

## **Children and Developed Agency.**

“Treating someone like a child is prima facie wrong, unless, of course, the person in question is really a child...By ‘treating someone as a child’ I mean interacting with her on the basis of more paternalistic standards than those which apply to adult-adult relations” (Schapiro, 1999; 715).

This is perfectly reasonable: we can only treat ‘children as children’ in this way if we can prove that this stands in great enough distinction from the adult. In response to this, there are two possible conclusions. One of these is that it can be shown that children are significantly unique (and certainly so in relation to adults) such that different treatment on this basis is justified. If it cannot be shown that children are different to adults or we cannot say who is and who is not a child, then the second conclusion must be that we cannot justify children as deserving of paternalistic treatment, and must either reject paternalistic intervention altogether, or else look for a new criteria upon which to base the application of these increased paternalistic standards.

That we *do* treat children differently from adults is clear. The attitude of increased paternalistic standards can be seen in a number of cases – be it the rights which children have in terms of medical treatment, decisions about their lives which are left up to parents or guardians, or the prohibition of certain activities before a certain age. Here, children are being ‘treated like children’ because it is supposedly better for them, because they do not really know what they want, or because we know better than them what is in their interests. This kind of intervention in the lives of children is done with an appeal to the principle that they are not responsible individuals. However, such a view seems incompatible with also wanting to ascribe blame to children in some instances. If childhood is a state that carries responsibility on one hand, and the exemption from it on the other, how do we sort out when we follow one rule, rather than the other?

It is often thought that no special justification is required to act paternalistically towards children in the same way that is true for adults. When justification is required, often appeals are made to consequences. That is to say, that justification is often given by arguing that children's interests will be better served by allowing older thus more experienced and capable taking charge of their affairs. I am not denying that some individuals *are* the proper subjects of paternalism, but maintain that age is not a reasonable test for this. Subsequently, I hold that children are *not* the proper subjects of paternalistic intervention simply because they are children. This is because the adult/child distinction is fundamentally flawed, and should be replaced by a distinction between *developed* and *undeveloped agents* (Schapiro, 1999; 718).

### **1 - What is a 'Child'?**

The UN convention on the child defines a child as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier" (UN Convention on the Rights of the Child, 1989; Article 1). Because this is the stance that is taken in England as the age of general majority, it is this age that should be taken as the age constitutive of the end of childhood during the discussion of children below.

Of course there are also common sense intuitions about what a child is, and indeed how they should be treated because of this, and these common sense intuitions probably fall broadly in line with the suggestion of the UN Convention. It may be said that using such common-sense notions is helpful, since if it is generally agreed that childhood is a state that continues until the age of 18 then it is so. This argument is even more forceful if such a principle is enshrined in law. But this does not necessarily mean that such an argument is *normatively* sound, even if it makes perfect common-sense to say 'a child is anyone under the age of 18 because the law says so and we all agree'.

Essentially the argument follows that while it may be true that in one sense that a child *is* anyone under the age of 18 because the law says so, it doesn't follow that it means anything more than just that. The problem is that simply stating that all children are "human beings under the age of 18" doesn't tell us anymore than precisely that. And it certainly doesn't give us any basis for treating them any differently from adults. A further problem is that all too often it *is* taken to mean something more than this, and we treat children very differently because we think that the threshold of age separating childhood from adulthood marks something more than just a difference in ages. Using age as a marker of the ability to make decisions is flawed not least because what these ages actually correspond to differs greatly between cultures, and individuals. "Where the line between childhood and adulthood falls in each instance cannot be determined by a general rule; it changes often, in respect to age, from country to country, from one civilization to another, and also from individual to individual" (Arendt, 1993; 195). If this is so, then what does this line correspond to such that different treatment is justified?

### **1.1 - Is There Any Such Thing as 'Childhood'?**

The argument here is that there is no such thing as 'childhood'. What I mean by this is that the differences between early-life experiences of different individuals (even those in the same household) are so great that categorising these experiences under the umbrella of childhood fails to capture this diversity. These differences will clearly have a difference upon the development of the individuals in those specific environments, and so talk of childhood as a stage with universal significance, or a common point of reference in a young person's life is meaningless. What is more, failing to acknowledge this diversity means that some individuals will be unfairly treated on the basis that they share nothing but an age in common with others.

