between the Amish way of life, and that of any other way of life in the outside world. This case involves the fundamental interest of parents only, rather than that of the state or of the children themselves, to promote the religious future and education of their children. Rather than preparing a child to move into the adult world with as many open opportunities as possible so as to maximize his or her chances for self-fulfilment, these children enter the adult world with a very narrow scope and ultimately, with no choice in their life plans. Admittedly, education in large, modern high schools may be viewed as a kind of indoctrination into secular values; however, with a broader knowledge of the world at large comes the opportunity to learn about other lifestyles, and the freedom to make informed choices about which life style to pursue. The Amish lifestyle does not invite choice.

The value of autonomy that grounds the ethics of teachers, coaches, and parents should preclude in assisting parents in a project that so dramatically narrows the autonomy of the fledgling adult-to-be. They need to question how experiences might *interfere* with the child's right to an open future, and how any experience might *benefit* the child's future. Parents invest their time, emotion, money, among other things in their children, and in their hopes and dreams for them. Parents whose preferences for their children are so compelling for them to take active steps in controlling their children's lives, are committed to certain specific expectations which may subtly or overtly limit that child's development and coerce them into following their parents' values and dreams, rather than their own.

6.3 Defining autonomy

The term "autonomy" has been used in different fields with different definitions, many of which have been influenced by its philosophical and political use. Gerald Dworkin (1978) wrote a "A person is morally autonomous if and only if his moral principles are his own" (p. 157). He selected six more specific characterizations of what it might mean for moral principles to be one's own:

1. A person is morally autonomous if and only if he is the author of his moral principles, their originator.
2. A person is morally autonomous if and only if he chooses his moral principles.
3. A person is morally autonomous if and only if the ultimate authority or source of his moral principles is his will.
4. A person is morally autonomous if and only if he decides which moral principles to accept as binding upon him.
5. A person is morally autonomous if and only if he bears the responsibility for the moral theory he accepts and the principles he applies.
6. A person is morally autonomous if and only if he refuses to accept others as moral authorities, i.e., he does not accept without independent consideration the judgement of others as to what is morally correct.

(Dworkin, 1978, p. 157)

This variety of different definitions of autonomy shows that one ought not to assume all who use the term do so with exactly the same intentions.

Autonomy is to be distinguished from freedom. A person may be free to do as he or she wishes, but may not be autonomous; for example, a person may be free to act however he or she wishes, but actually does only what he or she is told is free but not autonomous. Likewise, a person may not be free but may act autonomously. For example, someone who is imprisoned may not be free, but if he or she does what he or she wishes to do within the confines of little freedom, then he or she is acting autonomously (Barrow & Milburn, 1990).

6.3.1 Conceptions of personal autonomy

Feinberg (1986) categorizes the application of autonomy towards individuals as being separable into four meanings. First, it may refer to the actual *capacity* to govern oneself, which is a matter of degree; second, it may refer to the *actual condition* of self-government and its associated virtues; third, it may refer to an *ideal of character* stemming from that conception; or fourth, applying autonomy towards individuals may also refer to the *sovereign authority* to govern oneself, the right to self-determination, which is absolute within one's own moral boundaries, territory, realm, sphere, or domain. Thus, Feinberg's autonomy consists of a potential, an actuality, a value, and a norm. Paralleling these meanings of the term "autonomous" is the term "independent" which corresponds to "the capacity to support oneself, direct one's own life, and be finally responsible for one's own decisions; the *de facto condition* of self-sufficiency which consists in the exercise of the appropriate capacities when the circumstances permit; the ideal of self-sufficiency; and the sense, applied mainly to political states, of *de jure sovereignty* and the right of self-determination" (Feinberg, 1986, p. 28).

6.3.2 Autonomy as capacity

Capacity refers to the threshold conception of natural competence outlining the necessary and sufficient conditions for the sovereign right of self-government ascribed to individuals. Capacities of competence vary by individual and by degree; some people are more intelligent, prudent, sagacious, self-reliant, authentic, or possess more integrity than others. Differences in life circumstances and experiences will too determine and influence various competencies.

6.3.3 Autonomy as condition:

This sense of autonomy is outlined as being a condition to which we aspire as an ideal, both in itself and in what it may render—responsibility, self-esteem, and personal dignity. Despite having the capacity for and the right to self-government, a slave would not in possession of the opportunity to exercise his or her rights and capacities. Generally speaking, however, opportunity is available for most people, and it is the autonomous person who capitalizes of opportunity. So understood, autonomy refers to a collection of virtues, all of which come in various degrees from a conception of self-determination. This collection of virtues is linked, sometimes rather tenuously, to the generating idea of self-government. While each of them is also causally and conceptually interconnected, individually they fall short of the composite ideal of autonomy. Feinberg outlines a twelve-part framework of the concept of autonomy, each of which is tied to the central concept but is insufficient in any individual piece:

- a. *Self-possession*: the autonomous person has no keeper, he is “his own man” and “she is her own woman;” there is no sense of property or belonging to any other in this conception.
- b. *Distinct self-identity (individuality)*: the autonomous person is unique; they are no ‘shadow’ of any one else, and have a particular sense of identity. They are not defined in relation to any one else, as they stand alone.
- c. *Authenticity; self-selection*: Again, the autonomous individual is unique and speaks only for him or herself, not as a ‘mouthpiece’ for any other. This person is in control of his or her tastes, opinions, ideals, goals, values, and preferences without undue influence from anyone else. He or she is not manipulated or coerced by others, and does not conform for the sake of conforming. The opposite of an authentic individual would be one who is “other-directed” or an uncritical conformist. The autonomous individual in this case is authentic in every way, including in his or her opinions and values, which are subject to rational scrutiny, and open to change if reason or will dictates such change. “The authentic person will buy his clothes in part to match his

purpose, his physical characteristics, and his functions; he will select his life style to match his temperament, and his political attitudes to fit his ideals and interests. He cannot be loftily indifferent to the reactions of others, but he is willing to be moved by other considerations too" (Feinberg, 1986, p. 33).

- d. *Self-creation (self-determination)*: A person must already be in possession of some kind of character before he or she can change or choose a new character, says Feinberg (1986). This person applies some already accepted principles which adhere to rules of rational procedure to reflect rationally. While a person cannot literally be self-made, an autonomous individual in this sense rationalizes and consciously directs and forms the self, to the extent possible, so it is a self-recreation. Some principles, particularly the commitment to reasonable self-criticism need to be "implanted" in a child if he or she is to have a reasonable opportunity of playing a role in the direction of his or her own growth. Self-creation in the authentic person is a flexible process which rationally accommodates new experiences and old policies; this process of self-revision must have been entrenched at a young age by parents, educators, peers, and strengthened by our own employment of it.
- e. *Self-legislation*: Immanuel Kant understood autonomy in the literal sense, in that our rational will is the legislator of the law to which it is subject. In other words, in accordance with his categorical imperative, Kant believed we are obliged to follow and accept the moral law because we are also the very authors of that law: Our actions ought to be such that our will must be to have those actions accepted as universal law, and as such, the authority of the moral law, the source of its binding obligation, is our own rational will. Feinberg criticises this view of autonomy since it appears to support anarchy ("I make my own laws"), while simultaneously supporting moral rectitude at the expense of genuine independence; he would prefer a conception of autonomy which avoids such extremes.
- f. *Moral authenticity*: this conception of autonomy is a special case of the concept of authenticity. An autonomous person is shaped by moral beliefs which are derived from a committed process of continually reconstructing the value system the individual inherited. The morally authentic person is not conforming mindlessly, or acting blindly obediently, and neither are they being coerced or intimidated; he or she has moral beliefs which are deeply rooted in reason, and will change those views only in response to reasoned argument. Someone who has "shallow" convictions—morally inauthentic—may easily be swayed or convinced by seduction, indoctrination, or suggestion into changing his or her moral beliefs. When confronted by conflicting self-imposed duties, the morally authentic person "must be his own moral court; he must weigh and balance interests, reconcile and distinguish

cases, reason and decide, on his own” (Feinberg, 1986, p. 38). For example, if a person decides to become a vegetarian based on his or her own moral reasons, then he or she assumes a duty whose binding force comes from his or her own making. The morally authentic person does not necessarily “manufacture” or create his or her own moral principles, however this person has principles which are of his or her own choosing.

- g. *Moral independence*: if we think of personal moral autonomy as *de facto* independence simply, then an uncommitted person is an autonomy-hoarder. For example, someone who does not have any children, no pets, lives far from neighbours, is not engaged in any significant relationship such as marriage, refrains from promises to others, and joins no partnerships, may be considered an uncommitted person, maximally independent of the demands of others. It might be difficult to think of such a person as having any of the moral virtues which thrive on involvement, such as compassion, loyalty, cooperativeness, engagement, or trust. In some ways, we inherit some commitments, such as the commitment to care for our parents; we had no choice or control over being born, but have the moral responsibility associated with looking after those who did the same for us when we were young and in need of care ourselves. We ought to conceive of *de facto* independence in a way that would not diminish it by the existence of voluntary commitments, although such commitments ought to be at least below a reasonable threshold. In a large scale example, the United States has undertaken certain obligations by being part of the North Atlantic Treaty Organization (N.A.T.O.). Part of that agreement is the acceptance of an obligation to consider an attack on any of the N.A.T.O. group as being an attack on any of the involved countries, and therefore an agreement to aid any and all those involved in the alliance. This obligation and commitment to others ought not to be considered a diminishment of its degree of independent self-government.
- h. *Integrity (self-fidelity)*: someone of integrity is a person committed and dedicated to his or her own principles. Integrity thus presupposes moral authenticity. While integrity is a virtue linked closely to our conception of autonomy, autonomy is not the whole virtue, and therefore there may be yet be negative aspects of autonomy. A person may have strong, authentic moral principles, but might betray those principles by an overriding motivation, such as passionate pleasure (as in seduction), or self-gain (as in bribery). Moral weakness, then, is a failure of acting according to one’s authentic principles. Criticism directed to one who betrays his or her moral principles is harsh when the moral failure is related to passionate pleasure or self-gain; however, when an individual compromises his or her moral principles for neither self-regarding or malevolent motives, but rather “when pity,

mercy, sympathy, benevolence, or compassion erodes one's resolution, judgment is not as harsh" (Feinberg, 1986, p. 40).

- i. *Self-control (self-discipline)*: a person who governs him or herself from within, is in control, or self-governed. When, however, a person is neither governed from outside, nor in control him or herself internally, then no one is in control. This situation may be linked to the analogy of a political state of anarchy: "a condition which is neither heteronomy (government by another), nor autonomy (government by self), but no government at all" (Feinberg, 1986, p. 41). If an individual is not in reasoned control of his or her own person, then his or her principles, ideals, goals, and values, are meaningless and unconnected to the "real" or "true" self. The reasoning inner core directs and regulates a person, and without this, the individual would fail to be in control of him or herself, thus failing self-governance, and lacking in self-control and self-discipline.
- j. *Self-reliance*: where possible, the morally independent person avoids unnecessary ties with others, as one who is self-reliant does not rely on others' commitments. While in some respects self-reliance to be considered a traditional virtue, there are ways in which it is not so much a virtue—such as where a person deliberately avoids reciprocal commitments. Self-reliance is more admirable when being conceived of as a trait which enables an individual to rely upon him or herself when others fail. Having inner resources such as strength, courage, ingenuity, toughness, and resilience ought to be regarded as a virtue. Ultimately, a person has to rely on him or herself, and the knowledge that one can rely upon oneself ought to be reassuring and self-affirming. "A person's highest good in life is self-fulfillment, and by its very nature, fulfillment is not something that can be achieved for the self by someone else. Others can help and provide necessary means, but no one can simply make a gift to a person of his self-fulfillment" (Feinberg, 1986, p. 42).
- k. *Initiative (self-generation)*: an autonomous person in possession of personal tastes, opinions, and authentic principles creates his or her own ideas, projects, enterprises, and strategies. The autonomous individual initiates activity and does not rely upon others to generate proposals or direction for his or her own life. If a person rarely takes personal initiative to formulate endeavours of his or her own, then he or she could be considered deficient in autonomy.
- l. *Responsibility for self*: when an individual acts autonomously, responsibility for his or her actions and resulting states of affairs may be ascribed to that moral agent. If the person's actions were not autonomous, or the person was not an autonomous "actor" then retrospective responsibility judgments are revised or withdrawn. For

example, if the person was under the influence of alcohol or drugs, or otherwise not in “control” of his or her actions, then that person would not necessarily be held “responsible” for him or herself. If he or she was governed by another (as in the situation where he or she was acting only as an agent of another, a servant, or pawn) then also, the consequences may not be attributed to that agent. Also, if the person’s opinions and tastes are inauthentic, representing instead those of his or her manipulators or peer group, then again, he or she “is not even subject, without severe qualification, to the judgment that they truly represent or belong to him” (Feinberg, 1986, p. 43). *De facto* autonomy thus seems to be a presupposed condition of judgments of responsibility.

Responsibility itself contains a specific set of virtues; it involves people being responsible for actions and consequences, being responsible to others, and of being responsible in its broadest sense. Someone who is responsible is a capable subject of assignments of responsibility, and is also a qualified subject of retrospective ascriptions of responsibility, by virtue of possessing the appropriate traits for exercising responsibility. They are steady, trustworthy, and reliable, and have the virtues of good judgment, initiative, and self-reliance which include the ability to use discretion in problem-solving: altogether, this person can do things on his or her own. A responsible person is juxtaposed with the irresponsible person, and the nonresponsible—or incompetent—person. While this list of virtues may overlap that list of autonomy-defining virtues, the list only overlaps but does not coincide:

Independent judgment, self-reliance, and initiative are on both lists, but trustworthiness, dependability, steadiness (as opposed to recklessness) and especially the willingness to take on new commitments are more firmly on the responsibility list than they are on the autonomy list, just as moral independence and self-legislation, sometimes assigned to the autonomy list, have no necessary place in the account of responsibility.

(Feinberg, 1986, p. 44)

Assigning tasks of responsibility which require initiative, judgment, and perseverance to a child. Thus, autonomy contributes to responsibility, and responsibility contributes to autonomy. promotes the development of self-possession, distinct identity, authenticity, self-discipline, self-reliance, and the other components of the autonomous idea.

These twelve components of the conception of autonomy as “condition” are each insufficient to be more than simply a ‘piece’ of the broader understanding of autonomy. Some of these elements are vague, raising doubt as to whether all of them are in fact virtues to begin with.

6.3.4 Autonomy as ideal

In order for the conception of autonomy outlined above to be heralded as an ideal, this conception requires clarification and focus. Even a refined conception of autonomy will

remain only a narrow ideal, since autonomy itself is insufficient for complete moral excellence. Further analysis may not dismiss “a selfish but autonomous person, a cold, mean, unloving but autonomous person, or a ruthless, or cruel autonomous person”, because, “after all, a self-governing person is no less self-governed if he governs himself badly, no less authentic for having evil principles, no less autonomous if he uses his autonomy to commit aggression against another autonomous person” (Feinberg, 1986, p. 45). The aggressor might be morally deficient, but that deficiency is not in autonomy; an individual might well be rich in autonomy. Thus, refining a conception of ideal autonomy is hopefully of the view that it is better to be autonomous than not to be so.

One ought to question the validity of some of the aforementioned components of autonomy, earlier called virtues, and wonder if they truly are virtues at all. Others are virtues only within a narrow scope of limitations, and yet others seem to be confused in their very conception. For example, the Kantian notion of self-legislation which has long been affiliated with the concept of autonomy, proffers two conflicting views: on the one hand there is the “picture of a proud anarchist who accepts no commitments he has not himself made, who can commit or uncommit himself at will to anyone or anything, and is in principle capable of “inventing” his own moral principles” (Feinberg, 1986, p. 45); on the other hand is what Rawls also saw as Kant’s rationalistic and objectivist orientation, “a concept of a person who can act autonomously even when he acts against his will, if his compelled behavior would have been chosen by some hypothetical persons more “rational” than he” (Feinberg, 1986, p. 45). Less confusing a concept is moral independence, however, it may not be any more attractive an ideal, for it is one thing to avoid the state of moral overcommitment, but quite another to calculatingly arrange one’s life to minimize involvement with others—and thus commitment to others—on the grounds that commitment *per se* would diminish autonomy.

Integrity might also be overrated as a virtue, particularly when we begin to find it objectionable. When an autonomous person is self-governed by what may be called narrow or cruel principles, it is a “virtue” that makes that person as rigid and repellant. When self-reliance is taken to an extreme, it becomes an anti-social virtue and may even inhibit cooperation in group endeavours. Self-reliance may become tinged with pride or self-righteousness. Self-control requires subtle but complex management among diverse elements within the self so as to be rational and worthy. Some of the virtues of autonomy, such as self-reliance, independence, and self-control, can certainly be true virtues, but Feinberg cautions that they may not be good in great quantities: “they are virtues only when their elements exist in just the right degree, neither too little nor too much” (p. 46).

Human beings tend to thrive as social beings: as constituents of ongoing communities, which are defined by reciprocal bonds of obligation, common traditions, and institutions. These relationships between individuals affect our thinking about personal autonomy. Each individual comes into the world with links to other people, and those relationships expand as that individual makes and breaks social connections in every sphere: family, career, and social environments. The human world does not and can not be

comprised of over a billion separate sovereign individuals, with each individual exercising his or her own individual autonomy about where, what, how, and when he or she shall be, and each individual capable of surviving and even flourishing in complete independence of all other humans. Our notions of the ideal human virtue has to be consistent with the view of people being part of ongoing communities with various relationships rather than isolated, wholly independent individuals. The concept of autonomy ought to be some kind of equilibrium between totalitarian collectivism and atomic individualism. The ideal, then, of the autonomous person is authentic individual whose self-determination is as complete as is consistent with the requirement that that individual is part of a community.

6.3.5 Autonomy as right

This final sense of moral autonomy is described as a sense of sovereignty. The analogy is drawn from sovereign nations to sovereign persons, in that both senses possess an ultimate authority and/or power: the “uncommanded commander” (Feinberg, 1986). This analogy is explained through examining the difference between local autonomy and full sovereignty. Consider, for example, the nation of Great Britain (officially entitled the United Kingdom of Great Britain and Northern Ireland), with constituent parts of Scotland, Northern Ireland, and Wales. Great Britain, the sovereign nation, has granted local autonomy to each of these (each of which has been granted power in varying forms), however it has not granted full sovereignty (the right of self-determination) to any constituency. The term “devolution” is sometimes used to explain granting of limited “autonomy”, in that only some areas of responsibility are delegated to subordinate officers or committees (Feinberg, 1986). Thus, none of Wales, Northern Ireland, or Scotland are full sovereign nations, separate and independent from all other nations, with full rights of self-determination; however, they have been granted local autonomy, or devolution, in various forms to oversee various aspects of local administration.

Sovereignty and political autonomy are different in at least two respects: autonomy is partial and limited, and sovereignty is whole and undivided. As in the above example, the autonomous region governs certain limited parts, while the sovereign state is entirely governed by itself, even when it delegates autonomy. The other main difference here is that the authority of the sovereign state is a right, whereas the authority of the autonomous region is a revocable privilege. While the sovereign grants autonomy freely at his or her pleasure and withdraws it at will, local autonomy is delegated. Sovereignty is basic and foundational; it may be considered an ultimate source of authority.

Personal sovereignty—if, as Feinberg queries—there is indeed such an entity, belongs to all competent adults. It is not held by any newborn infants, but may be held ultimately by children, although before the point of qualification, those children may be understood to have various degrees of “local autonomy” (Feinberg, 1986, p. 48). The analogy is weakest in linking devolution and the granting of local autonomy to adolescents.

Parental delegation of local autonomy to older children may be more difficult to accept, as “a certain minimum, at least, he has by natural right, even if his privileges to use the family car, to stay out past midnight, and the like, are delegated and revocable” (Feinberg, 1986, p. 48). Individual competencies will vary, as will parental delegation of rudimentary autonomy, which challenge Feinberg’s analogy. He prefers the term “sovereignty” for the fourth sense of moral autonomy, and uses the term “personal sovereignty”.

In most states, there is an ultimate authority and/or power, which may be a monarch, council, legislature, or electorate. This “uncommanded commander” of society is this sovereign person, or body of persons. The constitutional checks and balances, universal electorates, and counterpoised social classes make this a more unusual state of affairs—to have this “uncommanded commander” of society. Sovereignty, more than representing a determinate internal sovereign, really represents the recognized national sovereignty *vis a vis* that authority recognized by external powers. It would be what one nation “recognizes” in another when it is acknowledging the independent national status of the other, and the “jurisdiction” that nation has, which is unconditional and absolute over its sovereignty.

Feinberg defines a nation as being a group of individuals possessing a high degree of unity by common cultural elements, who occupy a territory over which they have established a system of law or authority. The sovereign right of political independence seems to be accepted by others in that any particular country is a sovereign nation with the exclusive prerogative of governing its own territory. Fragmented states which have local provinces claiming independence from the sovereign state may face civil war, or ongoing internal conflict. For example, the Canadian province of Quebec has a small political faction which has been demanding independence from the rest of Canada; however, in a number of referenda, the majority of the province have repeatedly claimed to want to remain with Canada. There have been other cases where the international community becomes fragmented over particular cases of sovereignty and independence, such as with China and Taiwan.

The word “person” and the word “nation” are both somewhat ambiguous. A nation may refer to a juridical entity, the state, or to a collection of united individuals, or the word “person” may refer “to the entity that is a proper subject of such moral predicates as “right” and “duty”. Another sense of person is essentially juridical: a person as an appropriate locus of rights and duties. In this sense, a person is a moral agent and possessor of rights. A person is “naturally sovereign” over him or herself, in much the same way a state is sovereign over its territory. The analogy between the sovereignty of a state and personal sovereignty diverges in that parts of a sovereign state consist of persons with their own sovereign rights, whereas the parts of a person, e.g. desires, values, purposes, organs, limbs, etc. are themselves “nonpersons”. A state may choose to exterminate parts of itself, i.e. kill off people in parts of its sovereign state (e.g. Nazi Germany, the former Yugoslavia), in much the same way as a person may decide to cut off parts of limbs or exterminate certain desires; the difference between the two, however, lies in that the “nonperson” parts

of a person do not have any rights themselves, while the persons within all parts of a nation do have their own sovereign rights. Others ought not to interfere with a sovereign person's "internal affairs" wherein they might be harming their constituent parts, e.g. smoking, whereas others might justifiably interfere with a nation who is harming its own citizens, who are persons with individual sovereign rights. The point of Feinberg's linkage between the sovereignty of a nation and individual personal sovereignty is to propose that the individual ought to be thought of as a sovereign nation, with all the accompanying rights to self-governance and decision-making.

6.4 The capacity for autonomy (Competence)

Competence, in its simplest form, may be understood to mean "capable" (Gaylin, 1980). Within this context, however, competence shall be understood to mean the acknowledgement (legal or moral) of one's capability. Competence to make decisions is linked closely to autonomous decision-making: autonomy may be understood as the capacity to exercise choice. An individual is "autonomous in this sense to the extent that impediments to the meaningful opportunity to exercise his freedom of choice are removed" (Husak, 1980, p. 35). Adults, or those above the age of majority, are considered competent give valid consent; however, some adults in particular temporary or permanent states of mental incapacity, such as those suffering from conditions such as clinical depression or Senile Dementia may be considered incompetent in this regard. All children, for the most part, are considered incompetent in this regard. Moral obligations to vulnerable populations preclude the exploitation of those who are incompetent to consent for themselves. Children and others who are not competent to consent for themselves remain unique individuals who command all the respect, justice and inclusiveness that are accorded to competent individuals.

Children are a unique group within the designated "incompetent" group. While human beings are born wholly dependent upon others for their very survival, they gradually become more competent as they develop into adults, adulthood being the "completion" of childhood. Clearly, infants are not born autonomous, and as children grow and develop, their competence increases and they develop their autonomy progressively. Gaylin (1982) refers to the competence of children as "variable competence". Autonomy is also not developed simultaneously in all areas; a child may be knowledgeable and experienced enough to make certain decisions in a competent fashion, such as what they wish to wear, or which music they wish to hear, and whether they would prefer peas or carrots for lunch, and so on. While they may remain incompetent to make significant decisions regarding their future until later years, children may decide quite competently what they wish to do that afternoon, or that weekend.

