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A LIBERAL THEORY OF FREEDOM OF EXPRESSION FOR CHILDREN

COLIN M. MACLEOD*

INTRODUCTION

A conspicuous feature of much contemporary liberal political philosophy is the absence of sustained discussion of how basic liberal ideals of justice, equality, liberty, and rights apply to children. This is a serious oversight. But neglect of the status of children is not peculiar to contemporary liberalism. Conservative, communitarian, and even feminist theory has not, for the most part, grappled seriously with the challenges of incorporating the distinctive needs and interests of children in an account of political philosophy. Some critics of liberal philosophy suspect that liberalism, with its traditional focus on individual rights and respect for autonomy, is especially inhospitable to accommodating the needs of children.

Amitai Etzioni shares this suspicion. His interesting and engaging essay, *On Protecting Children from Speech*,¹ explores one area in which traditional liberal doctrines might seem particularly vulnerable to criticism. Etzioni seeks to identify principles for the interpretation of freedom of speech that can appropriately accommodate the interests of children. The communitarian approach he presents seeks to achieve a balance between the free-speech rights of adults and the claims of vulnerable children to be protected from exposure to harmful cultural materials. It appeals to a context-sensitive politics of the common good in which individual rights can be limited for the sake of other values, especially the value of protecting children from harm. According to Etzioni, a communitarian approach provides a much-needed salve to an excessive form of individualism rampant in politi-

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1. Amitai Etzioni, *On Protecting Children from Speech*, 79 CHI.-KENT L. REV. 3 (2004).

cal culture that has spawned a conception of liberal rights that is hostile to the common good. In particular, overemphasis in law and politics on the protection of individual rights has encumbered the reasonable efforts of parents and local communities to protect children. Etzioni's proposed communitarian corrective is aimed at empowering parents and local communities to address the corrosion to the common good allegedly caused by liberal rights.

Evidence of the harm posed to children by various forms of constitutionally protected kinds of speech provides a justification for various legislative measures that limit the access minors can have to such expression and provide parents with resources (*e.g.*, labeling, V-chip technology) that can help them monitor and regulate the materials consumed by their children. This paper offers a liberal rejoinder to Etzioni's analysis. But we should distinguish two questions about the difference between liberal and communitarian views. First, must liberals be hostile to the political proposals made by Etzioni concerning the appropriate resolution of the various specific controversies he explores? Second, is Etzioni's communitarian approach to free-speech issues involving children preferable to an analysis grounded in liberal ideals of equality, individualism, and rights?

The answer to both questions is no. At the policy level, there is common ground between liberals and Etzioni. Liberals need not, and indeed should not, embrace the extreme libertarian stance on freedom of speech presented by some representatives of the ACLU with respect to free-speech issues implicating children. Specifically, liberals can endorse a "child-adult separation approach" in order to limit access that children have to the Internet on computers placed in public libraries. Liberals can endorse mandatory labeling and rating systems as well as V-chip technology and other strategies that are designed to alert parents about potentially objectionable materials directed towards children. And liberals can accept strong regulations on commercial speech directed towards children. These policy options are attractive from a liberal point of view because they afford a way of protecting children without emasculating the legitimate free-speech rights of adults. The points of disagreement between Etzioni and myself are not, therefore, to be located primarily at the policy level, at least with respect to the particular issues he canvases. Instead, I dispute Etzioni's assessment of the relative merits of communitarian and liberal approaches to freedom of speech issues concerning children. A suitably developed liberal theory of freedom of expression can dis-

play sensitivity to the distinct and important interests of children in a way that exposes some important limitations of Etzioni's communitarian position.

The main points of contrast between Etzioni's analysis and the liberal theory developed here concern the interpretation of children's interests and the standing of children as individuals in society. Etzioni's analysis focuses mainly on the special vulnerability of children and on the importance of preventing children from being exposed to potentially harmful cultural materials. He is reticent, consequently, about attributing significant free-speech rights to children, even teenagers, and he is sympathetic to limiting the free-speech rights of adults in order to protect the welfare of children. Liberals accept that children need to be insulated from exposure to some forms of expression, but children's interests are more complex than the narrow focus on prevention of harm suggests. On the liberal view I defend, children have special evolving interests that are rooted in a particular conception of moral personality. The claim each child has to develop and exercise the moral powers that ultimately shape each person's distinct and independent moral personality gives rise to interests that children have, *qua* children, to information and to conditions conducive to independent reflection and deliberation. In virtue of such interests, children can acquire, well before they become adults, nontrivial rights of free expression. Respecting children's rights to free expression can entail limits on the prerogatives of parents to determine the sorts of cultural materials to which children should be permitted to access. Determining how considerations of parental authority, promotion of children's welfare, children's rights of free expression, and the rights of adults to free expression are to be coherently integrated poses difficult challenges. The objective of this paper is to outline a recognizably liberal theory of freedom of expression that meets these challenges. Towards that end, I begin by identifying some characteristic features of contemporary liberal approaches to freedom of expression. I will then explain how the liberal framework interprets and accommodates the distinct interests of children concerning free expression.

I. FREEDOM OF EXPRESSION AND THE INTERESTS OF FREE AND EQUAL PERSONS

A philosophical theory of freedom of expression seeks to provide an explanation of the value of freedom of expression and an account

of the considerations that justify limits on free expression.² Defenders of strong rights to freedom of expression, those who might be termed “freedom of expression absolutists,” sometimes present their position as if there are literally no justifiable limits on free expression, or at least on free speech. Such a position may have some rhetorical appeal in political battles waged over erosion of First Amendment protections threatened by censorious governments. However, the position has no philosophical credibility, and it is alien to the tradition of liberal political philosophy.³ Liberals, along with communitarians, endorse various “time, place, and manner” regulations of free expression. Moreover, some content-based regulations of free expression are uncontroversial. For instance, persons are not at liberty to express defamatory remarks that are false and calculated to cause harm to those they defame. Harm, nuisance, and offense are grounds on which speech can be regulated. We cannot find a helpful contrast between liberals and communitarians by attributing to liberals the simplistic view that free-speech rights of adults simply trump the value of protecting children, or other citizens, from harm. Etzioni’s suggestion that liberalism inflates the value of individual free-speech rights at the expense of protection of the welfare of children distorts liberal principles.

We can see that a liberal conception of free-speech rights is more subtle than Etzioni allows by examining some of its key features. The account I articulate draws broadly on a vision of liberalism as an interpretation of the equal moral standing of persons of the sort associated with the work of contemporary theorists such as John Rawls, Ronald Dworkin, and T.M. Scanlon, as well as, from an earlier tradition, the work of J.S. Mill.⁴ The conception of the person that lies at

2. For some influential treatments of freedom of expression, see ALEXANDER MEIKLEJOHN, *POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE* (Galaxy Books 1965) (1948); JOHN STUART MILL, *ON LIBERTY* (Gertrude Himmelfarb ed., Penguin Books 1986) (1859); JOHN RAWLS, *The Basic Liberties and Their Priority*, in *POLITICAL LIBERALISM* 289 (1993); FREDERICK SCHAUER, *FREE SPEECH: A PHILOSOPHICAL ENQUIRY* (1982); Thomas Scanlon, *A Theory of Freedom of Expression*, 1 *PHIL. & PUB. AFF.* 204 (1972).