While it may be argued that age in and of itself is no grounds for treating children differently, it may be said that the ages used correspond to some shared experience or status of childhood which *does* require markedly different treatment. Following from this then, in order to justify the increased paternalistic standards that are applied to children, it must be shown that childhood is sufficiently different from adulthood, and that this difference matters. As I see it then, childhood must be established as empirically different from adulthood and it must be established that this difference informs and justifies increased paternalistic treatment. Furthermore, it must also be the case that there is some shared ground between all childhoods so that this principle justifies treating all children the same.

### **1.2 - "Unequal Childhoods"<sup>1</sup>**

But it is not clear that all childhoods (and hence all children) *are* sufficiently the same. Childhoods can be affected by any number of differences in the situation of any young person which are not linked to their age and potentially defeat the notion of childhood as a shared experience altogether. One such difference appears to be the social class of a young person's parents (Lareau, 2003). As Lareau's study of a number of families of different socio-economic status points out, there are profound differences in what a childhood may involve, and subsequently the skills and traits it will inspire in the individual who has that particular childhood.

One may argue that differences in the lives and experiences that young people experience doesn't provide a firm basis for rejecting the term. However, the things that Lareau points to in her research

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<sup>1</sup> Lareau, A. (2003). *Unequal Childhoods*. London, University of California.

findings are exactly the kind of things that have significant differences on the capacities and skills of young people, and as such *do* refute the existence of childhood as a phase with any universal aspect.

According to Lareau, young people from a working-class background have “more autonomy from adults” (Lareau, 2003; 36) compared to their middle-class counterparts, who in turn can be expected to experience far more preparation for “performance-based assessment at school” and in later life (Lareau, 2003; 61). But the differences do not end here. Lareau also finds that children from middle-class families are also far more likely to develop skills which are of particular importance with fitting in with expectations of “[occupational] and other social institutions” (Lareau, 2003; 63). Related to this is the question of organised activities and the effect that this may have upon the development of young people from different socio-economic backgrounds. Because of the sheer cost of enrolling children in organised activities (be it ‘subs’ for a football club, sports equipment, petrol money to take a child to dance lessons, acting classes et c.) it is not surprising that a great many more children from well-off backgrounds take part in such activities than do their poorer counterparts. What may be less clear is the impact that this can have. A child who has an abundance of scheduled activities will be more comfortable integrating into formal institutions and regulated activity of all kinds, but will naturally have less time to play on their own terms. This is not true for the child whose parents cannot afford to support such organised activities, and who because of this will have greater skills of self-regulation because they spend less time receiving instruction through adult-led activities (Lareau, 2003).

Of more direct interest to our current question is Lareau’s suggestion that middle-class children feel a greater “right to be involved” in the adult world (Lareau, 2003; 60). This instinct towards belonging to an adult and not a ‘childlike’ world clearly has a huge impact upon what kind of people such an

upbringing will create, and how quickly such children are likely to 'grow up'. On the other hand, working-class and poor children are more likely, according to Lareau, to interact more freely with children of different ages, suggesting that they are then more comfortable with spending time of children of all ages, rather than just those of their year or class group (Lareau, 2003; 75). Also relevant is a child's use of language, education and so on. Here it may be that often the middle-class child has a distinct advantage over working-class or poor children.

I am using Lareau's study to show that when talk of childhoods, groups individuals of too great a difference are lumped into the same category. Even when we talk in terms of rather gross generalisations about class, gender and race, the ways in which a child's life and development may differ are massive. What Lareau shows is that childhoods are markedly different for different people, and that these ways *matter*. I am not using Lareau's study to show that this class or that class should be given preference in one matter or another, or to suggest that a middle-class child has a greater grasp of the adult world, and I strongly resist any claim that this may be the case. I am simply using it as an example of the multiplicities of experience that can be seen in a category of people. It is the case that using childhood as a way to categorise individuals fails to capture this, since it groups them together by age, and indeed nothing else.