In certain environments, the presumption of the child's incapacity has weakened as adults have come to recognize that chronological age is not necessarily an accurate

indicator of mental capacity, or competence (Schultz, 1993). Children are becoming increasingly involved in decision-making related to health care. Pediatricians are becoming more aware of the need to assess and enhance the decisional capacities of their young patients, and to progressively involve children in the decision-making process as they mature. The requisite abilities for decision-making by adults in the health care environment are the same for children: comprehension of the information, consideration and reasoning regarding that information, and freely choosing among the options. Many children are competent to at least participate in the decision-making process, and adolescents may possess most, if not all, of the capacity to give truly informed consent regarding their health care. Most children attain this level of reasoning around 12- to 13-years of age, and evidence suggests that by the age of 14-years, many children have reached the stage of cognitive development associated with the psychological elements of rational consent (Schultz, 1993). Thus, competence and by extension, autonomy, is learned progressively, and ought to be respected and encouraged as an ongoing process.

6.5 The value of autonomy

Autonomy is valued highly in our society. It is an ideal that has long been endorsed as being of great value to individuals and to society, and is propounded by western liberal democratic societies as being central among social traditions. The acceptance of autonomy is rooted in prior acceptance of modern social democratic traditions. Moral traditions such as deontological theories propound moral autonomy as emphasizing the dignity and inviolability of the person, the value of whom “is their ability to follow laws that are self-imposed, formulated by exercises of their capacity to deliberate and reason” (Husak, 1980, p. 28). Autonomy is held as a necessary and desirable feature of a “good” society, and similarly of a “good” person. The concept is held to high ideals, and much is expected of it.

It is used sometimes as an equivalent of liberty...sometimes as equivalent to self-rule or sovereignty, sometimes identical with the freedom of the will. It is equated with dignity, integrity, individuality, independence, responsibility and self knowledge. It is identified with qualities of self-assertion, with critical reflection, with freedom from obligation, with absence of external causation, with knowledge of one's own interests....It relates to actions, to beliefs, to reasons for action, to rules, to the will of other persons, to thoughts and to principles. About the only features held constant from one author to another are that autonomy is a feature of persons and that it is a desirable quality to have.

(Dworkin, 1988, p. 6)

Critics of autonomy have charged that it focuses too narrowly on the individual as independent and controlled by their reason, and ignores the complexity of life with emotions, community, reciprocity, and the development of personhood as an ongoing, longitudinal process (Sherwin, 1992). Oppressive socialization and oppressive social relationships can harm autonomy. This view is founded on the conviction that individuals are “socially embedded” persons, with identities that are formed and shaped within intricate and

multifaceted social relationships. Oppression in any form can impair autonomy by thwarting the development of the capacities and competencies essential for autonomy, and also by limiting the available choices for individual decision-making (Beauchamp and Childress, 2001).

Dependent relationships may predispose individuals involved in those relationships to power imbalances. For example, a teacher is the authority in his or her relationship with a student, who is in a dependent position in relation to the teacher; a physician is the authority in relation to the patient, who may be in the dependent role, and; a child is dependent on his or her parents, who hold an authoritative role in his or her life.

No theory of autonomy is reasonable or acceptable if it presents an ideal beyond the reach of individuals. "Even autonomous persons with self-governing capacities sometimes fail to govern themselves in particular choices because of temporary constraints caused by illness or depression, or because of ignorance, coercion, or other conditions that restrict their options" (Beauchamp and Childress, 2001, p. 58). We may qualify as autonomous agents, have the competence to be self-directed and so on, but fail to act autonomously. For example, we could agree to something without having prepared appropriately, even though the information we needed was available to us. Likewise, individuals who may not necessarily 'qualify' as being wholly autonomous may be able to make certain autonomous decisions in certain contexts. For example, while a child may not be able to make life-style choices regarding their careers at a young age, they may be able to choose their own clothing and leisure activities. Therefore rather than creating an ideal of autonomy, we ought to focus instead on creating a respect for autonomy in the larger sense.

The value of liberty may be overstated. While liberty is indeed valued and precious, it is by no means the only thing of value. One could, for example, be content and happy in the absence of freedom. Likewise, we could also be politically free but at the same time be alienated and discontented. This shows that regardless of the nature of their relationship, freedom and contentment remain distinct from one another and are not reducible one to the other. Liberty is one among a variety of important values, and while it is vitally important it is not in itself sufficient. Sometimes it conflicts with other values, and in certain circumstances, it may not be worth its price in relation to other values (Feinberg and Gross, 1977).

6.6 Deprivations of autonomy

Concern for and promotion of moral autonomy often leads to a general objection to paternalism. Libertarians such as John Locke and John Stuart Mill contended that individuals ought not to have their liberty constrained. In his classic defence of individual liberty and freedom of expression in *On Liberty*, Mill argued that the only reason for which the freedom of individuals may be interfered is that of harm to others.

Respect for the agent's autonomy is the limiting factor in justifying interferences for a person's own good, that is, paternalistic interference. Paternalism is justified by Mill if the

paternalist has superior knowledge. For example, if one knows that another is about to unwittingly step onto a faulty bridge, one is justified in interfering with that person's autonomy, thereby preventing harm to the individual. If, however, the person knows full well that the bridge is faulty—and fully understands the possible consequences of his or her actions—and still persisted in attempting to cross, then paternalism would not be justified.

Moral autonomy has been explained as consisting of several different senses (Husak, 1980): autonomy as the capacity to exercise choice, autonomy as the capacity to choose, and autonomy as conformity to moral law. The first of these senses is the meaningful opportunity of the agent to exercise his or her capacity to choose: an individual is autonomous to the extent that there are no impediments to the meaningful opportunity to exercise his or her freedom. These deprivations of autonomy may be physical, as in the most straightforward example of a physical restraint, as in confinement in a straightjacket. However, as Husak (1980) points out, most paternalistic interferences do not involve violations of this sense of autonomy. More often, they involve interference with one's freedom.

In his landmark article, "Paternalism," Gerald Dworkin (1983) attempts to separate justified from unjustified cases of paternalistic interference. Even though he tried to use the notion of autonomy to create limits to the range of permissible paternalism, he recognized that a kind of "freedom-maximizing paternalism" cannot be criticized on the basis of a concern for autonomy. For example, those who argue against the enforcement of legal sanctions imposed on those who do not wear helmets while riding motorcycles, or who do not wear seat belts while driving motor vehicles cannot do so on the grounds of autonomy. It seems quite clear that such legal enforcement actually maximizes the individual's freedom in that if they do become seriously injured due to not wearing a helmet or a seat belt, they would have less meaningful opportunities to exercise their capacities to make choices (Husak, 1980). In agreement with this line of thinking was J. S. Mill's concern that individuals ought not to be allowed to be free to give up their freedom, that is, enter into an agreement of slavery.

The second of Husak's (1980) senses of autonomy is autonomy as the capacity to choose. Here paternalistic interferences may be seen to be coercive, even though an individual is not deprived of his or her autonomy. For example, if a robber (the coercer) proffers the ultimatum, "your money or your life," it may seem as though the individual is being given a choice; however, the circumstances militate for a certain course of action, that is, to give up the money in exchange for one's life and therefore the victim is not really treated autonomously as there is really only one course of action. Another strategy to establish the incompatibility of paternalism with this sense of autonomy is the sense that one who is "paternalised" is not allowed to choose – his or her choice is made for him or her, and thus the individual is treated as though he or she actually lacked the capacity to choose. Husak's conclusion on this strategy is that paternalistic interferences, qua

paternalism, are objectionable. He expresses his doubt that this demonstration of the incompatibility of autonomy and paternalism will have much appeal.

The third sense of moral autonomy is that someone is not necessarily autonomous simply because they possess either the capacity to choose or the ability to meaningfully exercise this capacity. In this sense, a person acts autonomously “when his behaviour conforms to moral constraints that are objective though they are products of his own reason or will” (Husak, 1980, p. 38). In other words, the moral agent acts autonomously when he or she conforms to moral law that he or she has examined and judged acceptable, based on his or her skills of reason, rationality, as well as experience, intelligence, and maturity.

Not all individuals are autonomous agents, and some individuals may be gradually developing their autonomy, as in the case of children. Some situations of paternalistic interference with the freedom of children are justified. Children are a special population within human beings. Their cognitive and emotional capacities are in a process of ongoing development during childhood, and as such, they may be lacking in either of those areas, preventing them from making fully rational decisions. Dworkin (1983) notes that it is an empirical question to exactly what extent children have a sufficient conception of their own present interests, and whether they may be able to gauge their future interests. He gives the example of the difficulty many children experience in deferring gratification for considerable periods of time. Thus, given the deficiencies of reason and other cognitive and emotional abilities of children, as well as the risks and dangers that may befall children, parental duties of paternalism exist. In order to actually preserve, rather than diminish, the autonomy of a child, paternalistic intervention may be necessary, or even demanded as a duty. For example, a parent who limits a toddler’s freedom along a busy street would be considered negligent if he or she did not restrain the child’s erratic wandering. The parent must at times also overrule a child’s demands for inappropriate food. A child might wish to eat sweets for three meals a day, day after day; however, that diet, if continued for a sustained period, would have serious consequences for the child’s development. Again, the parent is justified in deliberately intervening with the child’s freedom at that time for that child’s own good and to preserve their future autonomy. Parental interference for the child’s own good is justified on the basis that it is necessary to protect the child’s future autonomy:

There is, however, an important limitation on the exercise of such parental power that is provided by the notion of children eventually coming to see the correctness of the parent’s interventions. Parental paternalism may be thought of as a wager by the parent on children’s subsequent recognition of the wisdom of the restrictions. There is an emphasis on what could be called future-oriented consent—on what children will come to welcome, rather than on what they do welcome.

(Dworkin, 1983, p. 28)

Despite one’s concern over similar behaviour in a competent adult, such paternalistic interference would not be justified.

There are also some instances of paternalism which are justified for wholly autonomous agents, because of the assumption that a competent adult would have

consented to such interference: “the moral autonomy of agents is not violated so long as they consent to a given interference with their freedom” (Husak, 1980, p. 30). For example, a contractual agreement between two consenting parties involves some kind of loss of freedom. Those involved in the contract are obligated by the terms of the agreement, “which means that certain legal options once available to the parties are lost as a result of their contractual commitment” (Husak, 1980, p. 30). This loss of freedom is justified as long as genuine consent is involved, and therefore the moral autonomy of the agent is not forfeited.

As in all cases of paternalism, there must be a strong burden of proof placed on the paternalist to justify his or her interference. In those cases involving paternalistic legislation, the authorities must “demonstrate the exact nature of the harmful effects (or beneficial consequences) to be avoided (or achieved) and the probability of their occurrence” (Dworkin, 1983, p. 33), such as, for example, the “principle of least restrictive alternative” which holds “if there is an alternative way of accomplishing the desired end without restricting liberty, even though it may involve great expense, inconvenience, etc., the society must adopt it” (Dworkin, 1983, p. 34). Thus, Dworkin supports liberty in the strongest sense.

6.7 Children and autonomy

To respect the autonomy of a moral agent is to acknowledge that person’s rights to self-determination, decision-making, and the freedom to act according to their personal values and beliefs. Beauchamp and Childress (2001) believe that such respect goes further than simple acknowledgement; “such respect involves respectful *action*, not merely a respectful *attitude*” p. 63). They feel that such respect must also involve obligations to develop and promote others’ capacities for autonomous choice, not simply non-interference in their affairs. Respect for autonomy thus involves deliberate enabling towards autonomy, while disrespect for autonomy includes attitudes and actions that ignore, insult, or demean others’ rights of autonomy.

The notion of respect for personal autonomy may be understood as non-interference: this can be criticized in that non-interference actually fails to respect children’s autonomy because it does not take account the nature of childhood, which begins as an infant who is entirely dependent on the parent or guardian, to the later stages of childhood and adolescence where an individual may be quite competent in many, but not necessarily in all, areas of ones’ life. Sometimes a parent must necessarily override a child’s preferences, since real respect for the autonomy of children requires parents actively attempting to neutralize the obstacles that could interfere with a child’s choices (e.g. immaturity, incompetence, lack of experience, naiveté), helping them to become self-directed and becoming autonomous agents.

Children fall into the category of those considered being incapable of self-determination. Children are particularly vulnerable to adult coercion and therefore have particular claims on our protection. They are considered to be incompetent, and as such, are “treated in the name of their own best interests, and in spite of their avowed wishes and

preferences” (Fried, 1974, p. 23). The courts have determined that persons in the categories of children, the insane, and other incompetents, are unable to make rational decisions regarding their welfare, and thus this group is not considered autonomous, or self-determining. As they are unable to give informed consent, parents or guardians are entrusted to make decisions on their behalf, and may override the expressed wishes of the child, as long as they are acting in the best interests of those deemed incompetent. These decisions made by parents or guardians on behalf of children may be called proxy consent (Dworkin, 1982). Others have differentiated between proxy decision-making as that made for someone who has made their wishes known before they became incompetent ; substitute decision-making for someone who did not make their wishes known before becoming incompetent (Buchanan and Brock, 1989); and decisions made based on an assessment of the person’s best interests, also known as the best-interests standard (Kopelman, 1997).

Parents have an interest in pursuing their conceptions of the good as much as anyone else does; this interest extends to the liberty that parents have in raising their children in accordance with their own personal desires and wishes (Daniels, 1996, p. 223). One of the difficulties with the parents’ liberty in imposing their desires on their children is, as Daniels (1996) points out, that there are clear sacrifices involved in this: many children will only be able to exercise their own autonomy over their own life plans with considerable cost. Therein lies the difficulty: balancing the parents’ right to autonomy in pursuing their life plans and freedom from the intrusion of others in their childrearing practices, and the child’s right to freedom of abuse and denial of fundamental opportunities.

The notion of future-oriented consent justifies certain paternalistic interferences with the freedom of children. Dworkin describes the exercise of parental authority in this manner as being a “wager” as the parent cannot know for certain which limitations of their autonomy the child will appreciate at an older age. However, it could be argued that there are some paternalistic interventions which do not necessarily require this subsequent consent. For example, Husak (1980) gives the example of parents insisting that their child brush his teeth every night before bed. This results in some nights of tantrums when the child resists doing so, but the parents insist. This case of paternalism does not require future-oriented consent as this requirement on the part of the parents could be considered a straightforward parental duty. A similar example would be the parental duty to ensure the health of his or her child, carried out by enrolling the child in a sporting pursuit. Childhood obesity levels are at an all-time high, attributed to a combination of poor food choices and a lack of physical activity (Ebbeling, et al., 2002). While the child may resent having to engage in physical activity, the parent could justify that paternalism on the basic parental duty to protect and promote the child’s health. The child’s autonomy may be respected in that the parent offers choices of sports—soccer or swimming—or activities where there is physical activity such as dance. Husak (1980) provides a modification of Dworkin’s criteria, the literal interpretation of which is that parental paternalism is justified only if the child actually subsequently consents to the

interference. Husak offers instead “what justifies an instance of parental paternalism is that it is *reasonable to believe* that the child will consent to the interference” (p. 34). Thus the paternalistic interference of insisting the child brush his teeth is justified, on the grounds that it would be reasonable to believe that the child will one day consent to that interference.

Issues surrounding raising a child “are simultaneously of the greatest magnitude and of the greatest intimacy” (Davis, 1997, p. 9). Parents have to bring to bear their own values on these issues—they indeed have the right to do so—but in the end they must also do so because they, and their children, must live with the consequences of such issues and the questions and challenges they raise

The reluctance to define, and generally, the very silence of the law on many areas of individual choice reflects the value our society places on pluralism. Nowhere is the need for freedom to pursue divergent conceptions of the good more deeply felt than in decisions surrounding individual life styles, and also those concerning children and how they are to be raised. We must preserve choice, and safeguard the choices that are made, but somehow within this valuation of individual freedom, we have to consider how to safeguard the lives and futures of children who may be at risk from the very people who ought to be looking after them and their best interests. It is a moral obligation of parents to promote and respect their child’s autonomous choices, and a professional obligation of teachers, coaches, and others involved in relationships with children, to respect the child’s autonomy. The child’s capacity for autonomy must be respected, but a cautionary note must be tagged onto the elevation of respect for autonomy above all other values, and that is the moral claims of the “future” child must not be overlooked.

From the time of infancy, when wholly dependent upon others—adults—for their very survival, to later years during childhood when they are less dependent but not entirely independent, children remain under the power or authority of adults for many things, including education, which will help them exercise their autonomy in their future freedom. During this time, their freedom of action is controlled by paternalistic intervention. This paternalism is justified on the basis of protection of the child’s present and future interests, of which autonomy is one such “good”. Their lack of adequate reasoning skills and unsettled preferences may result in present harm and a curtailment of their futures, and therefore justifies paternalistic intervention for their safety and security.

6.8 Conclusion

Autonomy is the capacity for an individual to exercise choice about his or her life. An individual is autonomous to the extent that he or she is able to be self-determining in making meaningful decisions about that which concerns him or herself. Paternalism is one kind of interference of autonomy, seen primarily in relationships between adults and children, and most particularly between parents and children. This chapter has outlined various conceptions of autonomy, which contributes to illuminating issues of autonomy in relation to children. As discussed earlier in Chapter Four, children are viewed as non-

autonomous beings, but who ought to be treated with autonomy-respectful paternalism so that their future right to autonomy is both nurtured but also safeguarded until they reach the threshold of adulthood. We turn now to consider theories of rights, which will then lead into the determination of children's rights, particularly their right to an open future.

7.0 Chapter Seven: Rights

7.1 Introduction

The concept of rights, known variously as privileges, claims, liberties, or even interests, has become one of paramount importance in our society. Rights-talk has served as an international language and standard regarding the way people are and ought to be treated. Proclamations such as the American Declaration of Independence (1776), the French Declaration of the Rights of Man and Citizen (1789), the American Bill of Rights (1791), the European Convention on Human Rights (1953), the United Nations Universal Declaration of Human Rights (1948), the Canadian Charter of Rights and Freedoms (1982), and both the United Nations Declaration of the Rights of the Child (1959) and the Convention on the Rights of the Child (1989), substantiate the importance placed on rights, particularly in the political and legal realms. These charters emerged historically from the conception of universal law and natural rights, which were put forth originally to check the sovereign power of government over its citizens. These political documents and discussions of rights were based on foundational rights, but led to the development of more specific rights, as outlined in the UN Declarations, for example. The rights asserted by these documents claim respect and status for human beings, and provide vital protections of life, liberty, expression, and property.

Rights can cover a broad range of matters, including beliefs, actions, relationships, property, or the safety and integrity of oneself. Rights may apply in both moral and legal contexts. Rights may be considered alone, or from the standpoint of an entire system of rights and duties; some rights are thought to 'trump' others; some rights may involve directing others to act, or even to refrain from acting. The notion of rights pervade many spheres of our lives: we hear of the right to freedom of speech, freedom of religion, the right to benefit from the products of one's own labours, the right to privacy, the right to education, the right to own property, the right not to be harmed, and even the right to life. We hear also of the rights of women, children, and parents, as well as other disparate groups having special rights, such as patients, and athletes. Rights may be upheld or accorded, denied, or violated by other individuals, groups, or the state. Legal rights, unlike moral rights, are endowed with legal protection against another person or institution deliberately withholding assistance or remuneration in regard to a specific action or certain state of affairs. That human beings have rights which are natural, non-renounceable or inalienable, and indefeasible has served as the catalyst for philosophers and legal authorities to consider the legitimacy of such ideas and their relationship to jurisprudence and moral theory.

The question of a definition of rights, or what 'having a right' means is far more complex than one would first imagine, and thus the conception of having a 'right' and performing a 'right action' must be differentiated. This distinction may be understood by the following: having a right has nothing to do with the morality of the act. For example, a woman may have a 'right' to have an abortion, but having that right does not affirm that she

is necessarily 'acting rightly', and the only thing having that right says about morality is that others have an obligation not to interfere with her right. Right action falls within the realm of ethics, one of the main branches of philosophy dealing with how human beings should act. Principles of right action form a type of moral code or natural law by which human beings accept in order to live with one another. Moral philosophers began asking questions about the nature and source of rights which stemmed from social and political philosophy, and developed theories of rightness and obligation. These theories included ethical egoism, utilitarianism, Kant's Categorical Imperative, and the Social Contract theory. Through the pursuit of right action, concepts of obligation, duty, and rightness developed.

Analyses and discussions of rights have been based traditionally in philosophy and the law. After observing that laws varied from place to place, ancient Greek philosophers realized the potential for human laws to be unjust (Almond, 1993). However, other domains such as political science and social theory have also included discussions on rights. Modern discussions of rights have focused in two main areas (Waldron, 1984): first, philosophers and jurists have become more interested in the precision of their use of the concept of a right. They have pursued the relationships between rights and duties and obligations in an attempt to clarify meanings. Secondly, there have been concerns with relativists, and issues of moral truth and objectivity. For example, Waldron asks, given the wide variety of cultural practices, including those which we would consider as oppressive and even inhumane, how can human rights be granted, expected, or accepted as valid for all people in all times and places.

This discussion will focus primarily on a philosophical approach, and will present a survey of rights theory within philosophical literature; however, since the disciplines are intertwined, a full consideration of rights cannot ignore the other areas of law and politics. Definitional issues of rights, liberties, claims, duties, and obligations will be discussed, as will be the question of whether rights have linking duties. The kinds of rights we have, and their value or function will be examined. Rights can be differentiated into several areas, including natural rights, moral rights, and legal rights. Rights dichotomies such as absolute/*prima facie* rights, choice/welfare rights, negative/positive rights, and liberty/claim rights will be discussed. Theories of correlativity also couple rights with duties, and shall be covered. We shall begin with a consideration of rights in general.

7.2 The nature of rights

Rights are powerful assertions of claims or interests that demand respect and status. They serve to protect individuals and their interests. A right is a justified claim or entitlement, validated by moral principles and rules (Feinberg, 1973). Dworkin (1984) considers rights to be understood best "as trumps over some background justification for political decisions that states a goal for the community as a whole" (p. 153). Having a right allows one to claim something as one's due, and to be justified in making that claim. Rights

entail certain connections between parties: the right-holders and the right-observers (Hinman, 1997). For every individual who demands a right, there must be another party from whom either action or no action, i.e. non-interference, is desired. Such action may be viewed as being a duty.

Questions of rights are generally invoked “when it is proposed that interests of one or more individuals should be traded off for the sake of others’ or in the name of some allegedly more important moral or political ideal (Waldron, 1984, p. 19). Rights are based on a system of rules which authorize us “to affirm, demand, or insist upon what is due” (Beauchamp and Childress, 1994, p. 71) possessing a right also validly constrains others from interfering with the exercising of that right. Statements of rights may “protect against oppression, unequal treatment, intolerance, arbitrary invasion of privacy, and the like” (p. 69). Some of these statements of rights have been given strength through legal endorsement, while others are more like aspirations with only moral force behind them. Schoeman (1980) asserts that the language of rights enables us to “sharpen our appreciation of the moral boundaries which separate people, emphasizing the appropriateness of seeing other persons as independent and autonomous agents” (p. 8), and that by considering the rights of others, we stress their moral independence.

Given that a right is a valid claim, there are two directions in which an individual can make a valid claim. First, certain rights may be claims “against specific individuals for assistance, repayment of debts, compensation for losses, and so on, or against all other individuals—the ‘world at large’—to noninterference in his private affairs” (Feinberg, 1984, p. 109). The second direction an individual may take is making a claim towards the state. These claims may be for either specific services and promised repayments, for noninterference in one’s private affairs, but also for legal enforcement of valid claims one may have against other private individuals. Many rights give rise to double claims. Feinberg gives the example of one’s right not to be punched. First, one has the right to noninterference from others, and second, one has a claim against the state for its protection. Such double claims are generally legal rights because they are reason-backed claims against other individuals or against the state, which are also enforceable by law. A moral right is a claim justified by valid reasons and depends on the conscience of the claimee or on public opinion. If these same claims are also then enforceable by law, they may be both moral and legal rights.

Rights are considered by some as being vital to the notion of the good life, but may also be viewed as being individualistic to the detriment of community. Raz (1986), for example, writes about right-based moralities in that they are usually individualistic moral theories. If one accepts that the function and justification of morality in general is to protect the rights of individuals rather than communal interests, and that rights are the most promising instruments in securing these individual interests, then moral action-guides are rights-based (Beauchamp and Childress, 1994).

The language of rights, within the moral vocabulary, has made significant inroads to protect the interests of individuals and also of minority groups, such as women and disabled populations. For example, in cases of moral controversy such as abortion and euthanasia, individual rights have often been raised in an attempt to question established practices or to resolve controversial issues. Being a rights-bearer has given individuals strength and dignity in actively demanding their interests, and in making claims against others to have their rights protected. "When persons possess enforceable rights correlative to obligations, they are enabled to be active, independent agents pursuing their projects and making claims" (Beauchamp and Childress, 1994, p. 77). Rights have become international currency for the evaluation of communities and states, and the treatment of individuals within those environments. Rights language itself provides the basic vocabulary for expressing the moral point of view.

