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# THE CERBERUS: PARENTAL LICENSING AND THE EQUALIZATION OF OPPORTUNITY

By

SIDNEY MADISON PRESCOTT

Under the Direction of Andrew I. Cohen

## ABSTRACT

Hugh LaFollette's theoretical justification of parental licensing hinges upon consideration of the harms associated with raising children. If we understand LaFollette's stance as one in which the moral status of children is equal to that of other human beings, we must consider what such a commitment might require of social institutions such as the family. Unlike other licensing programs, I argue that LaFollette's parental licensing program serves as a tool by which fair equality of opportunity can be acquired for those living within a given society. I attempt to demonstrate how the normative views as to the sovereignty of parents serve to discount the moral status of children, thus limiting the protections offered against child maltreatment. I will show how LaFollette's theoretical justifications align with concerns addressed in John Stuart Mill's harm principle and Rawlsian views as to the importance of access to fair equality of opportunity.

INDEX WORDS: LaFollette, Children, Licensing, Parenting, Equal Opportunity,  
Child Maltreatment

THE CERBERUS: PARENTAL LICENSING AND THE EQUALIZATION OF OPPORTUNITY

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Submitted in Partial Fulfillment of the

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Georgia State University

2015

By

Sidney Madison Prescott

Committee

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Dr. Andrew I. Cohen, Honors Thesis Director

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Dr. Sarah Cook, Honors Associate Dean

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Date

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2015

THE CERBERUS: PARENTAL LICENSING AND THE EQUALIZATION OF OPPORTUNITY

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SIDNEY MADISON PRESCOTT

Honors Thesis Director: Dr. Andrew I. Cohen

Honors College Associate Dean: Dr. Sarah Cook

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Georgia State University

April 2015

*“It takes more courage to examine the dark corners of your own soul than it does for a soldier to fight on a battlefield.”-William Butler Yeats*

There comes a time in each individual’s life where they must reflect upon the events of the past. And during the contemplation of the events of our lives, we make a decision. We decide to either defy the path once set before us or to allow that path to dictate the remaining years of our existence. Oftentimes the decision to change, to purposefully recreate oneself in order to pursue life with reckless abandonment comes at a price. We must forgo our previously held conceptions about ourselves, our world, and others in the hopes of attaining more assured footing within our futures.

To understand the path which unfolds before us as a result of the birth lottery is difficult. Despair over the luck of it all can humble even the most stoic of individuals. But for those who have suffered at the hands of the individuals whom society entrusts with the responsibility of parenting, such questions remain forever unanswered. Could life have been different without the pain inflicted from those whose actions culminated in the creation of a life in one instance, and the hindrance of potential in another? The victims of child abuse and neglect are undoubtedly torn between the love society presupposes that a child has for their parents, and unmitigated bitterness for the fate suffered at the hands of their caregivers. In the path towards redemption, it always darkest before the dawn.

There are five brave individuals who once endured horrific injustices in silence. Those same five individuals refrain from mentioning that which remains concealed under the guise of unity. But the unity which results from that which is unjust is the very essence of cruelty itself. Justice calls for unmitigated gall. Justice calls for bitter truths to be unearthed and revealed to all those still chained inside the cave, justice calls for the courage of conviction even in the face of harsh realities. For the one that could no longer endure the pain of the path which unfolded before him, I dedicate the passion contained within these pages to you. For the one who stoically believes that good can be found within those whose actions remained bathed in the darkness, I dedicate the hope contained within these pages to you. For the one who wishes to simply wipe the slate of human emotions clean in order to mitigate the pain emanating from the

memories of childhood, I dedicate the desire to equalize the beginning of life for all individuals contained within these pages to you. For the one who suffers in silence through the external recreation of the negative energy contained within her experiences, I dedicate the stoic commitment to equalize the moral standing of both children and parents contained within these pages to you. And for the little girl who gazed out of an open window each night from underneath an old pair of tortoise shell glasses, contemplating what life could be in spite of her circumstances...

I dedicate the audacity contained within these pages to you.

Although time has moved on, the five remain forever untied in the atrocities of the past. Millions of children remain trapped in a prison they cannot see, the result of a tragically abusive childhood. Sadly, many become victims of their own perceptions of life, unable to escape the mental and physical scars of child abuse and lose the will to continue on with their lives. To those who grew weary of the battle against themselves and the devastating memories of a childhood lost to the trauma of a broken home, I dedicate the empathy contained within these pages. May every individual who has ever felt neglected, wronged, changed, intimidated, ashamed, and afraid as a result of their upbringing find solace in their own desire to persevere through the madness in the hopes of forever changing their stars.

In conclusion, I am reminded of Plato's *Allegory of the Cave*. Individuals who grow up in chained within the cave must cling to hope with everything they have. According to the allegory, one individual will eventually break free to experience what lies beyond the cave. I believe that the potential to break free and bask in the light always exists for those who are willing to risk losing everything they believed to be true, in order to gain that which is beyond their wildest dreams. Thus, I dedicate my work to every single individual who dares to shrug off the darkness of the past in order to pursue the light with reckless abandonment. No matter how dark the night, never ever forget the brilliance of the dawn.

Q.E.D.

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I wish to take a moment to acknowledge the turmoil of my upbringing and the strength I gained as a result of my experiences. The desire to help my siblings to one-day experience better days allowed me to develop the strong sense of optimism and courage that I carry with me to this day. I am forever grateful for the opportunity I was given to be their sister. I also pray that my brother has found peace in a place devoid of the strife he endured in his lifetime. As I wrote this thesis, the struggles I witnessed my

brother endure as well as those I did not continued to weigh heavily on my mind. The sense of loss, I feel from his passing endures but so does my resolve to address gross miscarriages of justice in his memory.

And finally, I must acknowledge God. Were it not for the Creator's guidance, I would not have the capacities, the strength, and the good nature needed to endure the trials and tribulations of life. I was given the ability to persevere through the darkness of the past so that I might witness the miracle that lay beyond my suffering only through the grace of God. I live my life in awe of the journey, forever inspired by that which is unfathomable to some, and oh so dear to others. I am forever grateful for the blessings I have been given, and I only hope that my work inspires others in academia to pursue various intellectual endeavors while simultaneously maintaining an unwavering faith in the unseen.

## TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....vi

DEDICATION.....iv

### CHAPTER

I.	Introduction: Parental Licensing.....	1
II.	Exploring the Conditions: Theoretical Justifications for Licensing Programs.....	2
III.	The Harm Principle: Understanding the Justification of Interference.....	8
IV.	Parental Licensing: The Theoretical Justification of Licensing within the Family.....	16
V.	A Departure from the Norm: The Theoretical Components of Licensing Parents.....	20
VI.	The Great Debate: The Moral Status of Children (Interests & Rights).....	29
VII.	Constructing the Timeframe: Problems with the Equalization of Opportunity.....	40
VIII.	The Evolution of a Theory: Creating Public Policy.....	46
IX.	Conclusion: The Actualization of the Theory.....	56

### BIBLIOGRAPHY

“The sole end for which mankind are warranted individually or collectively, in interfering with the liberty of action of any of their number is self-protection...the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”

–John Stuart Mill *On Liberty*<sup>1</sup>

## I. Introduction: Parental Licensing

In Hugh LaFollette’s essay *Licensing Parents*, LaFollette argues for the state licensure of all parents (LP 182).<sup>2</sup> LaFollette’s theoretical proposal for parental licensing centers on the components of raising children that mirror those of activities requiring state licensure (LP 184). In this thesis, I will defend several claims. First, I will argue that LaFollette grounds the theoretical justification of parental licensing on the prevention of harms to children (LP 184). LaFollette’s justification for interference in the family unit is firmly rooted in one of the normative principles of toleration (T 9).<sup>3</sup> Thus, LaFollette’s parental licensing scheme is less of a radical ideology and more of an extension of one particular form of interference (T 81). I will show that LaFollette’s concerns are rooted in a desire to protect the moral status of children, as the justification of parental licensing is predicated on a belief that the moral status of children equals that of adults (LP 196). Next, I will argue that the current model of parenting presents serious challenges to the pursuit of equal opportunity within society that occurs as a result of the inequalities that persist within the family (PLC 272).<sup>4</sup> I will demonstrate that a carefully planned and executed parental licensing program is a morally justifiable way to support the equalization of opportunity within society (LP 182-197).

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<sup>1</sup> I would like to credit Dr. Andrew J. Cohen’s book entitled *Toleration* with the inspiration for the use of the opening quote contained in this essay (Cambridge: Polity, 2014).

<sup>2</sup> Hugh LaFollette’s texts will be abbreviated as follows: LP refers to *Licensing Parents* (New York: Wiley & Sons, 1980); LPR refers to *Licensing Parents Revisited* (New Jersey: Wiley-Blackwell, 2010).

<sup>3</sup> Moving forward Cohen’s text will be abbreviated to as follows: T refers to *Toleration* (Cambridge: Polity, 2014).

<sup>4</sup> Ron Mallen’s essay will be cited as follows: PLC refers to *Political Liberalism, Cultural Membership, and the Family* (Florida: Social Theory and Practice, 1999). Within the context of this thesis, I will continually use the United States of America as the structural model of a civilized society. Although differences will occur within families as a result of the various dynamics contained within the internal structures of different societies (based on economic growth, access to natural and man-made resources, and civil unrest due to violent conflicts such as war), I believe that using the United States as a model will create a foundation by which to consider the theoretical implications of parental licensing (LP 182-197). Thus, the United States will serve as the model society within the consideration of LaFollette’s theoretical parental licensing proposal throughout my philosophical inquiry (LP 182-197).

Lafollette's line of reasoning on the topic of parenting is a serious affront to the normative manner in which society treats the activity of raising children (LP 182-197). Despite Lafollette's departure from the typical way in which individuals come to raise children, the claims brought against Lafollette's theoretical proposal do not adequately address the issue of maltreatment of children within the normative parental model which consistently defers to parental sovereignty (LP 186).<sup>5</sup> Finally, I will argue that the benefits of parental licensing remain viable outside of Lafollette's theoretical framework, and I will demonstrate said claim by briefly outlining a mockup of a parental licensing program (LP 182).<sup>6</sup>

## **II. Exploring the Conditions: Theoretical Justifications for Licensing Programs**

Lafollette's support of a theoretical parental licensing program begins with a consideration of the components of parenting that mirror those of activities currently requiring licensure (LP 181). Our society typically regulates activities that are deemed to contain certain elements of risk for either the individual involved in said action or others (LP 182-183). The regulation of said activities exists via state intervention and regulatory agencies maintained through professional associations that are responsible for overseeing entrance within certain occupations (LPR 328).<sup>7</sup> Furthermore, the theoretical justifications for the licensing of certain activities can be seen in current United States law that stipulates;<sup>8</sup>

When practice of a profession or calling requires special knowledge or skill and intimately affects public health, morals, order or safety, or general welfare, legislature may prescribe reasonable

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<sup>5</sup> The working definition of the normative parenting model will include single-parent and two-parent homes, and refers to the *lack* of public interference within the typical household routines involving the rearing of children (LP 340).

<sup>6</sup> The proposed parental licensing scheme will be introduced to offer tangible support for the drafting of a public policy instituting a parental licensing program (LPR 338-340). Due to the constraints of the thesis project, I will only provide an overview of the primary components of a parental licensing program (LPR 338-340). Future academic projects will address the continuation of the drafting of public policy aimed at instituting a parental license program (LPR 338-340).

<sup>7</sup> The authority of the state to regulate potentially harmful activities will be discussed in detail in subsequent sections (LP 182). For the time being, I will take the position whereby individuals living within society can be said to give their consent to the state (and certain professional associations) to uphold certain standards and practices that are commonly associated with the regulatory powers necessary to approve and deny licenses for a variety of activities (LPR 328).

<sup>8</sup> Moving forward, I will deem the arguments that negate the validity of the laws as set forth in U.S. legislation invalid (LP 328). Within the context of the discussion at hand, we can assume citizens will execute compliance with the normative structure of the United States government and laws emanating from said government (LP 328).

qualifications for persons desiring to pursue such professions or calling and require them to demonstrate possession of such qualifications by examination on subjects with which such profession or calling has to deal as a condition precedent to right to follow that profession or calling (LPR 328).

Thus, Lafollette identifies two conditions contained in the law that account for the theoretical justification of licensing activities:

1. Individuals are to be engaged in an activity that may pose a direct or indirect harm to others. In addition, the harm may be categorized as “significant and life-altering” (LPR 328).
2. Individuals can only perform the potentially harmful activity if they possess a certain level of competence (LPR 328).

Moving forward, I will explore the problems Lafollette has associated with the aforementioned conditions and the manner in which the author addresses the solutions needed to solidify the conditions that are not only necessary, but sufficient for the theoretical licensing of an activity (LPR 328).

Lafollette deems the previous conditions as necessary but insufficient in terms of justifications pertaining to the regulation of harmful activities through the enforcement of licensing (LPR 328). Lafollette argues for a third condition that he believes is necessary to both counteract theoretical opposition to a licensing program and simultaneously justify the institution of a licensing program (LPR 328). According to Lafollette, a licensing program is only theoretically justified if the benefits of the program outweigh the theoretical proposals aimed at refuting the regulation of the action in question (LPR 328). Therefore, in order for any licensing program to gain theoretical justification, all three conditions must be met (LPR 328). Lafollette is quick to note that the need for all of the conditions does not negate the strength of each condition in and of itself (LPR 328). Rather, the trifecta of conditions allows for a substantial justification of licensing (LPR 328). Next, I will detail the specific components of each of the conditions deemed both necessary and sufficient for the theoretical justification of a licensing program in Lafollette’s view (LPR 328).

First, Lafollette sets out the condition known as “actions risky to others,” described as the type of activities some individuals may engage in which pose regular risks to non-participants (LPR 329).

Lafollette describes the act of driving an automobile as one which poses a routine risk to others (LP 183). Lafollette points out the potential harms posed by the operation of a vehicle, thus indicating that the act of driving serves to signify as one example of the type of risky action one might regulate through a licensure program (LP 183).<sup>9</sup> Lafollette acknowledges the need to avoid the censorship of activities merely because they pose a potential threat to others (LP183). Rather, Lafollette notes that normative regulatory licensing programs aim for a trade-off of sorts, in order to maintain the autonomy of both the individual engaging in the potentially risky activity and those who are merely innocent bystanders (LP 183).<sup>10</sup>

Driving regulations require individuals to exhibit a certain level of competency in order to limit the harms that arise from the risky activity (LP 183). Requiring that those who wish to drive to demonstrate a certain level of competence thus limits the potential harms without negating the benefits the individual receives as a result of participating in the activity (LP 183). Following Lafollette's line of reasoning leads one from denoting the actions deemed as potentially harmful to others to understanding the stipulations necessary to justify participation in said action (LPR 329). Moving forward, I will review the second condition that Lafollette deems necessary to justify the restrictions contained within licensing programs (LPR 329).