Even amongst families, differences can be large. In my own case, my brother and I had very different childhoods at times. Because he was a gifted rugby player in his youth, my brother needed to be driven around, often to far off locations for training and games. Moreover, his team was one in which he was by far and away the youngest player. As such, he could be said to be a lot more comfortable than I am in fitting into new communities, and particularly adept at feeling comfortable in situations of power imbalance brought on by age. For me, the experience of being at home in the

meantime led me to be a lot more comfortable spending time alone, and made me more independent. The thing to note is that even within a family, the experience of childhood can differ in ways that have a huge impact, and these ways have nothing to do with age.

### **1.3 - The 'New-ness' of Childhood**

“In Medieval society the idea of childhood *did not exist*: this is not to suggest that children were neglected, forsaken or despised. The idea of childhood is not to be confused with affection for children: it corresponds to an awareness of the particular nature of childhood, that particular nature which distinguishes the child from the adult, even the young adult. In medieval society, this awareness was lacking. That is why, as soon as the child could live without the constant solicitude of his mother, his nanny or his cradle-rocker, he belonged to adult society. That adult society now strikes us as rather puerile: no doubt this is largely a matter of its mental age, but it is also due to its physical age, because it was partly made up of children and youths... The infant who was too fragile as yet to take part in the life of adults simply ‘did not count’...” (Aries, 1973; 125, italics added).

Aries suggests that the non-existence of childhood in this period is owed to a lack of understanding about the special nature of childhood. But must this necessarily be the case? One could just as well claim that it is our own modern society that misunderstands the nature of young people, and incorrectly presumes incapacity due to a person’s age. Why then for medieval society did childhood ‘not exist’? For one thing, young infants were thought not to belong to the world of humanity at all, and children of the time were thought of as an inconsequential thing. This was in part because many children died at such a young age that attaching oneself to a young child in any deep sense could turn out to be a painful experience. As Aries writes “Nobody thought, as we ordinarily think today, that every child already contained a man’s personality. Too many of them died” (Aries, 1973; 37).

The thought that infants do not have a fully-fledged personality of their own is something that persists even today, and many of us regard people of such a young age not in terms of what they are, but the potential for what we hope they may *become*. If the realisation of that potential is seriously in doubt (as high infant mortality rates certainly threatened in medieval societies) then it is less surprising that infants were not regarded as important in the same way as adults were. The other way in which childhood did not exist was in the way that once they were clear of the stage of infancy, an individual suddenly became part of the world of adults. This may strike us (like Aries) as constitutive of a misunderstanding of the special nature of childhood, and I concede that to push *all* young people into the arena of the adult as soon as they no longer need constant supervision is wrong, but that it is only wrong in the same way that keeping *all* young people in quarantine from the adult world is now – and that is on the grounds that it ignores the needs and abilities of the individual in favour of following a rule which binds status to age.

If what constitutes childhood differs so massively and for so many reasons, how can we say with confidence what childhood is? And if we cannot characterise childhood, then how can we say who is and is not a child? Not being able to define the child in terms that go beyond the mere fact of their age makes it difficult to justify treating all children differently from adults, just because they are all children.

#### **1.4 - The 'Giant Leap' from Childhood to Adulthood**

Another concern that may be voiced over existing notions of adulthood and childhood is that it involves a giant leap from the one state of affairs to the other. Because adulthood is attained at the age of 18, it seems that this happens all at once, so to speak. As such the 18 year-old has a very different status to the 17 year old days away from their 18<sup>th</sup> birthday. This strikes us as odd as the

small difference between the two individuals in question confers a large difference in their statuses and what they are permitted to do.

One way of relieving this tension may be by introducing the concept of the adolescent. As far as this goes, it does much to redress the balance. Yet this does not do nearly enough to solve the problem since it is still a concept that is characterised by the attainment of an age. Adolescence introduces a further stage of development, thus eradicating the 'giant leap' from childhood to adulthood, but it does not seek to replace the system of mapping moral status, cognitive achievement, or personal responsibility to age; it merely makes it more sophisticated.