7.2.1 Natural law and natural rights

The ancient Greeks and Romans introduced the concept of natural law, which would direct the actions of all rational beings. Roman lawyers developed a doctrine of law that all civilization would accept, justified as a natural law for all people. They aimed to show that principles of morals could be known by reason alone, and would direct people how to live 'properly'. Aristotle and Aquinas' teleological views of nature were concerned with specific ends. They felt that everything in nature, including people, were concerned with promoting the natural developmental process. A natural law view on rights requires that rights be compliant with these ends, and thus, if an act interferes with the natural development process, it is wrong. For example, both euthanasia and abortion interfere with the 'natural' development of certain conditions, and as such, these acts are therefore wrong. The laws of nature could apply only to rational beings who could obey or disobey it deliberately and freely. Natural rights are considered to be those which are inalienable and infeasible. They are universal and apply to all, regardless of culture, custom, or any other such variable.

The writings of John Locke, Thomas Hobbes, Jean-Jacques Rousseau, and St. Thomas Aquinas include discussions of natural law and rights. Their views may also have influenced Thomas Jefferson, as his ideas about freedom and government can be linked to their writings.

Locke considered natural rights to include rights to life, liberty, and property. He felt strongly that certain areas of human conduct ought to be immune from governmental interference. He called these areas 'rights,' and they eventually played a significant part in the formation of the American Bill of Rights within their Constitution. The Bill of Rights, formulated in 1791, decrees that the government cannot interfere with certain conduct of its citizens and gives them certain fundamental rights, such as the right to freedom of speech and of worship. Locke's focus of rights was property rights: the right to own private property

which could not be justly taken away by anyone, including the government. He centred on property because he felt it is obtained by the fruits of one's own labours, and thus part of the person is actually invested in his or her physical property. To take that property away unjustly would be tantamount to an assault upon one's physical person. Locke also used the term 'property' in reference to life and liberty in addition to simply one's possessions. He argued also that all "men" [sic] are equal, which had a profound influence on the creation of democratic ideals of equality. All "men" were entitled to rights which were neither given by society, nor can they be revoked by society.

Critics of Locke argue that it is incomprehensible for people to have rights which were conceived prior to the creation of society, government, and laws who surely must have granted and upheld them. However, since Locke argued that there are certain inalienable rights which are neither society's to grant nor to revoke, rights that existed before the conception of society, then this criticism loses its strength. There are of course situations where certain rights are not absolute. For example, in the case of the right to freedom of speech, our society must overrule certain rights, as in the case of a person shouting "fire" without any cause on a crowded bus, or making jokes about bombs or high-jacking on an airplane. The alarmist's right to freedom of speech would infringe other people's rights not to be harmed, which would likely be compromised should this situation occur. Thus, rights can only be infringed with majority consent, such as within a democratic government, when the welfare of the general public could be compromised. Rights could be a matter of degree, as there are certain areas of human behaviour which can be interfered with only in times of great crisis, otherwise they must be left untouched. For example, a curfew restricting citizens' freedom of movement might be implemented during some kind of crisis, such as a riot or natural disaster. Therefore, people still have a significant latitude in freedom, but it is not absolute. Justifying which restrictions are allowable is a problematic topic, one which John Stuart Mill pursued in his treatise *On Liberty*.

Hobbes disagreed strongly with Locke's views, believing that prior to the creation of society, there were no property rights. He held that property is a creation of society, and thus there are no rights to anything other than what one can hold by force. Hobbes suggested that we should "do unto others" because if we do, others will be more likely to "do unto us" (Rachels, 1993). We have a "right of nature" to defend or protect ourselves from attack. He considered the natural right to liberty meant having the liberty to do whatever there was no rule or moral reason against doing.

Hobbes developed the concept of the Social Contract Theory, which he felt was necessary in order to escape the brutality of nature, with each person out to promote only their own interest at whatever necessary cost: "people must agree to the establishment of rules to govern their relations with one another, and they must agree to the establishment of an agency—the state—with the power necessary to enforce those rules" (Rachels, 1993, p. 142). This contract makes social living possible.

St. Thomas Aquinas wrote about natural law, believing the moral life to be the life lived according to reason. He held that where morality is concerned, duty is to think thoroughly about all courses of conduct, and to conform one's actions based on the most reasonable plan; thus, "conscience is the dictate of reason" (Rachels, 1993, p. 54). Similarly, Rousseau believed the 'voice of duty' requires man to act on different principles, and to consult his reason before listening to his inclinations. Opponents of Aquinas argued that it was God's will, and not intellect, which was the source of law. Aristotle acknowledged that a human being is a moral person, which recognizes that humans have interests and not merely functions, and thus one must concede to humans having at least this minimal right.

John Stuart Mill focused on civil liberty rather than on the freedom of the will, supporting the idea of a doctrine of rights which could prevent the formation of laws which would infringe upon areas an individual could regard as inviolable. He was concerned about the limits of government in controlling the individual as well as the pressure of public opinion, whereby the majority could control minorities. He felt that while certain individual behaviours could not be tolerated, other individual actions which went against public custom should not necessarily be regulated. The problem lies in determining the legitimate extent to which interference may reign within the confines of an individual's life. He was quite specific about the only legitimate powers a society could have over the individual, and that was in the case of the individual harming others.

Utilitarian and right-based views contrast in the most fundamental standpoint. Utilitarian justification is based on an aggregation of the interests or preferences of all those who are being taken into account (Mackie, 1984). Rights theorists, on the other hand, insist on the primacy of the individual, and that the separate interests of each individual must be respected and protected. Rawls too agrees with this view of the individual.

In his essay on utilitarian and rights-based views, Mackie puts forth his view of a rights-based theory. He begins by assigning some basic abstract *prima facie* rights in light of ordinary human needs and purposes. *Prima facie* rights are those which are capable of being overridden in particular cases. These rights include those to life, health, liberty, and the pursuit of happiness. Rights of possession include the rights to the products of one's labour, and a right to share equally in or to have equal access to all natural resources. Mackie extends this to include the right to the products of the labour of previous generations which have reverted to the status of natural resources, although these rights gradually fade because the subsequent rights claims become weaker than the rights of the original producer. Rights also include those to the fulfilment of reasonable expectations based on a fairly stable system of laws, institutions, and practices. The final right is an absolute right, "to equal respect in the procedures that determine the compromises and adjustments between the other, *prima facie*, rights" (Mackie, p. 87). This absolute right would then allow for any moral or political system or theory to be defended or criticized through a consideration of the extent to which it provides for the assignation of established, institutional rights in addition to

"rules, concepts of duty, identification and acceptance of certain dispositions as virtues, and the discouragement of others as vices" (Mackie, p. 87).

Mackie considers the ultimate rationale of such a moral theory as rights-based to lie in respecting and protecting separate interests, and to direct norms of reciprocity. Any such practical system needs to centre on agreements and cooperation to help people to participate in mutually beneficial enterprises, and to display other conditions of conditional cooperation such as honesty, fidelity, loyalty, and agreement-keeping. Mackie believes that rights must be recognized and taken seriously for social collaboration, which is also one of Rawls' main arguments for his theory of justice.

Mackie's suggested rights are basic, but defeasible since they may conflict with one another in particular circumstances, or may indeed even be overridden in certain cases. The conflicts between the rights may be resolved by *balancing the prima facie* rights—those such as the rights to life and to property—against each other, not by comparing or evaluating them with another standard, such as utility. However, he does suggest that conflicts between these rights could be dealt with by a 'utilitarianism' of rights. This means that a just arrangement could be reached in which total right-fulfilment was maximized, and total right-infringement was minimized, or even that one person's rights should be no more infringed than those of another. Overall, Mackie argues that it is clear that rights should be recognized and taken seriously within practical morality. The separateness of persons still supersedes aggregative utility.

One of the essential facets of natural law is that of universalisability. Natural rights, conferred by natural law, apply to all human beings, irrespective of nation, culture, or religion. They exist independently of any human action or institution, and can be used as an independent standard in terms of which to criticize the law and policies of governments and other organizations.

Immanuel Kant believed in the importance of universalisability of moral principles. Kant believed strongly in the notion of human rights, identifying basic freedoms which have to be respected. He declared that

There is nothing more sacred in the wide world than the rights of others. They are inviolable. Woe unto him who trespasses upon the right of another and tramples it underfoot! His right should be his security; it should be stronger than any shield of fortress. We have a holy ruler and the most sacred of his gifts to us is the rights of man.

(Immanuel Kant: *Lectures on Ethics*, trans. Louis Infield (New York, 1963), pp 193-4)

Kant devised a basic moral law which he considered to be the ultimate moral principle. He advised people to act only in such a way that you would will that it should become a universal law. In other words, act the way you would like everyone else to act. This supreme principle, what he called "The Categorical Imperative", gives people instructions on how to conduct themselves. In relation to the way people treat each other, he believed that individuals ought to treat other beings never as a means, but always as ends in themselves. Kant's principles are absolute, allowing for no exceptions. He developed his notions of moral

relationships between people, aligned with the classic deontological view, that people are to be treated as ends in themselves, and not only as means to the ends of others. Rights cannot be violated even if utility is compromised, or to achieve desirable ends.

Kant emphasized the justification of rules as universal laws, that they apply consistently to all people in all situations. His ethic of universality is an ideal of universal humanitarianism, for he allows no discrimination between human beings. Universalisability is the term Kant used in relation to the maxims guiding moral action. A maxim is universalisable if it can be willed that everyone obeys that rule or law. The maxim of universalisability ensures that action is guided by the same morality, that it be willed as such for everyone.

Natural rights are sometimes aligned with moral rights. They could even be argued to be the predecessors of moral rights (Lyons, 1984; Hart, 1989), or to exist independently of organized society (Macdonald, 1984). Locke was one who argued that there are certain inalienable rights which existed prior to the organization of societies, and which therefore are not society's rights to revoke. Macdonald suggests that Roman lawyers, who proffered the first authoritative statements of the doctrine of natural law, "conceived of natural law as an ideal or standard, not yet completely exemplified in any existing legal code, but also as a standard fixed by nature to be discovered and gradually applied by men" (p. 24). Hart (1989) advances his thesis that if there are indeed any moral rights at all, then it follows that there is at least one natural right, the equal right of every person to be free. This right is not culturally relative, nor is it conferred or created by any voluntary action of any person or group of persons. For example, the basic, fundamental moral rights such as those outlined by the United Nations, are accorded to human beings simply by virtue of being human beings. We shall move now to a consideration of moral rights.

7.2.2 Moral rights

Distinctions between legal and moral rights are important within rights theory. Legal rights have developed from political thought and constitutions, and the conception of natural rights, whereas moral rights "are thought to exist independently of social recognition and enforcement" (Lyons, 1984, p. 111). Moral rights are considered those rights which existed prior to, or independently of, legal or institutional rules (Feinberg, 1973). A person has a moral right when he or she has a claim whose recognition is based on either moral principles or the principles of an enlightened conscience. Moral rights may include 'natural' or 'human' rights as they are the most fundamental or foundational rights upon which individual dignity, and by extension, social dignity, rests. Legal systems are independent of moral grounding for their justification, and can be changed without regard for morality. Moral systems, on the other hand, do not require legal or political sanction and may be used as a platform for criticism or justification of the legal system; moral rights are justified by *moral* principles and rules. Many legal rights rest on moral foundations, and therefore moral rights

may be appealed to in an attempt to secure legal protection for those moral rights. For example, the right to religious freedom is essentially a moral right, with sanctioned, legal protection.

Distinctions about the nature and types of moral rights have emerged in ethical theory. Feinberg (1973) has outlined a framework of the main senses of 'moral right': (i) A *conventional right*: derives from established customs and expectations, and may or may not be recognized by law, e.g. helping a stranger in distress; (ii) An *ideal right*: this may not necessarily be a right but is what *ought* to be a positive (institutional or conventional) right, e.g. when a black woman in the Southern United States refused to sit at the back of the bus in the 1950s; (iii) A *conscientious right*: the recognition of this right is a claim by the principles of an enlightened individual conscience, rather than by actual or ideal rules of conventions, e.g. giving and respecting the rights of animals; (iv) An *exercise right*: this may not be a right in any sense in actuality, but it is moral justification in the exercise of a right of some other kind, the right which is unaffected by considerations of the rightness or wrongness of its exercising, e.g. the right of a woman to have an abortion, recognizing only her right to the act but not judging the rightness or wrongness of the act itself.

Morality is not an individual construction, but a social code which allows individuals to live together. Morality is the effort to guide one's conduct through reason, based on the best reasoning available, giving equal weight to the interests of those who will be affected by one's conduct (Rachels, 1993, p. 13). Moral rights evolved through talk of natural law, because of the importance in the ways that one's actions affect the interests of other people, and in turn, how others' interests affect the individual. These rights are composed of normative guidelines intended for practice by people in their relationships. The social importance of how to treat others and how one desires to be treated necessitated the recognition of natural rights which all people possess equally and inalienably. The laws of nature are binding on all people, and thus are universal.

The connections between moral rights and natural rights are ambiguous. Some limit natural rights to being our most fundamental rights, and contrast them with ordinary moral rights. Another view would not consider moral rights as being natural rights as they are conferred by the mores or positive morality of one's society and thus are culturally relative; in this sense, they come 'after' natural rights. Yet others view moral rights as having correlative duties to which attached sanctions are related more to public opinion (or even God) rather than the law. Having a natural right would differ in that a natural right to freedom would require first a liberty to do anything which would not coerce, restrain, or injure another, without which the right would not be equal for everyone. Second, it would also require that all others forbear toward oneself in these respects except to prevent one's coercing, restraining, or injuring others (Hart, 1989).

Having established that possessing a right entails being morally justified in limiting another's freedom and for determining how that other ought to act, Hart stresses the importance of that moral justification being of a special kind if it is to constitute a right. He

believes that rights can be claimed in two situations: first, when the claimant has some kind of special justification for interfering with another's freedom which other persons do not have, for example, "I have a right to be paid what you promised for my services"; or second, when one is resisting someone else's interference: for example, "I have a right to say what I think", or worship whom I please. Hart calls the former category special rights and the latter, general rights.

Human rights are seen as moral rights since they are a set of universal moral standards which are inalienable and indefeasible regardless of legal acceptance. Feinberg (1973) defines human rights as "generically moral rights of a fundamentally important kind held equally by all human beings, unconditionally and unalterably" (p. 85). They are sometimes considered to be (i) *ideal* rights in that they are not necessarily existing, recognized rights but those that *ought* to be positive (institutional or conventional, i.e. those that derive from social custom such as giving a seat on a bus to an elderly or pregnant woman) rights, or; (ii) *conscientious* rights, which are claims that may or may not be recognized by actual or ideal rules or conventions but rather by the principles of an enlightened individual conscience." Sumner (1987) holds that human rights may be divided into two categories: the first include civil and political rights which proffer protection of basic liberties, due process of law, and participation in the political system. The other category includes the broader economic, social, and cultural rights such as the right to life, employment, social security, health care, and education.

In 1948, the United Nations developed the Universal Declaration of Human Rights. This manifesto applies universally, despite not being recognized within legal codes in some countries. Human rights are essentially about basic needs and interests, canons by which social, economic, and political arrangements can be criticized. They provide a framework upon which protest and justification for definitive reform are based. The concept of a universal code of human rights is predicated upon the idea that there is a basic threshold of existence under which no human being should fall. The code of human rights is somewhat vague, and individual 'articles' cannot always be translated directly into legal rights. For example, Article 6 reads "Everyone has the right to recognition everywhere as a person before the law", and Article 7 adds "All are equal before the law and are entitled without any discrimination to equal protection of the law." Human equality is a fundamental stipulation within human rights.

The Declaration serves primarily as a kind of standard against which humanity may measure individual conduct and treatment. Failure of a government to uphold these rights may be considered an injustice and dereliction of duty. The normative function of the language of rights formulates an insistent demand, and may serve as a kind of common currency, notwithstanding cultural differences, for moral and political argument. It is up to individual countries and bureaucracies to actually uphold and respect these rights, and some countries choose to ignore them entirely, or even view them as being detrimental to their cultural practices. For example, in certain Middle Eastern countries, women have

virtually no legal rights of any kind: they have no freedom of speech, no freedom to circulate freely in society, no freedom of employment or benefit from the results of their labour.

Rights and duties within families or in intimate relationships, such as in relation to the parent-child association or between husband and wife, may be classified as a special category. The universal 'respect' for all human beings called for by Kant does not necessarily hold in such relationships of love and affection. These special relationships ought ideally to involve

an awareness of a kind of union between people which is perhaps more suitably described in poetic-spiritual language than in analytic moral terminology. We *share our selves* with those with whom we are intimate and are aware that they do the same with us. Traditional moral boundaries, which give rigid shape to the self, are transparent to this kind of sharing. This makes for nonabstract moral relationships in which talk about rights of others, respect for others, and even welfare of others is to a certain extent irrelevant.

(Schoeman, 1980, p.8)

Schoeman believes that using rights talk to describe and prescribe relationships within the family is inappropriate, since these relationships are very different from normative relationships within society. The parental relationship towards children is even more sensitive. He cautions that emphasising the rights of children might foster thinking about the relationship between parent and child as being quasi-contractual, limited, and directed toward the promotion of an abstract public good.

Moral rights, then, may be considered to be those rights which are not necessarily upheld by the law in a social sense of justice, but are rights which are universal, personal, and function normatively to formulate common moral standards. Possession of moral rights advantages the owner morally, and are a commodity. However, since moral rights are not necessarily legal rights, and are not conventional rights, they are not accorded recognition to the same degree that legal rights are shown by the law or civil courts. They can, though, provide moral reasons and moral force for demanding, establishing, and maintaining conventional legal rights.

7.2.3 Legal rights

Legal Rights are claims or entitlements which may be justified by legislated rules or codes. Legal rights may belong to people by virtue of their belonging to a particular state. For example, being a citizen of Canada entitles one to the various civil rights, or entitlements, available to Canadian citizens, such as access to the educational and health care systems, and to due process. When legal rights are infringed, it is incumbent upon the 'infringer' to either apologize or to perhaps even recompense the 'infringee'. Without a higher body, such as a court of law, to recognize and enforce one's rights in a legal context, rights hold no power further than morality, in that they represent what 'ought' to be the case, not what 'is' necessarily the case. Rights could be considered hypothetical powers if indeed

there were a powerful body to whom one could turn for enforcement. A legal right is thus one which would ordinarily and customarily be mandated, supported, and upheld by the law of a relevant state, thereby legally advantaging the owner. Laws regulate the relationships between people in a formal sense, and may "enhance our comprehension of the civil context of rights, and directs us to interpret them within a system of authoritative and binding social rules" (Freeden, 1991, p. 2). Legal analysis of rights in a broad context may protect rights in terms of enforceable sanctions, and may also "enable us to evaluate the legitimacy of the political systems and the efficacy of the social control and order that arise from the existence of civil, political, and social rights" (Freeden, 1991, p. 2).

Mill believed it to be just to respect and unjust to violate the legal rights of anyone. However, legal rights must themselves be just for this maxim to hold true. There are unjust laws, and consequently, law cannot be the ultimate criterion of justice. For example, slavery is now considered an evil institution, but it was legally sanctioned in the United States in the last century, and apartheid was a legal installation until very recently in South Africa. As mentioned earlier, breaches of legal rights may in fact relegate the right to be a moral right if it is not upheld by the law.

One of the most significant modern contributors to the notion of legal rights is Wesley Hohfeld, whose pioneering work in the analysis of the concept of rights date back to the early 1900s. He was concerned solely with the legal conceptions of rights, or 'jural relations' as he preferred. He formulated the classification of fundamental legal conceptions in order to clarify what he thought of as a conceptual obfuscation within judicial reasoning (Sumner, 1987, p. 19). He distinguished claim-rights from 'mere liberties', often called privileges, which in this sense is simply the absence of a duty. Hohfeld tried to describe the logical relations between his set of fundamental conceptions, and thereby organized rights into two tables of opposites (contradictories) and correlatives (equivalents). He gave a contextual definition of the notion of rights by virtue of a right being connected with its cognates, and a definition from judicial argument. He contended that a right was the correlative of a duty, and assumed that all duties were relational. Hohfeld's conviction was that the nature of rights could be illuminated only by the development and deployment of a clearly articulated normative vocabulary. His analysis of legal rights then, was confined to a special case of a conventional rule scheme, that of a municipal legal system, and has been extrapolated to the broadest sense within considerations of legal rights.

Most rule systems, or municipal legal systems, are a mixture of required, restrictive, and permissive rules (Sumner, 1987). Required rules make explicit certain demands, such as a stop sign, which demands that a driver stop his or her vehicle in accordance with the municipal rules. Restrictive rules are those which prohibit certain behaviours, e.g. "no smoking". Permissive rules such as "visiting hours between 8:00 and 9:00 p.m." are usually formulated exceptions to implicit or explicit background prohibitions. Where a rule is "restrictive", we could say that it imposes a duty upon those to whom it applies: positive if the rule is "prescriptive", negative if the rule described an act which is prohibited. In his

attempt to reveal the common structure of rights in all rule systems, not only in a municipal legal system, Sumner uses the notion of duty to cover any case of being obliged by a rule either to do or to omit some act (p. 24). Each of Hohfeld's duties, all relational, had a content (what it is a duty to do), a subject (the party whose duty it is), and an object (the party to whom the duty is owed). The straightforward deontic notion of a duty is non-directional and thus non-relational, whereas Hohfeld's fundamental conceptions of duties are that they are directional.

While Hohfeld's discussion was developed in an analysis of legal rights, they are quite relevant in the moral sphere as well. In relation to the phrase 'P has a right to X', Hohfeld determined further analysis was required in order to address the ambiguities the use of such a phrase raises (Waldron, 1984, p. 5). Waldron outlined the four areas Hohfeld distinguished in which the phrase might be applied:

1. *Privilege or Bare Liberty*: it might mean that 'P has no duty not to do X' to either a single individual or people in general; the term 'privilege' used by Hohfeld indicated that the idea might be used to convey P's special position in relation to an otherwise generally applicable duty, e.g. a police officer has the right to be out after curfew whereas an ordinary citizen must obey the curfew; police officers and ambulance drivers are permitted to exceed speed limits; consent is a form of privilege which allows one to have sexual intercourse without committing rape. Privileges necessarily belong to either a restricted few, or to everyone in very particular circumstances.
2. *Claim Right*: it might mean that Q (or everyone) has a duty to let P do X. This duty gives P a kind of claim against Q, and is referred to by Hohfeld as a 'claim-right'. The claim-right might be a positive requirement to do whatever one can to accommodate P doing X—that is, a right to active assistance; or it might be a negative duty for Q not to interfere with P doing X—a right to negative freedom. Claim-rights are valuable possessions: they can be urged, pressed, or rightly demanded against others.

Legal philosophers differentiate between claim-rights *in personam* and claim-rights *in rem* (Waldron, p. 6). A right *in personam* is correlative to a duty specifically incumbent on an assignable person. For example, there is a clear relationship between the rights and duties for people engaged in a contract. A right *in rem* is correlative to a duty in principle incumbent on everyone, e.g. property rights. My purchase of a car means that no one else may use it unless I give my permission. Some rights *in rem* arise out of contractual agreements—such as my buying the car—while others may be rights *ab initio*, for example, the claim-right to due process.

3. *Power*: Hohfeld's third interpretation of 'right' is about the ability or *power* of an individual to change existing legal arrangements. For example, if I sell my car to another person, then someone else acquires all the rights (the privileges, the claim-rights, and the powers) that ownership involves, while I in turn take on the duties and so on correlative to those rights. Powers are correlative to liabilities: if an individual has a legal power, someone (or everyone) is liable to have his or her legal position changed by an exercise of that individual's will.
4. *Immunity*: in this sense, a 'right' is both a power but also the correlate, the *lack* of power: an immunity from legal change. "If P has an immunity with regard to X, then Q (or maybe everyone) lacks the power to alter his legal position in regard to X". Constitutionally guaranteed privileges and claim-rights generally invoke an immunity. For example, no one, including the legislature, has the power to change those rights; they are immune from legal modification.