The next condition Lafollette indicates to be necessary within the justification of licensing schemes comes in the form of requiring certain levels of competency from those who wish to participate in activities deemed risky to others (LPR 329). On Lafollette's view activities that pose potential risks to others require the demonstration of certain levels of competency before one engages in said activity (LP 183). If it is reasonable to subject risky actions to some measure of regulations, Lafollette also reasons it to be theoretically desirable to regulate actions via the implementation of a licensing program

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<sup>9</sup> In *Licensing Parents*, Lafollette refers to the action of driving an automobile as that which causes potential risks to others (LP 183). However, in *Licensing Parents Revisited*, Lafollette primarily describes those acts performed by professionals, such as physicians or lawyers as befitting the regulations imposed by licensing programs (LPR 329). This distinction will be discussed in subsequent sections of this project (LP, LPR). It is important to note that the similarities of both types of action are a result of the potential harms posed to others by those who choose to operate a motor vehicle (LP 183).

<sup>10</sup> Lafollette's examples of normative licensing programs reference those used to regulate automobile drivers, as well as those used to control medical and legal professionals within their respective fields (LPR 329). In subsequent sections of this body of work, I will discuss my views on the important distinctions to be made between the various types of licensing, particularly in reference to licensing of parents (LP 183-197).

(LP 183). Furthermore, if a reliable procedure can be created to assist in determining the competency of those who wish to participate in risky activities, Lafollette argues that the action must be regulated (LP 183). Therefore, Lafollette claims that establishing licensing procedures “is the most feasible way of protecting vulnerable citizens” (LP 183).

In addition, Lafollette believes that the relationship between individual parties also raises the risks associated with certain actions (LPR 329). Activities such as practicing medicine or the law are two examples of professions whereby particular relationships are established between the practitioner and the client (LPR 329). Lafollette argues that individuals who demonstrate incompetence pose a greater risk of harm to innocent individuals (LPR 329). Competency on Lafollette’s view contains four different components, “knowledge, abilities, judgment, and disposition” (LPR 329). On Lafollette’s view, an individual must possess some knowledge in order to demonstrate the competency needed to partake in risky activities (LPR 329). Thus, individuals must be acquainted with the basic facts necessary to participate in risky actions (LPR 329). Lafollette offers examples of the knowledge physicians, and attorneys maintain respective of their professions (LPR 329). Both doctors and lawyers cannot adequately perform the tasks assigned to their roles as professionals without obtaining a solid knowledge base to aid their efforts (LPR 329).

Next, Lafollette addresses the second component of competency; the ‘abilities’ professionals possess in addition to their foundation of knowledge (LPR 329).<sup>11</sup> The possession of certain skills bolsters the knowledge one holds on a particular subject matter, thus creating a greater level of competency within the individual (LPR 329). Arguably, we may not know the specific abilities an individual should possess to partake in risky activities (LPR 329). However, Lafollette believes the mere possession of “considerable abilities” is an essential component within the discussion of licensing hazardous activities (LPR 329). Lafollette uses the example of the reading and writing skills lawyers must possess in order to demonstrate the type of abilities that are important within the discussion of individual competency (LPR 329).

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<sup>11</sup> During the discussion surrounding the different components of competency, Lafollette uses the term ‘ability’ and the word ‘skill’ interchangeably (LPR 329).



Lafollette moves the discussion forward, introducing the third component of competency, personal judgment (LPR 329). Lafollette argues that a lack of judgment during the decision-making process can jeopardize those who may come into contact with professionals (LPR 329-330). Those who participate in actions deemed risky to others must possess the judgment needed to conduct a proper assessment of the various situations that arise during certain activities (LPR 330). Activities such as the diagnosis of medical conditions or the methodology behind the advancement of particular distinctions within a legal case are two examples of the types of risky activities in which a certain level of judgment is needed (LPR 330). Lafollette concedes that one may not know the extent of the judgment necessary to adequately pursue risky activities (LPR 330). However, Lafollette believes that we can still understand the negative ramifications defective judgment has upon innocent people (LPR 330).

The ‘disposition’ of the individual is the final component of competency Lafollette advocates for in regards to the safe and efficient execution of dangerous activities (LPR 330). On Lafollette’s view, an individual may possess the knowledge, skills, and judgment necessary to participate in risky activities and still lack the ability to perform certain tasks in a competent manner (LPR 330). Certain dispositions may limit the scope of the various components of competency, thus impeding the individual’s ability to perform some actions without amplifying the risks to others (LPR 330). Again, Lafollette acknowledges the difficulty contained within the assessment of which particular dispositions might impede an individual’s competency (LPR 330). However, on Lafollette’s view one can still agree that the possession (or lack thereof) of certain dispositions amplifies the likelihood that the individual will not execute her tasks in a competent manner (LPR 330). Moving forward, I will explore the final component of Lafollette’s argument in support of licensure programs (LPR 330).

The last condition which justifies Lafollette’s theoretical reasons for the institution of licensure programs is the examination of the theoretical costs and benefits associated with the regulations contained within licensure programs (“LPR 330). Although licensure programs can be justified in order to regulate activities that might pose significant harms to others and ensure competency within those who wish to perform risky activities, Lafollette believes a third condition is needed (LPR 328). The two conditions

previously discussed fail to adequately address the theoretical reasons for licensure programs, thus proponents of licensing must demonstrate the ways in which the benefits of licensing might outweigh the costs associated with the regulatory action (LPR 329). Lafollette argues that all licensing programs poses significant limitations to an individual's options and can also become costly to maintain within society (LPR 328). Thus, in order to theoretically justify licensure programs one must illustrate "good reasons for licensing an activity" (LPR 330).<sup>12</sup>

Lafollette also notes the importance of moderation in the composition of the standards used to license individuals within a given society (LPR 330).<sup>13</sup> Programs which contain unreasonable expectations from individuals wishing to become licensed for a particular activity will reject a large number of qualified candidates; while those programs with insufficient criteria will allow incompetent individuals the ability to become licensed (LPR 330). Thus, the theoretical justification of licensure programs must ensure that innocent individuals are safeguarded against risk without posing insurmountable costs to others (LPR 330).

Lafollette disregards the speculations of those who believe the costs of licensure programs are too high to tolerate any form of licensing (LPR 330). On Lafollette's view, licensing is justified in order to limit those who may pose a significant risk to others from participating in certain activities (LPR 330). The costs associated with a complete disregard for any proposed form of licensure is insurmountable compared to the risks associated with imposing some regulations on particularly risky activities (LPR 330). I have examined the criteria Lafollette considers to be necessary for the theoretical justification of licensing programs (LP 182-197). Next, I will examine the components of activities deemed to pose potential risks to others, in order to further deconstruct Lafollette's argument that offers a look at the justification of licensing certain activities (LPR 328-331).

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<sup>12</sup> In subsequent sections, I will explore a multitude of reasons Lafollette might deem to be acceptable for the licensing of certain activities within society (LP 182-197).

<sup>13</sup> Lafollette gives examples of what type of guidelines one might follow to ensure a moderate licensure program in regards to parenting (LPR 327-341). I will examine the positive and negative aspects of embracing moderation within the creation of licensure programs throughout this thesis (LP 182-197).

### III. The Harm Principle: Understanding the Justification of Interference

On a daily basis, individuals in our society make the choice to engage in certain activities, some of which pose a significant risk to the well-being of other individuals (LP 183). Although we respect the decision-making abilities of rational adults, our society imposes a fair amount of limitations upon certain activities (LP 182). The regulation of explicit activities is predicated upon the belief that said activities are deemed as potentially harmful to others (LP 183). The distinction between the harm an activity might pose to the individual, as opposed to the harm an activity might pose to others is critical as the discussion moves forward (T 62). LaFollette's argument leans heavily on the distinction between the actions that pose harms to others, as opposed to those actions that might harm the individual participating in the activity (LPR 328). On LaFollette's view, the "theoretical rationale" behind the licensing of certain actions begins with one of two conditions, the first of which pertains to the harms which may befall others as a result of an individual's participation in an activity (LPR 328).<sup>14</sup> I would argue that LaFollette's argument first requires an understanding and assessment of how one might define "harm" (LP 182-197). Next, I will argue that an understanding of the various dynamics contained within the concept of "harm" is necessary for the theoretical justification of any licensing program (LP 182).

Although LaFollette goes to great lengths to pinpoint the skills which he believes individuals should possess in order to limit harm to others, he does not approach the topic of how one might define what might constitute "harm" (LPR 328). However, I believe that the dissection of LaFollette's theoretical justification of parental licensing necessitates an understanding of what constitutes "harm" (LPR 328). A very salient approach to this subject matter is explored within Andrew J. Cohen's work entitled *Toleration*, which details the importance of the various distinctions between "harm" and the "harm principle" (T 38-49). In line with Cohen's view, the remainder of the argumentation in support of LaFollette's theoretical conditions for licensing will focus on the objective nature of harms (T 40-46).

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<sup>14</sup> The individual in question must not have any coercive elements stimulating their participation in a particular action deemed to expose others to potential harms (T 49). I would argue that if an individual is coerced to participate in activities that pose a risk of harm to others, the theoretical conditions for licensing would become null and void, as the individual is not engaging in the activity of their own volition (T 49).

Therefore, objections as to what types of actions might constitute harms can be examined without any negative repercussions to the justifications of licensing posed by Lafollette (LPR 331). I would argue that an objective approach to harm allows for one to assess the moral justification of a parental licensing program, particularly in terms of the licensures ability to negate potential harms towards children (LP 182-192).

Defining the criteria for harm through the introduction of “normative principles of toleration” assists the members of society to understand the moral justifications for interference (T 36-40). Taking a rational and objective approach towards the justification of interference in the actions of others is necessary in order to avoid the pitfalls of selective explanations for interference in the lives of others (T 40-46). If we take personal autonomy to be of significance in the continuation of a liberal society, we must maintain a structured and rational approach towards the justification of interference in the lives of other individuals (T 46). The members of our society undoubtedly wish to lead lives whereby relentless interference in every aspect of their decision-making is not the standard *modus operandi* (T 46). Allowing for interference is thus justifiable, provided the interference remains devoid of any arbitrary considerations as to why one might restrict the actions of others (T 40-46). Finding normative principles to guide us as to when we might justify interfering with others allows us to respect the autonomy of all individuals, whether they be actively participating in certain acts or mere bystanders (T 46).

The definition of “harm” throughout this thesis will be defined as a “wrongful setback of interests” (T 40).<sup>15</sup> Within the defense of Lafollette’s argument, I will explore the application of the harm principle as it applies to the theoretical justification of parental licensing (LP 183). Although multiple variations of the harm principle exist, I will primarily focus on the strict version of the harm principle with a slight alteration, henceforth to be referred to as the *praesumptio* harm principle defined as follows: “*Actions involving the wrongful setback of a child’s (non-rational agent) interest in not being abused or neglected when committed by a rational individual result in a failure to meet one’s parental obligations*

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<sup>15</sup> The concept of a “wrongful setback of interests” originates from John Stuart Mill concept of the harm principle, which pertains to a principled approach to toleration within a society (T 38-39).

*to children, and thus interference is warranted*' (T 119).<sup>16</sup> The *praesumptio* harm principle serves to establish a normative principle of toleration that contains guidelines for how one might address actions involving individuals who are unable to engage in consensual acts due to the developmental restrictions on their ability to reason (T 114). By addressing the interactions that take place between rational and non-rational agents, the *praesumptio* harm principle provides an additional component to advance the harm principle's effectiveness in matters involving rational individuals and those individuals whose rationality is still in the developmental phase (T 48).

The *praesumptio* harm principle also modifies the "strict version" of the harm principle by altering the required completion of a wrongful setback of interests before said interference is justified (T 39). Mill uses the words "only" and "sole" to describe when interference with another is morally justified (T 39). However, I would argue that if we can find an objective method by which to prove that individual actions will bring about a wrongful setback of interests we can prohibit the activity in question before the act actually takes place (T 49). First, we must ascertain how one might go about developing a principled way to interfere with the actions of others based only on the statistical likelihood that harms might occur (T 119). Initially, the limitation of future acts appears to be quite problematic (T 117). After all, to interfere with an action that has not yet occurred based solely on the statistical likelihood of an occurrence faces serious barriers in terms of the justification of the interference (T 118).

However, as Lafollette demonstrates, this particular method of interference is currently the basis of licensure programs deemed justifiable by our society (LPR 335). Lafollette argues that "licensing programs are future-directed in both aim and execution" (LPR 335). The manner by which we limit participation in certain actions through licensing practices demonstrates the practicality of restricting actions that may potentially pose harms to others (LPR 335). Thus, the *praesumptio* harm principle falls directly in line with the justifications currently used within the execution of licensing programs

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<sup>16</sup> The *praesumptio* harm principle was crafted as a response to my ongoing advocacy for preventative intervention within the discussion of harms committed against others. It is inspired by Cohen's proposal of a "principle of parental responsibility" that addresses the obligation parents have to satisfy in order to avoid any sorts of interference in the rearing of children (T 119).

(LP 182-183). As such, I would argue that Lafollette's justification of a theoretical parental licensing program aimed at future acts of parenting works in unison with the *praesumptio* harm principle (LP 184-186).

Our society requires that any individual who desires to operate a motor vehicle must demonstrate certain levels of proficiency and competency before they are issued a driver's license (LP 183). The same can be said for the criteria currently in place within various professions such as medicine and the practice of the law (LP 183). Individuals are required to demonstrate certain capabilities in order to lower the potential risks posed to others as a result of certain actions (LP 183). Although the individual has not yet committed any particular harm, society deems it acceptable to interfere with the individual's future actions because the acts in question hold significant statistical risks to the welfare of others (LP 183). This is an important distinction to make, as Lafollette's theoretical parental licensing proposal hinges on interfering with unrestricted parenting *before* the act of parenting takes place (LP 184). As Lafollette states, "parenting is an activity potentially very harmful to children" (LP 184).<sup>17</sup> Thus, according to the *praesumptio* harm principle, interference with the act of parenting is justified.

One potential issue lies in the manipulation of the principle by those who wish to hinder the actions of others before the action in question takes place (T 46). Those who want to limit actions they disagree with could just threaten to harm others, and it appears as if the *praesumptio* harm principle would justify interfering with the future action (T 46). However, I would argue that any delineation from the limitations set forth in the harm principle can be avoided through the careful assessment of an individual's motivations (T 46). The interference justified by the harm principle exclusively pertains to the individual "doing or likely to do the harm" (T 46). Therefore, those who threaten harm in order to justify interference with the actions of others are simply in violation of the harm principle (T 46).

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<sup>17</sup> Subsequent chapters of the thesis will address the specific types of harms parenting poses to children (LP 184-185).

The creation of normative principles such as the harm principle allows those living in a given society to pinpoint which acts are morally questionable and thus subject to possible interference (T 37).<sup>18</sup> At this particular point in the discussion of interference, it is also important to note that the harm principle does not dictate the *type* of interference one might pursue (T 50-51). According to Cohen, the harm principle merely stipulates “when interference is warranted, it is silent about *what sort of interference is permitted*” (T 50).<sup>19</sup> The question remains as to how one might objectively ascertain whether or not a “wrongful setback to interests” has occurred, thus justifying interference with the actions of others (T 40). *Prima facie*, it seems as if the manner by which we evaluate actions might risk becoming convoluted; as the evaluation of said acts may be subjective in nature (T 40-46). However, the disagreement as to what might constitute a wrong does not necessitate a departure from adherence to the harm principle (T 42).