### **1.5 - Liberationism**

Liberationists hold that freedom from paternalistic intervention should be granted on capacity, but argue that children are not to be denied this on the basis that they do not possess the same capacity as adults (Cohen, 1980). The liberationist stance can be cashed out in two main ways. The first of these is to whom the principle is to be extended. A liberationist may claim that *all* children should be allowed to act according to their own will, or they may claim that only *some* are. Claiming that only some children can do this is more plausible since it is obvious that infants and very young children do not have the capacity to exercise choices of any kind. Even those who claim that *all* children can have rights, nevertheless acknowledge this point (Farson, 1974: 31). If the liberationist stance acknowledges that only some children should have rights (or at the very least that infants and very young children cannot) then the position can be summed up by saying that the liberationist believes that drawing a line separating those who can have the right to be free of paternalistic action from those who cannot is not inherently wrong, but that the line itself has been made in the wrong place.

Yet there are those who claim that the drawing of *all* such lines is wrong, and is based on the thought that any such lines “can be shown to be arbitrary” (Cohen, 1980; 48). Arbitrariness can be taken in two separate ways here. One can argue that the idea of drawing *any* lines is arbitrary, or as above, that the drawing of a *particular* line is arbitrary.

Could the drawing of *any* line whatsoever be arbitrary? Let us consider a hypothetical example. Imagine that we are taking a group of 10 children to a theme park, and there is one particular ride that they all wish to go on. However, the ride carries with it a safety restriction, only admitting individuals of 5 feet and over onto the ride. The heights of the 10 children we are accompanying are: 5’1”, 5’0”, 4’11”, 4’10” and one child at each descending height at one inch intervals, down to the shortest child. According to the rules of the theme park, only 2 of the 10 children will be allowed upon the ride. It may seem rather pedantic to refuse admission to the child a mere 1 inch below the required height to be allowed upon the ride.

As such, we may question the wisdom of drawing such a line, since refusing entry to the ride of the child who is only an inch shorter than a child who is allowed to go upon the ride, seems to mark a difference too insignificant for the large difference in the way in which they are treated, and the things which they are permitted to enjoy. The second objection that we may have to the 5 foot policy of the theme park may be that we question *why 5 feet is significant, as opposed to any other height*. We could claim that the drawing of 5’0” as a line between those who can and cannot enjoy the ride would be arbitrary since it discriminates against the child who is a mere 1 inch too short for the ride, even though there is little difference in height that marks a significant difference in treatment (that the line does not mark a *significant enough* difference between can and can’t).

The response is simple. If the criticism of creating thresholds delineating between can and cannot comes from the notion that the basis for that threshold has somewhat been 'plucked out of the air', then one could respond by stating that it may be that 5'0" is a height that has been well thought out, and does carry some significance. It may be that the safety mechanisms of the ride are only 100% effective on people of a height of at least 5'0" and above. Denying the 4'11" child access onto the ride seems less arbitrary if it can be shown that *this* height, rather than any other, marks a significant break in circumstances, and is thus a reasonable boundary, regardless of how small that difference may be.

But the same is not true for age. If we agree that freedom from paternalism be granted mapping the capacity to choose, then it makes no sense to infer that 2 children will have the same capacity for choice, purely on the basis that they share the same age. As such the drawing of lines between those who can and cannot have access to something is not what is flawed, but it is the doing so on the grounds of age which is.

Another liberationist argument suggests that allowing children to make important decisions forms an important part of them acquiring the capacity that they need to be able to make prudent choices in the future. Those sceptical of giving children this right often suggest that one part of a child's inability to hold rights stems from their lack of experience. This says the liberationist, becomes nothing more than a self-fulfilling prophecy – if children should not be allowed to make decisions because they lack the experience to do so, then how can they become more experienced if the opportunity to practise decision-making is denied them? Liberationists then claim that denying the responsibility of children is the main obstacle that prevents them attaining the capacity for such responsibility in the future.