3. This tendency towards rhetorical excess about freedom of speech is exhibited in some of the statements made by ACLU representatives discussed in Etzioni, *supra* note 1. Etzioni claims that free speech absolutism has its roots in liberalism but he cites no contemporary liberal theorists who actually endorse this stance.

4. There is theoretical diversity within this broad liberal tradition. The character of utilitarian defenses of free speech is importantly different from those grounded in appeals to autonomy or justice, even if they converge on similar solutions to political or legal controversies. A utilitarian defender of free expression might contend that First Amendment protections are ultimately justified because they promote the overall well-being of the community. Mill claims that his influential defense of free speech in *ON LIBERTY* is ultimately grounded in the principle

the heart of this form of liberalism is crucial to understanding the resources there are within liberalism to develop a theory of freedom of expression that is sensitive to the interests of children. Etzioni claims that "the reason liberals shy away from dealing with children in political and social theory is that children threaten the very foundations on which their theory rests."⁵ An examination of the foundational commitments of contemporary liberalism calls this diagnosis into question.

Liberalism is predicated upon a conception of moral personality and an allied conception of fundamental equality. According to Rawls,

[t]he basic idea is that in virtue of their two moral powers (a capacity for a sense of justice and for a conception of the good) and the powers of reason (of judgment, thought, and inference connected with these powers), persons are free. Their having these powers to the requisite minimum degree to be fully cooperating members of society makes persons equal.⁶

Conceiving of persons in this way does not, *pace* some communitarian claims, imply that persons come to have their moral powers independently of their interaction with others in communities of shared ideals or commitments.⁷ The attribution of moral powers to persons does not rest upon or reflect an atomistic conception of the self in which individuals are unencumbered by particular religious, cultural, familial, or philosophical commitments. Children and adults are influenced and shaped by their particular social and cultural contexts in a variety of profound ways. Various facets of our identity are determined by the particular communities in which we live and grow up. Indeed, as Rawls notes, the very acquisition of moral powers depends

of utility. See MILL, *supra* note 2. A Kantian defender of the same rights might claim that First Amendment protections are grounded in considerations of respect for autonomy. See Scanlon, *supra* note 2.

5. Etzioni, *supra* note 1, at 49.

6. RAWLS, *supra* note 2, at 19. Rawls relies on this conception of the person in developing his account of the basic liberties and their priority that employs the original position. *Id.* at 289–371. Development of the implications of this conception of the person for our understanding of the nature and importance of certain liberties can proceed without reliance on the original position. See JOHN RAWLS, *A Kantian Conception of Equality* (1975), reprinted in JOHN RAWLS: COLLECTED PAPERS 254 (Samuel Freeman ed., 1999).

7. For influential statements of the communitarian critique of the liberal conception of the self, see MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE 59–65 (1982); Charles Taylor, *Atomism*, in POWERS, POSSESSIONS AND FREEDOM 39 (Alkis Kontos ed., 1979); Michael J. Sandel, *The Procedural Republic and the Unencumbered Self*, 12 POL. THEORY 81 (1984). Will Kymlicka's response to communitarian critiques of the liberal self in LIBERALISM, COMMUNITY AND CULTURE 47–70, 237–42 (1989) effectively explains why liberals are not committed to an asocial conception of the self.

crucially on the nurturing activities of parents, families, and communities.⁸ But on the liberal view, the fact that our commitments, convictions, and personality are shaped by unchosen social and cultural influences does not necessarily preclude the possibility of deliberation about, and even revision of, basic commitments. We can raise children to become reflective, autonomous persons. On a liberal view, children have a right to an upbringing that facilitates full development of the moral powers. The value of freedom of expression in general and its significance for children must be understood against this background.

Persons have a fundamental interest in ensuring that the political community to which they belong gives adequate and reliable protection to the conditions under which their moral powers can be developed and meaningfully exercised. For autonomous adults, freedom of expression is principally important in relation to the exercise of moral powers. For children, as potentially autonomous agents, the importance of freedom of expression is related to both the development and the exercise of the moral powers. Our focus is on children, but examining the relation between freedom of expression and the exercise of the moral powers in the case of adults provides a context for considering the stake children have in developing and exercising the moral powers. Consider the connection between the first moral power and freedom of expression. Each person has a conception of the good that they will seek to pursue. The successful pursuit of a conception of the good will typically depend on being able to express publicly, in both one's opinions and activities, the ideals that one has embraced and that confer value on one's life. For example, a Christian may wish to communicate her views about the value of her religious commitments to others in the hope of convincing others to adopt her faith. She will want to have access to the views and practices of other Christians, both so she can join in shared worship and so she can better understand what her Christian commitments require of her. Freedom of expression thus plays an important role in facilitating each person's conception of the good. However, it is also a crucial feature of the liberal conception of the person that our convictions about what constitutes a good life are fallible. A person may come to realize that the conception of the good she currently adopts stands in need of significant revision. She may even come to believe that she should reject her

8. JOHN RAWLS, *A THEORY OF JUSTICE* 462-79 (1971).

current conception and embrace a radically different set of convictions. She may abandon her faith and become an atheist.

The recognition that our convictions about the good are fallible does not imply either that we cannot determine how best we should lead our lives or that we cannot pursue our convictions in ways that display a depth of commitment. However, it does suggest that we have a substantial interest in being able to deliberate about the nature and value of our basic commitments. Liberals contend that deliberation can be facilitated and enhanced both by being free to express our convictions to others and by having access to and being exposed to other perspectives or conceptions of the good, along with the opportunity to explore different possibilities. The interest in implementing and deliberating about our conception of the good provides a basis for prizing a culture that presents to its citizens a wide variety of opportunities to explore and pursue different conceptions of the good—and ensures them access to a rich repertoire of resources for deliberation about various matters. Even in the case of adults, we can see that the fact that humans are subject to external influences is assumed rather than denied by liberal social theory.