Arguably, there may be points of contention as to which actions are to be defined as wrongs pursuant to the restrictions set forth in the harm principle (T 45). However, such disagreement does not change the wrongfulness of the act in question and as we only need to abide by the following; should an act be considered as both wrong and the primary contribution to a setback of interests we are justified in interfering with the action (T 46). According to the harm principle, if an act is not a wrongful act, it cannot be considered as harm (T 40). If both components of the harm principle are not present, the consideration of the possible setback to interests is null and void, and interference is impermissible (T 40). Within the context of the topic of parental licensing, we will consider whether or not the abuse, neglect and maltreatment of a child constitutes a wrong, and, therefore, a potential setback to interests thus justifying interference with the action of parenting (LPR 335).

The next component of the harm principle centers on how the completion of the wrongful act simultaneously leads to a setback to interests (T 40-42). In order to justify interference, the harm principle

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<sup>18</sup> The *praesumptio* harm principle is included in the assessment of normative principles of justice which in and of themselves can be seen as components of complete theories of justice (T 37-38).

<sup>19</sup> Subsequent chapters will discuss the types of interference that might be imposed upon those wishing to participate in the activity of parenting, including the regulation of those deemed capable of raising children and the criteria one might be expected to meet before obtaining a parental license (LPR 331-333).

also requires that the wrongful action setback the interest of another individual (T 42). However, the difficulty lies in the assessment of what might constitute a setback to interests (T 43-44). Consider what we might think of a person who murders someone breaking into their home. The individual commits the act of murder out of fear that the burglar may cause destruction to both the individual's physical well-being and their property. Is the burglar's interest in living "set back" by the homeowner's act of self-defense that leads to the burglar's death? On the one hand, the homeowner might have spared the life of the burglar through the use of less force during the protection of their property and life; on the other hand the burglar committed a wrongful act as she attempted to rob the homeowner. In addition, the homeowner's interest in not having their property damaged and their physical well-being threatened was setback by the burglar's actions. Arguably the burglar both wronged the homeowner and set back the homeowner's interest in not being robbed.<sup>20</sup> An account of how such actions are to be assessed can be found in John Locke's *Second Treatise of Government*.<sup>21</sup>

According to Locke, individuals who attempt criminal acts have renounced the reason we attribute to human beings, and can thus be treated in the same manner typically reserved for halting the violent behaviors of wild animals (STG 7). The violation of the "laws of nature" that restrict an individual from acting in the same manner as animals are predicated upon an individual's capacity to reason (STG 7). Thus, actions executed by those who possess the faculties necessary to reason are expected to consist of a certain type of actions, primarily those activities that do not bring about harm (STG 7). If individuals who are otherwise considered to be rational engage in acts that subject other human beings to harm, Locke argues that one is justified in interfering with the actions of the offender so as to halt any harm from taking place (STG 7).

In the previous example of the burglar and the homeowner, one can ascertain that the homeowner's interest in not being harmed by another rational being trumps the burglar's interest in not

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<sup>20</sup> The example of the criminal breaking into a home is inspired from Cohen's talk of difficult cases of harms (T 45).

<sup>21</sup> The John Locke manuscript entitled, *Second Treatise of Government* will be referred to as follows: STG (New York: Barnes and Noble Publishing, 2004).



being killed during the attempted home invasion (STG 7). However many cases are not as clear-cut as the burglary of a property, and thus require careful consideration in order to understand whether or not a setback to interests has indeed occurred (T 45-46). We may deem some cases remarkably simple to solve, such as the act of murdering another human being, as the individual's interest in living is set back with the act of killing (T 45). However, many cases contain various instances where the committing of a wrong might setback multiple interests, including the individual who is considered to be in violation of the harm principle (T 46).

The consideration of a narrowed view of those actions which might constitute harms allows one to assess the actions of *one* individual in juxtaposition with the well-being of other individuals who are not engaged in the act in question (T 48). As Cohen states, "If we adopt the harm principle as the sole normative principle of toleration, when two or more people act upon one another with full consent, their action must be tolerated" (T 48). However, within our society, activities take place amongst both adults and minors (T 48). Thus, the question remains as to how a society might address the implementation of the harm principle as it relates to adults whose actions impact those who cannot consent, children (T 48). Children are a particularly special case, as there are questions as to whether the debate should center on the child's interests or the child's status as a potential bearer of rights (CSF 1).<sup>22</sup>

On the subject of children and the harm principle, John Stuart Mill argued,

It is, perhaps hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age that the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury (T 48).

However, we must understand the manner in which Mill references children (T 48). The statement clarifies the amount of responsibility children hold during the execution of wrongful acts against others and the protection deemed necessary to protect children from injuries resulting from the

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<sup>22</sup> David Archard's text will be abbreviated as follows: CSF refers to *Children, Family, and the State* (England: Ashgate, 2003).

actions of mature individuals (T 48). Thus, Mill intended to imply there is a distinction between who might qualify as a rational actor in cases whereby one or more of the individuals in question is proved to be lacking the normative components of rationality (T 48). Moving forward, we must consider how acts executed by rational individuals against those deemed to be non-rational might be assessed within the parameters of the harm principle (T 48-49).

The question remains as to how one might justify interference in cases in which the actions of consenting adults result in setting back the interests of those who cannot give their consent, namely children (T 111-124). Herein lays the next component of any critique of cases where setback to interests may exist. We must address simple cases of wrongful acts setback the interests of others, along with the more complicated and sometimes morally ambiguous cases as well (T 45). Two tools exist which can help us to ascertain whether or not an act constitutes a wrong (T 45). First, we can consider cases that model those in question; in order to compare and contrast the possible resolution to be reached as to whether or not the wrongful act also constitutes a potential setback to interests (T 45). A conclusion may result from the consideration of similar cases (T 45). Next, we can assess how the interference warranted by the harm principle might burden those justified to intervene if harms exist (T 46). If the interference justified by adherence to the harm principle contains a significant amount of burden, (i.e. death or dismemberment) for violators of the principle, those wishing to interfere hold a higher burden of proof during the disruption of the act (T 46).

In essence, cases in which interference might hold severe and life altering consequences must meet a higher threshold of scrutiny including; the authentication of the accused individual's participation in the act in question, verification of the wrongfulness of the action, and confirmation of a setback of the victim's interests as a result of the act in question (T 46). A similar frame of reference can be seen in the legal system's requirements for cases of possible discrimination against the government (T 46). The onus remains on the state to demonstrate a higher burden of proof when individuals believe that government actions create an undue burden on the individual (LP 192). Along the same vein, cases whereby interference produces serious consequences for the individual in question must be subjected to intense

scrutiny to ensure that the act of interfering does not result in the creation of harms (T 75). The considerations mentioned above will be of use as we examine the level of interference parental licensing requires and consider whether or not the interference itself constitutes the wrongful setback of a parent's interest in raising children (LP 185).

I have presented Lafollette's considerations of current licensure programs and have found them to be consistent with the accounts contained within the harm principle (LP 182-186). The regulation of acts deemed to present risks of harm to others is justified, as it provides a method by which one can decrease the occurrence of harm (T 65). On Lafollette's view, the licensing of parents is thus justified as the act of rearing children contains the same potential for harms as actions currently regulated through existing licensure programs (LP 184). Moving forward, I will present Lafollette's argument that applies the same theoretical justifications for licensure programs to the activity of raising children (LP 182-197).

#### **IV. Parental Licensing: The Theoretical Justification of Interference within the Family**

Initially, Lafollette's arguments supporting licensing schemes are based on those professionals whose actions pose significant risks to innocent individuals (LPR 328).<sup>23</sup> Lafollette uses this approach in order to first outline the theoretical justifications for licensure programs before applying the same considerations to the possible regulation of parenting activities (LPR 331). On Lafollette's view, the theoretical arguments for licensing risky activities gives rise to plausible justifications for the regulation of parenting (LPR 331). Lafollette outlines the similarities contained within the theoretical justification of licensure programs that regulate risky activities such as driving a motor vehicle or practicing medicine and the activity of raising children (LP 184-186). Next, Lafollette argues for the inclusion of parenting within the type of activities those in society believe the possession of a license is necessary (LP 185). In the next section, I will outline Lafollette's comparisons between the theoretical justification of licensing risky activities and the theoretical justification of licensing parents (LPR 331-333).

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<sup>23</sup> Lafollette's examples predominantly center on the justification of licensure programs within the medical and legal professions (LPR 327). However, the author's argument centers around utilizing the same conditions used to justify the licensing of physicians and lawyers to support the licensing of other risky activities (LP 184).

Lafollette begins with a comparison between the vulnerability of children and others within society (LP 331). Children are susceptible to being harmed by their caregivers, just as patients are at risk of being hurt by their physicians (LPR 331). The risk of harm stems from the “special relationship” that exists between parents and their children (LP 331). Lafollette believes the primary components of this special relationship are a combination of the vulnerability of children, and the exclusive amount of control parents have over their children (LP 185). Lafollette deems the act of raising children to be risky, thus parenting meets the first condition of the theoretical justification of licensing (LPR 331).

Next, Lafollette addresses the costs associated with the potential harms children may incur at the hands of their caregivers during childhood (LPR 331). Lafollette offers further support for this claim with the introduction of a variety of statistics regarding cases of child abuse and neglect (LPR 331). According to the data, parents were the party responsible for nearly 80% of child maltreatment cases while their unmarried partners made up an additional 4% of maltreatment cases in the United States (LPR 331). In addition, there are approximately two million cases of substantiated child abuse and neglect cases each year across the country (LPR 331).<sup>24</sup> Lafollette provides statistical data in conjunction with a thorough examination of the long-term implications of child abuse and neglect (LPR 331).

Lafollette argues that the impact of childhood maltreatment contributes to “significant long-term physical effects” such as cardiovascular disease, diabetes and cancer (LPR 331). The damages incurred to children who are victims of child abuse and neglect also contribute to the perpetuation of child abuse, as those who have experienced some form of maltreatment during childhood often go on abuse their own

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<sup>24</sup> The statistical data contained within *Licensing Parents Revisited* is a product of the US Department of Health and Human Services Child Maltreatment Report containing an analysis of data collected nationwide pertaining to cases of child abuse and neglect as reported to child protective service agencies (LPR 341). Arguably the statistical data has changed with the growth of the population and other factors as shown in the numbers presented in Lafollette’s original essay on parental licensing; *Licensing Parents (LP 182-197)*. The claims introduced within Lafollette’s first article pertaining to the harms children face as a result of abuse and neglect, were supported with data contained within the book entitled *Child Maltreatment in the United States* (LP 184). In subsequent sections of this work, I will explore current figures provided by the US Department of Health and Human Services in order to further support Lafollette’s argument indicating the severity of the costs to children as a result of parenting activities (LP 184).

children (LPR 331). Lafollette also argues that individuals who are victims of child abuse face a higher risk of engagement in criminal activities (LPR 331).<sup>25</sup>

Lafollette follows up his assessment of the harms posed to children who become victims of child maltreatment with a claim as to why the costs associated with child abuse and neglect outweigh the costs associated with parents who are deemed to be “inattentive, self-absorbed, or unsympathetic” (LPR 332). On Lafollette’s view, there are two reasons for this particular discernment between different types of parental behaviors (LPR 332). First, the statistics surrounding the implications of child abuse indicate that the harms to children as a result of said abuse are extremely significant (LPR 332). Second, although opinions may differ as to how the behavior of parents might impact children, there appears to be a general consensus that child abuse and neglect are inappropriate (LPR 332). Again, Lafollette references the similarities between the licensing of professionals and the potential licensing of parents (LPR 332). If we deem it feasible to use licensing to not only ensure that individuals have the training and skills necessary to avoid subjecting their patients to unnecessary harms, but to also ensure that individuals promote the interests of innocent individuals; then we must concede that the same considerations be made in regards to parents and their children (LPR 332). Thus, Lafollette deems the legal emphasis on abuse and neglect to be reasonable in the discussion of licensing parents (LPR 332).

Lafollette’s final comparison between parenting and other potentially harmful activities takes into account the need for those who participate in the activity of parenting to demonstrate the possession of the components of competency defined as, “knowledge, abilities, judgment, and disposition” (LPR 332). Only Lafollette’s view, parents must exhibit “knowledge” of information that is relevant to a child’s well-being (LPR 332). For example, such information might include a working knowledge of the symptoms of childhood illnesses and diseases (LPR 332). Otherwise, the child might end up receiving an incorrect amount of care for a potentially life-threatening illness (LPR 332). In addition, a parent must possess an

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<sup>25</sup> The figures supporting Lafollette’s claims as to the increased risk of criminality within the victims of child abuse are contained within Janet Currie & Erdal Tekin’s NBER paper entitled, *Does Child Abuse Cause Crime?* (LPR 342). Although the paper Lafollette referenced was released in 2007, recent studies continue to support the claim that child maltreatment leads to a greater risk of participation in criminal activities (LPR 342).

understanding of child development in order to avoid limiting the child's acquisition of skills such as reading and writing (LPR 332). Lafollette cautions that as with the knowledge held by professionals, the standards must not be set in such a way as to limit the participation of those who hold the skills necessary to participate in the rearing of children (LPR 332).

The next component of the competency requirements pertains to the 'abilities' of the individual engaging in the risky behavior (LPR 332). Similar to professionals within their respective fields, parents must possess a multitude of skills in order to successfully execute the task of parenting (LPR 332). Lafollette lists examples of the types of skills a parent should hold, including both intellectual and physical abilities (LPR 332). As with the other components of competence, Lafollette concedes to the possibility that it may not be feasible to give specificity to the types of abilities a parent should possess (LPR 332).<sup>26</sup> Nonetheless, we can agree that individuals who lack a significant amount of abilities may be incapable of adequately caring for a child independent of any interference from outside entities (LPR 332).<sup>27</sup>

Another component of Lafollette's theoretical justification of licensing parents is an individual's 'judgment' (LPR 332). In addition to the possession of knowledge and particular abilities, Lafollette argues that an individual who wishes to raise a child must also be able to make judgments regarding the care of the child (LPR 332). Parents must have the ability to judge things such as adequate nutrition, the types of discipline used within the household, and the ways in which the child's intellectual and social skills will be developed throughout childhood (LPR 333). On Lafollette's view, if the individual lacks the capacity to exhibit certain judgments throughout the parenting process, there is a higher risk that harms might take place (LPR 333). Lafollette's theoretical approach toward the regulation of the role of parenting children offers a serious affront to the normative parenting model (LPR 186). At the outset,

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<sup>26</sup> Moving forward, I will address Lafollette's hesitation in regards to outlining specific components of the elements of competence necessary to participate in risky activities (LPR 329-333). I will argue that we may be able to construct a basic framework of certain types of knowledge, abilities, judgment capabilities, and dispositions which can help us to identify those who may exhibit incompetence in the rearing of children (LPR 330).