Liberationists may also seek to redefine capacity, choosing to defend a thinner definition of capacity than the sceptic offers. In terms of enacting choice it can be said that children *are* capable of choosing. After all, even very young children can display preference for one thing over another. Another way that the Liberationist may seek to justify their claim that children should share the same status as adults is by denying that anyone, *including* adults, possesses the requisite capacity to 'pay the tariff' of being thought of as independent, fully-developed agents. The liberationist will suggest that even adults do not fully grasp the content of their decisions, yet they are still 'qualified' to exercise such choices. The argument persists, whichever definition of capacity one favours (the thick or the thin definition) and is this; the alleged difference between adults and children which justifies adults being free from paternalism and children as not is simply not there. Under the thin definition of capacity, the child satisfies as much of the prerequisites as does the adult, and under the thick definition, neither does. To assert the latter is to assert that if we take capacity to represent the prerequisite of granting the right to choose which has as its basis the "evaluation of the content of any choice or decision" (Archard, 2007) that choice *must* in turn, display sufficient evidence of the capacity to choose. The problem with ascribing a different status to children than adults on such a basis (which Archard points out) is that adults are frequently given the opportunity to make imprudent choices without the suggestion that they be restricted from exercising their right to choose because they do not understand the full content of their decisions, or are making unwise choices.

## **2 - '(Un)-developed Agency'**

If we acknowledge that granting freedom from paternalism turns on capacity, and the capacity to fully appreciate one's choices, but that age is not a satisfactory indicator of such capacity, then we must provide an answer as how to get around, or to replace the current system of using ages as (generally) indicative of the capacity to exercise choices. If we maintain that age is not a reasonable test of capacity, then it is possible to assert that children should not be thought of as distinct from

adults normatively speaking, nor are they the proper subjects of paternalism any more than some adults are. Rather than appealing to liberationist arguments about arbitrariness or claiming that no one can pay the tariff of a thick conception of capacity, the problem may be best solved by cashing out a concrete notion of developed and undeveloped agency. The term ‘developed agent’ I borrow from Schapiro (1999), but my own account of developed agency differs from her own in some fundamental ways. Firstly, Schapiro uses developed agency to constitute agency in a more general sense. That is to say that a developed agent will act according to the “law of her will” (729). This law is to be understood like a judge acting in accordance with a set of laws. Therefore a developed agent is one who has such a set of internal laws by which to regulate their conduct, where an undeveloped agent does not.

By ‘undeveloped agent’ I mean those who cannot be said to have fully formed the skills they need to make a *particular* decision, rather than all decision-making *per se*. Whether or not someone is to be viewed as a developed or undeveloped agent is not based on an assumption of incapacity due to age,<sup>2</sup> but maps an individual’s capacity to make a decision or be held responsible for an act. Where my own account of developed agency differs most from Schapiro’s is that for me an appraisal of one’s agency can be task specific. So rather than saying I have a set of laws in general by which I regulate decision-making, I have them in place in regards to this or that decision. I think it makes sense for me to say that in terms of some issues, I simply do not have enough knowledge, interest, or experience in order to make a decision about them. There is an element of the law of my will involved, but only in terms of what this or that particular decision means for me, and what the impact of it will be. Therefore it seems reasonable to suggest that although I may be permitted to make a decision about one thing, I may not about something else. Note that this does not mean that

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<sup>2</sup> Although Schapiro doesn’t mention age *as such* as a factor here, but it seems she is suggesting this is the case. I would be very grateful for any guidance here.

we are justified in prohibiting a decision simply because we do not approve of it. For Schapiro this comes from the fact that she develops her theory in line with a Kantian ethic – under which we are bound to respect the decisions of others as ends in themselves. For me this comes from a commitment to respecting the decision of a developed agent in this case.

Using developed agency in this sense would not only answer the criticisms of using age as the benchmark for the attainment of certain rights, but would also avoid having to class certain individuals as *generally* developed or undeveloped agents. As such, it is feasible that someone be permitted to make a particular decision (and yet be denied the opportunity to make another) if it can be demonstrated that they have developed agency in that particular instance, regardless of their age.