Hohfeld's distinctions were developed for the legal sphere, but the ramifications for moral rights are evident. The distinction between moral privileges and moral claim-rights has had, according to Waldron (1984), significant impact on the development of human rights and linking them to theories of morality. Criticisms of Hohfeld's distinctions have arisen in the literature, focusing on the problematic aspects which his account leaves unsolved. The significance of these problems has been noted particularly when rights-theorists have tried to extend his analysis into new fields of political concern. Given that Hohfeld's account of legal rights goes back to 1919, and with the growing import of human rights in the last half century, these problems were inevitable.

The conception of duty is the first concern: Hohfeld's analysis did not include this concept. Moral duties and obligations are as vague and indeterminate as are claims about moral rights. However, the latter area has incurred much analysis, and rights-theorists have made significant inroads in clarifying the vagaries of rights, and also of duties, over the last fifty years. The next area of concern relates to rights. Hohfeld's claim-rights are linked to the concept of individual rights in present usage. If we accept that someone has a natural right to free speech, then it means that others owe a duty to that person not to interfere with his or her free expression. Sumner (1984) questions the difference between what it is for a duty to be *owed* to a specific individual, and the straightforward idea of a *duty*. When someone's rights have been violated, the right-bearer him or herself has been wronged, and we consider also that a wrong has been done. The right-bearer has a unique relationship to the duty and to its violation, and he or she is entitled to protest. The point here is that we cannot move definitionally from statements about duties to statements about the rights of individuals until we comprehend the nature of this relationship.

The Choice Theory and the Benefit or Interest Theories have been proposed to explain the special relationship between duties and right-bearers. The Choice Theory focuses on the right-bearer because of the power that he or she has over the duty in question. For example, "When an individual Q has a duty to do something, maybe there is some other individual P who is in a position to control that duty in the sense that his say-so would be sufficient to discharge Q from the requirement" (Sumner, 1984, p. 9). P's control makes him or her a right-bearer since when Q makes a promise to P, a duty is acquired to perform that promise; it is, however, a duty from which Q may be released by P: P has the corresponding right to release Q from the duty. The Choice theory holds the conception of the right-bearer as a agent and one who may actively 'choose' rather than simply as a victim or potential recipient of assistance.

The Benefit or Interest Theory is based on Bentham's account of legal rights, which holds that "an individual P can be said to have a right. . . if someone else Q has a duty to perform some act (or omission) which is in P's interest" (Sumner, 1984, p. 9). A specific duty is thus correlated with a right only if one can determine, in advance, how a specific person will benefit from performing that duty. It is essential that the benefit giving rise to the right must be linked directly to the duty, and linked so closely that one could say—beforehand—that unless the benefit is accorded, the duty has not been executed. The problem with this conception of linking duties and rights so closely is that all factors are not always known in advance. So, rather than saying that someone has a right when he or she will benefit from someone else performing a duty or when a duty is imposed for his or her benefit, it is suggested that:

P can be said to have a right (in a moral theory or a legal system) whenever the protection or advancement of some interest of his is recognized (by the theory or the system) as a reason for imposing duties or obligations on others (whether duties and obligations are actually imposed or not).

(Sumner, 1984, p. 10)

This conception of rights and duties allows talk about rights before determining exactly who is linked to the relevant duty. Sumner gives the example of a starving child in Somalia. That child has a right to be fed. That right is determined without ascribing a specific individual or agency with the duty to feed him or her: that the child's interest to be fed is recognized serves as an appropriate basis for the assignment and allocation of duties. This conceptions of rights also provides a more stable ground for the individuation of rights. Thus, the right to freedom of speech may be understood in terms of recognizing that a person's interest in self expression is sufficient to hold other individuals and institutions under duties of one kind or another instead of being confounded with the details of the specific duties.

The Benefit or Interest theory is more accommodating to socio-economic rights, and of particular importance, to the rights of vulnerable creatures such as children and animals. Rights may be viewed as protective mechanisms for all human interests as well as interests which relate specifically to choice, self-determination, agency, and independence. From this

perspective, duties correlative to rights tend to be negative: they are duties to avoid interfering with action or choice of others rather than duties to provide positive assistance. Sumner suggests this approach may be related to general views of political morality, which tend to be *laissez-faire* and minimalist. Given that this approach to rights has been increasingly criticized, socio-economic rights such as rights to positive assistance including medical care, elementary education, and a decent standard of living, are no longer viewed as a devaluation of the language of rights.

7.2.4 Who has rights?

There has been considerable debate over exactly who has rights. Some believe that in order to be a right-holder, one has to be able to claim one's rights. However, if we accept this view, then children, the mentally infirm or comatose, unconscious people, animals, and other vulnerable beings would be without rights. I argue that a right-holder does not have to be able to assert his or her rights in order to have them. Their rights may be claimed on their behalf by parents or guardians or others acting on their behalf. In the case of animals, being as vulnerable as they are in the human world, human beings have profound duties to protect them and to recognize their rights in the same way that other vulnerable creatures would be protected. Rights best capture the purpose of morality, which is to secure liberties and other benefits for a right-holder (Beauchamp and Childress, 1994). Injustice and inhumane treatment seem to occur most frequently in areas that fail to uphold rights in their political ideology, and thus when a right-bearer possesses enforceable rights correlative to obligations, they have the potential to become active, independent agents capable of making plans, and pursuing their projects. Being a right-bearer in a nation or society that enforces rights provides right-bearers with a source of dignity and self-respect.

7.3 Categories of Rights

7.3.1 Positive rights and negative rights

Positive rights demand action on the part of others, specifically in order to secure some good. They are rights of performance, whereas negative rights are those of forbearance. When a person has a positive right it means that another has some kind of obligation to act. For example, in response to a child's right to education, a government may have the corresponding positive obligation to provide that education (within the agreed-upon framework accepted by that government, such as to provide a state education up to the age of 16). The right to education would be an example of a so-called 'welfare' right. Health care could be another; if a right to health care exists, then the government has a corresponding positive obligation to provide 'health care' (again, within the agreed-upon framework as mentioned above, with definitional limitations) to the citizens of that state. Here, however, as

explained by Beauchamp and Childress (1994), “the right to forgo a recommended surgical procedure is a negative right grounded in the principle of respect for autonomy” (p. 73).

Positive rights are ideologically attached to a maximizing perspective which demands whatever intervention may be considered necessary, and aspires to maintain a position anywhere between adequate human functioning and human flourishing. Rational assent to the intervention is considered a high priority. Freedman (1991) introduces the doctrine of paternalism in his discussion of positive rights. He explains that in order to promote the well-being of certain others, it may sometimes be necessary to intervene in their lives.

Moreover, because of mutual social ties, this may have to be secured through ‘intervention’ in the life of others as well. Without these actions, the satisfaction of human needs, the opportunities for their self-expression and the coordination of human conduct are considered to be impossible, although to a sceptical observer this may merely appear to be unjustified interference in the private domain.

(Freedman, 1991, p. 58)

Positive right theorists contend that the fundamental moral duty towards others involves affirmative obligations, which require an act of commission (Feinberg, 1973). Positive rights theories are tied to altruism, which holds that we are not merely self-interested, but are social beings capable of acts of compassion towards other people. In a similar line of thinking, the negative rights position holds that the primary motivation behind all human behaviour is self-interest.

Negative rights are rights to non-interference, requiring a positive duty towards others not to interfere. Libertarians hold that one of the government’s primary duties is to prevent infringements on our liberty or freedom; state responsibility requires protecting individuals from that interference. They believe that the primary right of individuals is the negative right to be free from constraints, coercion, or other forms of interference from others. Leading libertarian Robert Nozick (1974) held that this negative right against interference or constraints is influenced by Kant’s principle that individuals are ends and not merely means, and therefore they may not be sacrificed or used for achieving of other ends without their consent. Natural right theories and social contract theorists rely on the principle of self-interest, or egoism, which is primarily a negative rights perspective. In contrast, natural law theorists hold the view that people are social by nature, and are altruistic.

Negative rights may be divided into two subclasses: (i) passive rights are those not to be interfered with by others in certain ways, such as the right to be left alone, to keep one’s secrets, to enjoy one’s property, to keep one’s body and reputation undamaged (known collectively as one’s ‘right to security’), and; (ii) active rights are those to act or not to act, such as the right to liberty which involves going where one wishes to go, and saying what one wishes to say. Neither active rights nor passive rights may be considered more important than the other.

7.3.2 Absolute rights and *prima facie* rights

Some rights may be considered absolute, such as the right to choose one's own religion. Many would consider the right to life to be absolute. However, even the right to life may be overridden in certain circumstances such as in war and killing in self-defence. There are many rights that are not absolute; these are *prima facie* rights. A *prima facie* right is one which ought to be fulfilled unless it conflicts with an absolute right, or if the right owner waives that right. For example, we have a right not to be harmed; however, I might waive that right to a surgeon if that surgeon must first 'harm' me by slicing open my abdomen to remove a ruptured appendix. A physician might override a patient's right to give informed consent if that patient is brought into the emergency room in an unconscious state but in need of emergency attention to save his or her life.

Our rights cannot be *infringed* without justification, which means sometimes rights may be overridden for justifiable reasons. A right is infringed, according to Gewirth (1984) when the correlative duty is not carried out, that is, when the required act is or is not performed. For example, if the prohibited action of killing is performed, then a person's right to life is infringed. A right is *violated* if it is overridden for no justifiable reason (Beauchamp and Childress, 1994), or unjustifiably infringed (Gewirth, 1984). The key distinction is justification of the action or of the nonperformance of an action in relation to the right which was demanded.

An *absolute* right is one that can never be justifiably infringed, cannot be overridden under any circumstances, and must always be fulfilled without exception. There are two elements to the idea of an *absolute* right (Gewirth, 1984). First, as with all claim-rights, a right is a justified claim or entitlement to the performance or non-performance of certain actions and second, certain rights involve the idea of "exceptionless justifiability" of performing or not performing those actions as required. That is, a right is absolute when it can never be overridden or infringed, and it must be fulfilled without any exceptions. Thus, Gewirth considers the idea of an absolute right to be doubly normative.

7.3.3 Liberty rights and claim rights

Rights are sometimes described as claims. Hohfeld's claim-rights are seen as justified claims or entitlements to the carrying out of either positive or negative correlative duties. Feinberg (1980) considers the actual idea of a right as being included in that of a claim, and considers the language of claims and claiming as being required for to fully understand what rights are and why they are of such paramount importance. He explains that "claims are always *against* someone, and therefore necessarily correlated with the duties of those against whom they hold; but there is a sense of "claim", closely related to "need", in which this is not always so" (Feinberg, 1980, p. 139). He gives the example of starving children living in a slum. They are in "need" of nourishment and medical care; they have a "claim" to those needs. But who has the duty to fulfil their needs, and their claims? If

their parents cannot oblige the claims, then upon whom do the claims fall? Does the claim still exist even if the duty cannot be pinned on an individual? Feinberg accepts that needs sometimes constitute claims, and that the claim of the child has a correlative duty to be fulfilled. Of course, not all needs are necessarily claims. For one to claim to have a right is “to *assert* in such a manner as to demand or insist that what is asserted be *recognized*” (Feinberg, 1980, p. 141). For every right there is indeed a further right to claim that one has that right, in appropriate circumstances.

7.4 The correlativity of rights and duties

Morality requires us to balance our own interests against those of other individuals, and as moral agents, we as human beings have a duty to follow the directives prescribed in the moral law (Rachels, 1993, p. 76). The doctrine of correlativity asserts that a person's rights are linked to the duties of other people. Feinberg (1973) claims this logical correlativity is plausible, and perhaps logically unassailable since legal claim-rights are actually defined in relation to other people's duties. Despite this logical plausibility, however, there are some difficulties with this doctrine. Feinberg demonstrates not all duties are correlates of the rights of others. For example, legal duties of obedience to traffic laws: some traffic laws are not directed at specified others. A traffic light might direct me to stop, but if there are no other vehicles or persons in sight, and visibility is clear, then who can claim my stopping as his or her due? My legal obligation is thus without a correlated right claim against me. Moral obligations also present duties without correlated rights. Feinberg gives the example of duties of charity. No one person can claim our individual contribution to be his or her specific due.

The conception of a duty is a required act, which may be required by the rights of others, the law, or even by one's conscience. Some duties are correlated with rights-claims of others, and may be moral or legal in nature. Feinberg (1980) considers a duty as being something which obliges. It is something which is required of a person, to be done whether or not they want to do it.

Rights and duties may be considered by some to be correlative, meaning there is some kind of normative relation between rights and duties. If X has a right to do or have Y, then that right of X's entails some other having an obligation either not to interfere with X doing or having Y, or perhaps even to provide X with Y (Beauchamp and Childress, 1994). An example of this relationship is the state's obligation to provide 'goods' such as food or health care to people 'in need'. Any citizen of that state who fulfils the relevant criteria for being 'in need' may thereby claim an entitlement to food or health care. These authors note the 'untidiness' within the idea of correlativity of rights and duties, as concepts like obligation, requirement, and duty do not always imply corresponding rights. They give the example of a doctor agreeing to take someone on as a patient, and receive treatment. The doctor has incurred an obligation to the patient, and the patient has gained correlative rights.

These rights may be either the right to receive treatment, or the right to refuse treatment. Beauchamp and Childress view this correlativity of rights and obligations as being 'untidy' because obligations do not always imply corresponding rights. They give a further example of charity. Although we sometimes refer to requirements or obligations of charity, "no person can claim another person's charity as a matter of right. If such norms express what we "ought to do", they do so not from obligation but from personal ideals that exceed obligation" (Beauchamp and Childress, 1994, p. 74). So, these 'self-imposed oughts' are not necessarily required by morality, and one cannot claim of a right of another. Distinctions between perfect and imperfect obligations help elucidate this issue of charity. "Justice exemplifies perfect obligation, which entails a correlative right; whereas kindness, generosity, and charity exemplify imperfect obligation, which entails no correlative right" (Beauchamp and Childress, 1994, p. 74).

Hohfeld's claim-rights are seen as justified claims or entitlements to the carrying out of either positive or negative correlative duties. A duty is the requirement that some kind of act should or should not be performed. For example, we have a right not to be harmed, and a corresponding duty not to interfere with others. Thus, a right is considered as having been "*fulfilled* when the correlative duty is carried out, i.e. when the required action is performed or the prohibited action is not performed" (Gewirth, 1984, p. 92). Conversely, a right is considered as having been *infringed* "when the correlative duty is not carried out, i.e. when the required action is not performed or the prohibited action is performed" (p. 92).

Sumner believes that relational duties are crucial to understanding the concept of rights. He does caution though, that unlike Hohfeld, he does not assume that all duties, including legal duties, are relational. Nor does he accept that the subject and objects of relational duties must be distinct individuals, for some duties might be held by collectives, or both held by and owed to the same party (Sumner, 1987). Hohfeld's correlative of a relational duty is a liberty, which is the duty described from the perspective of its object.

7.5 An evaluation of rights

As with many theories, there is not always universal acceptance of ideas. That right-based theories are the best considerations of morality is one such example. Some of the concerns relate to the relationships between right-based, duty-based, and goal-based theories; others relate to the correlativity between rights and duties. Yet other differences focus on the adversarial nature between individuals and society at large. We begin first with the distinctions between right-based, duty-based, and goal-based theories.

Dworkin (1974), Mackie (1984), and Raz (1984) have made distinctions between right-based, duty-based, and goal-based theories. If we accept a logical relationship between rights and duties, one wonders how some theories can be right-based while others are duty-based. For example, if P's having a right is *defined* in terms of Q's having a duty. Theories of political morality accept that people have to perform or refrain from performing specific actions in specific situations, and the very foundation of these theories has to do

with the generation and justification of the performance or non-performance of these actions. Waldron (1984) gives the example of the requirement that police officers and other people should not engage in torturing others. If we find the impetus for this requirement being the pain and suffering that torture generally involves, we are actually concerned about the interests of those who might be tortured, and we are thus oriented towards a right-based approach. However, if we feel that the “deliberate infliction of suffering debases and degrades the torturer, derogating from his humanity and undermining his rational integrity” (p. 13), then our concern for the above requirement is duty-based. In reality, people probably feel both kinds of concern, but if one can determine one or the other theory as being more fundamental, then that theory might be considered right-based or duty-based. Kant’s moral theory is one of the most notable examples of a duty-based theory. Kant’s theory requires that people be treated always as ends, and never as means; his orientation stems from a deep regard for the rational integrity of those who might treat people in an instrumental manner.

Some consider morality as being based on individual rights. Right-based theory is characterized by a concern for individual interest, while goal-based theories are characterized moreso by a concern for something considered to be an interest of society as a whole. If the social interest is something like national glory, the distinctions are quite straightforward; however, Waldron feels that goals like prosperity or general utility cannot be defined without concern for individual interests. He notes that the single interest which grounds a right-based approach does not need to be restricted to only the peculiar interest of an assignable individual; it might be an individual interest which is shared with every other individual in society, such as human rights. He explains that a consideration of what is distinctive about right-based theories also sheds light on what is controversial about them; “they presuppose that the fundamental concerns of political morality must be concerns which can be focused on individuals one at a time” (Waldron, 1984, p. 14). Raz (1984) disputes this approach, arguing that such a consideration would underestimate the importance of indivisible and non-excludable public goods—like tolerant society or different ways of life—in constituting even individualist ideals such as autonomy.

Rights sometimes conflict. In order to deal with such problems, we need to know how the special importance of each right-claim is to be understood. Waldron puts forth three ways in which to understand the special force of rights. First, a right is no more than a particularly important interest. While it may be granted greater importance than ordinary interests, in principle, it can still be outweighed when either a similar interest is put forth, or when a greater number of lesser interests could vie for overall supremacy. Second, the interests protected by rights are assigned apparent, or lexical, priority over other interests. These interests are protected and promoted as much as possible, ahead of all other interests. This approach would render rights absolute against considerations of mere utility, but might also allow for what Nozick (1974) calls “a utilitarianism of rights”: for example, maximizing fulfilment and minimizing violations when rights conflict.

Most controversial is Waldron's third model. In this case, rights are understood as the basis of strict constraining requirements on action. The function of a right is to prevent particular behaviours involving others from being considered, thereby defining rights in terms of boundaries of practical deliberation. Waldron gives the example of "one having the right not to be tortured makes it wrong for another to even contemplate torturing you. Two issues regarding this model are important. One is the distinction between practical deliberation and consequential foresight: "If others are wrongdoers or the world is of a certain sort, we may have no choice but to contemplate the avoidable occurrence of the very actions and events whose consideration at an intentional level is absolutely ruled out by this approach (Waldron, 1984, p. 16). He suggests that others might be skeptical about this approach, since "to contemplate the occurrence of an event which we could prevent is already to take up a practical attitude to it" (p. 16). The second issue is that given the distinction between intention and foresight, the third model seems to be incompatible with the idea of a right-based theory as characterized by Waldron. Thus, a duty-based approach to political morality dominates in what purports to be right-based theory, despite a strict deontology of side-constraints.

Many utilitarians strongly resist the idea that rights provide the foundations of ethical theory. This resistance may stem from the conflicts between individual and social or communal interests, which seem to be at odds with one another. What is best for the individual may not always be best for communities or institutions. For example, if a coach finds a talented young performer who shows great potential to be an Olympic or world champion, in order to maximize that potential, the coach might wish to train the athlete extremely hard, and deny the child educational opportunities or social pleasures as they could detract from optimum training and interfere with competition. However, that athlete has rights to make decisions as he or she sees fit regarding his or her life (in an ideal world without coach or parental tyranny), and the rights of the individual could prove deleterious to the sporting career. Yet another example would be between the rights of an individual to health care, and the duties of a society to uphold those rights given the financial burdens faced by institutions and governments. The 1989 Declaration on the Rights of the Child lists many fundamental rights including that to education, but many nations cannot move beyond the struggle to feed its people let alone build schools and provide education. Now, many consider there to be a balance between respecting the rights of the individual and maximizing the athlete's potential so that the state could benefit from sporting success on an international stage. In cases like this, the individual athlete's rights trump the state's desire for moulding champions. Rights language, it is argued, is confrontational because of the demands it makes.

In his work on intimate relationships such as those in the family, Ferdinand Schoeman (1980) considers rights language as being overly confrontational and inappropriate in such settings. As discussed earlier in the section on moral rights, Schoeman warns that emphasizing the rights of children could lead to a consideration of the

relationship between parent and child as being of almost a contractual nature, which would be limiting and leaning toward the promotion of some kind of abstract public good. He feels that intimate relationships may not subscribe to these views of rights since talk about rights, respect, and welfare of others may be, to a certain extent, irrelevant within this context.

Rights may have an adversarial characteristic, as they sometimes conflict with each other. For example, the state's right to outlaw citizens owning guns conflicts with the right of citizens to own property and to live their lives as they see fit. The rights of privacy may conflict with the rights of the state to protect society (for example, if a police officer suspects a person or group of conspiring to rob a bank, they may wish to use phone taps to overhear conversations). A citizen's rights to privacy may conflict with the rights of the press to cover a story. When two equally deserving patients require liver transplants and there is only one liver, their respective rights to health care conflict. A patient's right to forgo treatment may conflict with a doctor's desire to help that patient. A woman's right to an abortion may conflict with a foetus' right to life. An athlete's right to make decisions about his or her training may conflict with a coaches' duty to protect that athlete. For example, a tower diver may elect to perform a dive of very high difficulty, and the coach may feel that the diver's life is at risk because he or she is not prepared for such a challenge. Paternalism becomes a consideration at this stage within rights. In conclusion, then, legitimate conflicts between rights must be recognized as such, and balanced. The differences between a violation of a right and an infringement of a right, as discussed earlier, may help in determining legitimate conflicts, and solving dilemmas.

Individuals may also sometimes consider forfeiting their rights. For example, if an individual becomes ill, and realizes that at some point in the future, they may be unable to attend to their personal affairs, they may assign their legal right to another so that person may act in their best interests. Similarly, a person who is going to be away may also give someone legal rights to act on their behalf in their absence. Sometimes a person who is facing a very difficult decision regarding medical treatment will ask their doctor to make the best decision on their behalf. A husband may grant his wife permission to act on his behalf over certain issues, thereby forfeiting his rights, and vice versa. She may forfeit her right to privacy by allowing him to open her mail. These aforementioned forfeitures may be reversible or retractable, while the following is not, at least not for a certain period of time. An individual who commits a crime forfeits his or her rights to freedom.

7.6 Rights and interests

When an action or practice is said to be "in the interests of an individual or group" it means that the recipient would somehow benefit from that action or practice, and therefore there is some reason to support that action or practice (Connolly, 1993). The distinction between something being in someone's interest and that something being "good" or "desirable" is important to make. Since personal autonomy is valued highly in our society,

wanting, choosing, and preferring are also important considerations in terms of what are considered as people's interests.

The concept of "interests" is generally discussed in relation to rights. Rights and duties serve by protecting or promoting interests; rights are protected interests:

an individual's right to some thing is based upon the individual's having a strong interest in it. Recognition of a right requires both that the interest should be of value and that its protection should not interfere with the securing by other individuals of things in which they have a valuable and comparable interest.

(Archard, 1993, p. 105)

Archard gives the example of liberty in relation to our interest in being as free as possible: "it is evident that we may claim a right to the maximum liberty compatible with a like liberty for others" (p. 105). One person's having a right may be correlated by another having a duty in relation to that right. The justification for the imposition of a duty lies with the interest it protects or promotes: "'x has a right' means that, other things being equal, an aspect of x's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty" (Raz, 1988, p. 184).

The protection and promotion of such human interests through the rights of people are what some people consider to be the constitutive element of morality, that a right-based morality is a morality of rights and duties. The justification for rights rests upon that which it protects, whether an interest or a liberty. Having rights constitutes a form of moral protection.

Rights are based on the interests of people. Where one's interest is a reason for someone else to act so as to promote or protect it, and when this reason has the peremptory character of a duty in that it serves the interest on which another's right is based, and only when the duty is for action which makes a significant difference in promoting or protecting that interest does the interest give rise to a right. Rights express the right-holder's status as a person, and the respect owed to him or her in recognition of that fact. Respecting that person involves cognisance of his or her interests.

Despite rights being based on the interests of the right-holders, an individual may possess rights which are against his or her interests (Raz, 1988). Consider the examples of it being in a person's best interest to be incarcerated, despite having the right to freedom, or of a person owning property which is more trouble than it is worth. Rights are vested in right-holders because these right-holders possess certain general characteristics, such as their being the beneficiaries of promises, nationals of a certain state, etc. "Their rights serve their interests as persons with those characteristics, but they may be against their interests overall" (Raz, 1988, p. 180).