<sup>27</sup> There are many accounts of what might constitute "adequate" care in terms of how children are raised (LPR 338). I will discuss my views on what elements might be exhibited in the proper care of a child in later portions of the essay (LPR 338).

Lafollette's two-pronged justification of parental licensing establishes the necessary components for any act deemed to pose enough risk whereby licensure (LP 185). However, Lafollette's claims as to why the family unit meets the requirement necessary for regulation via the implementation of a licensing program must be assessed (LP 184).

## **V. A Departure from the Norm: The Theoretical Components of Licensing Parents**

Lafollette's support for the regulation of parenting via the parental licensing begins with an assessment of the potential harms that result from various parenting activities (LP 331). The statistical evidence of harms committed against children is evident throughout our society (LP 184). Within Lafollette's first essay on parental licensing, the evidence suggested that around 400,000 and 1,000,000 children are the victims of neglect and abuse at the hands of a parent (LP 331). Thus, the statistical evidence demonstrates not only that the potential for harms to occur exists, but that harms actually occur as a result of parenting (LP 184). Although the data set Lafollette uses is arguably outdated, recent data sets also support Lafollette's claims as to the potential risks children face within the family (LP 184).

Each year there are roughly two million confirmed cases of child abuse and neglect (LPR 331).<sup>28</sup> It is important to note the distinction that exists between the confirmed cases and the unconfirmed cases of child abuse and neglect. If we can justify interference in the family due to the risk of harms stemming from the act of raising children, we must also consider the fact that the potential harms may extend beyond the reported cases of abuse and neglect (LPR 331). On Lafollette's view, the statistical data provides irrefutable evidentiary support for the following claim; "Parenting is an activity potentially very harmful to children" (LP 184). However, I would argue that the underreporting of childhood abuse and neglect also lends a great deal of credence to Lafollette's claim regarding the amount of harms that result from parenting acts (LP 331). However, the question remains as to how one might justify interference with the entire institution of parenting based on the potential harms created by a certain percentage of individuals living in society (LP 193).

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<sup>28</sup> Lafollette references the US Department of Health and Human Services report entitled, *Child Maltreatment 2006* (D.C: Department of Health and Human Services, 2008).

*Prima facie*, the type of interference suggested by Lafollette’s proposal appears to be extremely heavy-handed, after all he calls for the regulation of entire institution solely based off of the documented failures of the parenting model (LP 184). However, the justification for the interference caused by the licensure of other professions hinges on the same premise as Lafollette’s proposal for the licensing of parents (LP 331). Namely, although the liberal society promotes individual freedom of choice, such choices cannot infringe upon the well-being of other individuals (T 26). As with other professions where the potential risk of harm is thought to be higher than that of other activities, licensing can decrease the amount of individuals who might have otherwise been seriously injured (LP 329). Although the profession of medicine has been regulated for countless number of years, the regulation does not exist based on confirmed cases of physician neglect, it exists in order to restrict the number of individuals participating in an activity that poses high risks of harm to others (LP 329).<sup>29</sup> Thus, the same justification can be made for parental licensing, the statistics provide evidence as to the risks associated with the act, but the dynamics of the action lend theoretical support to the licensing of the activity (LP 329).

There are those who will argue that the state’s involvement in the licensing of certain professionals in our society qualifies as an instance of an excessive amount of interference (LPR 338). However, I would disagree with the assumption that actions can either be unjustly regulated by the state or justly unregulated (LPR 338). The harm principle does not address the *exact* manner in which one might interfere with harms (T 50). As Cohen notes, “the principle says that it is permissible to interfere when there is a harm – that this is when toleration can rightly end.” (T 50). Thus, according to the harm principle, state interference in actions that result in harm is merely a choice to pursue *one* manner of permissible interference in the actions of individuals (T 50).

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<sup>29</sup> Although there are countless arguments against the state regulation of certain professions such as medicine, on my view the state has a duty to ensure that trades practiced within the public sphere do not cause undue harm to its citizens (LP 183). Therefore, I take the position that state regulation of activities which pose an increased risk of harm to others is a necessary interference in the lives of otherwise autonomous individuals (LP 183). Questions as to how much government regulation is sufficient to prevent harms from occurring and worries as to the methods used to implement the regulation of certain professions are important (LPR 337). However, I limit such inquiry at this particular time as questions of this nature pertain more towards the implementation of regulatory programs, as opposed to considerations focused solely on the examination of the moral justification for the state’s regulation of professions (LPR 338).



I would argue that those who deem state regulation as a form of interference do not believe that the specific actions performed in the profession pose negligible harms to others (LPR 337-338). Rather, the argument against state regulation is formulated from a general disapproval of the costs associated with state interference (T 50). However, such concerns do not contain a “principled reason” as to why the act in question must be tolerated (T 50). As such, any avoidance of interference with harmful actions due to a disdain for varying forms of state interference are not justifiable under the terms set forth in the harm principle (T 50).

In addition, concerns as to the costs associated with the justification of state interference in matters taking place between consenting adults (namely that such interference impedes upon the individual’s autonomy) also fail to negate the importance of the *praesumptio* harm principle (T 50). Children present a special case entirely in the discussion of the entities that might be justified in executing various forms of interference, as children are not the sorts of individuals who can consent (T 114). I would argue that the state may be justified in the execution of various forms of intervention on behalf of those who cannot consent, nor protect themselves from being exposed to harm, children (T 119). One might disagree as to whether the state or a different localized entity (such as a privately held company or organization) might offer superior forms of intervention (LP 337). However, such concerns fail to undermine the justifications set forth in the harm principle that justify interference if wrongful setbacks of interest do indeed occur (T 40-46).

Daniel Engster addresses the conflict between the private parenting model and a liberal conception of justice *The Place of Parenting within a Liberal Theory of Justice: The Private Parenting Model, Parental Licenses, or Public Parenting Support?* (PP 233-262)<sup>30</sup> Engster notes that the decision to have and raise children has a long-standing tradition of being considered to be a predominantly private activity (PP 233). Typically, individual choose to have children without any interference from any government entity, and subsequently take on the task of raising their children privately (PP 233). Thus,

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<sup>30</sup> Daniel Engster’s essay will be cited as follows: PP refers to *The Place of Parenting Within a Liberal Theory of Justice: The Private Parenting Model, Parental Licenses, or Public Parenting Support?* (Florida: Social Theory and Practice, 2010).

parents pose a special set of issues that professionals working in disciplines such as medicine or the law do not, particularly in terms of government interference (PP 234). Medical professionals are incapable of legally making the choice to practice medicine independent of any outside constraints (LP 183). Imagine the calamity which would ensue if individuals could not only make the private choice to become a doctor, but also had the ability to begin to practice medicine on others as a supposed “doctor” (LP 183).

However, our society not only allows, but supports the private decision to become a parent and to raise children (PP 233). The question remains as to why an activity that poses such risks to a vulnerable subset of society continues to be considered a “private project” in our society (PP 236). I would argue that LaFollette is correct to argue for the failed justification for the assumed dichotomy that exists between the activity of parenting and any other activity that exposes others to potential harms (PP 331).

The “private parenting model” is the prevailing view of how the rearing of children should take place in our society (PP 233). Rational individuals are not only assumed to be capable of making the choice to have children and subsequently raise them, but they are also assumed to have the resources and capacities needed to succeed as a parent (PP 233). Questions as to the possession of certain levels of competency and potential state interference into the family unit are raised only when certain factors indicate the possible existence of abuse or neglect within the family unit (PP 234). However, the argument LaFollette raises is still salient, as one must justify why acts such as parenting are not subject to the same regulations as other potentially harmful activities (LPR 331). One must consider whether the justification for the private parenting model hinges on purely normative views as to how children have previously been raised within our society, or the systematic merits resulting from the continuation of the model itself (PP 236).

On LaFollette’s view parenting appears to be an activity that requires certain levels of “competency, knowledge, abilities, judgment, and dispositions” (LPR 329). The question is whether or not the private parenting model allows parents to bypass the demonstration of certain abilities in order to promote the importance of individual choice in the matter (PP 233). Within the private parenting model there remains an underlying assumption that all of the capacities, as mentioned above, exist within any

individual who chooses to become a parent (PP 234). Such an assumption fails to understand the significance of the qualifications necessary to decrease the risk of potential harms posed to children as a result of the activity of parenting (LPR 331). One must wonder whether the activity of parenting truly requires a unique set of skills in order to dispel the potential risk of harms posed to children (LPR 332-333). Perhaps can one argue that Lafollette is merely imposing restrictions on a private choice which should remain independent of such considerations (LPR 334). I would argue that parenting is an activity that poses significant risks to children, and such risks can be significantly reduced if the individuals who wish to become parents can demonstrate that they possess certain abilities (LP 329). Moving forward, I will explore the significance of the skills Lafollette presents within the theoretical justification of the licensing of parents (LPR 329).

First, one must consider the magnitude of the responsibilities the task of parenting presents to those wishing to engage in raising children (LPR 333-334). Raising a child is an arguably strenuous task, requiring the balance of a multitude of mental and physical capabilities in order to foster a child's development (LPR 333-334). In addition, parents have an inordinate amount of control over children during their most formidable years of life (LPR 332-333). However, the question remains as to whether or not the characteristics Lafollette ascribes to parenting are necessary components of raising children (LPR 332-333). One might argue that Lafollette is mistaken in his assessment of the qualifications one must possess to be a parent, as he may be ascribing duties to parents that are purely subjective in nature (LPR 332-333).

Lafollette mentions the manner in which a parent might "fail to love, care for, encourage, and guide her children in many ways, ways that can cause them serious harm" (LPR 332-333). However, Lafollette chooses to direct his argument toward the possession of particular skills that decrease the potential of harm to children, as opposed other character flaws which might also impact a child (LPR 332). After all, many parents might be considered to be egotistical, apathetic, or absentminded in terms of the manner in which they raise their child (LPR 332). One potential flaw in Lafollette's

justifications is that his argument fails to include a variety of character traits into the components he deems necessary to exhibit competency during the task of raising children (LPR 332).

In addition, Lafollette argues that the demonstration of particular skills is necessary in order to ensure that one might have the ability to competently engage in the activity of raising children (LPR 332). Lafollette's claims rest on the evidence of harms provided through the study of relevant statistical data (LPR 332). Thus, the level of specificity with which Lafollette approaches the topic of competency allows for a holistic assessment of an individual's ability to engage in the act of raising children, without subjecting the child to any form of abuse or neglect (LPR 332). Lafollette agrees with the critics of the competence requirement on the subject of whether or not other parental inadequacies exist which might cause some disruption to the normalized take on childhood (LPR 332). However, Lafollette argues that the empirical evidence of the harms suffered by the victims of child abuse and neglect are "highly significant" (LPR 332). Thus, Lafollette's theoretical proposal remains committed to the incorporation of preventative measures within the parental model in order to decrease occurrences of child abuse and neglect (LPR 332).

The question remains as to what constitutes a "wrongful" setback to the interests of a child (T 40). The normative structure of the family provides an environment for children that allows for parental choice in the various facets of the child's life (PP 235). Children are brought up in the cultural institution known as the family, and differences in parenting methods are prevalent throughout society (PLC 272-273).<sup>31</sup> Ron Mallen considers the ways in which children might develop a sense of cultural membership during their childhood years as a result of being raised in the normative family unit in *Political Liberalism, Cultural Membership, and the Family* (PLC 271).<sup>32</sup> *Prima facie*, considering the actions that might constitute a "wrongful" setback of interests in the context of the family environment

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<sup>31</sup> Moving forward, the family will be defined as follows, "those cultural institutions that consist of one or more adults who are primarily responsible for the upbringing of one or more children, and are prototypically (though not essentially) comprised of biological relatives of the children in a close and affective relationship with the children" (PLC 271).

<sup>32</sup> Ron Mallen's essay will be cited as follows: PLC refers to *Political Liberalism, Cultural Membership, and the Family* (Florida: Social Theory and Practice, 1999).

appears to be extremely difficult, complicated by the variance of cultural norms that exist throughout our society (T 114). How might one assign value to the actions occurring in the family considering the fact that parents have a variety of ways in which to raise children? (T 114). Assessing such variances might prove to be extremely complicated without an objective means by which to evaluate the family (T 114). Mallen considers the plethora of differences emanating from within the normative family unit as follows:

Different families will offer different opportunities, different amounts of parental skill and parental investment, different numbers of siblings and other relatives, different immediate communities, and even different quantities of love, they cannot help but differentially affect children's life prospects (PLC 273).

Careful consideration must be given to the evaluation of parental actions, particularly concerning the moment that an action can no longer be defined as a difference in cultural norms, but as a wrongful setback of interests (T 114) Cohen's belief in "objective claims in morality" correctly ascertains that cultural membership does not automatically negate one's ability to discover whether certain acts are morally problematic (T 114). Moving forward, I will demonstrate that wrongful acts can be identified outside the consideration of cultural norms and differences in parenting styles (T 114).

Although families are considered to be distinctive and unique units, we must not assume that an objective evaluation of the actions of parents is unattainable (T 114). Cultures that promote indiscriminate killing and other problematic behaviors can be viewed as problematic in terms of their long-term viability (T 114). In addition, some cultures are extremely similar, and as such make it more difficult to access the superiority of one culture over the other (T 114). According to Cohen, "All this can be said about parents as well. Parents who routinely abuse their children, leave them in a closet all the time, throw boiling water on them, starve them, or rape them are simply not good parents" (T 115). I would argue that such actions are not only to be considered as examples of bad parenting, but also constitute wrongful acts. Thus wrongful acts can be defined as those actions that cause children to endure undue suffering (T 115). Children are similar to other sentient beings insofar as they possess "an interest in not suffering"

(T 118).<sup>33</sup> Thus, instances whereby the actions of a rational adult cause a child to suffer can be deemed as “wrongful” setback of interests (T 118). Next, I will explore some examples of parental behaviors that resulted in causing undue suffering to a child, in order to demonstrate clear instances of parents who wrongfully setback the interests of their children (T 117).

Consider the following examples:

Example A: A Philadelphia mother left her twenty-one year old son (who suffered from cerebral palsy) in a wooded area by a major highway and promptly boarded a bus to Maryland in order to visit her boyfriend (CN 3).<sup>34</sup> According to law enforcement officials, the young victim suffered from “eye problems, dehydration, malnutrition and a cut to his back that raised infection concerns” as a result of being exposed to below freezing temperatures for approximately four days (CN 3).

Example B: A group of four Nebraska adults (two of which were identified as the parents of the victims) were accused of keeping four children in a wire dog care inside of a trailer littered with “trash, dirty clothing, food and animal feces and urine” (CN 1). Law enforcement officials found two children, ages three and five inside of the metal kennel that was secured with a wire tie (CN 1). The dog kennel reportedly contained a mattress where the children could sleep while they were in the cage (CN 1). Two other children were found outside of the kennel but were also considered to be in danger due to the unsafe living conditions of the trailer (CN 1).