What those who wish to deny that children should be granted freedom from paternalism claim is that it is obvious that children lack certain cognitive abilities (in general) in relation to adults, be it developmentally in terms of their lack of understanding, or experientially simply because they have not been around as long as adults and so cannot draw on experience in the way which adults can. On the face of it this seems a damaging argument – after all, one will of course get more experience simply by being around for longer. However, there are two responses to this argument. One is that the importance of experience has been overstated in this instance. After all, we grant privileges on the basis of passing a test in many instances, but we do not necessarily demand a level of experience to go along with it, but simply an agreed level of proficiency in the activity to which the test applies. Archard (2003) uses the example of a driving license: we do not require that a certain number of lessons are taken, nor are we required to rack-up a set amount of hours in driving experience before we take the wheel. Another argument may be that although a set amount of experience may not be

a pre-requisite to proficiency in a certain area, at least some direct experience *is*. As such, it makes sense to foreclose certain decisions from children, because they do not have enough direct 'life-experience'. Again though, this claim is mistaken. There are a great many 'experts' who have no direct experience at all of that which they are experts. We would not strip a history professor of their title simply because they have not been to this or that historical period, nor would we claim that someone who has slavishly learned a language to proficiency is less capable than we to converse with native speakers on the grounds that we have been there many times, yet made no effort to learn the language. In the same way, it makes no sense to say that experience 'of life' is so important to the child – surely it is understanding and not experience that is important? And it is not clear to me that all children are destined to fail such a test, any more than all adults would pass it.

Even if we admit that experience is an important part of making good decisions, since my own formulation of developed agency is task specific, age really may be no barrier to the kind of experience that is required in order to make well thought out decisions. For example, I would argue that a child who has a long history of suffering from a particular condition would be far greater placed to make a decision about the treatment of that condition than I would were I diagnosed with it tomorrow. What strikes me as odd is that I would be allowed to make a choice, or refuse treatment altogether regardless of the fact that I may have no experience and very little knowledge of what faces me, simply because I am 25, and not say, half that age.

Schapiro establishes her notion of developed agency in relation to children, and although Schapiro shows that there are some cases in which paternalistic intervention is justified, and responsibility for actions diminished, it does not necessarily follow that children are those for whom this rule applies. This is because the criteria by which she defines the child could just as easily (and I think, more

fittingly) be used to define the undeveloped agent. Schapiro argues that “Our basic concept of a child is that of a person who in some fundamental way is not yet developed, but who is in the process of developing” (p.716). But this is not necessarily the case with all children, nor should it be presumed it is. As we have seen, differences in childhoods may well mean that children gain developed agency at different ages, and as such a definition which maps age against such agency unfairly discriminates against some children, as much as it grants choice to some adults who are not capable of exercising it. By replacing child with undeveloped agent, then this is avoided since the lack of development of an individual is the only consideration which would lead us to conclude that they are undeveloped. Put another way, we could only fail a test of agency on the grounds of our agency (which seems fair) rather than on the grounds of our age (which does not). Moreover, this would mean that some adults would be considered undeveloped agents at the same time it would class some children as developed agents.

### **2.1 - Active and Passive Citizenship**

What then would be the difference between the developed and undeveloped agent? Very simply, the distinction would be made in terms of *active* and *passive* citizenship (Kant, 1996). In *The Doctrine of Right*, Kant talks of passive citizens as those who are not full members of the political community, and thus are not entitled to the same range of liberties which are open to the active citizen. Chief amongst these liberties for Kant is voting, and the justification for foreclosing this is that passive citizens lack the independence necessary for voting: “being fit to vote presupposes the independence of someone who...is a part of the commonwealth acting from his own choice in community with others” (Kant, 1993; 314). That some kind of independence is necessary to be granted certain privileges is certainly something it is helpful to retain, and I use this to guide my own test for developed agency (below).