When we consider the second moral power that Rawls attributes to persons—the capacity for a sense of justice—there are parallel reasons for attributing significant value to the protection of freedom of expression. In a political community, particularly a democracy, citizens with an effective sense of justice will be concerned with ensuring that basic social institutions are just and that policies pursued by government on behalf of the people are commensurate with justice. Citizens will thus have an important interest in being able to express their convictions about justice to others. They will also have an interest in engaging in deliberation not only about the merits of legislation and proposed government activity, but also about their understanding of the principles of justice that ought to shape basic structures of society. Freedom of expression permits the dissemination of information relevant to deliberation, is intimately linked to political participation, and facilitates deliberation about justice.⁹

The often-cited claim that freedom of expression contributes to the discovery of truth complements the foregoing considerations. Frederick Schauer offers a useful summary of this view and its appeal:

Open discussion, free exchange of ideas, freedom of enquiry, and freedom to criticize, so the argument goes, are necessary conditions

9. See MEIKLEJOHN, *supra* note 2, at 115–124.

for the effective functioning of the process of searching for truth. Without this freedom we are said to be destined to stumble blindly between truth and falsehood. With it we can identify truth and reject falsity in any area of human enquiry.¹⁰

Mill and other proponents of this argument may have been unduly optimistic about the inevitable tendency of truth to win acceptance over falsity or for reasonable doctrines to prevail over unreasonable ones. In some contexts, it is arguable that permitting some forms of speech actually inhibits the effective pursuit of truth. For instance, hate speech that advances demonstrably false, inflammatory, and hurtful claims may divert attention from areas of enquiry in which knowledge can be advanced.¹¹ We may simply waste time refuting the demonstrably false claims of Holocaust deniers and the like. Similarly, the presence of racist invective in educational settings may impede the ability of students to learn.¹² But the importance of free speech to the discovery of truth can be defended even if it is not true that unfettered freedom of expression is always maximally conducive to the discovery of truth. The presumptive value of free expression depends only on the general tendency for freedom of expression to advance the aim of providing citizens with helpful and reliable information.

We have seen that free and equal persons have deliberative, expressive, and informational interests that are well served by freedom of expression.¹³ To the degree that circumstances can be identified in which freedom of expression frustrates these interests, there are grounds to regulate expression so as to better advance these aims. At this juncture, however, liberals express skepticism about the capacity of the state to make appropriate distinctions about the kinds of expression that merit protection and those that can be restricted or

10. SCHAUER, *supra* note 2, at 15.

11. Criminal sanctions for certain forms of hate speech have been deemed constitutionally valid by the Canadian Supreme Court. See *R. v. Keegstra*, [1990] 3 S.C.R. 697, 699.

12. In *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, 830–31, the Canadian Supreme Court accepted the claim of a Human Rights Board of Inquiry that the notoriety of a teacher's off duty anti-Semitic publications contributed to a "poisoned" educational environment" even when there was no evidence that the teacher expressed his views in the classroom. I shall not address controversies concerning the appropriateness of college speech codes aimed at ensuring a non-discriminatory learning environment.

13. Joshua Cohen distinguishes and discusses these interests in *Freedom of Expression, in TOLERATION: AN ELUSIVE VIRTUE* 173, 184–89 (David Heyd ed., 1996). T.M. Scanlon, Jr. makes a different but complementary distinction between kinds of interests. See T.M. Scanlon, Jr., *Freedom of Expression and Categories of Expression, in PORNOGRAPHY AND CENSORSHIP* 139 (David Copp & Susan Wendell eds., 1983). Scanlon distinguishes participant interests, audience interests, and bystander interests. See *id.* at 140–47.

regulated. There are at least two sorts of concern. First, liberals worry about the motives that governments have for restricting free expression. A government may seek to silence critics in order to retain power, or it may be motivated to curry favor with powerful segments of the population to implement intolerant policies that unfairly deprive unpopular minority groups (whether religious, cultural, racial, sexual, or linguistic) of opportunities to pursue and express their ideals (*e.g.*, by targeting gay and lesbian erotica for censorship). Second, even where state action is not directed by illiberal motivations, state officials face enormous practical difficulties in trying to discriminate reliably between forms of expression that merit protection and those that are either valueless or harmful. For instance, hate speech and certain forms of pornography probably tend to frustrate rather than facilitate the exercise and development of moral powers. As such, these forms of speech do not merit special protection. However, it may be next to impossible for state officials to distinguish genuinely objectionable material from material that contributes positively, or at least not adversely, to the realization of our moral powers. In an important range of cases, even well-intentioned state bureaucracies lack reliable means to determine which forms of expression merit protection and which do not. Extensive freedom of expression is presumptively valuable on this score not because it always or necessarily contributes to maximal truth discovery, the effective dissemination of information, or deliberation. But more highly regulative approaches to freedom of expression tend to serve these values less well than minimally regulative approaches. Ensuring that a high threshold of justification must be met before content regulations can be applied is one important way to guard against both the corrupt use of state power and the inevitable errors that even well-intentioned state agencies will make.

II. COSTS OF EXPRESSION AND LEGITIMATE GROUNDS FOR REGULATION

We have seen that liberalism locates the justification of free-speech rights in claims about how the fundamental interests of persons are served by freedom of expression. However, as some points already raised suggest, unregulated freedom of expression can have

serious costs for free and equal persons.¹⁴ As Joshua Cohen notes, freedom of expression

is sometimes offensive, disgusting, or outrageous; it produces reputational injury and emotional distress; it requires protection from hecklers; when it is delivered through leaflets, someone has to clean up the mess; and, concentrated in sufficient numbers on billboards, telephone poles, and buses, it can add to the general ugliness of an urban environment.¹⁵

The challenge is to devise principled and practically feasible strategies that permit, insofar as possible, reasonable forms of mutual accommodation of the divergent interests affected by free expression, both positively and negatively. I will not offer a comprehensive analysis of the interests of adults that can be damaged by expression. It suffices to note that adults have interests in not being offended, insulted, confused, misled, emotionally injured, physically injured, or financially disadvantaged by expression or the predictable effects of expression.¹⁶ Children have parallel interests, but the character of their interests is, in some respects, more complex.

The liberal way of dealing with the costs of speech has four elements. First, different categories of expression are distinguished with respect to the importance of the interests generally served by them.¹⁷ Expression concerning political, religious, moral, artistic, literary, and academic matters is typically placed in a category of specially protected expression. Protecting expression in these areas seems more closely related to the exercise of our basic moral powers and advancing our deliberative, expressive, and informational interests than protection of commercial speech. The categorization of kinds of expression relative to interests provides a partial basis for determining when regulation of the content of expression is legitimate. The threshold of justification that must be met for regulating the content of expression is higher for some categories of expression than it is for

14. Some free expression absolutists may be tempted by the idea that expression, as opposed to action, is not itself costly and thereby cannot be limited on the grounds of its costs. The position, dubbed "minimalism" by Cohen, is discussed and effectively refuted by him in *Freedom of Expression*, *supra* note 13, at 180–82.

15. *Id.* at 178.