Example C: A Florida couple was accused of torturing five out of seven living in their home (CN 2). The couple forced the children to sleep in a closet with a wind-chime attached to the door so as to alert the adults if the children left the closet (CN 2). The couple was accused of several acts of child maltreatment, including the use of either a stun gun or a cattle prod to shock the children, chaining the

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<sup>33</sup> I take it to be an uncontroversial fact that children have an interest in not suffering (T 118). In addition, Cohen’s view summarizes my thoughts on this particular topic (T 118). Cohen argues, “That there is such an interest seems clear when we recognize that when it suffers, a being recoils, trying to avoid the suffering” (T 118).

<sup>34</sup>Articles referenced from the CNN news website will be listed as follows: CN 3 refers to the CNN Cable News Network article entitled, “*Mom in 'treatment' after leaving quadriplegic son in woods, police say*” (Atlanta: Cable News Network, 2015). CN 1 refers to the CNN Cable News Network article entitled, “*4 accused of keeping children in dog cage make court appearance*” (Atlanta: Cable News Network, 2011). CN 2 refers to the CNN Cable News Network article entitled, “*Couple Accused of Torturing Children Allegedly Pulled out Kids' Toenails, Beat Them with Hammers*” (Atlanta: Cable News Network, 2005).

children up in certain areas of the house with metal chains, hitting the children's feet with hammers, and pulling out the children's toenails with pliers (CN 2). According to authorities, two fourteen-year-old boys living in the household were so malnourished they weighed thirty-six pounds, the typical weight of a four-year-old (CN 2).

In all of the examples, there are clear cases of actions that cause children to suffer in some way, shape, or form. *Example A* demonstrates parental actions that resulted in the child suffering multiple physical injuries as a result of being exposed to the elements for an extended period of time, thus "wrongfully" setting back the young victim's interest in not suffering the injuries incurred as a result of being left in the woods (CN 3). *Example B* illustrates the prolonged confinement of children in an inhumane way, a direct result of the actions of the adults responsible for the care of the children, thus "wrongfully" setting back the children's interest in not suffering psychological and possible physical impairments as a result of living inside of a dog cage during their formative years (CN 1). *Example C* exhibits parental actions that resulted in the suffering of multiple children, as a result of being subjected to physical abuse at the hands of their caregivers; thus "wrongfully" setting back the children's interest in not suffering from prolonged and unwarranted physical pain (CN 2).

In each case, specific parental actions led to the suffering of children, thus signifying a "wrongful" setback of interests (T 40). Arguably determining whether or not a child's interests have been wrongfully setback is a difficult task (T 117). However, I would argue that although the moral questions may indeed be difficult to assess this does not imply that an objective answer as to what types of behaviors constitute "wrongs" does not exist (T 121). Although it may be difficult to ascertain which particular actions "wrongfully" setback a child's interests, establishing a definitive view of "wrongs" as those actions that cause undue suffering to children can help to clarify future consideration of the subject of the wrongful setback of a child's interests (T 119).

Lafollette notes that there are a variety of disagreements surrounding the issue of how to classify and subsequently address parental behaviors that might be seen as inappropriate in nature (LPR 332). There remains little debate as to whether or not child abuse and neglect constitute inappropriate adult

behavior (LPR 332). However, I would argue that a rational individual would view the harms brought about as a result of subjecting a child to abuse and neglect as a wrongful setback of the child's interests which falls directly in line with the guiding factors of the harm principle (T 64-65). Moving forward, I will discuss my views on the debate regarding the question of whether or not children have rights or merely interests (CFS 1).

## **VI. The Great Debate: The Moral Status of Children (Interests & Rights)**

In addressing Lafollette's concerns as to the harms resulting from the act of parenting, we must also address the question of whether or not children are the types of individuals capable of holding rights (CFS 1). Within Lafollette's theoretical justification of parental licensing, we must consider whether the harms inflicted on children are to be viewed as a breach of rights or a setback of interests (CFS 1). First, we must answer a question that is one of the underlying themes of Lafollette's theoretical inquiry, namely we must ascertain the moral status of children (LP 182-197). Next, we must consider what the moral status of children requires in the instances where a child's status is violated (TM 2).<sup>35</sup> Once we formulate a plausible conception of the ethical considerations of children, we must then assess what a commitment to the accepted moral status of children means for the development of the principles of justice in our society (TM 18). In addition, we must be careful to adopt principles within our conception of justice that address violations of a child's moral status (TM 22).

Moving forward, I will explore the ethical considerations for children as set forth by Samantha Brennan and Robert Noggle in, *The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice*.<sup>36</sup> The authors present a thorough assessment of the factors leading towards the theoretical development of a view on the moral status of children which directly supports Lafollette's justifications of the theoretical parental licensing proposal (TM 1).<sup>37</sup> I will argue that acceptance of the moral status

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<sup>35</sup> Samantha Brennan and Robert Noggle's essay will be cited via as following: TM refers to: *The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice* (Florida: Social Theory and Practice, 1997).

<sup>37</sup> The primary goal of Brennan and Noggle's essay is to address the constraints on theoretical proposals regarding the moral status of children in order to determine how both public policy and ethical considerations of the nature of parental actions might be impacted. I believe that Lafollette's parental licensing proposal addresses how the institution of the family might change as a result of a retooling of how one comes to think of the moral status of children (TM 1-2).



presented within Brennan and Noggle's essay will allow us to move forward with a clear understanding of what justice requires from adults living in a society whereby potential violations of a child's moral status are bound to occur (TM 1).<sup>38</sup> After offering an overview of the claims set forth in the Brennan and Noggle essay, I will demonstrate how the authors' views lend credence to LaFollette's theoretical proposal as a viable means of reforming public policies pertaining to children (TM 2).

Brennan and Noggle offer some insight into the moral considerations given to the status of children's rights within the discussion of family justice (TM 1). The authors frame three "commonsensical claims" regarding the moral status of children in such a way as to clarify the conflicts that exist between the normative views of children and rights (TM 1). Primarily the argument centers on the following claims: "that children deserve the same moral consideration as adults, that they can nevertheless be treated differently from adults, and that parents have limited authority to direct their upbringing" (TM 1). Within the justification of parental licensing, an understanding of the relevance of the moral status of children is crucial, as it allows one to understand whether or not certain acts involving children are in direct opposition to the child's moral status (TM 2).

The primary goal of Brennan and Noggle's essay is to address constraints set forth in theoretical proposals regarding the moral status of children, alongside the conflicts which result from the "commonsense" understanding of children's moral status in society (TM 2). The authors also consider the issue of public policy reforms in relation to the moral considerations given to children (TM 2). Brennan and Noggle isolate three claims deemed to be compatible with acceptable ethical theories pertaining to children (TM 2). The first commonsense claim, the "Equal Consideration Thesis" places the moral status of children on the same level as the moral status of adults (TM 2). Namely, the thesis equalizes the moral consideration for children with that of the adult population (TM 2). As a result of adherence to this thesis, one must regard children in a manner consistent with others who hold the same

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<sup>38</sup> In a perfect society whereby each adult understands and accepts the moral status of children, violations of a child's moral status would not occur (TM 1-22). However, on my view a theory of justice must also include considerations of how non-compliance might impact the status of others (TM 1-22).

moral status, and one must take the moral claims of children to be as relevant as those of adults (TM 3). In essence, the “Equal Consideration Thesis” allows for the moral status of children to remain separated from those biases generally associated with age considerations (TM 3).

In addition, Brennan and Noggle note that a commitment to providing equal moral consideration to separate entities does not require that both parties have the same moral rights and duties (TM 3). On Brennan and Noggle’s view children are persons, and as such they are entitled to specific moral considerations by virtue of being human beings (TM 3).<sup>39</sup> As such, if we attribute a particular moral status to all those who are considered to be persons, children would hold the same moral status as all other persons (TM 3). If we deny children the moral status held by other persons, we either reinforce the idea children are not to be considered persons, or the concept that individuals do not hold a particular moral status as a result of being found to be a person (TM 3).

The “Equal Consideration Thesis” allows one to understand the moral status of children in relation to the moral status of other individuals (TM 3). The thesis is extremely relevant to LaFollette’s theoretical justification of parental licensing, as it allows for a fundamental understanding of the moral status of children *independent* of the normative considerations imposed upon children as a result of the consideration of age and maturity (TM 3). If we deem children to hold the same moral status as other persons, we cannot discount instances in which they might be wronged as a result of a violation of their moral status (TM 3). In addition, I would argue that cases whereby a rational individual’s moral status is deemed to be infringed upon in some manner also apply to children (TM 3). Predicated upon an understanding of the types of actions that infringe upon the moral status of persons we can move forward with the consideration of acts that violate the moral status of children (TM 2). Thus, we circumnavigate the need for separate conceptions of the moral status of children and adults (TM 2). On Brennan and Noggle’s view (which I find to be quite salient), children are to be subject to the same moral

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<sup>39</sup> Within the line of argumentation contained in this thesis, I wish to avoid the debate as to the exact moment when an entity should be considered a person (TM 3). On my view, children have enough capacities and distinguishing traits to constitute persons (TM 3). Whether or not they are ‘future persons’ is also an extensive debate that leads us off the topic of parental licensing and the negation of child abuse and neglect (LP 182-197). For the purposes of this project, children are to be considered persons, with the potential to have an unspecified future should they live what we believe to be an average lifespan (TM 3).

considerations as all other persons, thus simplifying the assessment of potential infringement of their moral status (TM 3).

The next thesis contained in the commonsensical view of a child's moral status is called "The Unequal Treatment Thesis" (TM 3). According to Brennan and Noggle, the thesis legitimizes the rationale behind the manner in which children are treated differently than adults (TM 3). The authors argue that the second thesis is a widely held tenant within a normative conception of the moral status of children (TM 3). Thus, any moral theory that denies or contradicts the second thesis would most likely be difficult for most individuals to accept (TM 3). An example of the second thesis can be seen in the limitations set forth within our society as to the types of activities children are "legitimately prevented" from doing, despite the fact that the same prohibitions on the activities of adults would be deemed unacceptable (TM 3). We limit a child's ability to buy or consume alcoholic beverages, we do not permit children to purchase or own guns, and we also do not allow children to engage in the voting process (TM 3). Such limitations are indeed unequal, as we legitimately allow adults to engage in the same activities that are deemed impermissible for children to participate in (TM 3). Outside of the "appeal to intuition" and "appeal to tradition," public policy considerations also support the "Unequal Treatment Thesis" (TM 3-4).

As a matter of public policy, a shift allowing children (irrespective of their moral status) to vote or to use their judgment in the consumption of alcoholic beverages is utterly implausible (TM 3). In addition, it would set back a child's interests to craft public policy that allows unrestricted access to potentially harmful substances and environments (TM 3). Brennan and Noggle also argue that most rational adults consider the "Unequal Treatment Theory" to be plausible in terms of the need to restrict themselves from harms that might have occurred during childhood, and would subsequently agree to "give a sort of retroactive consent to having has various sorts of restrictions placed on us when we were children-even if we did not agree with them at the time" (TM 4).

The concept of "retroactive consent" can also be applied to restricting actions others impose upon the individual during childhood (TM 4). Imagine the plausibility of a moral theory that allowed one to

understand violations of one's moral status in terms of actions deemed to be retroactively impermissible (TM 4). Arguably, a commitment to the second thesis might also aid in the expansion of the concept that there may be actions committed against the individual in childhood that are deemed as impermissible in hindsight (TM 4). If one has an interest in restricting the potential harms resulting from unfettered access to acts typically considered permissible for adults, one arguably also has an interest in limiting those actions committed *against* herself which are deemed to be potentially harmful as well (TM 4).

The final component of the commonsense theses which is aptly named "The Limited Rights Thesis," pertains to the discretion exhibited by parents during the rearing of children (TM 4). The premise of the thesis involves an awareness of the limitations of children and a parent's ability to subsequently exercise their judgment due to the child's lack of maturity (TM 4). Children are limited in a number of ways; cognitively speaking they lack the power and the experience adults have to make rational decisions (TM 4). As a result, we deem parents to be the entities responsible for making choices for their children on a daily basis (TM 4). Everything from the type of clothing a child will wear, to the manner of schooling the child will receive (i.e. public or private school education), to the type of food the child will eat, and the manner of discipline the child will receive is thus regulated by the parents (TM 4). Herein lies the key issue, there are negative externalities associated with the normative views regarding a parent's authority over the upbringing of a child (TM 20-21). Although the "Limited Parental Rights Thesis" is described as a claim dictating the "thresholds" of parental rights, we must consider when such limits are reached within the act of raising children (TM 8).

Brennan and Noggle argue that two of the commonsense claims, the "Equal Consideration Thesis" and the "Limited Parental Rights Thesis" conflict with one another (TM 8). We must decide how to treat children with the same moral considerations as adults while simultaneously allowing parents the authority to make decisions regarding the child's formative years (TM 8). The key to balancing both claims begins with an understanding of parental rights, particularly in regards to the inherent thresholds contained within the "Limited Parental Rights Thesis" (TM 8). According to Brennan and Noggle, the

threshold aspect of a right pertains to a set of conditions which can override the right if one of the two conditions is met (TM 8). The two conditions are as follows:

1. If a right conflicts with a stronger right, it is permissible to defeat the weaker right (TM 8).
2. An example of this might be a scenario where the knife in my hand will either be thrown at Madison's arm or Preston's chest. Madison's right not to be harmed by being stabbed in the arm is defeated by Preston's right not to be stabbed in the heart (TM 8). If overriding a right will bring about significant benefits to others, it is permissible to defeat the right (TM 8). Another example of this condition would be the right to carry a loaded firearm. In general, the right to carry a firearm is a serious affair. However, we can think of scenarios in which it would be permissible to infringe upon the right to own a firearm. For instance, carrying the unconcealed loaded gun into a classroom full of children might present a grave danger to the classroom environment. A child might gain control of the firearm and harm themselves or others in the classroom or panic might break out as a result of carrying a visible firearm into the educational environment. Therefore, most individuals would deem it permissible to "defeat" the right of the gun owner to possess the firearm in order to ensure the safety of others (TM 9).

On Brennan and Noggle's view, "both of the conditions for overriding a right are often satisfied in interactions between parents and children, when parental rights conflict with children's rights and children's needs" (TM 9). The relationship between a parent and a child meets the first "overriding" condition, as the parent's right to make choices which involve the child is overridden as soon as the "child's right not to be harmed" is violated (TM 9).<sup>40</sup> In order to deny the "override" of the first condition of parental rights, one would have to posit a threshold for parental rights that was strong enough to negate a child's right not to be harmed (TM 9).

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<sup>40</sup> This section contains an overview of rights from a section in the Stanford Encyclopedia of Philosophy entitled *Rights* that will be referenced as follows SP (California, The Metaphysics Research Lab, Center for the Study of Language and Information, 2011).