However, Kant's characterisation of passive and active citizens is not without its problems. Foremost, is who Kant believes should be regarded as passive citizens. Because independence is important for Kant, it means that his list of passive citizens includes not only children, but servants, tenant farmers and women. That such people (in Kant's day) were dependent in some sense is clear, but the reasons for which they were dependent say less about those individuals and their capacity for independence, and more about the cultures in which they found themselves and the lack of opportunity they were given to be independent. Moreover, the status of active citizenship is a general status. That is to say that provided one has the independence to vote, one can be considered as an active citizen in all matters. The system of agency that I propose would distinguish between active and passive citizens in different matters. I may be a politically active citizen and thereby be able to vote, but a medically passive one and thus have to defer to others when making choices about healthcare.

This is not to say that the distinction between passive and active citizens itself isn't worth keeping, even if Kant's list of passive citizens isn't. What is perhaps most appealing about the notion of passive citizenship though is that it does not deny the citizenship of the passive citizen. Passive citizens are not even to be regarded as lesser forms of citizen. "They are simply citizens who are not fit to vote and who therefore are denied this privilege" (Schapiro, 720). So even if I cannot vote (or make some other decision) it means nothing other than I cannot do this thing, so I am not allowed.

## **2.2 – Testing for Developed Agency**

So far I have talked about the notion of Developed Agency, but have said little as to how a test would be made. What is vital is that we be able to measure the capacity for decision-making in individuals, rather than the decisions themselves. This is because the reasons behind the decisions we make is the way in which developed agency can be established.

In order for a decision to be considered 'developed', it should include: *evidence of choice* (quite simply, the display of a preference of one outcome over another), *rational reasons* (that the choice is arrived at in a logical manner, based upon reasons which correspond to the decision at hand), and *understanding* (that the choice made is done so appreciating the risks and benefits of doing so).

Evidence of choice is probably the most straightforward (and easiest for an agent to fulfil). It is however still important, since those who cannot display any preference of choice over a matter cannot be said to display developed agency. We are either uninterested, or else our failure to decide also fails to demonstrate *any* kind of independence, qualifying us as an undeveloped agent/passive citizen on this basis. The most important word here is *we* – for the display of preference must be our own, and we must not be cajoled or coerced into making a decision. Kant claims that independence is important for active citizenship (and by my logic so too active citizenship) but in light of a test of developed agency, this independence would be a dependence of agency. This would mean that one were able to arrive at a decision based on one's own reasons and logic, and not someone else's. This is not to say we may not take advice on board, but that taking it (or not) is something we *ourselves* decide upon. Rational reasons are those which should be based upon logical reasons connected to the decision at hand. Therefore if we are making a decision on whether or not to join a university, this should be based on the courses, campus, sports teams, and not because we picked it out of a hat. Understanding may be the hardest criteria to fulfil, and turns on the notion of really *appreciating* the benefits and risks of any decision that we make. This involves appreciating possible outcomes, and is based upon at least some knowledge of the area our decision is in, and the outcomes it may produce. Not only this, it also entails us being prepared to accept those outcomes.

Consider two examples in which the principle may feasibly be enacted: the ability to vote, and to join the armed forces. Currently, each decision is regulated by age restrictions – 18 and 16 respectively. And each decision is undoubtedly a ‘big’ one. If we are to be allowed to vote then we must be able to have a genuine preference over who we want to vote for (evidence of choice), this preference should be based on rational reasons (for example because we have read the manifesto, and not because we think this or that politician has nice hair, or that we will die if we do not vote for them) and finally we must fully appreciate that if we vote for this person/party they may well win an election and we would be subject to any policies that they implement (understanding). If it were the case that a 14 year old displayed all of the above, then I do not see why they should not be allowed to vote, any more than I see that I should be refused the chance to vote at the age of 25 if I do not display the above.

In the case of joining the armed forces, the same test could be used. For evidence of choice, I must have a preference for joining the army as opposed to not joining it. In terms of rational reasons, I must base my decision on the fact that I want to protect my country, or that I see it as worthwhile career, and not on the fact that I love the uniform or guns. In terms of understanding, then I must fully appreciate that in joining the army, it is feasible that I may fight on the front lines, and that it is possible that I may die.