The language of individual rights leads on quite naturally to the concept of an individual human interest. Individual interests may be considered as being what rights protect, and "the individuation of interests piggybacks upon that of the rights that protect them" (Baier, 1994, p. 244). Sometimes we claim rights before we are even aware of what is

valuable about what we are claiming. Baier believes that consciousness of our vital interests demands more of us than awareness of our rights; indeed, the language of vital interests may be seen as the proper complement, or even successor, to the language of rights. We have both the concept of rights and the concept of interests. The language of rights protects that which we consider to be vital and protectable individual human interests; welfare rights should be included among those recognized universal rights (Baier, 1994). We ought to have rights to such vital goods as food, shelter, and aid that we are unable to provide for ourselves. Children, the elderly, and the incapacitated or infirm cannot provide the basic goods and services for themselves, and must also be protected from significant harm. Children ought also to be provided with education during their early years. These welfare rights would serve to mitigate the effects of dominance without requiring begging; we would not be forced to meet such vital interests by means of violence or imploring others to serve our interests. Perceptions of things for which we may wish to fight or beg—if we cannot claim them as ours by recognized rights—may vary within and between cultures, and as such, disagreement may result over which interests are paramount.

These fundamental and vital interests lead to rights. Interests are precursors to rights, and are of sufficient importance as to require the protection of rights. For example, Baier (1994) lists our interest in our cooperative practice of speech and the rights to which that interest gives rise; we have other interests in cooperative practices such as food and shelter production, and the care of the very young and old, as well as the infirm. She also points out that certain basic interests must be met before others, such as shelter before freedom of speech. Welfare rights support rights-claimants in articulating and protecting their interests. Rights support both community and individual responsibilities, such as maintaining common goods of civilized speech and civilized ways of settling disputes.

An action or practice is said to be in the interests of a person or group of persons, which means that the beneficiary of such action or practice will somehow benefit. Therefore there is some reason to support that action or practice. When someone is harmed, it means that they have been wronged or treated unjustly, or that their interests have been thwarted, defeated, or set back (Beauchamp & Childress, 1994). Wronging another means to violate their rights, but harming does not necessarily involve a violation. For example, people are harmed by disease, acts of God, and simple bad luck; people may be wronged without being harmed as when a wrongful action such as withholding promised information accidentally redounds to their benefit. What is considered a harm to one person might not necessarily be considered a harm to another because of their varying considerations of what constitutes a setback to their interests.

Raz's (1988) proposed definition of rights identifies the interest upon which the right is based as the reason for holding that some persons have certain duties: the rights themselves are the grounds for those duties. He explains that interests are part of the justification of the rights which are in turn part of the justification of the duties. For an interest to be sufficient upon which to base a right, there must be a sound argument having a

conclusion that a certain right exists and among its non-redundant premises is a statement of some interest of the right-holder. Other premises must supply grounds for attributing to the interest the required importance, or for holding it to be relevant to a particular person or class of persons so that they and not anyone else are obligated to the right-holder. These premises must be enough to require no other considerations, and if so, then the individuals concerned have the right. Other premises may need to be added to establish that these grounds are not entirely defeated by conflicting reasons. Raz explains how someone might be part of a group to whom duties are owed, but that individual cannot claim a right on his or her own. He gives the example of a government having a duty to improve the standard of living for all citizens, while no specific individual has a right that the government should improve his or her specific standard of living.

A right exists where the interests of the right-holders are sufficient to obligate someone else. That an action will serve someone's interest is a reason for doing it, but not necessarily sufficient to establish a duty to do it. So, even if a person has a particular right, not everyone is necessarily under an obligation to do whatever it is that will promote the interest upon which that right is based. Some rights are held against certain people, while other rights are held against the world at large. For example, we have a right not to be harmed; this right applies to everyone but we do grant certain exceptions to doctors and various medical staff who in their attempt to help us might have to cause short term harm, e.g. phlebotomy is painful at the time but the procedure is instrumental in diagnosing or treating certain diseases. Other rights are held against specific individuals because of the relationship they have with the right-holder. For example, children have rights to be cared for by their parents. Sometimes interests are sufficient to establish a duty on certain individuals and not on others. For example, contractual rights are based on an interest in being able to create special relations, and so these rights lead to rights against other parties involved in the agreement since they are the only ones who can satisfy the interest on that occasion. While a right may impose duties on some but not on others, they can also impose duties to do certain things but not others. Thus, having a right to life may impose duties not to kill or endanger the life of another, but it does not impose the duty to take whatever action is necessary to keep someone alive.

7.7 Rights demand action

Rights require action on the part of others: they ground requirements for action in the interest of other beings. In his analysis of rights, Sumner (1987) develops analogues for rights in terms of their structure involving claims. He has two accounts of claims: the benefit account of claims and the control account of claims. His analogue of the *benefit account* of claims is a conception of rights as being protected interests; rights are tools for promoting individual welfare. This claim's central notion is the idea that a right holder is the beneficiary of duties imposed on others, or as being the one whose interest justifies imposing these

duties on others. These duties may be either positive, for example to provide some good or service, or they may be negative, for example, the duty not to harm others. Sumner's analogue of the *control account* of claims is a conception of rights as protected choices. That the right-holder has the freedom to choose among a set of options, and that this freedom is protected by a set of duties imposed on others, is integral to this conception of rights as protected choices. A choice could be provided by a full liberty. In this case, its protection would include claims of non-interference by others. A choice might also take a simpler form of a claim, because every claim must involve the power to either demand performance by the duty-bearer or to waive it. If this was the case, then the choice would be protected by an immunity against the powers of others.

The two models share the foundation that the function of rights serves as one kind of constraint on the pursuit of social goals. They thereby “share the conviction that real rights—standard, normal rights—must protect their holders by imposing normative constraints on others, and that these constraints must include duties borne by these others” (Sumner, 1984, p. 47). So, regardless of whatever else rights may be composed, they must include claims.

The conception of rights as protected interests allows for a more generous distribution of rights. This conception can consider freedom or autonomy as a particular interest, whereas the conception of rights as protected choices cannot. It generally holds that any being capable of autonomy is a being with interests.

7.8 Conclusion

In conclusion, having rights constitutes a form of moral protection. They are powerful assertions of claims or interests that demand respect and status. They serve to protect individuals and their interests. An individual's right to some thing is based upon that individual's having a strong interest in it. Knowing the moral status of right-claimants is necessary for us to determine whose interests we ought to take into consideration, since only those with interests can have their interests considered. Thus I move now to discuss children's rights in particular.

In a similar vein, the coach holds the same kind of obligation of a physician in that he or she ought to seek the well-being or benefit of the athlete. The doctor-patient relationship is thus similar to that of the coach-athlete relationship, that between a professor and a student, as well as the parent-child relationship, that upon which the term originates. In these relationships, one of the pair is the “powerful” with knowledge, and the other individual may be viewed as the “powerless” one who needs the knowledge of the other. It is an unequal, imbalanced relationship in terms of power and process, and thus one greatly susceptible to exploitation.

Current views on paternalism range from the liberal notion that it is not appropriate to treat others paternalistically, to some believing that it is never right to do so, while yet others believe that there is a place for paternalism in certain relationships, and indeed, that it may even be morally required at times. John Kleinig (1984) defends the concept of paternalism against strong liberal antipaternalist arguments. He accommodates the central liberal sources of aversion towards paternalism, and argues that it does indeed have its merits, and may be justified. Kleinig views paternalism as representing “an attempt to ensure the good of individuals, where, in contradistinction to patriarchalism, that good is conceived as sufficiently independent of the good of others or some social whole to constitute *on its own* a focus of attention” (1983, p. 3-4).

Paternalism is not a doctrine that Kleinig puts forth as a substitute for persuasion or education; rather, he views it as a strategy of last resort. Paternalism, like punishment, is justified but is something for which there are strong moral reasons for seeking to eliminate its very existence. He *de facto* denounces paternalism, saying

it would be a better world were such paternalism not necessary, just as it would be a better world were punishment not sometimes called for. Paternalism is not something to be evangelistic about. It is not a substitute for persuasion and education, but a strategy of last resort. Like punishment, it is something that, though justified, we would like to see less of, something for which there are strong moral reasons for seeking to eliminate the need for.

(Kleinig, 1983, p. 70)

However, despite these views, he does conceive of allowances for paternalism in certain situations, which will be discussed further along.

The term “paternalism” is characterised by the relations between people, or between institutions (such as the state or government) and people or groups of people. Kleinig discerns the intention as being clearly focused on familial relationships, such as the existing relationships between parent (or father) and child. A paternalistic relationship is one in which parents act on the presumption that they know better what is best for the child, and that they know better than the child itself what is best for it. Paternalism is considered a distasteful and insulting practice, with no redeeming features; indeed, adults and older children (referred to oxymorically as ‘mature minors’ by Onora O’Neill) regard paternalism directed towards them to be insulting and offensive, as it presumes incompetence on their behalf: “to treat them as young children is to derogate their capacities and standing”

8.0 Chapter Eight: Children's Rights

8.1 Introduction

In Chapter Seven, I explained that rights are powerful assertions of claims or interests that demand respect and status. They are validated by moral principles and rules, and serve to protect individuals and their interests. Having a right allows one to claim something as one's due, and to be justified in making that claim. Rights are based on a system of rules that empower us to affirm, demand, or insist upon what is due, and possessing a right also validly constrains others from interfering with the exercising of that right. I argue that a theory of rights is an appropriate moral vocabulary in which to secure protection of children from harm, and to promote their right to an open future.

Earlier, I wrote about the notion of childhood as a separate and distinct phase of the human condition. This notion has grown over the years, to the point where "the separate condition of the child has never been so bounded by thinking, so established in law as it is today" (Warner, 1994, p. 46). Children are in many senses considered powerless and under the control of adults, particularly their parents.

[T]he chief thing about being a child is being in the power of grown-ups. Everything comes from them—food, love, treats and punishments. They have the power to give and to withhold. Some of them make up the rules as they go along to suit their convenience and the child, who would like the chance to make up a few rules himself, knows it.

(Vittachi, 1989, p. 1)

Childhood as a social concept, a marketing niche, and as an area of research (Warner, 1994) had led towards children no longer being considered as chattels, but as persons with unique characteristics and needs.

In this chapter, I turn from rights talk in general to focus specifically on children's rights. I examine the development of children's rights, and consider—in the philosophical sense—whether children are eligible right-holders. I determine that children are eligible right-holders, and as such, turn to examine Feinberg's (1980) development of the right of children to an open future. I focus on the application of the child's right to arrive on the threshold of adulthood with as many choices and options as possible. I apply this view to the experiences of elite sport children in high-performance sport, and argue that such participation in abrogates their right to an open future.

Movements towards child protection have called for the recognition of children's rights. New legal measures such as the Children's Act (1989) in the United Kingdom and the United Nations Convention on the Rights of the Child (1989) have given children some force regarding choices and decision-making, as well as being the impetus for increasing debate on the rights of children in general. The Children's Act (1989) in particular has reconceptualised children as persons to whom duties are owed, rather than as possessions

over which power may be exercised, in that the Act clarified the parent's role as being one of parental responsibility rather than one of parental rights (Lyon and Parton, 1995).

While recognition of children's rights in society at large has become more commonplace, the recognition of children's rights in sport has been slower (David, 1993). General norms and values in sport are often different from those in society, and increasingly, questions have been asked whether this ought to be so (David, 1998; de Knop, 1998). For example, the use of drugs and doping methods, sexual discrimination, and physical assault in violent sports such as rugby, ice hockey, and boxing are evaluated differently in the sporting context than they are in elsewhere. The treatment of children differs considerably from general society to the sporting context as well. David (1998), de Knop (1998), and Galasso (1988) have questioned whether the norms and values in youth sport are respectful of children's rights, particularly as they have been outlined in the United Nations Convention on the Rights of the Child—hereafter known as the UNCRC or the Convention. David, de Knop, and Galasso have identified conflicts with organizational structures of sport and young participants. One of the main problems lies in conflicting rights. Because of the various interests of those involved, such as coaches, parents, agents, sport governing bodies, as well as those of the young athletes themselves, the interests sometimes conflict, resulting in the interests of the children being compromised.

8.2 Recognising children's rights

Children's rights "came of age" in the 1980s, according to Franklin (1995). In his work on children's rights, Colin Wringle (1981) describes the proliferation of calls for children's rights during the 1970s. For the most part, the leaders of the children's rights movement were adults, although some children and adolescents were involved. The authoritarian regime in schools was recognised as part of a more general abuse of childhood, particularly regarding the widespread use of corporal punishment, restrictions of free speech, the mandatory wearing of uniforms, and the lack of participation by pupils in the organization of their schools (Wringle, 1981). A wide variety of groups were clamouring for recognition of children's concerns. Despite their diversity, these groups were fairly unanimous in their criticisms of the ways children were being (mis)treated by the adult world, and their calls for the acknowledgement of children's rights. Wringle (1981) suggests the use of the currency of rights may have been due to fashion and imitation since many of the rights being demanded belonged "recognizably to a liberal tradition of long standing, the only new feature in the situation being their application to children" (p. 10). Some of the rights demands on behalf of children included: the demand that children should be seen as persons in their own right, the right not to attend school, the right to educational democracy, the right to organise democratically, the right of freedom in personal appearance, the right to freedom of expression, the abolition of corporal punishment, the right to freedom of worship, the right of free access to knowledge, the right of sexual freedom, and many others such as the right to vote, work, own property, travel, choose one's own guardian, to receive a

guaranteed income, to assume legal and financial responsibilities, to use drugs and to drive, in addition to rights to food, space, toys, and books (Wringe, 1981).

The area of children's rights is a subclass of rights in general. The paradigmatic right-holder is a "normal" adult (Wellman, 1995). Children fall into the sub-set of right-holders, which may include women, fetuses, incompetent adults such as those with permanent or temporary mental incapacities, minorities, workers, animals, and even the environment. These sub-sets exist because either individuals or groups have made claims, or others have made claims on their behalf, demanding a separate set of rights above and beyond general rights, such as those outlined in the United Nations Universal Declaration of Human Rights (1948). Other groups who have claimed distinct rights include patients, students, and athletes. Controversies in philosophical discussions concerning right-holders involve who may be a right-holder, and if only persons may be right-holders, then what is a person. There are also controversies surrounding rights and correlative duties, and whether a right-holder must also have duties, or responsibilities.

8.3 United Nations Convention on the Rights of the Child (1989)

In November of 1989, the United Nations adopted the Convention on the Rights of the Child (UNCRC). The document expresses some of the most basic values regarding the treatment of children, including their protection and participation in society. It articulates the human rights of children everywhere, and the standards to which all governments ought to aspire in realizing human rights for all children, without discrimination.

The relatively recent international recognition and promotion of children's rights, as well as the widespread ratification of the UNCRC have led to new considerations of children and childhood. Article 1, which defines children—those 18 years and under unless the relevant national laws recognise an earlier age of majority—and then covers non-negotiable standards and obligations including rights to survival, to protection from harm, abuse, and exploitation, to civil rights, health, education, as well as to participate fully in family, cultural and social life. The Convention aims to protect children's rights by laying down standards in health care, education and legal, civil, and social services. These standards are benchmarks against which progress by world governments can be assessed.

The overarching philosophy supporting the UNCRC is that children are human beings, that they are equals, and that they have the same inherent value as adults (Franklin, 1995). The document acknowledges that childhood is valuable in itself and not simply or merely a training period for adult life; it does so by affirming the right of children to play. The UNCRC recognises that the child's path to adulthood is gradual, and is characterised by their evolving capacities. Particularly in the earliest stages, children are vulnerable and require special protection and support in order to enjoy their rights in full. It may seem strange to promote children as equals, but to simultaneously demand their protection, notes

Franklin (1995). He suggests that part of the answer to that query lies in the obligation of states that are party to the Convention to develop and undertake all actions and policies according to the principle of the best interests of the child, as stated in Article 3:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (Art. 3, 1)

Thus, the interests of the child ought to be considered in all decisions which affect them. The interests of the parents are important, but not all-important, and neither are the interests of the state.

The Convention confirms that children have a right to express their opinions about issues concerning themselves. Article 12 says that a child who is capable of forming his or her own views may do so freely in all matters affecting the child, and that the views of the child be given due weight, in accordance with the age and maturity of the child. Article 12 does not, however, state that children's opinions are the only ones to be considered. It says explicitly that children have a responsibility to respect the rights of others, especially those of their parents.

Legally, the principle of the best interests of the child has come to be informed by the principle that where appropriate, the child's views and desires ought to inform legal decisions affecting them, such as the right to choose with whom they will live, to accept or reject an adoption, or to change their name or nationality. The Convention highlights and defends the family's role in the lives of children. The views that parents "own" their children, and have absolute rights over them are overturned and replaced with the parents' responsibilities to protect and promote their children's rights. In the Convention Preamble and in Articles 5, 10, and 18, the document refers specifically to the family as the fundamental group of society, and the natural environment for the growth and well-being of its members, particularly children. As children mature and begin to understand the values, culture, and norms of their society, the parents' responsibilities with respect to their children's rights are reduced. The UNCRC acknowledge the balance between the rights and responsibilities of families with the increasing capacity of children to be self-determining individuals, and exercise their own rights and responsibilities.

Governments must respect the primary responsibility of parents for providing care and nurturance for their children, and are obliged to support parents in their responsibilities by providing material assistance and support programmes. Furthermore, governments must also prevent the separation of children from their families unless such separation is determined as being necessary for the child's best interests as outlined above in Article 3.

Article 2 of the Convention, and one of the four general principles of the Convention, is that regarding discrimination. It stipulates that all children should be able to access and benefit from their rights, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 6 of the Convention includes the right to survival and development, and recognises that every child has the inherent right to life. The term “development” has to do with the broadest understandings of mental, emotional, cognitive, social, and cultural development, and may be seen as the departure point for all other Articles relating to economic, social, and cultural rights for children.

The Convention on the Rights of the Child has been formulated in the spirit of protecting and promoting the rights of the most vulnerable populations, children. The notion of children’s rights is not as outlandish as has been suggested in the past, and has achieved respectability. The Convention has contributed to that progress. The kinds of rights that the Convention has formulated, however, are primarily legal rights. We turn now to consider discourse about the moral rights of children, and whether children really are right-holders at all.

8.4 Moral rights and moral agents

Critical moral philosophers have questioned the ascription of rights to fetuses, children, animals, and other beings incapable of claiming their own rights for themselves. Questions concerning whether fetuses or animals have rights are common philosophical debates. The practical outcomes of such debates are of vital importance. For example, if a foetus or animal is granted the right to life, then abortion and killing animals would be considered rights-abrogations of those beings, and from a rights standpoint, those actions would be considered morally wrong. The extension of such a query—whether fetuses or animals have rights—would presuppose a more fundamental philosophical problem, that being which kinds of beings could have moral rights.

The notion of moral rights was discussed in the previous chapter. The question I shall ask here is whether children are the sorts of beings who could be moral right-holders. If indeed they are, what sorts of rights they would be entitled to claim, and when would they be able to make those claims. If fetuses, for example, are not considered to be the kinds of beings who are right-holders, then at what point does a foetus become an infant and then when do they become a child?

Whether children are indeed right-holders hinges upon their nature, as well as upon the nature of moral rights. The nature of children and of childhood is discussed in depth in Chapter Four, and will not be re-examined here. Moral rights are only one in a family of rights, and thus even if children are determined to be possessors of moral rights, such a conclusion does not necessarily mean those rights will automatically transfer to another family of rights, such as legal or institutional rights.

A moral right is understood as being “a claim backed by valid reasons and addressed to the conscience of the claimee or to public opinion,” while legal rights are legally valid claims against the state for enforcement (Feinberg, 1984, p. 110). The distinction between rights are supported by reason, and those which are not. A legal right

that is arbitrary and unsupported by reason is a legal right only, and not a moral right. An example of a legal right which is not a moral right—albeit a contentious and a jurisdictionally variable one—would be a woman’s right to have an abortion. Such a right rests upon law only, and not on moral grounds. Some moral rights are moral rights only, and have no legal backing. For example, the moral right to be treated politely by strangers is not enforceable by law. A child has the legal right to be cared for, and provided with the basics of life such as food and shelter. The law cannot, however, legislate that the child has the legal right to be loved. That is a moral right. Within the context of sport, the right to be treated with respect and courtesy by opponents is primarily a moral right, rather than a legal right. The concept of fair play is a moral concept, although in some sports, such as tennis, disrespect to opponents or referees may be penalised within the rules of the game; however, in other sports, “trash-talking” or “sledging” may be accepted within the ethos of the sport. Violent sports such as boxing blur the distinction between moral and legal rights.

Moral rights are generally independent of and antecedent to legal rights (Feinberg, 1984). For example, the moral right not to be harmed precedes the legal right not to be harmed. Legal rights are jurisdictionally determined, whereas moral rights are universal. The moral right not to be harmed applies universally, and is not based upon state enforcement for recognition and enforcement. The legal right to obtain a driver’s licence, however, is jurisdictionally dependent, for in some states it may be 16 years of age and in others it may be 17 or 18 years of age.

Normal adult human beings are the paradigmatic moral right-holders (Wellman, 1995). Their qualification to hold moral rights is, at the very least, their possession of moral agency. Only beings who are moral agents may possess moral rights; a moral agent is one who exercises freedom and control. Since the critical function of a right is to confer dominion on the right-holder, a right-holder must be capable of acting freely or exercising control (Wellman, 1995). The essential function of moral rights is to determine the morally justified distribution of freedom and control. One may view the ascription of moral rights to those who are incapable of exercising such freedom and control to be idle and inappropriate, without any moral purpose, or misleading people into believing that freedom and control may belong morally to those who are incapable of either acting freely or exercising control: one can only be held morally responsible for one’s own actions if one has the capacity to act in response to moral reasons. This sense of competency in turn is based, at least, on several presuppositions: “the capacity to learn or become acquainted with the relevant facts, the capacity to recognize their moral relevance, the capacity to be motivated by them, and the capacity to act in the broad nonmoral sense of doing something” (Wellman, 1995, p. 112). When someone acts in response to desire, passion, ambition, or self-interest, they are not acting morally.

A moral right-holder then is an agent, and the sort of agency which is required to be a moral right-holder is that which renders one morally responsible for one’s actions; this agent is one who has the capacity to act based on specifically moral reasons (Wellman,

1995). Such capacity presupposes, at a minimum, cognition of relevant information, an ability to appreciate their moral relevance, and to be motivated by them. These capacities do not have to be particularly sophisticated, as children can be morally responsible for relatively simple decisions even if they do not have any moral duty to act “rightly” in more complex situations; moreover, our most basic rights presuppose only a minimal degree of moral agency. For example, a six year old child may share his or her bicycle with another child without one; the child does this because he or she realises the other does not have a bicycle, while they do, and thus they feel compelled to share. While the child shares with his or her neighbourhood friend, the child does not have a moral duty to do so with children in far-off lands where others are without bicycles.

While Wellman questions the purpose of ascribing moral rights to non-agents, he does qualify such an ascription as not always being meaningless or without moral purpose. Ascribing rights to such beings may highlight the value and obligation we have to such entities. The issue of rights and our obligations towards animals are an area of great moral import; however, it is beyond the scope of this discussion. We focus herein on the vulnerability of children, and a consideration of children as potential right-holders.

8.5 Children as right-holders

Infants and very young children lack moral agency. Because they lack agency, it has been argued that they cannot be moral right-holders (Wellman, 1995). Along the moral continuum, newborns are situated at the very beginning, children are seen as being further along, and adults are considered to be the paradigmatic moral right-holders.

Children are in a progressive state of development. They acquire moral agency as they mature physically and psychologically, presumably towards adulthood. One of the difficulties in any general discussion about children lies in the inherent differences amongst other children. The very notion of childhood involves a dynamic state of growth and development, and includes such a wide chronological and physiological spectrum that any generalizations about “all” children are difficult to make. The United Nations Convention on the Rights of the Child (1989) definition of a child covers a period of tremendous change, with its associated variety of competencies. Thus, it would be inappropriate simply to speak of “all” children as though they were exactly the same. It is crucial, however, to nurture burgeoning autonomy without abandoning children to self-determination before they are capable of making their own decisions. These varying capacities and competencies are among the most significant challenges in raising children, as each child ought to be recognised as an individual without overlooking the inherent nature of children as being in need of guidance and protection.

One cannot classify children according to chronological age either, as even within these categories, competencies may vary dramatically. For the purposes of this discussion, very young children will be considered those from birth to approximately two years of age;

young children will be those up to the age of approximately seven years; children will be those up to the age of about twelve, and adolescents or youths will be teenagers up to the age of eighteen years.