Children are one of the most vulnerable demographics of our society; thus it seems nonsensical to think that parental rights would somehow trump a child's right not to be harmed (TM 9). Children cannot consent to the actions they are subjected to, nor can they remove themselves from dangerous or even life threatening situations (T 190). Such a parental right would be akin to ownership or property rights over the child, whereby the parent would have the ultimate discretion in the treatment of the child (TM 9). In essence a parental right whereby parents essentially possess property rights over their children would negate the child's not to be harmed, and give the parent the subsequent right to make choices regarding the child, *carte blanche* (T 190). The desire to adopt such a drastic threshold for parental rights is likely to be non-existent within our modern society (TM 9). Thus, the child's right not to be harmed trumps the parental right to make unrestricted choices concerning the child's well-being (TM 9).

The second overriding condition is one which can be satisfied in certain cases where child's specific needs aren't met (TM 9). On Brennan and Noggle's view, the benefit to the child's well-being often justifies interfering with the rights of a parent (TM 9). The authors refrain from offering a full account of instances whereby a child's needs might not be met, opting for a few clarifications of the limitations of the second overriding condition (TM 9). First, Brennan and Noggle argue that the parent's rights are significant, and as such the value placed upon the rights of parents deters individuals from interfering with said rights if such interference only provides "marginal benefit" to the child (TM 9). Therefore, instances of varying degrees of financial security between sets of parents would not require the termination of parental rights for individuals who were financially worse off than others (TM 9).<sup>41</sup> In addition, the parents' rights might be "overridden" if a violation of the child's rights takes place (thereby negating the moral status they share with other individuals), or if the child's needs are not being met. (TM 10). Therefore, if a child is abused or severely neglected, it would be justifiable for the parents to potentially lose their parental rights (TM 10).

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<sup>41</sup> However, I would argue that certain instances of financial ineptitude might be serious enough to infringe upon a child's interests in having their nutritional needs met, or their housing, and educational needs met (LP 332). In subsequent sections, I will explore this worry alongside Lafollette's concerns about the possible instances of parental instability (LP 329).

In addition, the overriding conditions might allow one to argue for the use of the conditions in order to address the “potential substantial benefit to people other than the parents or the children involved” (TM 10). Thus, the interests the citizens have in the manner in which the children are raised might give credence to the negation of parental rights (TM 10). On this view, which I shall call the “Jan Narveson Perspective,” parents hold “property rights” in children, although such rights are limited due to the impact which children have on other individuals (TM 10). Thus, we are justified in limiting parental rights in order to minimize the resulting impact to others (TM 10). However, it is important to note that Brennan and Noggle reject Narveson’s view as to the property rights parents hold over children, primarily because the moral status of children presupposes that a child cannot be considered to be the property of those who possess the same moral status as the child (TM 10).

*Prima facie*, Lafollette’s view appears to be one that is primarily concerned with the potential harms children themselves might suffer, as opposed to the potential harms others might incur as a result of child abuse or neglect taking place in the home (LPR 331). Lafollette considers the impact to others (as a result of the interactions individuals will have with those who have faced forms of child abuse ) as a secondary concern, noting that individuals subjected to childhood maltreatment have higher propensity to engage in criminal acts (LPR 331). I share Lafollette’s concern for the safety of others, particularly in light of the statistical evidence demonstrating the social ills that result from those who have suffered maltreatment at an early age (LPR 331).<sup>42</sup> Protecting other individuals from the acts exhibited by those who have previously been victimized by child abuse or neglect can be seen as a secondary concern about the ramifications of child abuse and neglect (LPR 331).

In addition, altering parental rights due to the potential harms abused children might inflict on others falls in line with the harm principle, as said individuals set back the potential victims interest in not being harmed (T 65). If one can demonstrate the propensity for harm to occur at the hands of individuals

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<sup>42</sup> The statistical data contained within the National Institute of Justice report entitled, “*Impact of Child Abuse and Maltreatment on Delinquency, Arrest and Victimization*” will be referred to as follows, NIJ (Washington, D.C., U.S. Dept. of Justice, 2011). The study suggests that individuals who have been abused or neglected have an increased risk of engaging in behaviors which result in arrests (NIJ 1). Furthermore, the study also suggests that higher rates of “officially recognized delinquency, violent self-reporting delinquency, and moderate self-reported delinquency” occur as a result of child-maltreatment (NIJ 1).

who have been previously abused or neglected during childhood, it seems permissible to interfere with the actions that set back the interest the individual has in not being harmed during their childhood (T 64-65). In addition, interference is permissible due to the greater risks those who come into contact with the victim of child abuse or neglect are exposed to (T 64-65). However, if we remain committed to Lafollette's theoretical proposal for parental licensing, we must identify harms to children as the *primary* reason for the implementation of regulations in the act of child rearing (LPR 331). Thus, on Lafollette's view, the third application of Brennan and Noggle's overriding conditions (the consideration of the impact children have on the well-being of others) is simply another element of harm stemming from the initial violation of the child's moral status (TM 332). Brennan and Noggle's three commonsensical claims as to the moral status of children, combined with the authors' position on the nature of parental rights thus leads us to the following:

1. Parents possess rights.
2. The rights parents possess include rights that are held over their children.
3. Even though parents have rights over their children, parental rights have thresholds.

Therefore,

4. It is permissible to infringe upon the rights of parents based on the limitations set forth within the thresholds.
5. Interference with parental rights ensures that a child's needs are met or to preserve the rights of the child.

Therefore,

6. Parents who fail to meet their child's needs, or who fail to preserve the child's rights will have their parental rights overridden. (TM 1-22).<sup>43</sup>

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<sup>43</sup> It is important to note that Brennan and Noggle believe that parental rights can be overridden, "even if they do not actively harm the child" (TM 11). This claim is formulated on the consideration of acts which fail to preserve the rights of the child (TM 10).



On Brennan and Noggle's view, the conceptualization of parental rights as rights with "built-in thresholds" allows for parental rights to exist alongside the equal consideration of the moral status of children (TM 11). Thus the initial conflict between the "Equal Treatment of Children Thesis" (the claim concerning the equal moral status which exists amongst both children and adults) and the "Limited Parental Rights Thesis" (the claim legitimizing parental right to exercise "limited but significant discretion in raising children") is resolved (TM 11). Moving forward with the claims set forth in the Brennan and Noggle argument creates a frame of reference whereby one might formulate moral guidelines to address the status of children along with the rights parents hold over their children (TM 11).

Lafollette's justification of a theoretical parental licensing program contains the same structure as the Brennan and Noggle argument (TM 1-26). Lafollette's proposal aims to treat the act of parenting in such a way so as to require a particular skill set in order to minimize the risk of harms to children (LPR 331). The theoretical licensing proposal offers restraints to the act of parenting that inherently value the moral status of children (LPR 331). In addition, it is important to consider that even if children are thought to hold the same moral status as adults, it does not necessitate the dissolution of parental rights (TM 9). Adherence to such a view of morality would only justify interference with parental rights if and when parents either fail to preserve the rights of children or fail to ensure that the needs of children (TM 10). At this particular juncture, we have a sound concept of the moral status of children, and we understand how the acceptance of this situation impacts the rights parents hold over their children (TM 1-11). However, the question remains as to how one can justify interference within the "intimate relationships" contained within the family (TM 14).

If parental rights can be "overridden" in certain circumstances as a result of certain moral considerations, we must ascertain how such an act can become a component of a society filled with individuals pursuing their desires and passions to live a good life (TM 18). Thus, we must take a closer look at how we might incorporate rules as to how we should live our lives into the broader picture of the structures that govern our society (TM 18-22). Furthermore, serious consideration must be given as to what can be gained by a commitment to institutions that would uphold certain moral principles in a

society despite the existence of various cultural and religious convictions (TM 14-15). Why is the commitment to uphold the moral status of children within the family so relevant in a liberal society? (TM 18-19).

In the next portion of this essay, I will argue that Lafollette's theoretical justification for parental licensing must be conceived as one particularly way in which the equalization of opportunity can occur within our society (LP 182-196). There are various institutions with different measures focused on the equalizing of opportunity for individuals (EOO 376-377). However, the current institutions do not adopt the time frame that I believe holds the potential to provide improvements in the manner in which people come to hold particular talents and skills (EOO 378). Thus far, I have shown Lafollette's theoretical parental licensing program to be compatible with the harm principle, insofar as the licensing program's primary objective is interference in order to prevent harm (i.e. setback of interests) which may occur to children during childhood (T 65). I also demonstrated how a commitment to an equalization of the moral status of children and adults can provide a moral litmus test of sorts for the validation of actions involving the well-being of children (TM 11). Lafollette's theoretical parental licensing program is formulated with the same moral considerations as those contained within Brennan and Noggle's assessment of the moral status of children and parental rights (TM 11). Considering which actions might violate the moral standing of children without negating parental rights to raise their children in the manner they see fit is a complicated process (TM 15-16). However, Lafollette's theoretical parental license is rooted in the same justifications given to other actions posing risks to others such as the practice of medicine or the practice of law (LP 182).

I will argue that Lafollette's theoretical licensing proposal contains the potential to equalize opportunity within society (LP 182-197). Thus, parental licensing should be considered to be an effective way to minimize the occurrence of harms to children during childhood while simultaneously allowing for children to receive equal access to an environment that lessens their exposure to child abuse and neglect (LPR 331). Valuing the cessation of harms against children and the moral status of children leads us to question the types of institutions within society which will honor a commitment to protect the moral

status of children by limiting the harms children may be exposed to as they develop into autonomous individuals (LPR 327-343).

## VII. Constructing the Timeframe: Problems with the Equalization of Opportunity

Claire Chambers addresses problems contained within liberal egalitarian theories of equality of opportunity in the essay; *Each Outcome is Another Opportunity: Problems with the Moment of Equal Opportunity*.<sup>44</sup> Chambers argues that the methods used to support egalitarian equality of opportunity arguments is inherently incorrect, as they often involve “looking backwards” in time to understand how past advantages and disadvantages impact equality of opportunity (EOO 376). Chambers also argues that egalitarian theories related to the equalization of opportunity are involved in “tracing back the source of an individual’s advantage through their educational, family, and even genetic history” (EOO 376). Chambers believes the problematic timeframe originated with John Rawls’s concept of the equalization of opportunity, i.e. “fairness depends on underlying social conditions, such as fair opportunity, extending backwards in time” (EOO 376). Chambers argues that the concept of a life divided in half by an MEO fails to adequately address past events that negate equality of opportunity not only the past but in the future as well (EOO 377).

On Chambers view, dividing up equality of opportunity in society constitutes separating an individual’s life into two “halves” that are interrupted by the “Moment of Equal Opportunity” (EOO 377).<sup>45</sup> The first half of an individual’s life contains events that happen to the person that can be considered to “*unjustly* make her different from her peers” (EOO 377). For example, as a fetus, she is composed of particular sets of genes, which then translate into “particular propensities for talents” (EOO 377).

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<sup>44</sup> Claire Chambers’ essay will be cited as follows: EOO refers to *Each Outcome is Another Opportunity: Problems with the Moment of Equal Opportunity* (New York: Sage Publications, 2009).

<sup>45</sup> “The Moment Of Equal Opportunity” will be referred to as the MEO (EOO 377).

Next, the individual is;

Unfairly subjected to the influence of her parents, who add unjustly varying degrees of advantage to her genetic endowments according to their inclination for, and skill at, such activities as reading bedtime stories, playing Mozart in the home, taking her to Shakespeare plays, and asking her to count and name various everyday objects (EOO 377).

In addition, the educational atmosphere “which may be unfairly determined by the resources of her parents,” also contributes to the development of unfair advantages or disadvantages which will manifest at some point in her lifetime (EOO 377).<sup>46</sup> Chambers notes that the cycle of benefits and harms to the individual are of a repetitive nature, so that the attainment of different positions in other institutions shifts as a result of past experiences that contain some unfair components (EOO 377). However, at some point, equality of opportunity can be said to take place within the process (EOO 378). One such example of the “Moment of Equal Opportunity” is the much-deliberated college admissions process (EOO 378). Many argue that the unfair advantages and disadvantages contained within the young lives of college applicants should be addressed within the college admissions process by those making the admissions decisions (EOO 378). On this view, an individual who attends public school should not be judged as harshly as one hailing from an elite private institution (EOO 378). Chambers argues that beyond the initial “Moment of Equal Opportunity” the lives of individuals continue to develop at a different pace (EOO 378). Thus, the advantages and disadvantages individuals face in the first half of life before the “Moment of Equal Opportunity” continues to impact their lives far beyond the interference provide by the MEO (EOO 378).<sup>47</sup>

Chambers is quick to note that the primary issue does not reside in the way lives are split into two halves, one portion being life before the MEO and one portion being life after the MEO (EOO 378).

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<sup>46</sup> Lafollette’s claims also address the setback of interests which occur as a result of child abuse and neglect within the family, along with concerns as to the financial resources provided by potential parents (LP187).

<sup>47</sup> The “Moment of Equal Opportunity” will be referred to as the MEO per the Chambers’ abbreviation (EOO 377).

Rather, the issue pertains to one's acceptance of the division of an individual's life into events that occur *before* any sort of intervention occurs to compensate for advantages or disadvantages, and events which occur *after* the MEO (EOO 378). Chambers believes that dividing an individual's experiences up in this manner contains a problematic assumption as to when attempts to compensate for previous advantages and disadvantages within the individual's life should cease (EOO 378).

Thus, we must ask ourselves whether or not the progression of an individual's life and the final outcomes resulting from the MEO are consistent with both justice and equality of opportunity (EOO 378). Chambers argues that one might view the results emanating from the interference of a MEO as effective based on, "the version of equality of opportunity one employs and whether one endorses a Moment of Equal Opportunity" (EOO 378). Next, Chambers advocates for acts that would continuously equalize opportunity throughout an individual's life (EOO 378). However, Chambers also notes that the methods to accomplish such a goal might prove to be problematic, particularly in terms of the epistemological concerns and efficiency issues (EOO 378).

On my view, the normative means by which equality of opportunity is accomplished matches the account given by Chambers (EOO 374-400). Chambers believes that the typical manner in which to achieve equalization of opportunity consists of the use of "non-discrimination" techniques and opportunities known as "careers open to talents" (EOO 378). However, Chambers argues that most liberal egalitarian theories of equality of opportunity advocate for a "more extensive, more egalitarian" approach towards achieving equality of opportunity within an individual's life than the aforementioned policies (EOO 378). On Chambers view, more extensive equality of opportunity theories are incompatible with the increased inequalities that manifest throughout an individual's life based on previous advantages and disadvantages (EOO 378). The question remains as to whether the division of an individual's life into time before the MEO occurs and the time, after the MEO occurs, is justified within liberal egalitarian theories of equality of opportunity (EOO 382).

I would argue that Lafollette's approach to minimizing the harms to children during childhood addresses the primary concerns raised within Chambers' assessment of the methods used to achieve

equalization of opportunity in society (EOO 382). In essence, Lafollette's parental licensing proposal negates the value currently placed on the equalization of opportunity *after* inequalities have already pervaded the individual's life (LP 185). On Lafollette's view, children who face maltreatment during childhood carry the psychological scars of their abuse throughout their lives (LP 185). Individuals who have been abused are statically more likely to become abusers themselves, or to face a barrage of psychological and physical issues as a result of being harmed during their formative years (LP 185).