16. Some expression, such as offensive speech, is directly costly. The mere fact that I hear someone tell a racist joke causes me to be offended. Some expression, such as incitement to violence, is indirectly costly. In this sort of case, the expression causes behavior—e.g., an assault—that would not have occurred were it not for the incitement. Advertising can be indirectly costly in a similar way. A business may suffer a loss of revenue when consumers learn via advertising that a competing business offers the same products at a better price.

17. Both Scanlon, *supra* note 13, at 154–57, and Cohen, *supra* note 13, at 177–80, defend this approach.

other, less important, categories of expression. For example, because the interests served by commercial speech are less fundamental than those served by political speech, and because it is easier to identify uncontroversial standards of truth concerning claims made about products than about political positions, regulations of the content of commercial speech—*e.g.*, laws requiring truth in advertising—can be easily justified, whereas content regulation of political speech is rarely, if ever, justified.¹⁸

Second, various time, manner, and place regulations of expression are helpful in mitigating some costs of expression without substantially diminishing the expressive, deliberative, and informational value of freedom of expression. Third, some of the costs generated by free expression can be reduced by encouraging and facilitating more expression. The “more speech”¹⁹ strategy aims at giving those adversely affected by protected forms of expression an opportunity to mitigate the damaging effects of expression—*e.g.*, the tendency of people to form false beliefs about, or hostile attitudes towards, an individual or group—by using expression to challenge and thereby dilute the effects of damaging expression. Fourth, efforts can also be undertaken to ensure that individuals and groups have fair and adequate access to freedom of expression. For example, in order to limit the degree to which political discourse is excessively dominated by wealthy and powerful groups, the state may undertake to provide free-time political advertising.

III. EXTENDING THE LIBERAL CONCEPTION OF FREEDOM OF EXPRESSION TO CHILDREN

I have identified some of the main resources available in contemporary liberal theory for dealing with First Amendment issues.²⁰

18. There are, of course, difficult cases. Some hate speech clearly falls into the category of political speech and thus might seem to be immune from content based regulation. However, since the potential harm from hate speech is significant and since the claims advanced by some hate mongers are often demonstrably false, some content regulation of hate speech might, in principle, be consistent with liberal principles. See *R. v. Keegstra*, [1990] 3 S.C.R. 697, 699–701 (Can.).

19. Cohen, *supra* note 13, at 201. Cohen notes that this “more speech” strategy was articulated in Brandeis’s opinion in *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

20. I assume that a philosophical account of freedom of expression can play an important role in the interpretation of constitutional guarantees of rights, such as the protection of free speech given in the First Amendment. However, I do not assume that a sound theory of freedom of expression necessarily exclusively determines the best interpretation of such a provision in the American Constitution or other constitutions. The connection between constitutional

The analysis shows that liberal theory is more nuanced than Etzioni's diagnosis of the limits of liberalism suggests. Liberals recognize limits to freedom of expression, and they gauge these limits via an interpretation of the interests of free and equal persons. However, even on the account sketched above, one can see the basis for the charge that the liberal conception is insensitive to the needs of children. The liberal conception is silent on two important issues. The first can be labeled the "protection of minors" issue. It concerns the degree to which children have a claim to be insulated from exposure to forms of expression to which adults are permitted access but that may be unsuitable for children. Etzioni's communitarian analysis is mainly focused on this issue. He emphasizes the importance of protecting children from *harmful* cultural materials. By contrast, I argue that liberals should conceive of the protection issue in broader terms. Protecting children from harm is obviously important, but children can also be insulated from exposure to certain materials that are not harmful but are nonetheless unsuitable for them. The protection issue involves determining the criteria that should be employed in determining what forms of expression children should be shielded from. The harm-focused analysis provided by Etzioni is helpful but limited. A liberal framework can explain why the avoidance of harm is not the only focus of concern in resolving the protection issue. Or so I shall argue.

The second issue on which liberal theories of freedom expression have been largely silent concerns the claim children have to rights of free expression. I will label this the "expression of minors" issue. For the most part, Etzioni sets this issue aside. He seems reticent about attributing significant free-speech rights to children. From a commu-

interpretation and normative political theory depends on the theory of constitutional interpretation one adopts. Even on theories of constitutional interpretation in which sound legal reasoning is directly linked to considerations of justice not explicitly stated in legal documents, it is possible that the best interpretation of meaning of the First Amendment with respect to a particular legal controversy may diverge from the solution to the controversy that is recommended by a philosophical theory of freedom of expression. It could be true, for instance, that justice permits comprehensive bans on advertising aimed at children under thirteen, but that such a ban lacks adequate justification in First Amendment jurisprudence in light of earlier decisions regarding the government's right to regulate commercial speech. (Quebec imposes such a ban and the Canadian Supreme court has upheld its constitutionality. *See Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, 933.) It is not analytic, in other words, that protections of free speech given in any particular constitution are to be understood as equivalent to the best philosophical understanding of the nature and limits of free speech. Although I think the proposals I make about the liberal theory of freedom of expression are relevant to First Amendment jurisprudence, I shall not present an expressly constitutional argument concerning the correct interpretation of the First Amendment or other facets of the American Constitution.

nitarian perspective that emphasizes the dissimilarities between adults and children by focusing mainly on the special vulnerabilities of children, inattention to the expression issue is unsurprising. From a liberal point of view, however, the free-speech rights of children cannot be treated so lightly. As children mature and start to acquire moral powers, they have increasingly weighty interests in having access to the speech and expression of others—both of other children and of adults. Without some such access, the development of the moral powers can be inhibited. Similarly, children develop interests in being able to express their views to others. Liberals think that children can display a greater degree of moral agency and independence than communitarians are prepared to acknowledge.²¹ As beings with active but immature moral powers, children *qua* children have at least some rights of freedom of expression, and the scope and importance of these rights increase as children mature. The existence of such rights can affect the degree to which parents, other adults (*e.g.*, school authorities acting on behalf of parents), or the state can legitimately exercise authority over children in determining the materials that children should be permitted to access and the expressive activities that they should be permitted to engage in (*e.g.*, having access to information about sexuality or engaging in political protests at high schools²²). The expression issue has two dimensions. First, what criteria should determine the expressive material children have a right to access? Second, what criteria should determine the kinds of expressive activities children have a right to engage in?

Two dimensions of a satisfactory response to the protection and expression issues are worth noting. First, the criteria regulating protection and expression must be sensitive to relevant differences in how these issues are resolved for children of different ages and maturity. As children develop cognitive, emotional, and moral capacities, the range of material from which they need to be protected diminishes. Similarly, as children mature, the scope and content of their

21. Joe Coleman reviews some recent work in developmental psychology that suggests that the differences between the moral capacities of adults and young teenagers is not as great as is often assumed. See Joe Coleman, *Answering Susan: Liberalism, Civic Education, and the Status of Younger Persons*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN* 160 (David Archard & Colin M. Macleod eds., 2002).

22. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 510–11 (1969) (policy prohibiting students from wearing black armbands to protest the hostilities in Vietnam held to be an unconstitutional infringement of students' right of expression).

rights²³ to expression increase. We can meaningfully ascribe rights of free expression to children without supposing either that all children, irrespective of age or maturity, have the same rights, or that the content of their rights cannot be differentiated from the content of the rights of adults. Etzioni accepts the general point that children are evolving beings. He suggests that minors can be divided into two categories: children and teenagers. I argue that further distinctions between children at different stages of development are needed in order to track more accurately different degrees of moral maturity and their relation to children's interests in having access to some expressive materials. Second, the scope and character of both adults' rights to freedom of expression and those of children will depend on a consideration of the interaction between the interests of children and adults. The extent to which adults may engage in some forms of expressive activity may be limited by effects of expressive activity on children. We cannot determine the actual content of adult rights without considering the distinct and independent interests of children. I shall call this the "intersection issue."

IV. INTERPRETING THE EVOLVING INTERESTS OF CHILDREN

The point of departure for the liberal theory of expression is the Rawlsian conception of persons as free and equal. Children, especially young children, are not free and equal in the Rawlsian sense because they lack full possession of the relevant moral powers. Children do not have a developed sense of justice or a mature capacity for a conception of the good. Moreover, they do not have a determinate conception of the good. This does not imply that children are not entitled to equal consideration as independent persons. But extending the principle to children requires recognition that children are, in Robert Noggle's phrase, "special agents," and as such are subject to various kinds of adult authority.²⁴ So we cannot argue that a liberal conception of freedom of expression serves the moral powers of chil-

23. For a discussion of the attribution of rights to children, see Samantha Brennan, *Children's Choices or Children's Interests: Which Do Their Rights Protect?*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN*, *supra* note 21, at 53; Harry Brighouse, *What Rights (if Any) Do Children Have?*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN*, *supra* note 21, at 31; James Griffin, *Do Children Have Rights?*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN*, *supra* note 21, at 19. I am assuming that children can at least be assigned legal rights.

24. Robert Noggle, *Special Agents: Children's Autonomy and Parental Authority*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN*, *supra* note 21, at 97, 101.

dren in just the way it serves the moral powers of adults. Indeed, very young children in virtue of their cognitive, emotional, and moral immaturity seem to have virtually no direct expressive, deliberative, or informational interests that are served by freedom of expression. By the same token, freedom of expression poses virtually no direct costs for very young children. An infant cannot be misled, offended, confused, emotionally wounded, etc, by exposure to expression with a particular content precisely because she cannot comprehend the content of the material. The potential benefits and costs of freedom of expression for children emerge as children develop. The cognitive, moral, and emotional immaturity of children can render them especially vulnerable to some forms of expression that they are ill equipped to protect themselves from. They depend on others to advance their crucial interests and protect them from harm.²⁵

Nonetheless, freedom of expression issues involving children can be resolved in a way that is structurally parallel to the liberal account of freedom of expression concerning adults. We begin by considering how the immaturity of moral powers of children and their consequent vulnerability and dependency affects the special character of children's interests in relation to freedom of expression. But we also consider how the gradual development of children's independent moral personalities can be facilitated by freedom of expression. This marks an important contrast in the liberal and communitarian analyses. Etzioni tends to treat children as fairly passive beings who are extremely vulnerable to the consumption of harmful speech that is directed their way. Liberals, I contend, see children as agents in the process of development who have special vulnerabilities, including ones not noted by Etzioni, but who have claims to have their moral powers developed and, to the degree the powers are realized, respected. The special attention given to the development of moral personality can deepen our understanding of the costs and benefits of freedom of expression for children. We can then draw on the four-part strategy favored by liberals for identifying reasonable strategies for mitigating the costs of expression.

25. This is not to imply that adults are not, in important respects, dependent on others for protection of their basic interests. But the character of child dependency on adults is importantly different than the character of an adult's dependency on others. The dependency of children is typically more extensive and is rooted in their developmental immaturity.

A. *Developmental Interests—Moral Powers and Welfare*

If children are to become the sort of beings for whom full rights of free expression are valuable, then the moral capacities on which the value of these rights depends must be suitably nurtured and developed. From a liberal point of view, the development of the basic moral powers is of preeminent importance. Special weight should be placed on ensuring that the exposure of children to expression does not encumber the development of a sense of justice or their capacity to deliberate and pursue a conception of the good. The concern with the development of moral powers has a self-regarding and an other-regarding aspect. We want children to blossom into reason-sensitive beings who are capable of living meaningful and successful lives. But we also want children to become persons who can recognize and respond to the legitimate moral claims of others. Exposing children to graphically violent or hateful material may dull their sensitivity to the moral claims of others and encourage anti-social attitudes. The studies cited by Etzioni concerning the effects of exposure to televised violence on children's levels of aggression are disturbing from this perspective. They suggest televised violence can impede the development of a robust sense of justice. But exposing children to a steady diet of mindless television can be objectionable even if it does not impair children's sense of justice. It can be objectionable on the grounds that it diminishes their capacity for imaginative reflection on the projects and challenges that might be worth pursuing. Liberals should be concerned with ensuring that children have access to a diverse range of cultural materials that can contribute to the cultivation of deliberative capacities and can stimulate critical reflection on a range of options. From the point of view of developing moral personality, merely blocking children's access to harmful materials is myopic.

Provision of the conditions under which the two moral powers can be developed is especially important, but children have other developmental interests that merit recognition. Children have crucial welfare interests that can affect matters of freedom of expression. Most obviously, children have a special interest in physical and mental health. Importance naturally attaches to ensuring that children develop good eating habits and that they do not develop addictions to tobacco, drugs, or alcohol. If, as seems to be the case, young children are gullible, impressionable, and unable to defer gratification of their desires effectively, then we have reason to be concerned with material

(e.g., tobacco or fast food advertising) that tends to cultivate in children unhealthy habits or damaging desires.²⁶ Concern for ensuring the development of moral powers and concern for the more familiar welfare interests of children provides a *prima facie* basis on which to restrict the sort of access that minors can have to various forms of expression. The focus on protecting developmental interests is, I think, a plausible way of capturing and elucidating the general concern for protecting children from harm. However, especially as they mature, developmental interests, particularly those associated with the moral powers, can be served by access to a greater range of expressive materials. One way in which development of moral powers takes place is through experimental exercise of the powers. Children gradually acquire informational, deliberative, and expressive interests that are structurally parallel to those of adults. They have an interest in reflecting on the options open to them and exchanging their opinions on an increasingly wide range of subjects, including moral and political matters, with others. This suggests that developmental interests can be appealed to not only in the justification of insulating children from some materials, but also in the justification of ensuring that children have access to expressive materials and that they are permitted to engage in expressive activities.