If moral agency is necessary for the possession of rights (Feinberg, 1980; Wellman, 1995), and since very young children lack moral agency—and if moral agency is necessary for the possession of rights—then it appears that the youngest children cannot be moral right-holders. Despite the premises supporting the conclusion, this reasoning is somewhat disconcerting. The implication of such a theory of rights that renders the youngest children as not qualifying as moral right-holders, is dealt with in terms of “claims” by Feinberg. He holds that a right is a valid claim, and since a very young child cannot make any claims at all, then adults (presumably their parents or guardians) may claim their rights on their behalf. Thus, both theories of rights appear to suggest that beings incapable of claiming their rights cannot therefore be right-holders. However, because their parents or guardians may claim those rights for them, Feinberg believes that they are thereby capable of possessing moral rights. This extension would clearly also apply to animals, as humans are capable—even obliged—of claiming the rights of animals on their behalf, since they cannot do so themselves, nor will they “grow up” as children presumably will. Wellman (1995) does not accept that the youngest children are capable of possessing moral rights because they completely lack moral agency, which is the primary qualification for being a moral right-holder. Of course, disqualifying them from being moral right-holders is entirely different from being legal-right holders. Because the law says that very young children have rights, then “very young children have rights” since legal ascription of rights is, while jurisdictionally variable, accepted in societies (Wellman, 1995).

This discussion has covered the area of moral rights, and whether children are moral right-holders. I agree that even though the youngest children cannot claim their rights on their own behalf, these rights may be claimed for them by their parents or guardians. Older children are capable of possessing moral agency, given their more developed intellectual capacities, and thus as moral agents, they are moral right-holders. In conclusion, then, all children are moral right-holders, although the youngest children need their parents or guardians to claim their rights on their behalf, until they are capable of claiming their own moral rights. We turn now to consider the kinds of rights to which children may lay claim.

8.6 Child protection and child liberation

As discussed earlier, the debate surrounding children's rights has focused on the nature of children and childhood, and whether children differ from adults in morally relevant ways. The main issues in regard to children's rights are whether: (a) children are so different from adults that they cannot be right-holders at all; (b) children are sufficiently different from adults to require a distinct set of rights, or; (c) children ought to be accorded equal rights.

We have already determined that children do differ sufficiently from adults in terms of requiring special care and protection, and thus we shall now consider the two other issues from the protectionist and the liberationist perspectives. Archard (1993) refers to the protectionist approach as the “caretaker” thesis, which is similar to Feinberg’s (1980) version of the child’s right to an open future, or future-oriented consent.

Child liberationists argue that children are wronged by separation from the adult world and, by being accorded equal rights, children will be able to protect themselves from injustices (Aiken and Purdy, 1998). Proponents of equal rights for children focus on the limitations placed on children—primarily those in the western world—and believe that children are wronged by these inappropriate limits. While liberationists agree that there are differences between adults and children, they do not consider these to be of sufficient moral relevance to justify the denial of adult rights to children. Liberationists accept that children do require some protective rights, but not when these rights may prevent them from exercising the rights open to adults. For example, they agree that children may have special access to education, however, compulsory schooling would violate their rights of freedom. Child liberationists believe that the possession of instrumental reasoning is sufficient in deciding moral standing, and since even young children are capable of making accurate judgments about the consequences of a given action, then they ought to be according equal rights (Aiken and Purdy, 1998).

In contrast, child protectionists believe that children have special moral status entitling them to special moral and legal treatment. Because children are lacking in experience, competence and maturity, children do not have the knowledge or self-control required for exercising adult rights and liberties well (Aiken and Purdy, 1998). Their inability to recognise fully the consequences of their actions renders them more susceptible than adults to harming themselves, or being harmed by others. Those who are experienced and able to recognise likely harms are the children’s parents or guardians. Therefore, “parents are expected to take charge of their children, protecting and guiding them through their long years of development, gradually expanding both their rights and their responsibilities” (Aiken and Purdy, 1998, p. 452). Child protectionists are also usually supportive of state limitations on children:

Among these limits are requiring attendance in school until a certain age, prohibiting the sale of alcohol, tobacco, and other drugs or sexually explicit literature or contraceptive devices to children, imposing curfews, mandating health care such as vaccinations, and generally limiting the conditions under which children can work, engage in sexual activity, consent to abortion, refuse medical treatment, consent to be research subjects, make legal contracts, and be held legally accountable and punishable for their illegal actions.

(Aiken and Purdy, 1998, p. 452)

Such paternalism is justified on the grounds that children are in need of special care and protection during the formative years of their lives, particularly if the children are to grow up to be fully participating and contributing members of the community. However, as Feinberg

writes, children ought not to be treated as children after a certain point, “else they will never acquire the outlook and capability of responsible adults” (1980, p. 110).

Children gradually acquire competencies in different areas as they grow and develop. A child may be fully competent to make prudent and moral judgments about certain things, but not about others. Thus, blanket restrictions may not be appropriate, and this is where demands for restrictions on the lives of children are challenged. For example, protectionists deny that instrumental reasoning is sufficient to make good prudential and moral judgments as the liberationists argue. However, since the capacity to make such good and prudential judgments is not held by all adults either, how can they accept a chronological boundary separating those in need of protective rights, and those free to enjoy full adult rights? Protectionists may have to make stronger requirements for the accord of adult rights, which would complicate the already established chronological boundaries, or else they may have to consider a less restrictive approach to children’s lives and their rights.

I believe, as many do, that children do differ in morally different ways from adults. They are beings in the process of becoming self-directed moral agents, and need support and assistance from their parents or guardians to be able to claim their rights. Children are vulnerable, and are in need of protection and guidance in their early years so as to maximise their futures, and this protection and guidance may be conceptualised in terms of rights. Children’s rights may be considered in two groups, protective rights and promotive rights.

8.6.1 Protective rights

Protective rights (Archard, 1993; Franklin 1995), claim rights (Feinberg, 1984; Sumner, 1987; Wellman, 1995), or welfare rights (Griffin, 2000; Sumner, 1987), as they are known variously, are those which serve to safeguard children. Due to their vulnerability, incompetence, and inexperience in the ways of the world, children cannot protect themselves from harm, abuse, exploitation, oppression, or neglect by others. These rights must be claimed by others—usually parents or guardians—on behalf of the children: children themselves do not need to do anything to be accorded these rights. Protective rights include the basic welfare rights to food, shelter, health care, and protection from harm. The Convention (1989) includes the rights to be protected from economic (Article 32) and sexual exploitation (Article 34), and from the illicit use of narcotic drugs and psychotropic substances including the illicit production and trafficking of such substances.

Protecting children from harm is one of the most crucial functions of children’s rights. Presumably parents or guardians act to protect and promote their children’s interests, and thus it seems absurd that children would have to call on legal rights for redress of harms experienced within the family. Unfortunately it is not always the case that parents or guardians have natural love and affection for their children, or always act in the best

interests of their children, and thus children's rights serve also to protect children from the very individuals who ought to be protecting them.

Certain types of maltreatment are obvious. For example, a child who is deliberately beaten for misbehaving, or is told repeatedly that she is stupid and that nothing she ever does is good enough is clearly suffering from physical and emotional abuse. Other types of abuse may be more difficult to identify. While child abuse itself is difficult to define because it may take a wide variety of forms, it may be presumed to constitute a significant wrong. The wrong of child abuse lies both in the harm done to the child itself, as well as to the future adult the child will one day become (Archard, 1998). At one time or another, many (if indeed not all) children may feel that their parents are being unreasonable, unfair, or mean-spirited for what they "force" the children to do. When parents insist that their child go to school, or eat their dinner at the table rather than in front of the television—and eat all the spinach, or be home by a certain time, children may feel that the parents are torturing them, but in reality the parents are acting in the best interests of their child. It just may take some time for the child to recognise such limitations as "good" things. In the vast majority of cases, the actions of parents, despite how painful they may appear to be at the time, are well intentioned and appropriate. However, these are not the cases that ought to concern us. It is the cases wherein parents act in ways that do not benefit their children, and may actually harm them, with which we are concerned. For example, a parent who lives his or her life vicariously through the child, and pressures the child to participate—and excel—in certain activities, may also be considered abusive. When a parent forces a child to train and compete in intensive sport from an early age, one must question whether such participation is in the child's best interests. David (1998) and de Knop (1998) suggest that such treatment is abusive, and call on children's rights as stipulated in the Convention (1989) to support their claims. Children's rights in sport will be discussed in a later section within this chapter.

8.6.2 Promotive rights

Promotive rights (Archard, 1993), or choice rights (Feinberg, 1980a), or liberty rights (Sumner 1987), or participation rights (Franklin, 1995) are those that serve to advance the interests of children. These include rights covered in the Convention (1989), such as those to education. Article 29 states that the education of the child shall be directed towards:

- a) the development of the child's personality, talents and mental and physical abilities to their full potential
- b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations
- c) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin
- d) to develop respect for the natural environment.

(UNCRC, 1989, Article 29)

In recognition of the inherent nature of children, the Convention declares children also have rights to rest and recreation:

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

(UNCRC,1989, Article 31)

Article 5 applies to the child's right to be provided with appropriate direction and guidance; Article 6 concerns the child's right to development. This right to development may be understood in the context of creating one's own life plan, in light of one's interests and abilities. Jonas (1974) and Feinberg (1980a) have argued that an individual has the right to self-determination, which involves creativity and freedom in developing and changing one's direction in life as one chooses. A life directed by others would be a less authentic life. We move now to consider the child's right to an open future.

8.7 The child's right to an open future

Is there a moral right to be allowed to create one's own life plan? If a child's life becomes pre-determined by others, such as by his or her parents or guardians, then his or her fate is already determined. The child loses the opportunity to spontaneously and freely create and become his or her own authentic self. One loses the sense of human possibility in freely creating one's own future (Jonas, 1974). Jonas suggests that it may even be tyrannical to try and create another's fate in this way. What is important for an individual's experience of freedom and ability to formulate one's own life plan is whether one believes that one's future is open and undetermined, and remains still to be largely shaped by the choices one makes. Feinberg (1980a) argues that children have a right to an open future. This right has been used to justify paternalistic behaviour in the upbringing of children so that when they reach the threshold of adulthood, they are prepared to be self-determining in creating and living out their own individual life plans. When parents foreclose the futures of their children, they have done them wrong. Feinberg has been one the most influential philosophers to articulate and defend this thesis, and thus this work relies primarily on his explanations and discussions of the recognition and promotion of the child's right to an open future.

That a child has a right to an open future means that someone has a correlative duty—most appropriately parents or guardians—that they not foreclose the future options that the child would otherwise have by personally formulating his or her own life. Deliberate foreclosure of reasonable opportunities from which the child may choose would be a

violation of the child's right to an open future. Denying a basic education, or health care, or even love and nurturance, would limit or deny the child the opportunity to create an autonomous life. Such constraint would limit the child's options for his or her life plans. For example, if a child does not learn to read or write, then his or her employment possibilities would be severely curtailed, as would many life prospects in general be limited. An inability to read a newspaper, a job advertisement, a novel, the label on a can of food, or forms at a hospital would seriously hamper all aspects of life. While some skills may certainly be learned later on in life, such learning often more difficult and take far longer than it would in childhood.

Typical parenting often does involve many constraints on a child's behaviour and opportunities that the child may resent at the time, or in the future. Demanding that the child attend school when the child—at the time—does not wish to do, or making the child take piano lessons against his or her own wishes, is constraining. While one could argue that piano lessons may be part of a child's education, learning how to read and write would surely take precedence over the former, since those skills are essential in contemporary society. Indoctrinating a child into a particular religion at a young age also forecloses their future in some ways. Children are heavily and often forever influenced by exposure in their early years, and thus the earliest and strongest ideologies to which they are exposed may remain with them forever. Though they may later choose to leave religion, or to choose another religion, the first one to which they were exposed will likely be the most influential as they were indoctrinated during their most impressionable stage.

In arguing for the child's right to an open future, one may ask how children's rights might pose special philosophical problems. While adults possess a number of rights of children equally, there are some rights that apply exclusively to adults. There are also rights that, while not exclusively particular to children, are generally characteristic of them. He calls those rights that are common only to adults "A-rights," those that are common to both adults and children "A-C-rights," and those which are characteristic of children to be "C-rights".

A-rights are thought to be those possessed only by adults. Examples of these would be the legal right to vote, drink alcohol, smoke cigarettes, get married, enter into legally binding contracts, and stay out all night. A subset of these rights are autonomy rights, which are protected liberties of choice. For instance, the free exercise of one's religion, which presupposes that an individual already possesses religious convictions or preferences. It is important to note that when parents choose to expose their child to religious practices, they are exercising their rights, and not those of their children.

A-C-rights are those shared by adults and children. An example would be the right not to be mistreated by others. If a child is accosted by a stranger who hits him and takes away his candy, the stranger "has interfered wrongly with the child's bodily integrity and property interests and has violated his or her rights just as surely as if the aggressor had punched an adult and forcibly helped himself to her purse" (Feinberg, 1980a, p. 125).

C-rights are not those that apply exclusively to children, but are generally characteristic of them. They might also apply to adults in certain limited circumstances. There are two subclasses of c-rights: first, dependency rights, and second, rights-in-trust. Dependency rights are those that apply to all children, and adults in special cases such as those who are mentally challenged and unable to support themselves. These rights are based on the child's dependence upon others for the basic goods of life, such as food, shelter, and protection.

The second subclass of C-rights are rights-in-trust, which resemble those in the autonomy rights subsection of A-rights belonging to adults. They are special because the child cannot yet exercise these rights until later when he or she is "more fully formed and capable". These rights are "saved" for when the child becomes an adult. So, because sophisticated autonomy rights may be ascribed to children before they are actually able to exercise them, it is possible for these rights of children to be violated "in advance". This means that by violating conduct in childhood, when the child reaches adulthood, certain options may already be closed. The child's right—while he or she is still a child—is to have these future options kept open until she or he becomes a fully formed self-determining adult capable of deciding among such options. Feinberg identifies these "anticipatory autonomy rights" as autonomy rights in the special conception necessary to be held "prematurely" by children. These rights-in-trust are summed up into the single "right to an open future." An example of such a right and its abrogation is certain of the harms experienced by elite child athletes. The children experience harms such as spinal injuries that have life-long consequences. Their right to arrive on the threshold of adulthood with as many possible options available to them is abrogated since the nature of their injury has foreclosed a number of options. For example, they may never be able to become a firefighter or a pilot because they would not be able to satisfy the physical requirements of those professions.

Some rights with general names are difficult to classify, particularly when attributed to older children (Feinberg, 1980a). For example, some rights, such as the A-right to free speech, may straddle the divide between subclasses in the A-right and C-right category as children grow and mature. When ascribed to a ten-year old child, the right to free speech, interpreted as the freedom to express political opinions, is primarily an A-right but is also a C-right in terms of the opinions which the child may come later to hold, but which are currently beyond his or her comprehension.

A-C-rights protect interests that children have now. A distinction ought to be drawn between interests and present desires—or what Goodin (1997) considers "preferences"—which often clash. The advancement of the child's interests are a constituent of the child's good qua child at present, but the child may also come to have interests as he or she grows up, and these are protected by these rights-in-trust within the class of C-rights. "While he is still a child these "future interests" include those that he will in fact come to have in the future and also those he will never acquire, depending on the directions of his growth" (Feinberg, 1980a, p. 127). Present desires may interfere with those interests. For example,

children have interests in autonomy, which are manifested during childhood through the right to education. A child may have preferences to not attend school, but these preferences clash with his or her rights-in-trust of autonomy. If the child does not go to school, and does not learn to read and write, then at the point of becoming an adult, he or she will have a foreclosed future since those skills of reading and writing are significant components of burgeoning autonomy in that they allow the then-adult to obtain employment, which in turn will contribute to the person being independent and self-governing. Thus, if the adult-to-be wishes to exercise his or her autonomy at a later stage, the options must be kept open during childhood. Perhaps, as unlikely as it sounds, he or she will never have to make choices which depend on reading or writing, but that child is the potential adult who will need such basic skills, and since the child is potentially that adult, it is that adult who is the person whose autonomy must be protected now.

Clearly, children are different from adults. When a mature adult is faced with the challenge of being satisfied now, and having his or her future options left open, our respect for the other's autonomy is such that we cannot force his or her present choice even if it would protect his or her future liberty. "His present autonomy takes precedence even over his probably future good, and he may use it as he will, even at the expense of the future self he will one day become" (Feinberg, 1980a, p. 127). Children, however, are treated differently in order to secure their future liberty. While autonomous adults are free to make their own decisions, even those that may affect their future freedom and are imprudent, children's interests are protected by the future self which exists in childhood in the form of a claim to prudence. Respecting a child's future autonomy requires intervening in his or her free choices now. While adults are free to make their own choices and live with the consequences, in order to respect the future adult's autonomy, the child's present desires may be denied. Thus, the child's right to an open future must be protected against present desires, as they may interfere with his or her future interests.

8.8 Conflicting rights

One of the primary drawbacks of deontological theories is how to deal with conflicts, as in the case when a conflict arises between children's C-rights and their parents' A-rights. For example, one of the most frequent clashes occurs between the child's protected personal interest in growth and development, and the parents' right to determine their own child's upbringing, or to create their own individual lifestyle, or to practice their own religion without interference from others. Since the state often reinforces the interests of the general community, there may be further conflicts. For example, communities are concerned about public health in that they have an interest in children not being sources of infection to others, that children grow up socially well informed enough to vote as informed and responsible citizens, and that children not become involved in criminal activity or a drain on the state welfare services. Due to the three unique perspectives involved, family legal issues such as

custody hearings, maltreatment or neglect charges against parents, and criminal trials for the violation of compulsory school attendance laws and child labour regulations, become adversarial contests among the various rights of children, parents, and the state who represents the community's interests.

Since children are incapable of legally defending their own future interests against present infringements by their parents and others, they are protected by the state in its role of *parens patriae*. As explained in Chapter Five, this doctrine confers on the state the right, even the duty, to protect children and others incapable of protecting themselves. In such situations, the state becomes the “parents of last resort” in protecting children, sometimes even from their own parents. When the courts attempt to make decisions concerning the welfare of children, they attempt to do so as they presume the children themselves would decide when they become adults, which is not always straightforward. The courts try not to make decisions in the name of the future adult, and can sometimes delay making serious and final commitments by interfering with the parents until the child reaches maturity is becomes legally capable of self-regarding decision-making.

The state is generally reluctant to interfere in family affairs, and will do so usually with only the most compelling evidence. When parents abuse, neglect, or exploit their children, they can expect the state as *parens patriae* to interfere in their private relationship with their children, and if need be, assign the children to the custody of court-appointed trustees. However, “given satisfaction of reasonable moral standards of care and education, [no] court has the right to impose its own conception of the good life on a child over its natural parents’ objections” (Feinberg, 1980a, p. 139). While the state cannot choose the influences that are best for the child, it may expect that all public influences remain open, and that children—through their education in accredited schools—be exposed to a wide variety of information about the present and historical world. The state is expected to be neutral between atheism and theism in the private lives of its citizens; it must allow citizens to choose between private and public schools, sectarian or non-sectarian; parents may raise their children with their own values, ideals, and political persuasions; essentially, the family is free to create their own environment for the child, within the minimal standards of humanity, health, and education as determined by the state.

8.9 Challenges of the right to an open future

Challenges surround the proposition of the child having a right to an open future. The child's right to an open future sets limits around the choices parents have in raising their own children, and may also impose duties upon the state in its role as *parens patriae* to enforce those limits. These protective duties towards child protection invoke the connected ideals of autonomy—or self-determination—and self-fulfilment, concepts which are notoriously confusing.

Conceptual clarity is difficult because of the myriad beliefs surrounding raising children, discussed in Chapter Four on conceptions of children and childhood. Because children are fledgling members of the adult community, the stage of childhood is spent becoming socialised into their community. They learn their parents' and community's values and mores, which they internalise and meld with their developing identities. Since children are born without precisely determined character structures, they must be socialised into appropriate members of the adult community, and this socialization may include measures of discipline that may be contrary to the wishes of the children themselves. The nature of parents is such that they protect their children: they are characteristically paternal towards their off-spring. Sometimes this protection is from the foolishness and immaturity of the children themselves, but it may also be from dangers from other members of society. Community and state officials in the form of police and the judicial system work towards constructing and maintaining a framework of safeguarding citizens through its power and threats of punishment. The state's protective policies—typically western democratic states, for the purposes of this discussion—towards citizens are paternalistic in that they intend to protect in a manner characteristic of parents. Sometimes, however, the state uses these powers to protect children against their own parents.

The term “autonomy” plays a central role in discussions about children's rights. There are two senses of the term: first, it may refer to the capacity for self-governance (which is a matter of degree), or; second, it may refer to the sovereign authority for self-governance which is absolute within one's own moral boundaries (Feinberg, 1980a). There are also two senses of the term “independent” which also plays an integral role in discussions of children's rights. One sense of the term refers to self-sufficiency that involves the capacity to support and direct one's life, and to be ultimately responsible for one's choices. The other sense is primarily political, which refers to *de jure* sovereignty and the right of self-determination. These are important distinctions, as both autonomy and independence refer to capacity and to self-determination, crucial elements of discussions on children's rights and with paternal interventions by the state. The state justifies its interventions in parent-child relationships by appealing to the future autonomy of the children. It argues that the future adult the child will become has the right of self-determination, like all free citizens. That right is violated in advance of adulthood if certain fundamental and irreversible decisions that determine the course of a person's life are made by anyone else before that individual attains the capacity of self-determination.

Policies protecting a child's burgeoning right of self-determination do not necessarily promote the child's own good. Although there is little agreement by philosophers as to what constitutes a person's own good, many would connect a person's good ultimately with his or her self-fulfilment, which is not the same as autonomy or the right of self-determination. Self-fulfilment is also understood in different ways, but each sense includes as “the development of one's chief aptitudes into genuine talents in a life that gives them scope, an unfolding of all basic tendencies and inclinations, both those that are common to the species and those

that are peculiar to the individual, and an active realization of the universal human propensities to plan, design and make order” (Feinberg, 1980a, p. 143). Thus, self-fulfilment understood in this way is different from achievement, and one must ensure that it is not to be confused with pleasure or contentment even though achievement may often be highly fulfilling, and fulfilment in turn may be highly gratifying.

One way of deriving the right to self-fulfilment is to base it on the good of self-fulfilment. Any given adult is more likely to know his or her own desires, dreams, interests, talents, and natural dispositions better than anyone else. Thus, he or she is probably more capable of making personal decisions to the end of his or her own good than any state official, or a parent at an earlier stage who attempts to pre-empt personal choices. The individual's advantages in relation to this are sufficient that for all practical purposes, that recognition and enforcement of the right to self-determination, or autonomy, is a causally necessary condition for achieving self-fulfilment, or the person's own good, for an individual.

Another way of deriving the right to self-fulfilment is to view it as morally basic as the good of self-fulfilment itself. This interpretation holds that autonomy is more important than personal well-being, and that even when a person is not achieving his or her own good by making his or her own decisions, it remains that the individual must be the one to decide, for better or for worse, how to live his or her own life, since “the life that a person threatens by his own rashness is after all his life; it belongs to him and to no one else” (Feinberg, 1980a, p. 144).

The third view of regarding the adult's right to autonomy is where there is no priority, and one must attempt to somehow balance autonomy against personal well-being on an intuitive basis. Since the two separate ideals of sovereign autonomy (self-determination) and personal well-being (self-fulfilment) are likely to be involved in the discussion of the grounding of the child's right to an open future, Feinberg states that it is not essential to prioritise one ideal over the other. Thus, he believes it is in this manner that the good (self-fulfilment) and the right (self-determination) of the child fits into a discussion on the justification of this right to an open future.