An important part of the test for developed agency is that (in terms of wanting to make a decision) the principle is only enacted upon the application of an agent to make this or that decision.

Returning to the above examples of voting and joining the army, this would mean that in my own case it wouldn’t matter to me either way if I were allowed to join the army. Because I don’t have an

interest in doing so, I would not ask for my agency to be tested on this issue. By contrast, I *do* have an interest in voting, and I do not see why age is an appropriate barrier to doing so (in either case).

### **3 - The Implications of Developed Agency**

So far, it has been argued that instead of age and childhood being used as indicators of capacity and responsibility, a mark of the agency of an individual should be taken and that this should hold regardless of their age. Furthermore, I have suggested that this agency should be task specific, and so this does not exclude the undeveloped agent from all spheres, merely that in which their undeveloped agency has been established. However, if I am to argue that such a notion should replace that of existing concepts of the child and adult (and more importantly the things we can and cannot do based on this) then I must show how such a system could proceed in reality. Since criminal proceedings involving children are to be my main focus, it is this which I will turn to below.

#### **3.1 - Developed Agency in the Courtroom**

The principle of developed agency may be able to solve many of the problems faced by youth justice procedures. The principle as devised above clearly has an impact on how children are properly viewed, and this has the effect of changing how they should be viewed in matters of justice and responsibility:

“Giving children legal rights or according them a certain status at law will make a huge difference to how we then think about them. If the law represents children in a certain light – as entitled, for instance, to make claims against adults – then it is correspondingly harder to continue seeing them as helpless dependents. At the same time children may make good use of the status they have been accorded legally to show that they do indeed merit that standing. Or they may simply employ the opportunities provided to acquire the requisite abilities” (Archard, 2007; 252).

Essentially, the principle of developed agency renders the question of 'youth' justice redundant. Rather than focusing upon justice for adults or for children, a system which used the notion of developed agency would dichotomise its response in terms of the developed or undeveloped agent, and not in terms of the child or adult. Youth justice proceeds on the assumption that individuals of a certain age have certain capacities, and this assumption has been shown to be false. Archard sees a central question in examining youth justice as "How...can we think of children both as vulnerable young persons whose needs must be met and as agents capable of exercising fundamental rights?" (Archard, 2007; 250) and to this I would give the answer that using a model of developed agency avoids having to ask such questions. Once again, the application of the principle is to be specific, so that someone may rightly hold certain rights, yet still be judged to lack the requisite capacity to either stand trial, be held accountable for a certain act, or both. Furthermore, this specificity means that culpability may be determined for one crime and not another rather than for all crimes *per se*.

It is all well and good to suggest that developed agency should be used as a guiding principle in (youth) justice, but it is undoubtedly a complex notion, and furthermore one that must be ascertained in *all* cases. As such, it may be a concern that the application of this principle is simply too complex to be used practically in cases. However, a system every bit as complex as that I am proposing is already in existence – the system where appraisals of the mental health of defendants are made to ascertain if they are capable of being held accountable, and also if they are able to stand trial. Admittedly, the case of justice is different from those in which a test is applied *before* an act (and the law works *de-facto*) but if establishing what happened, and the *mens rea* after the event is something which can (and is) a part of criminal proceedings, then I don't see why an appraisal of developed agency as to the acts that were performed in the past, rather than those wished to be performed in the future could not be made.

In most cases we want to treat children as a homogeneous group, yet we seem unable to agree upon what the features of this group even are. On one hand we want to believe that children are vulnerable, undeveloped and somehow in need of protection. Yet as we have seen this discriminates unfairly to children in terms of foreclosure of the things they may want to do, and may well be capable of doing. Moreover, viewing children in this way often resists ascribing accountability to young people for their acts, seeking to blame others for their conduct, or lessening their punishment. Once again, this is done primarily on the assumption of capacity linked to age. If the principle of developed agency is applied instead, then it becomes possible to ascertain if the person before us (regardless of their age) is to be held accountable for their actions, and to what extent.