B. *Quality of Childhood Life Interests*

Developmental interests emphasize the sorts of beings children will become, and thus they are future-oriented. We seek to equip children with the habits and capacities for reflective deliberation and self-direction that will permit them to live successful and responsible adult lives. However, we should also display concern for the interests children have as children in living rich and rewarding lives. This point relates not so much to the expressive, deliberative, or informational interests of children, but rather to the degree that exposure to materials can either enhance or diminish the quality of the experience of childhood per se. Here, too, there are reasons both to insulate children from material and to ensure that they have access to material. Having access to a wide variety of books, movies, music, and television can enrich the quality of a child's childhood. But materials are only likely to enhance the experience of childhood to the degree that

26. In *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, 933-34, the Canadian Supreme Court was influenced by evidence that children under thirteen are especially vulnerable to manipulation through advertising.

they are “age appropriate”—that is, to the degree the subject matter and modes of presentation are ones children can relate to in a suitable fashion. The acquisition of moral personality is not facilitated by presenting children with a wide array of options to examine if they lack the cognitive or emotional maturity even to grasp the options presented to them. Yet such exposure need not hinder moral development for it to be objectionable. Expressive materials with “mature” themes can be unsuitable for children on other grounds.

The general point is that protecting children from harm is not all that matters. Some material may be unsuitable for children because it is *unsettling*. Material can be unsettling but nonharmful in a number of ways. It can be confusing, frightening, or embarrassing, or it can be apt to elicit from children inappropriate responses. The distinction between harmful and unsettling material draws on a distinction made between harm and unhappy states of mind.²⁷ Persons are harmed when they suffer a setback to a basic welfare or developmental interest. But there are various unpleasant or disliked states of mind that we have reason to avoid that do not constitute a setback in our interests. Nonharmful but objectionable states of mind include “unpleasant sensations (evil smells, grating noises), transitory disappointments and disillusionments, wounded pride, hurt feelings, aroused anger, shocked sensibility, alarm, disgust, frustration, impatient restlessness, acute boredom, irritation, embarrassment, feelings of guilt and shame, physical pain (at a readily tolerable level), bodily discomfort, and many more.”²⁸ Children can experience some of these unpleasant states of mind, and such experiences can diminish their childhood experience. Because we must show concern for the quality of the experience of childhood, we have reason to insulate children from unsettling expressive materials even if exposure does not result in significant harm.

Suppose, for instance, that it was determined that exposing young children to movies depicting explicit sexual activity between consenting adults had no harmful effects on children. That is, it had no discernible lasting effects on attitudes to sexuality or sexual behavior, and it did not impede the development of a healthy self-image of oneself as a sexual being, etc. We can still object that it is not appropriate to expose young children to such materials because children

27. Joel Feinberg distinguishes two kinds of unhappy states of mind: offenses and hurts. See 1 JOEL FEINBERG, HARM TO OTHERS 45–47 (1984).

28. *Id.* at 45.

lack the emotional and cognitive maturity to grasp fully the nature of the activities depicted or to appreciate their social and cultural meaning. We do not augment the quality of children's lives by exposing them to materials that they cannot grasp, but which nonetheless elicit strong unsettling responses from them. Graphic displays of explicit sex may elicit confusion, embarrassment, or even titillation of a sort that can diminish the sense of innocence that is an important aspect of a good childhood. Similarly, it can be appropriate to shield young children from frightening films or even news reports of war, crime, or natural disasters on the grounds that such material will unnecessarily upset or confuse children. The force of this sort of justification for limiting children's access to expressive materials diminishes as children acquire the capacities that permit them to understand and successfully negotiate unsettling material. And it is not reasonable to expect that children can always be fully insulated from unsettling material. Indeed, at certain points in their lives, the welfare and developmental interests of children will be served by giving them access to unsettling material. A possible example is sex education. Young teenagers may be embarrassed by certain educational materials, but this will not be sufficient reason to avoid use of such materials for legitimate educational purposes. The main point is that we have reason to insulate children from unsettling material even if exposure to the material does not pose risks of long-term harm or does threaten to impede proper moral development.

C. Guardian Interests

Since children lack a determinate and stable conception of the good of their own making, the direction of children's lives initially depends crucially on the judgments made by their guardians, usually their parents. Parents have a special responsibility to nurture their children and advance their children's interests. In discharging this responsibility, parents typically enjoy wide-ranging discretion in shaping certain features of their children's upbringing. In particular, parents have special prerogatives to raise children in ways compatible with their conception of the good. Religious parents will want their children to participate in distinctive religious practices and will attempt to transmit their religious convictions to their children. The justification of such parental authority is rooted partly in the concern to advance the interests of children and partly in the independent claims parents have to implement their own conception of the good.

On a liberal view, parental authority to transmit a conception of the good to their children is limited in various ways. Parents cannot try to indoctrinate their children by denying them access to primary or secondary education. Nor can parents seek to subvert or circumscribe the development of the autonomy of children in other ways. Many controversies involving children turn on disputes about the nature and extent of parental authority over children. I have argued elsewhere that parents have the prerogative to provisionally privilege a particular conception of the good, but that they cannot seek to authoritatively fix their children's ends.²⁹ Determining the precise boundaries of parental authority is an important issue. But for the purposes of this discussion we need not determine just what these boundaries are. Instead, we can proceed on the assumption that guardians have a legitimate interest in shaping and controlling some important aspects of the "ethical" and cultural environment in which children are raised. In pursuing this interest, guardians have some claim to regulate the kinds of expressive materials to which children have access. The important point here is that the stake parents have in regulating access is not limited to shielding children from materials that are deemed to be harmful. To some degree, parents have a claim to limit access to materials that are inconsistent with or offensive to the conception of the good they seek to present to their children.

Consider parental views of profanity. Parents who are offended by profanity or who believe, in virtue of their religious convictions, that children ought not to be exposed to profanity have a stake in ensuring that their children are not exposed to it. The stake that parents have here in shielding their children from profanity is not dependent on establishing that profanity is harmful to children, or even that it is unsettling to children. Instead, parents can claim that exposing children to profanity is offensive to parental sensibilities. Guardian interests of the sort described here are related to, but not entirely equivalent to, the interests of children. They are initially grounded in the interests that guardians of children have in pursuing a conception of the good, but insofar as children participate in the conception of the good favored by parents, they also become part of children's interests. Children have an interest in living a life that is guided by some

29. There are a variety of views about the nature and extent of parental authority. See Colin M. Macleod, *Conceptions of Parental Autonomy*, 25 POL. & SOC'Y 117 (1997), for development of the idea of "provisional privileging" and a critical review of competing views of the extent of parental authority.

determinate conception of the good. By respecting, at least to some degree, the conception of the good that parents extend to their children, we thereby manifest respect for the children's interest in having a life that is shaped by a conception of the good.