Both conceptions of self-fulfilment and self-determination can breed paradox unless they are dealt with carefully. The fully self-determined adult is a person who has determined his or her own life-circumstances and personal character. It seems inevitable that regardless of the policies adopted by a child's parents, or of the state in terms of laws,

the child's options in respect to life circumstances and character will be substantially narrowed well before he is an adult. He will have to be socialized and educated, and these processes will inevitably influence the development of his own values, tastes, and standards, which will in turn determine in part how he acts, feels, and chooses. That in turn will reinforce his tendencies to act, feel, and choose in similar ways in the future, until his character is set. (Feinberg, 1980a, p. 146)

The situation is inescapable that parents will influence their children according to how the parents choose to live their lives. The environment in which the child grows up will shape his or her character and habits, and parents will serve as ready models for their children. This

inevitable limitation of options, if it can be shown that it is in accordance with the child's actual or presumptive, explicit or tacit consent, can happen without violating the child's C-right to self-determination. The problem lies with consent: one cannot simply ask the child for their actual explicit consent to the formative decisions of parents since when the child is first exposed to the family environment, he or she was unable to give consent. At birth the infant was not developed enough, and neither did he or she have any values or preferences of his or her own with which the parents could consult. Obviously in the early stages of infancy and childhood, the child is unable to communicate such information. When the child is able to communicate relevant preferences, values, and the capacity to consent, that outcome will have been influenced by the child's earlier experiences and will depend on how the parents raised the child. The parents in effect influence the child when he or she is young, and they shape the same child who will later make decisions about his or her preferences and values. It would be very difficult, if not impossible, for a child to be raised in a completely neutral environment which would not be influenced or shaped by the values and preferences of the parents. It is challenging for parents to decide what the child might choose if he or she was competent to make his or her own autonomous choice, but also to try and consider and take into account in childhood the interests of the adult which the child will become. It is extremely difficult for parents to judge during childhood whether the interventions they make on behalf of the future adult are appropriate or desirable by that future person. These are very difficult and complex issues, since the future adult is so integrally shaped by his or her experiences, the consent of that future adult may essentially be a product of his or her childhood. If a child is raised to value certain things, he or she will likely do so as an adult, who will look back and value the values his or her parents instilled during his or her childhood. Thus, future-oriented consent for interventions during childhood are notoriously difficult to evaluate. There is a paradox of self-determination by an adult. If the adult is to create his or her own life, and be the product of his or her own self-determination, then he or she must already have a self who is fully formed and capable of carrying out the determining. He or she cannot have determined that self completely alone because he or she would already have had to have formed a self to do that. The circle is infinite.

The paradox of self-fulfilment is somewhat similar. To discover what would be good for a child, one has to find out what are his or her propensities, skills and aptitudes, or highest potentials. We have to learn about the child's character in order to try and determine what might fulfil his most primary characteristics. We are faced once again by a vicious circle when we accept that if a person's own good is to be conceived of as self-fulfilment, then we cannot really know the young child's long term future good until his or her "nature" is fully formed, just as we cannot know the best way to shape the child's nature until we know what will be for his or her own good. Because the child's values begin to develop in childhood, it is impossible to simply leave the child's entire future open to him or her to

embrace upon settling adult values. Regardless of what parents do, a child will begin to acquire his or her values right away.

A child's own future character will largely be a product of the self being moulded from the beginning. By educating and socializing children into any culture, their futures are in some ways being curtailed; however, it is not possible to wait until a child has a fully formed character to educate or socialize the person. Thus, parents participate in creating some of the interests whose fulfilment will constitute the child's own good. "They cannot aim at an independent conception of the child's own good in deciding how to do this, because to some extent, the child's own good (self-fulfilment) depends on which interests the parents decide to create" (Feinberg, 1980a, p. 148).

The paradoxes of self-fulfilment and of self-determination as outlined by Feinberg sound plausible; however, by his own admittance, they are only approximate generalizations. Human life is a continuous process of physical, psychological, and sociological development from birth until death. There is no clearly defined boundary separating childhood and adulthood, both of which are abstract social constructions. As such, there are no absolutes when considering distinctions between the two, as many central distinctions differ by degrees. For example, we cannot say that there is a stage in a young child's life where his or her character is wholly unformed, or where his or her talents and temperament are entirely malleable without latent bias, or that there may not be any self-determination without the self who does the determining being already fully formed.

By the time a child has reached the end of his or her first decade, the majority of a child's C-rights-in-trust have already become A-rights. Competency varies between individual children; one child at the age of five may have very different abilities than another at the same chronological age. Age stipulations for the point at which all the natural rights-in-trust become actual A-rights are mere approximations. For example, not all eighteen year olds or even twenty year olds may be as mature and cognizant of their values and beliefs as are some sixteen year olds. The role of the child in shaping him or herself is a process of continuous growth and development started at birth, and there is no specific point before which the child played no role in shaping his or her identity, and after which he or she is the sole responsible maker of his or her character and life plan. Even at the very beginning, an infant has a kind of basic framework of character and proclivities, as well as a genetically fixed potential for learning various skills and talents. Feinberg compares the exposure of a child to a basic nurturing upbringing and a social environment to be the equivalent of adding water to dehydrated food; it fills out and actualises its stored-in tendencies.

From the very beginning of a child's life, exposure to its parents and their values and beliefs, as well as outside influences, will lead the child in a certain direction. From there, the parents will promote the child's future autonomy and well-being with due respect to the initial bias from heredity and the child's early environment. The child will be able to contribute to the making of his or her own self in an ever-increasing capacity. As the child moves through the developmental stages, the child will plan an ever-increasing role in

creating his or her own life until reaching the arbitrary division between childhood and adulthood. At this stage, the child is assumed to be ready and responsible for self-determination. This is, at least, how growth ought to have proceeded, when parents and others have raised a child with maximal regard for the autonomy of the adult that he or she will one day become.

In much the same way, parents who have raised their child so as to promote his or her self-fulfilment will have tried at every opportunity to strengthen the child's apparent tendencies and inclinations. Feinberg assumes that with parental support, talents that have been discovered through exposure to a multitude of opportunities will have been allowed to develop and flourish. Parents will encourage the child towards the kind of career which matches his or her character. Feinberg suggests that there will be no self-fulfilment for a child who is inclined to lead a sedentary lifestyle but endowed with fine motor control over his sensitive fingers to be pushed into a job requiring hard physical labour and no patience for small painstaking tasks, or the other way around. Of course, these situations are ideal. I recognise that not every child will be fortunate enough to be raised in such an environment. Each child will be different from all others, with unique interests and proclivities, temperaments and talents. He or she will have distinctive attitudes towards life, which may take years of searching and analysing to understand and justify as an adult. His or her discerning parents may possibly be able to identify and understand these elements of life more clearly than the child, and insofar as it is possible, may help direct the child towards his or her own preferred directions. Of course, the natures of children and of parents are often at odds with each other, but as the child matures, he or she may come to see the parents as nurturing concerned only for the child's best interests. If the child's life has been left open for his or her own finished self to determine, then Feinberg believes that the fortunate adult who emerges will already have achieved a certain degree of self-fulfilment through his or her own already autonomous choices in promoting his or her own preferences from the earliest opportunities.

8.10 Children's rights in the context of sport

In this section, I discuss some of the work done primarily by sociologists who have applied conventions and rights frameworks to sport. This section illustrates such application of generally established frameworks towards child protection in sport specifically.

Organised sport at all levels is controlled exclusively by adults. Children who participate in sport have no control over rules, regulations, the appointment or release of coaches, managers, referees, or any other sporting officials, and as such, they are at the mercy of adults who control their entry into sport and then all subsequent participation, training, and competition (Galasso, 1988). The harm and abuse experienced by children participating in organised, competitive sport at the highest levels has been discussed at great length in the chapter on harms in sport. Brackenridge (2001) believes that "the laxity

with which children's rights are applied in sport has facilitated other types of exploitation, such as sexual abuse" (p. 15). Sport is often considered as being beyond the scope of the laws of society, for actions which would be considered assault and battery out on the street are either overlooked in sport, or even supported and encouraged as they are in boxing, ice hockey, and other sports. Recently, this has changed as some cases of violence within sport have been taken to legal courts for redress. For example, American hockey player Marty McSorley was charged with assault with a weapon after he hit another player on the head with his stick during a game. He was found guilty, but was given a an extremely minor penalty (a small fine), and thus the purpose of the court case remains questionable. Violent sports are examples of these cases, wherein rights abrogations are often overlooked. However, David (1998) argues that rights ought to be accorded to individuals within and beyond sport; if children are persons, and if persons have rights, then children also have rights. These rights apply ought to apply universally, including in sport. When sport becomes child labour, slavery, and involves other such horrors as child trafficking and doping of children, then clearly, children are being harmed and their rights are being abrogated (David, 1998; Galasso, 1998).

Concerns have been raised by many sociologists (Donnelly, 1993, 1998, 2000; de Knop, 1998), physicians (Mafulli and Helms, 1988; Nash, 1987; Tofler et al., 1996, 1998), and others (David, 1993; Kidd and Eberts, 1982; Ryan, 2000) about these experiences, and calls have been made for the protection of children in sport. Kidd and Eberts (1982) conducted a legal inquiry into athletes' rights, wherein they questioned intensive training and competition for children, and recommended further investigations into child athletes' rights. In 1988, Beamish and Borowy published the results of a systematic study into Canada's high-performance sport system. They analysed athletes' working conditions and argued that athletes are poorly paid crafts workers. In their research on children's sport, Cantelon (1981) and Donnelly (1993, 1997) have approached child's participation in terms of labour laws. Their findings are that athletes often do experience exploitative practices that would never be tolerated outside the sporting environment. With no voice, and thus no power to make their concerns known, these young athletes have little reproach to abusive and exploitative treatment, other than through the advocacy of others. Concerned professionals have turned to their plight, and have called for changes to be made. Donnelly (1997) has advocated the application of labour laws, particularly those protecting children working in the entertainment industry, to sport. Another approach has been the application of human rights towards children in sport, particularly as outlined in the 1989 United Nations Convention on the Rights of the Child. The rights outlined in the Convention are accepted and supported internationally.

While many examples exist where sport has existed outside the legal framework of society, traditions appear to be changing. One of the most important examples of a sporting practice being brought before the courts was the Bosman case (David, 1988). The European Union and its member states recognise the principle of the right of freedom of

movement and employment for all citizens. However, the European Union of Football Associations (UEFA) strongly limited this fundamental human right with its own regulations. Jean-Marc Bosman, a player for the Belgian club FC Liège, argued that locking a player to a football club through contract and transfer fee restrictions was a violation of the Treaty of Rome (Cashmore, 2000). At the end of his contract, FC Liège demanded a transfer fee from any other football club who wanted to sign him. Bosman believed this violated his right to freedom of contract for citizens of the European community. He went to the European Court of Justice, and in 1995, the Court established a landmark ruling ending the necessity for transfer fees. The Court determined the UEFA ruling to be a gross violation of European law, and demanded the UEFA change their regulations. Consequently, a player may now sign with any European club. This was an extremely important landmark case, as it established that human rights violations applied to sport as well as in society at large. Thus, it ought to follow that human rights violations of children in sport ought to be recognised as such. Children's rights ought to be taken into account by all those involved in sport: parents, coaches, trainers, officials, sport governing bodies, and government officials themselves. Unfortunately, this has not been the case.

As David (1998) and de Knop (1998) have argued, many of the Convention's rights are directly relevant and applicable to sport. Rights to survival and development are protective rights outline in the Convention (1989), and thus Article 6 outlining such rights is applicable to, and ought to cover children's participation everywhere, including the sporting environment. Many of these harms have been considered elsewhere, and thus only a few on the Articles of the Convention will be expanded upon here.

Article 3 covers the principle of the best interests of the child, which is one of the most fundamental of children's rights. Article 5 is about the right to be provided with appropriate direction and guidance. The right to be protected from discrimination applies in sport; Article 2 states that all children are to have equal opportunities for participation, training, and competition. Articles 13 and 15 concerns the child's right to freedom of expression and of association.

Article 17 relates to access of appropriate information. In order to make informed choices, information must be available to those who need it. Athletes and parents need to know the philosophy of the sport organisation in order to determine if that is the right environment for the child: the child has the right to know what they are getting themselves into and what they may expect to get out of an activity or team experience (Galasso, 1988). Selection criteria, training and competition expectations, disciplinary practices, transfers, coaches' qualifications, travel requirements, and financial outlay must be clear and available. Athletes and parents need to know the repercussions of missing practices or competitions: will the athlete be punished in some way, such as by not being selected for a future competition.

Athletes need to know where they may go for help about harassment or abuse in sport. They need to be able to access medical attention, particularly without worrying about

repercussions from the coach or other authority. If an injury or illness is revealed, this information may have a significant impact on the athlete's career. The coach may not choose the athlete for a competition, or the athlete may lose sponsorship funds if his or her career is in jeopardy from the medical condition. Even rumours may be sufficient to discourage a sponsor. This would relate to Article 16, which deals with the right to privacy. An international athlete's personal details are often discussed by the media; this kind of invasion of privacy is difficult for anyone to deal with, but a child may have additional difficulties coping. Medical personnel have professional duties of confidentiality, but this responsibility ought to apply to all trainers and others involved with the athlete. Dealing with an injury is difficult enough for an athlete, but having to read about the details and comments from others would be unpleasant and distracting. Article 39 is about the right to benefit from rehabilitative care, which would apply in this area and also relate to rights to privacy. Articles 33, 34, 35, and 36 cover a number of forms of abuse and exploitation. These apply in a variety of situations involving children's participation in sport.

Article 24 is about the right to health. There are many risks associated with participation in sport, particularly in sport at the highest levels. Few sports, if any, have entirely no risk of injury. Many of the harms suffered by children in sport have been discussed in an earlier chapter. However, a number of pertinent issues are discussed here. The recent exposé of the former East German sports system has revealed years of deliberate, systematic abuse of young girls in sport, including the administration of drugs and doping agents to children (Ungerleider, 2001). The American Academy of Pediatrics (AAP) supports exercise for children, but has issued a number of cautions related to children's participation in intensive training. Sustained, high-intensity training for children may induce musculoskeletal, endocrine, hematologic, thermoregulatory, psychological, and social damage (AAP, 2001a, 2001b, 2000a, 2000b, 2000c, 1996, 1990). While a number of chronic injuries are clearly accidents resulting from uneven playing surfaces and collisions with other players, there are other injuries which are preventable (AAP, 2000b). For example, after the "spearing" rule in American football was instituted, cervical spine injuries were reduced, and rules about wearing helmets with visors in ice hockey also reduced the number of injuries. Of significant concern is overuse injury. In soccer, the practice of "heading" the ball by young players has come under scrutiny by researchers. A study comparing adult soccer players who began playing soccer in youth leagues with controls showed 81% of the soccer players to have mild to severe deficits in attention, concentration, and memory (Tysvaer and Lochen, 1991). Recommendations to prevent injuries in young players include reducing the size of the ball, and also delaying introducing the skill of "heading" until the players are older and more skilled in ball control. Young female athletes are at higher risk than non-sporting youth for developing eating disorders, particularly the "female athlete triad" (AAP, 2000c), an issue which must be addressed by all children's sport governing bodies, and policies implemented to protect young athletes.

The right of the child to have his or her views heard and considered (Article 12) are also protective rights in that they apply first to respecting the child's dignity, and second, towards supporting the child's interests. A child participating in sport has thoughts regarding his or her participation, and these views must be respected. The child athlete must have the right to withdraw from participation if he or she so desires.

Article 19 covers the right to protection from abuse, neglect, and all other forms of violence. The child must be protected from overenthusiastic parents, coaches, and others involved in the sport. While the parents are ultimately responsible for the child's health and welfare, there must be policies in place which would allow state representatives to intervene on the child's behalf under circumstances wherein the child's rights are violated. Parents also need to be aware that when they hand their children over to the control of the coach, they are not abdicating all responsibility for the child. While the coach certainly has *in loco parentis* obligations to care for the child, the onus remains on the parents to safeguard their child's health and safety. Appeal procedures and processes must be available and transparent for athletes and parents. There must be no opportunity for reprisal. The athlete has a right to be present and have access to evidence regarding disciplinary matters (Galasso, 1988). In all cases, the best interests of the child must be the paramount consideration.

Article 32 is about protection from economic exploitation. Very few sports, if any, are entirely free of the influence of money. While a myth exists that all high-performance athletes are making a financial fortune, that is certainly not the case for all athletes. Some athletes do make millions of dollars, but these are primarily professional athletes such as football, basketball, and ice hockey players, golfers, tennis players, among others. Furthermore, not all athletes in these leagues make millions, only a select group. Even at the highest level, some athletes struggle for money to train and travel to competitions, for equipment, medical needs, and not all of them have sponsorship. Female athletes earn less than their male counterparts. Even international competitions, such the All-England Tennis Championships, award less prize money to women than to men. The Canadian men's hockey team is made up of professional players who earn multi-million dollar salaries in addition to their sponsorship, while the women's team is made up of women who work as plumbers, administrators, and hold other full-time jobs. Beamish and Borowy (1988) reported financial constraint to be one of the main reasons Canadian athletes left their international sporting careers.

While not a major issue of concern in North America, South American and European football clubs scout young children, some as young as 11-years of age. This may also happen in hockey, but certainly not to the same degree as in football. Anecdotal reports have been made about football clubs signing children on below the age of ten. Many of the young footballers come from undeveloped countries, often from remote areas from poor families. Parents may be given what they consider enormous amounts of money in exchange for signing a contract promising their young child to a football club (David, 1998).

The children are sent away to training programmes. Sometimes these clubs are far away from their parents, even on different continents. Article 9 applies here, which covers the child's right not to be separated from his or her parents. These clubs rarely give any consideration to the developmental needs such as social integration and education of the children they recruit, claims David (1998).

As with any high-performance sport, very few actually make it into the professional leagues, and those who do not make it are forgotten. This was the case for Marc-Hervé, a young footballer from the Ivory Coast (David, 1998). He was scouted in Africa, and sent to a French football club. After being fired from the team, he was dismissed without any form of compensation and abandoned by the team without money to go home or a residence permit. A 13-year old Zairian was scouted by Juventus Torino in Italy in 1994, but his father refused to let him go (David, 1998). An 11-year old Italian boy was offered a contract by AC Milan (David, 1998). In France, 15-year old players are sometimes offered upwards of \$50,000 to sign contracts with clubs (David, 1998). Despite many of these young prospects falling by the wayside, the very few who do make it to the professional leagues often earn such lucrative salaries that these practices are profitable for professional football clubs. This kind of commercialisation can certainly be viewed as a kind of slave trading. These children are "bought" and exploited for the economic gain of the football clubs. While their parents may have received what they consider a fortune for the child, and usually sign on with the best interests of their children in mind, they and their children are exploited, and thus Article 32 protecting children from economic exploitation is very much appropriate to this dark side of sport. A coach with Milan AC football club remarked on the practice of enticing young athletes from Africa: "By 2005 no African national soccer teams will be left. European clubs are importing younger and younger African players, and taking away their nationality by picking them for European national teams" (Jusu, 1999, p. 24).

Camel racing circuits in the Gulf States use children as camel jockeys (Anti-Slavery International, 2000). Children as young as six, and sometimes younger, have been routinely "trafficked" from South Asian countries to the Gulf to supply the demand for camel jockeys. After the death or injury of a number of these child-jockeys, the Anti-Slavery International organisation joined other human rights organisations in an effort to ban this practice. While the United Arab Emirates Camel Jockey Association formally banned the use of children as jockeys in 1992 in response to the campaign, evidence obtained by British television in 1997 showed these rules are being ignored. Children continue to be bought, abused, and exploited in the business of camel racing, although more so now from Africa than from South Asian countries. In an example of how being a signatory to the United Nations Convention on the Rights of the Child (1989) is criticised as mere political posturing rather than as any kind of moral or legal promise, the United Arab Emirates is one of the countries who signed the Convention, and yet ignores this practice. Anti-Slavery International and the other human rights organisations have requested that the UAE ban this practice, and also make

every effort to repatriate these young children to their families, and provide them with compensation (Anti-Slavery International, 2000).

Articles 28 and 29 of the Convention relate to rights regarding education. When children are removed from state-sponsored schools, they must still have access to education. Some teams have private tutors and some parents tutor their children at home. However the child is educated, he or she must receive an equivalent programme to his or her non-sporting peers. After winning the 1982 Alpine Skiing World Cup Downhill championship, Canadian Steve Podborski bemoaned the fact that he had not graduated from high school, despite having been very successful in sport. Sport is not a substitute for formal education.

While child athletes certainly have rights in sport, they also have responsibilities (Galasso, 1988). They are expected to adhere to codes of fair play and the rules and regulations of their sport. They must refrain from engaging in all forms of foul play such as cheating, verbally or physically abusing other athletes, sporting officials, and others involved. Young athletes should be represented on committees, and be involved in decision-making to the degree possible. Children are capable of assuming responsibilities early on in life, and being responsible for their actions is certainly an excellent starting point. Codes of fair play for athletes, parents, and coaches are one way of educating all those involved in sport. Implementing and enforcing such codes in children's sport ensures awareness of rights and responsibilities from early experiences into sport, which ought hopefully to stay with athletes throughout their careers, and parents as they support and encourage their children.

Finally, it has been suggested that the pursuit of athletes' rights reflects a lack of commitment to excellence (Beamish and Borowy, 1988). Claims have been made that an interest in athletes' rights may be incompatible with a winning attitude, and may interfere with the athletes' ability to perform at the highest levels. These claims are preposterous. The United Nations Declaration on Human Rights (1948), as well as more specific rights such as those guaranteed to all Canadian citizens by the Canadian Charter of Rights and Freedoms cannot be given up, nor can they be taken away, simply because someone wishes to compete in sport, at any level. Athletes may actually be entitled to more rights on the basis of the unique demands required by high-performance sport, rather than fewer or even none. Knowing that they will be treated fairly and justly, having access to established criteria in advance of selection processes, and awareness of and access to appeal procedures, athletes may be able to focus exclusively on their training and competition, rather than having to be concerned with other crucial but distracting variables (Beamish and Borowy, 1988). Such knowledge and information would surely enhance, rather than detract from, performance. The recognition and respect of the rights of children in society and in sport are surely a worthy vehicle towards eliminating harm and promoting the best that sport has to offer.

8.11 Wrongs of children's rights

This chapter has focused on the promotion of children's rights, and has discussed a myriad of institutionalised and proposed rights for children in general society, as well as in the specific environment of sport. We have considered theories of child liberation and child protection, and promotive and protective rights. What we have not yet approached is whether the language of rights is actually the most appropriate one for the protection of children.

The way society views and values humans is crucially determined by the kinds of rights which are accorded them, and thus giving rights to children may be seen as a public and palpable acknowledgement of their status and worth (Archard, 1993). Rights talk in general has faced criticism. The presupposition that the language of rights is the best approach to analyse and evaluate the situation of children has been challenged on three fronts. The most frequent criticism has been that rights are individualistic in nature, and may actually be detrimental for individual members within certain close-knit communities (MacIntyre, 1985; Gilligan, 1982; Sandel, 1982; Schoeman, 1980). In staunch opposition to such claims, MacCormick (1977) argues that rights promote the interests of children, and "that they have as their specific aim the protection or advancement of individual's interests or goods" (p. 192). Rights serve to promote an individual's interests by conferring status on the rights holder and giving them dignity. Not being accorded rights means individuals are dependent upon others, and may have to plead, request, or beg from others to be treated in particular ways (Feinberg, 1970). The endorsement of rights by the United Nations for all human beings, including children, supports the view that rights do promote an individual's interests.

Other challenges to rights have included the view that rights talk tends to be "all-or-nothing" which serves only to further separate the realms of childhood and adulthood, and that rights talk may be morally impoverishing and neglect an alternative ethical view of the world, characterised by the affectionate, caring interdependence of the ideal parent-child relationship (Archard, 1993).

Rights do not have to be all-or-nothing. That children are not accorded all adult rights does not have to mean that they have no rights at all. In much the same way that adults who breach certain rules may have their rights abrogated, and returned when deemed appropriate—for instance, if an adult is charged with driving while intoxicated, his or her right to drive may be withdrawn for a period of time—children can also have some rights and not others. There are moral claims to be made on behalf of children that do not have to necessarily be expressed in the language of rights, and this does not make them any less valuable than rights claims. Wrongness or degrees of wrongness do not have to rely only on whether a right has been violated. However, it stands that rights talk does allow the declaration, recognition, and enforcement of claims that are otherwise difficult to make.