Arguably, individuals who have endured child abuse and neglect suffer from disadvantages that those who are not abused during childhood do not (LP 185). Furthermore, according to the harm principle child abuse sets back the child's interest not to be harmed; thus interference is permissible (T 185). Children cannot consent to be born to a particular set of parents, nor a certain set of circumstances; thus we inevitably have children living in different home environments, who are subjected to various advantages and disadvantages (EOO 376). In order to resolve the resulting inequalities, one must consider interference in the form of an MEO (EOO 376). I will argue that one solution to the "division of life" problem contained within most of the well-known liberal egalitarian equality of opportunity theories can be found in a Rawlsian approach to fair equality of opportunity (EOO 385). In addition, I will demonstrate how the use of a Rawlsian approach falls directly in line with Lafollette's theoretical justifications for parental licensing (EOO 385). Furthermore, I will show that a Rawlsian approach to equality of opportunity (in conjunction with a parental licensing program) provides an ample foundation by which to promote justice amongst individuals living in our society (EOO 385).

An MEO is a strategic method of interference in the lives of individuals which contains two initial stages of equal opportunity, "non-discrimination and unembellished careers open to talents" (EOO 385). However on a Rawlsian view, such measures can be seen as "insufficiently egalitarian;" due to the fact that the scope of interference does not provide the amount of interference necessary to counteract previous advantages and disadvantages within an individual's life (EOO 385).

Thus, Rawls introduces a concept known as “fair equality of opportunity,” which can be defined as a method intended to:

Correct the defects of formal equality of opportunity – careers open to talents – in the system of natural liberty, so-called. To this end, fair equality of opportunity is said to require not merely that public offices and social positions be open in the formal sense, but that all have a fair chance to attain them. To specify the idea of a fair chance we say: supposing that there is a distribution of native endowments, those who have the same level of talent and ability and the willingness to use these gifts should have the same prospects of success regardless of their social class of origin, the class into which they are born and develop until the age of reason. In all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed (JF 43-44).<sup>48</sup>

The Rawlsian concept of fair equality of opportunity is also predicated upon a particular moment of an individual’s life, namely the time before the person reaches the “age of reason” (EOO 386). The “age of reason” can be considered the age of maturity at which an individual can be considered an autonomous individual capable of making choices based on personal experience, preference, and reason.<sup>49</sup> Rawls argues that the class an individual is born into impacts the person’s life far beyond birth (EOO 386). Thus, Rawls’s claim supports the view that one’s potential success within the various institutions in society should not depend on class one is born and raised in before the “age of reason” (EOO 386).

Herein lies the intersection between the Rawlsian concept of “fair equality of opportunity” and the motivation behind Lafollette’s theoretical justifications for the implementation parental licensing (EOO 385). Both Rawls and Lafollette are concerned with how individuals might obtain a fair chance to

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<sup>48</sup> John Rawls essay *Justice as Fairness: Political Not Metaphysical* is referred to as follows: JF (New Jersey: Princeton University Press, 1985).

<sup>49</sup> Within my discussion of the Rawlsian conception of the components of equality of opportunity, I believe the “age of reason” to be twenty-five years of age (AC). I consider the choice to be one that is objective in nature, as it hinges on empirical evidence contained in the Sharon Biggs article entitled, *A Child’s Brain Fully Develops by Age 25* henceforth to abbreviated as follows: AC (Colorado: The Examiner, 2009). Biggs’ article offers scientific evidence indicating that the development of brain areas considered to be critical to one’s ability to reason ends at twenty-five years of age (AC). Before the age of twenty-five individuals exhibit “coincidental decision-making skills, use of appropriate judgment, rational thinking, integration of emotion & critical thinking, ability to think clearly about long-term outcomes that stem from behaviors, [and] global thinking vs. self-centered thinking” (AC).

attain certain positions in life despite the social class and environment the person is born into and raised within (EOO 386). In addition, both Rawls and Lafollette are suspicious of the inequality contained within the family unit (EOO 386). Moreover, Rawls addresses the conflict between the family and the equalization of opportunity within the discussion of fair equality of opportunity noting,

Even in a well-ordered society that satisfies the two principles of justice, the family may be a second barrier to equal chances between individuals. For as I have defined it, the second principle only requires equal life prospects in all sectors of society for those similarly endowed and motivated. If there are variations among families in the same sector in how they shape the child's aspirations, then while fair equality of opportunity may obtain between sectors, equal chances between individuals will not. This possibility raises the question as to how far the notion of equality of opportunity can be carried (PLC 273).<sup>50</sup>

Rawls is correct to view the family as a contributing factor in the discussion of the disadvantages and advantages that create unequal access to opportunities throughout an individual's existence (PLC 273). But we must also wonder what Rawls might consider to be "fair access" to attain positions in a society which lead towards the realization of "fair equality of opportunity" (JF 43-44). How can one ascertain which home environments allow individuals to achieve equitable access to the development of the skills necessary to compete within society once maturity is reached? (EOO 376).

*Prima facie*, one might be tempted to call such considerations subjective in nature (T 114). After all, different families have different social practices, and various dynamics in play which make it virtually impossible to create a standard prototype of the type of family unit that could promote fair access to the development of skills one must possess alongside others in adulthood (EOO 377). However, I would disagree with the stance that families constitute the type of unit whereby the prediction of potential outcomes is impossible or impractical (T 114). Furthermore, I believe that the primary motivation of Lafollette's theoretical justification of parental licensing, the limiting of harms to children resulting from

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<sup>50</sup> Ron Mallen's essay, *Political Liberalism, Cultural Membership, and the Family* will be abbreviated as follows: PMF (Florida, Social Theory and Practice, 1999).



the act of parenting, provides an objective and efficient manner in which the productivity of the family unit can be measured (LP 185). Moving forward, I will address the ways in which Lafollette's theoretical justification of parental licensing resolves Rawls's concerns regarding the inequalities resulting from individuals being raised within different families (PLC 273).

### **VIII. The Evolution of a Theory: Creating Public Policy**

One way in which we can predict the outcomes of child rearing activities comes from the acknowledgement of the adverse results harmful acts such as child abuse and neglect produce in those individuals subjected to such harms (LP 185). One need only consider the statistical data indicating the increased risk of involvement in criminal activities and violent acts those individuals who are subjected to child maltreatment and neglect demonstrate to recognize the outcomes created by negative family environments (UCM 1).<sup>51</sup> Arguably, different empirical studies reveal different methodologies and different results as to the extent of the correlation between child maltreatment and a propensity to engage in violent crimes (UCM 1). Although there are numerous factors that might contribute to an individual's future involvement in criminal activities, it has become evident from the consideration of juvenile crime statistics and child victimization cases that increased instances of criminal participation exists for individuals who have undergone some form of child abuse or neglect (UCM 2). Thus, although we might concede that successful parenting has the potential to manifest itself in a multitude of ways, we can most certainly create the guidelines as to impede the types of parenting which results in adverse outcomes (LP 190).

Satisfying the Rawlsian concerns as to the inequalities created within the family can be addressed through careful consideration of the types of actions which might negatively impact a child's ability to achieve fair equality of opportunity upon reaching maturity (EOO 386). Once we ascertain which types of parental actions limit access to fair equality of opportunity within the family unit, we can then create the guidelines as to the types of acts considered to be impermissible (LP 190). On Lafollette's view, those

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<sup>51</sup> The Cathy Spatz Widom essay entitled, *Understanding Child Maltreatment and Juvenile Delinquency: The Research* will be abbreviated as follows: UCM (Washington, D.C: U.S. Dept. of Justice, 2010).

who object to parental licensing, citing the impracticality of the search for the “criteria of a good parent” fail to understand the goals of the licensing policy (LP 190). The primary function of a parental licensing program is to exclude individuals who are considered to be inadequate parents from raising children (LP 190). Lafollette believes the theoretical justification of licensing to be a regulatory scheme which can be “efficiently and justly implemented,” as the implementation rests solely upon objective measures of parenting outcomes, as opposed to merely arbitrary assessments of what constitutes a “good parent” (LP 190).<sup>52</sup>

Another objection to the use of a parental licensing policy as a tool to elicit fair equality of opportunity lies in the reliability of the methodologies contained within the licensing program (LP 190). Rawls’ concerns regarding the inequalities created within the family are adequately addressed only if the restrictions placed upon the family as a result of the parental licensing program can provide an accurate measurement of those individuals who have the potential to restrict a child’s access to fair equality of opportunity (EOO 386). The purpose of the licensing of parents entails various components, all aimed at ensuring that children are raised in an environment that does not subject them to undue harm (LP 190). However, the method by which such goals are achieved must be just (LP 190). Lafollette gives serious consideration to the difficulties involved in the creation of tests that might accurately predict which individuals who wish to become parents have a greater risk of exposing their children to harm (LP 191).

It is important to note that Rawls considered the family to be problematic due to the varied nature of different family units, as children are exposed to varying degrees of “unjust influences” (EOO 386). Thus, Lafollette’s consideration of the measures taken to predict which parents might pose greater harms to children in the home environment also addresses Rawls’ concern as to the manifestation of “unjust influences” over a child’s potential abilities in the family (EOO 386). Furthermore, Lafollette’s desire to incorporate data from longitudinal studies of prospective parents into a standardized parental licensing test showcases a commitment to ensuring the just implementation of practices aimed at negating a child’s

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<sup>52</sup> Lafollette notes that he might be in favor of licensing good parents if a plausible way to assess what qualities a “potential parent” might possess in order to be considered as a good parent were to be developed, although he also indicates that he has not given much consideration to such a proposal (LP 190).

exposure to an environment which might prove to limit fair equality of opportunity (LP 191). On Lafollette's view, the possibility of a just parental licensing test remains intact, so long as resources currently used to isolate characteristics such as the tendency to resort to violence, an inability to manage one's frustrations, or high level of self-centered behaviors are contained within the test (LP 191). Thus, concerns as to the current existence of a parental licensing test do not negate the legitimacy of creating a licensing program (LP 192).

The implementation of a parental licensing program also requires the creation of policies that address whom might be qualified to administer the test required of all potential parents (LP 192). The issue of how to best achieve compliance from individuals designated as authority figures, as well as those individuals living under said regulations, remains a common problem within the creation of various institutions in society (LP 192). As we consider the creation of institutions to limit barricades to fair equality of opportunity within the family, we must also consider the manner in which those who enforce said institutions might abuse the newly formed systems, thus impacting the end result of well-intentioned programs (LP 192). In essence, the creation of new systems (such as parental licenses), aimed at achieving equality of opportunity within society might contain negative externalities including the potential for creating harms due to misuse of testing protocols (LP 192).

On Lafollette's view, there will be mistakes made during the administering of the parental licensing test (LP 192). However, Lafollette is quick to note that the potential for mistakes to be made exists within any procedure administered by autonomous individuals (LP 192). Lafollette argues that the harms resulting from child abuse and maltreatment are far worse than the potential harms that might result from the denial of a parenting license to an individual (LP 192). In addition, any parental licensing program would also contain an appeals process (similar to other licensing programs) along with numerous opportunities to take the test, so that individuals might have an opportunity to circumnavigate any intentional abuse stemming from the test administrators (LP 193).

Arguably, all licensing programs are skewed in some way (LP 192). Human beings have a tendency to allow unfounded assumptions about the social status, trustworthiness, and potential of others

to taint their perceptions, for better or for worse (LP 192). Although one might wonder about the biases administrators have, we cannot simply dissolve all forms of regulation due to the preferences individuals hold (LP 193). A successful licensing program would simply hold those individuals within certain administrative positions to a higher standard of scrutiny, due to the seriousness of the position (LP 193).

If Lafollette's theoretical justifications for parental licensing are to become a potential tool by which to aid Rawlsian fair equality of opportunity, we must also consider objections as to the reasonable and just enforcement of the parental licensing program (LP 193). Let us assume that a comprehensive and reliable method to test potential parents exists (LP 193). The question remains as to how one might deal with individuals who violate the parental licensing requirements and conceive a child (LP 193). Two issues present themselves as a result of non-compliance (LP 193). First, we must consider whether or not parents who defy the regulation should be subjected to penalties enforced by the law (LP 193). Next we must ascertain the fate of the children born as a result of violations of the parental licensing policy (LP 193).<sup>53</sup>

Consider the number of individuals who are arraigned each year on charges of practicing medicine without a medical license (LPR 328). Despite the severe consequences associated with violating the laws associated with the offense, each year numerous individuals are arraigned on charges of practicing medicine without a license (LPR 184). However, a reasonable person would never call for the end of the medical licensing program due to the actions of potential violators (LP 183). In fact, we can see the benefits of continuing to uphold the strict regulations in the field of medicine as a result of the harms that occur at the hands of unlicensed practitioners (LPR 327). Arguably, a parental licensing program would be no different, particularly in terms of the viability of the program (LP 193). On Lafollette's view, the existence of potential violators does not necessitate an insurmountable problem (LP 193). Lafollette argues that the seriousness of the task at hand (i.e. protecting children from being abused by their parents) strengthens the demand for the development of a "reasonable enforcement procedure" (LP 193). Thus,

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<sup>53</sup> Lafollette notes that issues of non-compliance exist within all professions and activities requiring licensing (LP 193).

even if uncertainties exist as to the manner in which the parental licensing program might be enforced, one can remain committed to the implementation of the licensing proposal (LP 193).

Thus far, I have demonstrated how Lafollette's theoretical justifications of a licensing program are compatible with the Rawlsian concerns as to how individuals might achieve fair equality of opportunity in spite of the inequalities contained within different families (EOO 387). Fostering a theory of justice which addresses the differences individuals face in regards to life prospects is essential for both Rawls and Lafollette (EOO 387). In addition, both viewpoints suggest respect for the moral status of children, despite a child's immaturity and inability to contribute in the same manner as adults living within a given society (LPR 340). However, questions remain as to the practicality of the implementation of a parental licensing program (LPR 336).

Lafollette argues that one can justify the constraints of a licensing proposal if the following criteria are met: "(a) if we can specify criteria for a competent parent, (b) if we have moderately accurate methods for determining competence, and (c) if there are no special reasons for thinking that the program's cost exceed its benefits" (LPR 336). I have noted the points of contention surrounding Lafollette's theoretical parental licensing proposal and deemed them to be remarkably similar to the issues all licensing programs initially face (LP 183). Moving forward, I will consider Lafollette's proposal which calls for the implementation of a "limited licensing program" thereby transforming the theoretical justification of a parental licensing program into a viable public policy aimed at regulating parents (LPR 338).