Liberals accept that guardian interests have some role to play in resolving issues concerning freedom of expression and children. Parents cannot, however, exercise the prerogatives of parental authority to block access to expressive materials in ways that impede the development of children's moral powers. Parents may hope that children will come, in maturity, to embrace the values and commitments of their parents. But parents must recognize the ultimate independence of their children as separate persons who have the right to decide for themselves what commitments to embrace and what projects are worth pursuing. Parents may legitimately make special efforts in their nurturing activities to privilege their own distinctive conceptions of the good. They may include children in distinctive religious and cultural practices, and they may provide special instruction about the teachings of a particular faith or way of life. But they should not seek to advance their conceptions of the good by foreclosing opportunities for informed deliberation about different conceptions of the good. Children, even at a fairly young age, should be made aware that there is a plurality of conceptions of the good, and they should have access to education and educational resources (*e.g.*, libraries and museums) that allow them to learn about and contemplate other conceptions of the good. This does not mean that parents cannot control and monitor the expressive materials children access and seek to access. Parents have greater authority over young children to control and monitor the consumption of expressive materials than they do over teenagers. However, the degree of permissible control and monitoring is ultimately limited by respect for the emerging moral personality of children. Parental authority gradually gives way to the emergence of children's autonomy and their development of independent deliberative and informational interests. The emerging moral powers of children are, on the liberal view, accompanied by increased moral independence from the authority of parents. The efforts that parents may undertake to transmit distinctive values or commitments to their children are tempered by the moral independence of children. So although children are, to a degree, ingredients in their parents' life plans, they cannot merely be used as a means for the realization of parental ideals. On the liberal view, children must be schooled in autonomy, and the state has an important role in ensuring that the

social conditions for the development of autonomy are secured for all children. In the context of freedom of expression, this means that children have a right to access age-appropriate information³⁰ about conceptions of the good that are different from and even opposed to the conception of the good embraced by parents.

Disputes between liberals and communitarians concerning the extent of parental autonomy often turn on two distinct issues. The first concerns the value of autonomy per se. Some communitarians deny that children have a right to full development of the moral powers.³¹ The second concerns the social conditions of autonomy. Here the issue is whether development of the moral powers requires, as I have insisted, providing children with access to a wide plurality of deliberative resources.³²

V. BALANCING THE DISTINCTIVE INTERESTS OF CHILDREN

So far we have seen how a liberal conception of moral personality can affect our understanding of the interests of children. We now consider how these interests can be balanced. We seek balance along three interconnected dimensions. First, we want to determine what sort of balance between access to expressive materials and insulation from expressive materials appropriately accommodates developmental, quality of childhood life, and guardian interests. Second, we need an account of this balancing that is responsive to the evolving character of children's interests and capacities. Third, we need to explain how the freedom of expression claims of children intersect with those of adults.

The sort of balance between access and insulation that serves developmental interests, quality of life interests, and guardian interests will vary with different stages in childhood. The child-teenager distinction proposed by Etzioni provides a useful starting place, but it is arguably insensitive to developmental differences in the deliberative, expressive, and informational interests of children. Instead I propose

30. By age-appropriate, I mean information that is expressed in forms that children can understand, given their stage of development, and that is presented in ways that are not needlessly unsettling.

31. See WILLIAM A. GALSTON, *LIBERAL PURPOSES: GOODS, VIRTUES, AND DIVERSITY IN THE LIBERAL STATE* 129–31 (1991), for a skeptical view of the value of liberal autonomy.

32. For a more detailed discussion of the social conditions of autonomy, see generally Eamonn Callan, *Autonomy, Child-Rearing and Good Lives*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN*, *supra* note 21, at 118; EMILY R. GILL, *BECOMING FREE: AUTONOMY AND DIVERSITY IN THE LIBERAL POLITY* (2001); Macleod, *supra* note 29, at 131–33.

that we distinguish at least five stages of childhood: infancy (0–3 years), preschool (3–6 years), a juvenile stage (6–12 years), adolescence (13–15 years), and young adulthood (15–18 years).³³ We can anticipate that as children move through these stages their deliberative, informational, and expressive interests expand and become weightier such that the range of expressive materials to which they must be permitted access increases and the manner in which they have access is less subject to monitoring and content regulation by adults in positions of authority. At later stages of childhood, development interests are likely to be well served by permitting (and indeed encouraging) children to access an increasingly wide range of expressive materials, even ones that may not meet with parental approval. Development of deliberative capacities can be enhanced by the challenge of sorting through a plurality of perspectives that require children to exercise a degree of independent judgment about the value of different ideas, activities, and forms of life. Similarly, as children mature, they become increasingly able to determine for themselves what expressive materials and activities are likely to contribute to the quality of their lives. So the need for adult control over the expressive materials to which children have access declines. Nonetheless, before full maturity, parents retain, partly in virtue of their guardian interests, some degree of control and influence over the sort of materials children can access. In early stages, the degree of control is high, but it diminishes as children become independent and able to direct their own lives. For example, parents might initially enjoy almost complete authority to determine the form and content of the material to which children have access. But as children become young adults, parental prerogatives consist primarily in limited forms of monitoring of the kinds of materials accessed by children. In a similar way, the range of expressive activities in which children are entitled to participate also gradually increases, and the degree of adult control over such matters gradually decreases.

The expectation that increased maturity should be accompanied by increased expressive autonomy is predicated on two provisional assumptions. First, it is assumed that younger, less mature children are usually especially vulnerable to the potentially damaging effects of exposure to expression. They tend to need more protections from expression, and they tend to have weaker interests in having access to

33. I readily admit that this is a provisional proposal. It might need to be refined or modified in light of findings in developmental moral psychology.

expressive materials. Second, I assume that advancing developmental interests has priority over advancing quality of childhood life interests and guardian interests. In effect, it is more important that expression be regulated in ways commensurate with the development of children's moral powers and realization of their basic welfare than it be regulated in ways that makes their childhood pleasant or facilitates the realization of guardian interests. Of course, often there will be harmony between these interests. However, tensions between the interests concerning freedom of expression can arise. For example, religious parents may wish to restrict the access that their teenager has to material that questions the authority or veracity of tenets of the family's religion. Preventing access to such material may advance guardian interests, but it would impair developmental interests. I assume that in such cases developmental interests trump guardian interests. This assumption is a natural extension of liberal emphasis on the development of free and equal persons.

I have already given some indication of the sort of guidance liberalism provides with respect to the protection of minors and expression of minors issues. But a few additional remarks are in order. First, it should be clear that the high presumptive value of freedom of speech for adults cannot be extended in any straightforward sense to children. Especially in the case of younger children, it is often relatively easy to meet the threshold for regulating the content of expression. Restricting the access that young children have to violent, sexually explicit, hateful expression, as well as manipulative advertising, is readily justified by appeal to the interests I have emphasized. Exposure to these kinds of expression does not plausibly advance the developmental interests of children, and it may even damage these interests. Empirical studies of the sort reviewed by Etzioni that examine the potentially harmful effects of expression for children are thus extremely important. But even if there is no conclusive empirical evidence establishing the harmful effects of exposing minors to such material, restricting access to such material can be justified by the appeal to the quality of childhood and guardian interests. So in the case of young children, content-based restrictions of expression can be justified without establishing that material with a particular content is harmful to children. We need only show that it is likely to be unsettling (as opposed to harmful) to children or that it offends parental conceptions of propriety.