Affection and caring interdependence ideally characterise the parent-child relationship, while the rights model applied within intimate relationships may seem to interfere with the interplay of affection and care characterising such relationships (Archard, 1993). Along similar lines, Schoeman (1980) cautions that

The danger of talk about rights of children is that it may encourage people to think that the proper relationship between themselves and their children is the abstract one that the language of rights is forged to suit... Emphasis on the rights of children might foster thinking about the relationship between parents and child as quasi-contractual, limited, and directed toward the promotion of an abstract public good. (Schoeman, 1980, p. 9)

Such talk could possibly forge a divide within intimate relationships. Waldron (1993) suggests that “to stand on one’s right is to distance oneself from those to whom the claim is made; it is to announce, so to speak, an opening of hostilities; and it is to acknowledge that other warmer bonds of kinship, affection, and intimacy can no longer hold” (p. 373). What seems to be so unpleasant or antagonistic about the notion of rights talk within the family is the *assertion* of such rights, beyond simply the existence theory of the rights. However, when that affection and care is either non-existent or is questionable, there must be some kind of method of protection available for children. Since rights are often claimed only when things have gone wrong in intimate relationships, it seems heavy-handed to claim that rights cause antagonism. Furthermore, in those situations where a right may cause antagonism, appeals to rights may be required so as to promote a greater good. For example, in a situation where a child is being abused by a family member, the child claiming the right to be separated from the family may negatively affect the intimate relationship with his or her parents. While we would all prefer to think of the family as being a sphere of mutual respect and concern, an environment wherein the interests, opinions, and happiness of all members are taken seriously by all, this ideal is simply that: an ideal. In reality, as within all relationships, there are cases of morally questionable power dynamics and traditions that do not respect equally the inherent moral worth of each family member. Injustice within relationships may include physical and psychological abuse, as well as less tangible injustices, such as the family’s acceptance of racist or sexist attitudes. Essentially, not all individuals involved in intimate relationships, or family members, respect and accept the view that the well-being of each member matters, or certainly, that the well-being matters equally (Dworkin, 1977). Rights serve as fallbacks when affection and attachment fail.

8.12 Rights and virtues

A significant criticism of rights theory has been its focus on the individual, rather than on the community. Communitarian Alasdair MacIntyre (1985) was one of the early critics of what he considered as the “individualist concepts” of rights. The concern is that individual rights, with its orientation based on individual autonomy, assumes a false conception of persons as being “unencumbered selves;” such a conception of persons may

disregard the moral import of communities and the shared commitments that arise from such relationships (Sandel, 1984). Sandel and MacIntyre argue that rather than trying to establish universal rules and principles of right action, we ought to instead consider the established values of a particular society, and its virtues. They believe we should look to morality within a framework of virtues which are grounded in practices and the modes of life that communities use to sustain themselves. Virtuous conduct is based on the theory of virtue ethics, which involves both the identification of character traits that are considered morally praiseworthy, and the integration of these virtues in practice.

One of the necessary elements of the virtue ethics approach is to identify the kinds of qualities we should like others and ourselves to possess. Such qualities form a long list including: honesty, truth-telling, promise-keeping, loyalty, patience, perseverance, integrity, tolerance, fairness, courage, temperance, chastity, considerateness (Wringe, 1998). As Wringe rightly points out, the list seems to be almost endless, and may continue with little indication of rationale, structure, or priority. MacIntyre (1985), however, identifies virtues which are linked with modes of behaviour that promote the flourishing of particular communities. Such virtues are not grounded in universal principles, but rather with particular communities and with particular circumstances. It seems clear that such an approach is problematic, and possibly dangerous. The Nazis identified with particular values and virtues of their communities, and such identification led to the extermination of millions of victims (Wringe, 1998). Without criteria for external appraisal—such as a universal moral code—communities may act in accordance with their particular values and virtues, but in doing so, may grossly abrogate general morality which views genocide as wrong, as well as other less egregious examples.

In many societies attitudes and beliefs are shared; however, they may also differ widely. Few societies remain self-sufficient and self-contained, or small enough for us to know all those who affect our lives and who are in turn affected by our actions (Wringe, 1998). As such, attitudes and beliefs are not shared in most societies, and few are aware or even concerned with how their own attitudes and beliefs affect the fortunes and misfortunes of other persons in those communities. Individuals in modern society where people often live far away from immediate and extended family, and their friends, and as a result, are not particularly subject to the scrutiny or control of their communities or societies. Therefore, individuals are relatively unaffected by those who attempt to prescribe such duties of loyalty, or obedience based on some kind of moral responsibility to the community. Coercive moral doctrines remain fairly ineffectual in such situations, where the individual is autonomous in most spheres of his or her life. However, this may not necessarily be so in a small community such as that of sport, which is purportedly entered into on a volunteer basis.

In large organisations, as in large societies described previously, particular established practices and implicit understandings and obligations are often replaced by sets of rules. Social control can no longer be exercised over others by duties ascribed by

tradition, including traditions of religious followings. Rather, in the attempt to give consistency to morality, universal principles such as rights have been formulated.

In recent years, a number of sport organisations have developed “codes of conduct” or “codes of ethics” (guidelines and stipulations of right—and sometimes wrong—action) for athletes, coaches, parents, researchers, and even spectators in some cases. These organisations have included professional groups such as football’s international ruling body (FIFA), national coaching organisations (Sports Coach U.K., Coaching Association of Canada), university levels (Canadian Inter-university Sport), and children’s sport (National Alliance for Youth Sport, National Youth Sports Safety Foundation), in addition to academic groups such as the British Association of Sport and Exercise Science. Much of the development of such codes have originated from scandals within sport such as sexual harassment and abuse of athletes by coaches, and less frequently, of athletes by their peers (Brackenridge, 2001). By establishing such rule-based codes of ethics, it seems these organisations aim to govern conduct by establishing guidelines for right action. Such guidelines are not without reference to virtuous conduct however. In Alpine Canada’s Ski Coaching Code of Ethics (Alpine Canada, 2002), for example, principles of respect, responsibility, integrity, and honour are outlined in terms of the coach’s relationship with both athletes and parents.

Virtue ethics has been described by MacIntyre (1985) as perhaps the best theory to replace the questions of rights theory, and its associated problems. For example, the question of “What rules ought we to follow?” may be replaced with “How ought I, as an individual” to live?” Behind the question is the notion of “flourishing”, and some have suggested that this concept may be more useful to those who are seeking an ethic for coaching relationships, beyond that provided by rule-based codes of conduct (McNamee, 1998). While McNamee does not suggest that rule-based considerations are necessary less valuable than virtue considerations, he writes that they may co-exist for the purposes of guiding professional conduct in coaching. Virtue-based considerations such as courage, honesty, and justice guide would be preferable in guiding conduct rather than adherence only to the rule book. McNamee asks

Are we not to prefer those who merely keep the rules for fear of being punished but those who keep them in order that the contest is a fair and equal test of relevant abilities and powers? And if sports are to flourish too, must we not have trustworthy coaches and wise administrators as well as honest performers all of whom keep the sporting faith; the spirit of the game?

(McNamee, 1998, p. 161)

Since the pursuit of human well-being or flourishing (*eudaimonia*) may be better served by some characters than others, then in order for persons to achieve or experience “the good life”, a core of virtues are required (McNamee, 1998). These virtues cannot be acquired by simply consulting a moral rule book for specific guidance. McNamee (1998) gives the example of trust and the virtuous coach. He writes that in order to enact and evaluate

trusting relationships, a range of dispositions including courage, wickedness, spite, generosity, foolhardiness, and benevolence are necessary.

As described earlier in this work, in Sections 3.3 and 3.3.1, trust is an essential component of the coaching relationship. I would argue further that it is an essential component of any close relationship, including that between parent and child. It is especially important in children's sport because of the inherent vulnerability of children to harm. While it is essential for coaches to respect the rights of children in promoting their best interests and avoiding harm, parents who entrust their children to the care and guidance of a coach would like the coach to go beyond simply one who is a "respector of rights" but who is also trustworthy, and a virtuous person. That individual should not only adhere to codes of conduct which will include respecting athlete's rights but ought to also be a "good" person. When a code directs one to "respect the rights of athletes", one would like to think the kind and virtuous person will go beyond simply the mechanical upholding of such directives, but will uphold them in a kind and considerate manner, as a virtuous person.

Given the nature of sport, and the discretionary power of both coaches and parents, respecting the rights of athletes could be strengthened by their application by a virtuous person. As McNamee (1998) states, "the rules do not specify their own scope and interpretation; agents, who are variously virtuous and vicious, do" (p. 165). However, we cannot overlook the importance and value of rights theory in protecting vulnerable beings. As Wringer (1998) argues, reflection and reasoning on ethical matters cannot be dispensed with in the virtue ethics approach to seeking how we ought to live our lives, and how to determine right action.

8.13 Conclusion

As the treatment of children in society has been conveyed out of the privacy of the family and brought into the public domain, children's issues have come to the forefront of many agendas. Every sphere of childhood is being examined, and pronouncements are made to improve and safeguard the experiences of children in a variety of environments. International comparisons and recommendations are made of education systems, social welfare systems, and of health care systems. While it would be naïve to think that there will one day be a world for children that is entirely free of maltreatment, disease, and conflict, the recognition and promotion of children's rights is a positive step towards improving the treatment of children.

Parents have responsibilities to protect, nurture, and love their children. These moral obligations demand that parents care for their own children more deeply than for other children, and that they ought to go to considerable lengths to meet the needs of their children, including keeping them safe from harm. The good parent or guardian must strive to safeguard the child's "open future" by maximizing the child's particular nature, but at the same time protecting the child from harm. There is a crucial but paramount balance to be sought in protecting the child, while at the same time allowing the child to develop his or her

talents, to learn the skills of self-determination, and to begin identifying interests which will help the future adult find the path towards self-fulfilment. There are opportunity costs to any and every upbringing. When one skill or talent is nurtured, another one may be overlooked or neglected. The fundamental argument here is that the child has a right to an open future. A life narrowed too early forecloses the child's opportunity to create and develop his or her own life plan, which is an essential element to every self-fulfilled and self-determined life.

In this chapter, I have determined that children are moral right holders, in addition to being legal right holders. The United Nations Convention on the Rights of the Child (1989) has served to set standards for the way children are treated on an international scale. Children have both protective rights safeguarding their health and safety, and promotive rights to prepare them for a self-determined and self-fulfilled life. Rights serve as a fallback in cases where children's needs for love and care—and as a result, the child's best interests—are compromised. The child's right to an open future is one of these promotive rights which serves to avoid foreclosing a child's right to create and live out his or her life plan with as much freedom as possible. This right recognises that the experiences of many children in competitive sport may foreclose their futures, in addition to harming them directly during the time of their training and competition.

9.0 Chapter Nine: Summary and Recommendations for Further Study

9.1 Conclusions

In this thesis, I have argued that some children who participate in high-performance sport are being harmed by such experiences, and their right to an open future is being abrogated. The unique and distinctive ethical issues raised by the participation of children in high-performance sport relate to serious safety and health concerns, autonomy and individuality, paternalism and family integrity, and the commodification of children. There are ethical concerns about a degradation of the quality of parenting and family life when parents are tempted to seek excessive control over their children's lives, and to value their children according to how well they meet overly detailed parental expectations of performance and achievement. Few would argue that the risks and realities of physical and emotional harm, as well as foreclosure of certain life plans is not only questionable, but simply wrong. They may even argue that such concerns and actualities ought to justify a prohibition on such participation. In addition to concerns about specific harms to children, there are also concerns about such practices undermining social values, for instance the exploitation of children by parents and coaches. Other concerns include the protection and promotion of personal choice—or autonomy—for both children and adults, the encouragement of individuals to fulfil their dreams, the rights of children to develop their own life plans and to have an open future, and the rights of parents to determine the lifestyles of their children. Limitations of individual freedom must be made only when the benefits of such prohibitions clearly outweigh the value of maintaining these kinds of challenges and experiences. The compelling cases of physical, psychological, and social harms that some children experience through their participation in high-performance sport must somehow be mitigated by a balance between the values that society wishes to reflect, and the freedom of individual and parental choices. For children to arrive on the cusp of adulthood with their futures open and as unconstrained as possible should be one of the paramount objectives of both childhood and parenthood.

One of the challenging tasks has been to understand and describe the moral objections to children participating in such environments. Few moral philosophers can agree on the “best” moral theory, and some may not even be able to reach consensus on the practical implications of any particular theory, although limitations of various theories may be identified. While it may not be possible to identify the single best way to live one's life, it is possible to identify factors that hinder rather than help individuals to flourish. For example, lack of education, poverty, homelessness, sickness, abuse, and exploitation are unequivocal impediments to human fulfilment. The argument that children are either not suited to participating in high-performance sport, or that the environment of high-performance sport is not an appropriate environment for children is based on the evidence of harms that children experience while participating in high-performance sport, and the foreclosure of their futures. Arguments about the child's right to individuality, a life free from harm and exploitation, and

an open future ought to be promoted over the parent's right to dictate the present life of their child when that lifestyle forecloses their future. These overarching rights of children and of parents or guardians may clash. The challenge rests on determining the balance between competing rights and benefits.

In summary, I have argued in this thesis that some children participating in the world of high-performance sport are being harmed by their participation, and their futures are being foreclosed. The argument within this thesis was organised as follows. In Chapter Two, I provided a theoretical discussion on harm based on Feinberg's non-normative sense of "harm" as a set-back to interests, and the normative sense of "harm" as a *wrong*, or a violation of an individual's rights. Chapter Three followed with discussions of actual experiences of children that contextualised the discussion by illustrating the harmful nature of certain sporting practices, and explained the harm done to some children. The harm argument is compelling when confronted with the litany of medical reports on the injuries suffered by young athletes while in training and in competition. This chapter also discussed the power imbalance between athletes and coaches, and the inherent subordination of the young athletes in such relationships. This discussion illustrates the potentially harmful nature of children's participation in elite sport and the effects such participation may have on the shaping of a child's identity at the time and in the future.

Chapter Four outlined conceptions of children and childhood. It discussed historical and modern conceptions of childhood, and included a short discussion on parenthood as well. This chapter examined how these conceptions serve to inform the nature of elite child athletes, and the inherent contradictions between childhood and the adult world of high-performance sport.

Chapter Five offered an extended analysis of the concept of paternalism within the literature. Given the inherent vulnerability and immaturity of children, their relationships with adults are necessarily paternalistic, but I argued that they must be autonomy-respectful paternalistic relationships. Such autonomy-respectful paternalism is predicated on the potential risks of harms. The higher the risk of harm, and the more permanent that harm, the more appropriate that autonomy-respectful paternalism becomes. When harms may substantially shape a child's subsequent life prospects, the case for paternalistic intervention is further strengthened. Such serious harms do not allow children the chance to benefit by learning from their mistakes. In some sporting practices discussed in this thesis, the stakes are so high that losing the gamble once could be life-threatening, and if situation is permanent, one cannot benefit from the wisdom accrued. When such practices are life-ending, there is clearly no opportunity for subsequent learning by the athlete him or herself, although others should surely learn from such terrible consequences.

Chapter Six provided a further substantial analysis of autonomy, consent, and harm as they relate to children's participation in elite sport. This chapter outlined the nature of autonomy and demonstrated the difficulties of trying to identify any one conception of autonomy as it relates to children because of the inherent changing and developing of

children as they progress from wholly dependent at birth to being autonomous beings at the threshold of adulthood.

Chapter Seven evaluated the capacity of a rights vocabulary to determine whether a rights-based moral vocabulary is the most appropriate language upon which to construct an approach to child protection through children's rights. I argued that rights theory as a moral framework applies to a consideration of the participation and exploitation of children in elite sport, and serves to protect them. Children in this environment are being harmed by morally indefensible conduct that both sets back the children's interests, but also violates their rights to freedom from harm, and to an open future.

Whereas chapter seven focused specifically on rights in general, Chapter Eight focussed specifically on children's rights, particularly as they are articulated in the United Nations Convention on the Rights of the Child (1989). I applied Feinberg's articulation of the child's right to an open future in the context of children's participation in high-performance sport. I argued that children's experiences ought to, in every possible respect, keep their futures as open as possible. Insofar as it is possible, children ought to be encouraged and assisted in developing the skills of self-sustainment and self-determination so that they may construct their own life-plans and live out those life-plans according to their own interests, and not those of others. The nature of high-performance sport is such that it threatens the child's right to an open future, and as such, children's participation in this environment requires reconceptualisation.

9.2 Recommendations for further study

This work has attempted to challenge the morality of the participation of children in high-performance sport; however, it is only a start. Many issues remain unexplored and unexamined.

Firstly, it must be determined whether children can participate in high-performance sport in any way without being harmed physically, psychologically, or socially. If such participation simply cannot take place without these harms—as outlined in Chapters Two and Three, then children ought not to participate in high-performance sport. If such participation can occur, but under certain conditions, then guidelines need to be put into place which guard against such harms for children. One method of removing child athletes from this environment could be accomplished by raising the minimum age requirements. This has already begun, for instance, the minimum age for participation in gymnastics in Olympic competition has already been raised from 14-years to 16-years of age, but I do not believe this is far enough. It ought to be raised to at least 18-years, possibly even 21-years of age. A higher age limit would necessitate a transformation of the sport from its present orientation towards acrobatics and contortionism possible only for young children into an adult sport. The titles at world championships and the Olympics would also be more appropriate: the "ladies" figure skating titles and "women's" gymnastics titles are really more appropriately termed "girls" figure skating or "girls" gymnastics since the vast majority of

competitors are well below the age of majority in almost all countries. Figure skating judging also rewards jumps disproportionately, and gymnastics has focused increasingly on acrobatics, both of which require very high strength-to-weight ratios and thus these sports tend to see a very high proportion of disordered eating behaviours as athletes attempt to remain as light as possible. If these sports had an older minimum age, athletes would be post-pubertal and the “race against puberty” with its associated harms would be mitigated. Older athletes would also be better equipped to give informed consent to the rigours and dangers associated with intensive training and the risks of competition which child athletes are forced into through proxy consent of their guardians.

Secondly, it is unacceptable that individuals (parents, coaches, agents, and others) with vested interests (in the child and in the child’s participation in sport) deem themselves suitable judges of what is morally appropriate in relation to their vulnerable young charges. I recommend that the nature of these kinds of relationships between children and adults in the sport environment be explored in more depth than has been conducted herein. I propose that a kind of “athlete’s ombudsperson” be available in every sport for confidential consultation by athletes. This person must have the qualifications to assess accurately the nature of the sporting practices, and the power to demand changes that serve to protect young athletes from harm. This person must also be at arms-length from the coaches and parents so the athletes will feel comfortable in seeking help. I also propose that an ethics committee be appointed. This committee would not be sport-specific but would evaluate sporting practices across all sports, which would allow more objective evaluation. I would recommend that the composition of this committee would include a layperson from outside sport in order to help overcome the inherent prejudices and tolerance of those closely involved in a sport. For instance, if a gymnastics coach was on the panel evaluating gymnastics, his or her experiences and knowledge of the sport would likely interfere with an objective evaluation of the sporting practices—they would be more accepting of practices that they consider “part of the sport” and have greater difficulty perceiving the harmful nature. It would be a challenge to compose a committee with people who are informed enough to understand the nature of sport but are also able to recognise the dangers associated with intensive training and competition. Such a committee might include a child psychologist, an educator, a physician, a coach, a sports administrator, and a community representative. Both an ombudsperson and an ethics committee would also serve to deal with the issues of sexual abuse in sport, since many athletes feel helpless in seeking help to deal with such issues. An ethics committee would work towards preventing such situations from occurring by identifying unsafe situations, such as coaches and athletes working alone, outlining travel policies such as not allowing coaches and athletes to share rooms, and they may also either investigate themselves or set in place a group to investigate allegations of inappropriate behaviours. Further, codes of practice need to be developed and disseminated, and both the ombudsperson and the ethics committee could do this. The United Kingdom has formulated a detailed code of practice in relation to the prevention of

child abuse in sport, but few other countries have done the same thing. I recognise that this is not a solution to the harms in sport, but it serves to educate and create awareness of the issues, and also provide avenues of redress. Such education would promote the athletes' autonomy, and protect them from harm, as explained within this thesis.

Thirdly, an examination of the parental control of young athletes needs to be conducted. While paternalism—as outlined in Chapter Five—is a paramount and integral component of the parent-child relationship, and by extension in the coach-child relationship, such control must be examined so as to protect the children. Parents are given great latitude in raising their children, but when children are being harmed by the very individuals charged with their protection, something must be done. I would recommend a mandatory educational programme for parents of all children involved in competitive sport at all levels. This could be financed by the sport governing body, each sport club, or even an external sponsor. This programme does not have to be an expensive or time-consuming undertaking. A workshop or seminar could suffice. Such a programme would serve to ground parents regarding the nature of their child's participation, that in reality a very, very small number of child athletes will grow up to earn their living as professional athletes, and participation as a child should not be predicated on such outlandish expectations.

Guidelines need to be formulated by sporting organisations to deal with over-zealous parents who are harming their children. While it may not be appropriate for any individual or group to act as “gatekeepers” to keep such parents from enrolling their children in sport, if the expectations of parents surrounding their children's participation in sport are introduced at entry levels of sport, and regularly consulted throughout all levels of sport, parents might also be able to keep their expectations reasonable. Another suggestion would be the appointment of parent monitors. At each competition, two parents would be selected who would act as peer-monitors. They would wear some kind of identifying sash or vest, and their job would be to observe the proceedings. If a child is injured, or another parent starts getting out of hand, they have the power to eject that person, or stop the competition, or take whatever action is needed to ensure the environment is child-friendly. Raising awareness would help reduce unpleasant and potentially harmful situations.

Fourthly, a moral examination of the physician-athlete relationship would shed light on the varying conflicts experienced by both the physician and the athlete. This relationship is paternalistic in nature, and as such, justification of an examination is based on the prevention of harm and the promotion of the young athlete's best interests. The physician is confronted with pressures to keep the athlete in competition, and to return an injured athlete to competition at the earliest possible opportunity. These pressures often lead to the health and safety of the athlete being compromised, whether they are child or adult athletes. While this is clearly an abrogation of the physician's professional duty to the patient, the pressures and conflicts of interest cannot be discounted.

Fifthly, an examination of the medical and sociological literature as discussed throughout this thesis has revealed that a wide variety of harms exist in the sports discussed

herein; a further study would explore the breadth and depth of such harms in a wider variety of sports, and would catalogue the nature and extent of these harms. It is not necessary to demonstrate that large numbers of children are being harmed to censure the harmful practices—that *any* number of children are being harmed is surely enough to question these practices—but accurate quantitative data would serve as stronger corroboration in demanding changes to the offensive practices in sport.

Sixthly, a comprehensive coaching education programme oriented to the high-performance child athlete must be developed. All coaches who are involved with such athletes must be required by sport governing bodies to take this course. Of course, education does not guarantee child protection, much the same way that codes of conduct do not guarantee adherence; however, they serve as guidelines. Sometimes simply to state what is and what is not acceptable is enough to change some behaviour. For example, certain harmful practices that are part of a sport culture need to be isolated and identified as such, that identification is the first step in eliminating or reducing the harms described within this work. Coaches often scream and shout at athletes, insulting and tormenting them, purportedly to improve performance. This behaviour must be named for what it is—abuse and harassment—and eliminated.

In conclusion, I have not intended in any way to devalue the contributions of parents or guardians in any way, nor have I intended to belittle coaches and others involved in sport. When one attempts to criticise any aspect of sport, one may be seen as being an opponent of sport. If I did not have a deep love and concern for sport, I would not have dedicated my education and career to its study. My objectives for this ethical analysis of children's participation in high-performance sport are to raise awareness of how elite sports children are being treated, and to improve children's experiences in competitive sport, as well as to highlight the fact that children—regardless of their environment—ought to be recognised and treated with the respect they deserve. Such recognition and treatment includes respecting their right to an open future, and the right to be protected from harm. Respect for children in the sporting environment is demonstrated by the direct action of parents, coaches, and others involved in sport to nurture and protect children by recognizing them first as children, and second as athletes.

Parents have loved, nurtured, and protected their children from the beginning of time, and will continue to do so forever; however, sometimes parents and others involved in the lives of children make questionable decisions regarding the welfare of children, and act in ways which do not promote the best interests of the child. Somehow children must be protected from decisions that have harmful repercussions, permanent or short-term. While it would be naïve to think that the purpose of this work is to eliminate the harms associated with children's participation in high-performance sport, it may be realistic to believe that raising and identifying moral concerns about such experiences will draw attention to the issues, and may serve to reduce the harms. Experience suggests that harm, in some degree, is attached to almost all human activities; some of these harms though may be

eliminated or the risks reduced. Sport policies need to be designed that will reduce the overall harm associated with children's participation in high-performance sport. We must accept that these sports are here to stay, and that we have to implement policies in these arenas so that children suffer the least possible harm in their participation. If protecting children means that they do not belong in the world of high-performance sport, that view is justified by the harms they incur, and not the immorality of their participation. The promotion of children's rights in general, and in particular the child's right to an open future, will serve to protect children in the burgeoning development of their autonomy and the promotion of their open futures.

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