Within the defense of a parental licensing program, Lafollette outlines the various components that are necessary for the creation and implementation of a "limited licensing program" (LPR 338). Lafollette's ideas for the limited licensing program are predicated on setting specific defaults within society, whereby those who meet minimal requirements for a parental license might be *rewarded* for their compliance, as opposed to being punished for failing to meet the licensing requirements (LPR 338). In essence, Lafollette's reward system would entice individuals who wish to become parents to seek out the

parental license (LPR 338). In addition, slower implementation might be perceived as less intrusive than the full scale rollout of a parental licensing program (LPR 338).

One example given by Lafollette pertains to the types of strategies employed by insurance companies who wish to encourage teenagers to seek out driver's education courses (LPR 339). As a part of promotions aimed at securing new insurance policy customers, insurance companies offer teenagers who complete the driver's education courses discounts on car insurance (LPR 339). On Lafollette's view, prospective parents might be enticed to participate in a parental licensing program in the same way, particularly if tax breaks are used to incentivize participation in the parental licensing program (LPR 339). Lafollette's consideration of tax breaks as a means by which individuals might be incentivized to participate in the parental licensing program appears to be a smart and relatively simple way to encourage participation in a parental licensing program (LPR 339).

Consider the current tax breaks offered to individuals who are married, or those who have children, or even those who own property in our country (LPR 339). The United States government incentivizes particular institutions, such as the institution of marriage (LPR 339). The government also offers benefits to those who wish to start a family (thus taking on the responsibility of raising children) with tax credits each year (LPR 339). Using the same principles to motivate individuals to participate in the parental licensing program would be a viable and smart way to introduce radical change into the normative parenting model (LPR 339). Insofar as our society remains based upon the principles of capitalism, awarding monetary benefits for those who chose to participate in a parental licensing program would arguably be a success (LPR 339). Furthermore, the tax breaks would also help to bolster the financial stability of potential parents (LPR 339).

Concerns may be raised as to the impact such benefits might have on compliance within varying socioeconomic groups within society (LPR 339). After all, the wealthy would most likely feel less inclined to participate in the licensing program, as the tax breaks would be less enticing for those in their tax bracket (LPR 339). However, I would argue that one need only look at the response of the wealthy in previous matters concerning tax breaks (and potential tax increases on the rich) to understand that tax

breaks are just as appealing to those who are considered to be a part of the higher tax brackets as they are to those in the lower tax brackets (LPR 339). The motivations to receive tax breaks remain high for both groups, despite the varying levels of financial stability (LPR 339). Furthermore, offering tax breaks would allow for a more cost-effective and unobtrusive start to the implementation of the parental licensing program (LPR 339). Arguably, a vast number of institutions in our society favor the wealthy, thus the implementation of tax breaks provides a mechanism by which individuals from a variety of socioeconomic backgrounds can benefit financially and improve their financial standing each year (LPR 339).

Next we must consider the various components of the parental licensing program (LPR 339). On Lafollette's view, the licensing program would consist of either stand-alone parenting courses or courses that would be offered in high school to individuals who might be interested in becoming parents one day (LPR 339). Those who complete the parenting courses would then meet the requirements to receive a parental license (PLR 339). Lafollette argues that a rigorous parenting course would ensure that individuals do not possess traits that may increase the risk of harms to children while simultaneously strengthening the "vital knowledge" parents need in order to adequately provide for a child's needs (LPR 339). This claim rests on statistical evidence which indicates that a large number of parents do not possess basic knowledge about the developmental needs of children (LPR 339).<sup>54</sup> A lack of knowledge as to the various stages of child development limits one's ability to pursue the types of interactions necessitated by the child's mental and physical needs, thus amplifying frustrations and potentially raising the likelihood of abuse or neglect in the home (LPR 339). On Lafollette's view, providing individuals with classroom instruction on the symptoms and treatment of childhood illnesses, the stages of cognitive development, and even childhood nutrition can also help to mitigate the frustrations some new parents may feel (LPR 339).

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<sup>54</sup> Lafollette cites a study contained within the 2008 *Pediatrics Academy Society Publication* which indicated that one-third of parents lack "basic knowledge of child-care and development" (LPR 339).

Another important component of Lafollette's limited licensing program concerns assisting (and simultaneously monitoring) new parents during the first few years of a child's life (LPR 339). Lafollette's inspiration for this additional component stems from the "UK Health Visitor's Program" (LPR 339).<sup>55</sup> The program assigns an in-home nurse to every family living in the UK with a child who is under the age of five (LPR 339). According to Lafollette, "the nurse is available for home visits to examine and care for the child, and to offer advice on nutrition, parenting, development, etc." (LPR 339). The goal of providing such a service to new parents ensures that the parents feel supported and better prepared to handle the new responsibility of raising a child (LPR 339).

In addition, the nurse can serve as the second component of the parental licensing program, thus ensuring that instances of potential maltreatment of children will be addressed as soon as possible, rather than later on in the child's life (LPR 339). Lafollette notes the importance of early intervention in cases of child abuse and neglect, as nearly half of all instances of child maltreatment takes place before the child reaches four years of age (LPR 339).<sup>56</sup> The services provided by the nurse can serve as an additional checkpoint in the parental licensing program, while also offering an additional resource to new parents who will find the nurse to be a beneficial "perk" associated with the licensing program (LPR 339). The aforementioned procedures encourage the development of good practices within the new parents, thus fostering a nurturing environment where the interests of the child are at the forefront of adult actions, rather than assuming that parents inherently possess the skills and knowledge needed to raise children (LPR 339).

Next, Lafollette pinpoints another issue with the parenting classes contained in the parental licensing program requirements (LPR 339). One cannot guarantee that the parenting courses will give an adequate indication of whether or not an individual possess the "abilities, judgment, and disposition" necessary to raise a child devoid of any maltreatment (LPR 339). Thus, the validity of the parenting

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<sup>55</sup> Information on the "UK Health Visitor's Program" can be found in the following publication: Department of Health, *Facing the Future: A Review of the Role of Health Visitors* (London: Crown Copyright, 2007).

<sup>56</sup> Lafollette's statistical data regarding instances of child maltreatment and the ages of occurrences of child abuse and neglect can be found in the *US Department of Health and Human Services* (op. Cit., Table 3.3).



courses appears to be subjective at best (LPR 339). However, Lafollette argues that if the courses aim to enhance the judgment and skill-set of the individual, such worries are of no consequence to the effectiveness of the licensing program (LPR 339). Although a test may not exist which can provide definitive proof of whether an individual holds such traits, there are ways in which one can measure the complete *lack* of the traits which nurturing individual's possess (LPR 339).<sup>57</sup> If one can show that an individual lacks certain personality traits and abilities, one can then ascertain the level of risks the person may pose to children (LPR 339).

Lafollette also briefly mentions the existence of the "Child Abuse Potential Inventory" test, a clinical psychological exam that measures various factors in order to ascertain whether an individual might possess the character traits and propensity to (LPR 337). The CAP Inventory consists of a 160 question inventory of the following:

The CAP Inventory (Form VI; Milner, 1986) is a 160-item, paper and pencil questionnaire that was originally designed to provide an estimate of parental risk in suspected cases of child physical abuse. The CAP Inventory (CAPI) is now used as a risk screening tool in a variety of assessment situations. It has a third-grade reading level and respondents are instructed to respond to each item by indicating whether they agree or disagree with the item statement. The 160-item CAP Inventory (CAPI) contains a 77-item child physical abuse scale and six factor scales: distress, rigidity, unhappiness, problems with child and self, problems with family, and problems from others. In addition, subsets of the 160 questionnaire items have been used to develop two "special" scales: the ego-strength scale and the loneliness scale. There are also three scales designed to detect response distortions (a lie scale, a random response scale, and an inconsistency scale) which in different pairs form three validity indexes: the faking-good index, the faking-bad

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<sup>57</sup> Lafollette mentions the "Child Abuse Potential Inventory" test as a potential prototype of the manner of testing that would take place during the initial assessment of a potential parent's ability to provide a child with an environment free from abuse or neglect (LPR 337).

index, and random response index. If any validity index is elevated, the abuse score may not be an accurate representation of the respondent's "true" abuse score (PM 10).<sup>58</sup>

A variety of similar tests are currently in use by social workers throughout the country, all of which are designed to quantify an individual's propensity to demonstrate varying levels of abusive or neglectful behaviors (LPR 337). Thus, concerns as to the development and reliability of parenting tests can be satisfied through the careful assessment of the existing clinical studies in order to ascertain which methods might provide the most definitive predictors of an individual's propensity to engage in acts of child abuse or neglect (LPR 337). In addition, as the parental licensing program becomes integrated into society, the number of individuals who wish to participate will grow, thus yielding even more data that will continuously refine the effectiveness of the licensing tests (LPR 337). Eventually, the test results will illustrate an extremely robust understanding of the traits of individuals who pose greater risks to children, limiting the fears of the existence of "false-positives" in the licensing program examination (LPR 337).

Lafollette also suggests that the parenting courses include a "self-graded personality inventory" for students (LPR 339). The instructor of the class would go over the results, in order to explain the impact of certain personality traits to potential parents (LPR 339). Ideally, isolating the personality traits that indicate a higher propensity for violent behaviors gives individuals a wealth of knowledge about their potential shortcomings as a caregiver *before* a child is born (LPR 339). Thus, individuals would have yet another chance to rectify problematic personality traits before attempting to pass the parental licensing tests (LPR 339). At every step in the process, Lafollette purposefully builds in extra considerations of the skills needed to raise a child, while also offering additional services to those individuals who do not yet possess the tools needed to mitigate the risks associated with parenting (LPR 339). The underlying principle of Lafollette's parental licensing framework continues to be the protection of the health and welfare of children, as their moral status is considered to be equally as important as that of adults (LPR 340).

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<sup>58</sup> The *Harsh Parenting Measurement Study* compiled for the Los Angeles Children and Families Commission will be referred to as follows: PM (California: Harder + Company Community Research, 2012).

The final component of Lafollette's licensing program concerns bolstering the existing safety nets within our society in order to lessen the stressors new parents may face (LPR 340). Lafollette argues that the combination of economic, social, and personal issues may cause parents to abuse or neglect their children (LPR 339-340). Lafollette argues that additional protections for children are created indirectly, as a result of "strengthening public education, expanding health care, and bolstering children's services" (LPR 339). Thus, reinforcing social safety nets provides an additional step aimed at the protection of children in order to limit the potential risk of harm imposed upon children by their parents (LPR 39). On Lafollette's view, if the varying degrees of interference with the family *fail* to prevent harms to children, adjustments to the parental licensing program are permissible, including the potential implementation of more "robust" licensing programs (LPR 340). However, the goal of the limited licensing program is not to experiment with parental interference, but to offer a parental licensing program that prevents harms to children while simultaneously garnering the support of potential parents (LPR 340).

## **IX. Conclusion: The Actualization of A Theory**

In the consideration of Lafollette's parental licensing proposal, one primary objection remains independent of the aforementioned concerns regarding implementation and compliance, (LPR 340). On Lafollette's view, those who emphatically reject to the concept of parental licensing do so as a result of the lack of consideration the theory places upon a parent's "natural dominion" over children (LPR 340). At the outset of his second essay on parental licensing, Lafollette noted that English common law served as the foundation for most laws within the United States, despite the fact that English law promoted the belief in "parental sovereignty" (LPR 340). In addition, it is important to consider the fact that English common law considered children to be the property of their fathers (LPR 340). Although Western civilization no longer supports this view of a father's dominion over his children, Lafollette argues that our normative views (as to the status of children within the family) remain hinged to the original concept of a child's inferior status (LPR 340). Lafollette's original paper addressed the issue of parental authority and subsequent attitudes towards children in the concept of "natural dominion":

[P]arents legitimately exercise extensive and virtually unlimited control over their children. Others can properly interfere with or criticize parental decisions only in unusual and tightly prescribed circumstances – for example, when parents severely and repeatedly abuse their children. In all other cases, the parents reign supreme (LP 196).

Herein we can see the underlying problem as to the prevalence of policies aimed at the continuation of parental sovereignty, despite the potentially detrimental consequences of child abuse and neglect (LPR 340). The reluctance to forgo the antiquated concept of parental sovereignty results in a perpetual cycle whereby adults are given the ability to retain unconscionable amounts of power over the lives of their children (LPR 340). Allowing parents' unrestricted access to the manner in which the future autonomous individuals of our society (i.e. children) are treated is problematic at best, as we must then attempt to ascertain whether or not individuals were subjected to child abuse and neglect (LPR 340). Eliminating the belief that parents within our society hold “natural dominion” over their child will mitigate the manner in which the moral standing of children is continuously violated (TM 332).

I have shown how Lafollette's theoretical justification of parental licensing is predicated on the same considerations as those contained within the harm principle (T 65). In addition, I have illustrated how the interference justified by the harm principle (as a result of potential harms committed against children), intersects with the belief that children hold an equal moral status with other human beings (TM 3). As children are considered to be persons, and all persons are entitled to receive equal moral consideration, we can no longer disregard the moral standing of children (TM 3). If children are no longer considered to hold inferior moral statuses, we must then consider what justice requires if we desire to preserve the moral standing of children living in our society (TM 3).

In order to address considerations of just principles within society, I explored the Rawlsian concept of fair equality of opportunity which illustrates the problems associated with the time-based interference known as a “Moment of Equal Opportunity” (EOO 385). Both Lafollette and Rawls stress the existence of inequalities within the family structure, particularly in terms of the potential advantages and disadvantages individuals incur during childhood (LP 273). If we value access to fair equality of

opportunity for every individual in our society, we must create institutions that circumnavigate the advantages and disadvantages individuals incur as a result of their upbringing (EOO 386).

Hugh LaFollette details one particular way in which equality of opportunity can be achieved without the dissolution of the family, namely the establishment of a parental licensing program (LP 182). Within the theoretical justifications of parental licensing, LaFollette demonstrates the existence of the same rationale that underlies the licensing restrictions of various professions (LPR 328). Arguably, parenting is an activity that poses a significant risk to a large demographic of individuals who are not capable of giving their consent (LPR 331). As children are one of the most vulnerable groups within our society, we must ascertain how to protect them from the mental and physical harms that may occur at the hands of their caregivers (LPR 331). Establishing an objective, child-centered, and parent-guided manner in which children can be raised calls for the consideration of new methodologies that will finally cast aside the normative view of a parent's "natural dominion" over their child (LPR 340).

Acknowledging the vulnerability of children and the equal moral considerations they are to be given, "merely in virtue of being a person" requires a reevaluation of previously held views on parent-child relationships within our society (LPR 341). We cannot ensure that every single child will have parents who love and support them (LPR 341). We also cannot guarantee that every single child will be born into a wealthy family, or have an opportunity to attend an Ivy League school. However, as the gatekeepers for the next generation, we are justified in trying our absolute best to protect children from harms predicated on antiquated conceptions of parental authority (LPR 341). Rather than allowing children to become victims at the hands of their caregivers, we must reevaluate the moral standing of children and the way in which we have come to view the normative parent-child relationships in the family (LPR 341). A parental licensing program does not call for the end of autonomy in the family, but rather an end to the ability to cause psychological and physical harm to children during their formative years (LP 182-197).

Q.E.D.

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