Matters change somewhat as children mature and the range of expressive materials that might plausibly advance children's developmental interests widens considerably. At this stage, it becomes harder for adult authorities to distinguish reliably between content that is and is not appropriate for children to access. As children enter adolescence, content-based regulations are harder to justify and also hard to enforce feasibly. Nonetheless, even at this stage, some categories of expression are legitimately subject to more regulation than others. Whereas adolescents arguably have a strong claim, grounded in developmental interests, to unfettered access to educational resources concerning any subject matter, it is doubtful that they have a claim to unfettered access to expressive materials that are primarily commercial or erotic in nature. For example, whereas it is consistent with liberal principles for the state to prohibit the sale of pornography to minors, it is contrary to liberal principles to restrict a teenager's access to educational materials about human sexuality. There are, of course, important practical difficulties in classifying expressive materials and regulating the access that minors have to materials on the basis of such classifications. But restricting access to material via this kind of categorization is consistent with liberal principles.

The categories of expression that have special protection for children parallel the categories given special protection for adults. Political, religious, literary, intellectual, and artistic expression can contribute to the development of children's moral powers, so expression in these categories merits special protection. The degree of protection these categories receive increases with the development of children, and it is only with older children that these categories enjoy the sort of status they are assigned in discussions of the free expression rights of adults. However, in these protected areas, older children have genuine rights to freedom of expression that are almost indistinguishable from those of adults.

VI. INTERSECTION ISSUES

We have seen that liberal theory provides a nuanced and developmentally sensitive theory of freedom of expression for children. Children's rights to freedom of expression are different from, and more limited than, those of adults. Children have distinctive claims both to protection from expression and to access to expression. The question remains, however, whether it is possible to accommodate children's claims without unduly encumbering the free expression

rights that liberals traditionally assign to adults. Given that the rights of freedom of expression of adults are more extensive than those of children, are there feasible ways of ensuring that constraints on expression designed to protect children do not encumber the rights of adults to freedom of expression?

The cases examined by Etzioni provide helpful examples of intersection challenges. His analysis points in the direction of solutions to intersection issues that liberals should endorse. Indeed, the child-adult separation approach defended by Etzioni in some of its forms is quite consistent with the kind of time, manner, and place regulations that liberals routinely accept as legitimate. Providing adults and children with different computer terminals to access the Internet does not block adult access to protected speech, and it is hard to see how there can be a principled objection to reliance on this strategy. Similarly, judicious use of labeling, V-chip, and filtering technology should not occasion alarm, nor should selective prohibitions on selling some expressive materials to minors. None of these strategies involve the content regulation that liberals are justifiably suspicious of, and none significantly encumber the access that adults have to expressive materials. Indeed, from the vantage of the theory I have outlined, these strategies can be defended even without appeal to evidence of the harmful effects of cultural materials on children. Consider, for instance, the way in which labeling and V-chip technology can serve both guardian and quality of childhood life interests. Labeling can alert parents to material that might in their judgment be unsuitable for young children—either because it is offensive to the values embraced by guardians or because it is likely to be unsettling. Even as children mature and parental authority to determine access to content diminishes, parents retain an interest in monitoring the materials consumed by their children. Labeling and software that tracks the web activity of children can play a role in the legitimate monitoring of children's activities.

There are some limitations and hazards with these ways of effecting child-adult separation. The schemes of classification upon which filtering and labeling strategies depend are imperfect at best. Filtering software is highly fallible and can be subverted by clever children or adults determined to target children with objectionable material. The costs generated by failures in these strategies are borne mainly by children. They may be mistakenly exposed to objectionable material or they may be wrongly denied access to material. But the main free

speech interests of adults—either to have access to important expressive materials or to communicate expressive materials to a wide audience—are not imperiled. The fact that children’s interests will, at best, be imperfectly accommodated by child-adult separation strategies suggests supplementary strategies are likely to be necessary if the freedom of expression interests of children are to be adequately served.

Let me briefly mention two such strategies. First, it is inevitable that children will be exposed to unsuitable or even harmful expressive materials. One way to mitigate the costs of this kind of exposure is through the “more speech” strategy. The idea here is to provide children with information and materials that help them to understand or deal with objectionable material. For example, children, even quite young children, can be alerted to ways in which advertising is manipulative or how exposure to depictions of graphic violence may lead to anti-social attitudes. Proactive efforts to engage children in reasoning about the content and possible effects of expressive material will not always be successful. But they can contribute to the development of moral powers and hence have much to recommend them from a liberal point of view. Second, it is likely that efforts to protect children from speech will result in children being denied access to valuable forms of expression. As I noted above, it is doubtful that state officials can reliably discriminate between material that is suitable for children and material that is not. It seems appropriate, therefore, for governments to ensure that children, especially adolescents and older minors, have fairly unfettered and unmonitored access to a rich and diverse repertoire of educational resources, including on potentially controversial subjects (*e.g.*, sexuality, religion, or politics). Respecting the deliberative and informational interests of adolescents does not require providing them access to any material of their choosing, but it probably does require providing them access to information about virtually any topic that they wish to explore.³⁴

34. The Supreme Court’s ruling in *Board of Education v. Pico*, 457 U.S. 853 (1982), is, from this perspective, a step in the right direction. The Court held that school boards cannot use their discretion to determine the content of their libraries in “a narrowly partisan or political manner.” *Id.* at 870. Respecting the rights of expression of adolescents on my view also requires ensuring that the holdings of school libraries are diverse and representative of a broad range of views, even controversial ones.

CONCLUSION

The variety of liberalism that I have drawn on retains a commitment to individualism and rights. But it does not deny that individuals can be profoundly affected by expression. Rather, it supposes that expression is important precisely because it can affect our beliefs, attitudes, and conduct so dramatically. The effects of expression are not always welcome and a decent theory should display appropriate sensitivity to ways in which important interests can be frustrated by free expression. Etionzi's communitarian analysis sensibly urges us to pay attention to the possibility that speech can harm children. Liberalism is not hostile to this point. Indeed, the advantage of a liberal theory of freedom of expression is that it provides a rich typology of the range of children's interests that merit recognition when gauging the costs and benefits of freedom of expression for children. A liberal theory can guide us in determining the appropriate contours of various child-adult separation strategies, and it alerts us to the importance of respecting the emerging moral personalities of children.