

Libertarianism, The Family, and Children

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Abstract

In this chapter, we explain libertarian thought about family and children, including controversial issues in need of serious attention. To begin our discussion of marriage, we distinguish between procedural and substantive contractarian approaches to marriage, each endorsed by various libertarians. Advocates of both approaches agree that it is a *contract* that makes a marriage, not a *license*, but disagree about whether there are moral limits to the substance of the contract with only advocates of the substantive approach accepting such. Either approach, though, offers advantages over the current *licensing* system, so we discuss paths from that to a contractarian system. We also discuss the concept of marriage itself, the ages of consent for marriage, sexual activity, and reproduction, as well as how marriages can be dissolved, and coercion that sometimes occurs in marriage. We then turn to children. We first discuss reproductive freedom and then discuss the moral relationship between children and parents, especially considering stewardship, propertarian, and best interests approaches (we also touch on anti-natalism). One of the biggest issues facing parents is how to properly raise and educate children; we discuss this in depth and consider the sort of schooling that should be offered in a free society. Since children lack the requisite ability to consent, they cannot choose their education; how to respond to this is of the utmost importance for libertarians. As we note, the same issue of consent looms large for many forms medical treatment of children.

Introduction

We preface this piece with a simple two-fold disclaimer. While we try here to represent the best in libertarian thought about the family and children, there is too much diversity of thought amongst libertarians for us to capture it all. Relatedly, thought about the family and children is seriously underdeveloped generally. The topic needs more extensive intellectual work than it has thus far received. Socialists and welfare liberals are as lacking in such work as libertarians. We hope to fill part of the lacuna as we discuss how one loosely connected group of intellectuals considers these topics. We begin with libertarian approaches to marriage and then move into questions relating to reproduction and child-rearing, with special attention to education.

A. Marriage

The straightforward libertarian view of marriage is that it is a contract between consenting adults. Within that basic framework, however, there is considerable variation. At its most basic, the contractarian position can be divided into two possible approaches, procedural and substantive approaches.

The procedural contract approach is found in John Locke's writings. Locke's is one of the clearest and earliest discussions of marriage as a neutral contract, rejecting religious and political content and focusing on consent. For Locke, individuals consent to be married for so long as the union is useful to both of them and their children (Locke 1690). Either partner may end the contract at any time for any reason. The specific content of that contract, whether traditionally patriarchal or radically egalitarian, is the choice of the members, unhampered by legal or political restrictions. This approach's focus is on the procedure by which the contract is created – specifically, the presence of consent – rather than on the content of the contract.

The second approach is the substantive position taken by classical liberals, including J.S. Mill, Herbert Spencer, Lucy Stone, and Sarah Grimke.¹ These argued for a particular kind of marriage, namely egalitarian marriage – still procedurally consent-based – but requiring additional proto-libertarian criteria. These accounts focus on eliminating government mandated inequality between the sexes, but do not support imposing egalitarian principles on everyone. They also emphasize the moral superiority of marriages that limit coercion and force. This view, that the content of the marriage itself must be *substantively* libertarian (i.e. that both partners are protected against coercion, abuse, force, and fraud within the marriage itself), is relevant to crucial questions surrounding consent, which we discuss below.

The procedural approach is preferred by many libertarians who argue that so long as the choice to enter the marriage is freely made and freedom to exit is maintained, one can enter into any manner of unequal, degrading, or abusive relationships, because preferences are variable and individuals may find utility in a variety of seemingly problematic family forms.

Both the substantive and procedural libertarian positions agree that the state should not be involved in either promoting or licensing marriages, but rather that marriage should remain a private contract between consenting adults with the state's role limited to adjudicating disputes when called to do so. The distinction between a contract and a license is crucial here. With a license, the state allows a particular relationship to exist and thus creates the relationship in question. With a contract, by contrast, the state merely recognizes and enforces an existing relationship between two people (see Boaz 1997). Despite the externalities created by marriage, discussed more below, libertarians are suspicious of state involvement on both principled and practical grounds. On principle, libertarians are concerned with coercive state involvement in private affairs. Practically, libertarians also point out that government policies that relate to marriage have practical, often unintended, effects that can be discriminatory, intrusive, coercive, or incentive-altering. Examples include anti-miscegenation laws, prohibitions on same-sex marriage, family and divorce law, and welfare benefits that privilege unmarried mothers.

Benefits of Contract Marriage

Libertarians generally support a fairly simple contractarian approach to marriage that allows for a range of marital types and frameworks. So long as the contract is entered into without force or fraud, it can contain a variety of enforceable provisions including time lengths (e.g., five year renewable marriages), number of individuals (including more complex contracts that stipulate varying types of relations and benefits between different members of the marital group), or even various kinds of intimate contracts that have nothing to do with what is traditionally considered marriage (such as mutual-aid contracts between elderly siblings living together).

Contract law allows for a polycentric approach to family law, in which the state is not involved in most marriages at all. In such a system, the rules of each marriage are framed by individual preferences (perhaps including cultural traditions the individual parties endorse), whether such preferences include the flexibility of polyamory or a variety of different religious approaches including Sharia, Catholic, or Judaic customs. Religious covenant marriages – those that make

¹ See Mill 1869, Spencer 1851, and excerpts from Stone and Grimke in McElroy 2002, Chs. 8 and 9.

divorce very difficult or even impossible – could co-exist alongside polyamorous five-year renewable marriages.

Libertarians defend privatizing marriage – allowing marriages to form contractually – on a range of theoretical and practical grounds. Perhaps most obviously, marriage was historically a private agreement between two persons, their families, and often a religious community. Marriage law changed in response to increasing entanglements between the church and state, not because private marriages did not work (Horwitz 2015). More recently, marriage contracts have shifted from primarily economic contracts toward more varied companionate contracts with a range of provisions, time lengths, and other considerations that have little to do with economic resources. A polycentric approach to marriage, libertarians argue, allows marriage as an institution to adapt to a greater diversity of individual needs including local, idiosyncratic, and even ideological commitments. Privatizing marriage also provides greater flexibility for a wider conception of kinship, including extended families, blended families, adopted families, and so on.

A polycentric approach may also limit cultural conflicts about marriage by removing its political influence. Under a purely private system of marriage, libertarians argue, people are free to contract into a variety of marriage forms and, because the state isn't involved, no single form of marriage can claim access to preferential state treatment or benefits. Presumably, political and cultural debates about legitimate forms of marriage would thus lose traction. At the same time, individuals are freer precisely because polyamorous couples, e.g., whose unions are currently not recognized at all, gain protection in the legal sphere without forcing, e.g., evangelical Christians to accept or recognize such unions in the private sphere. Unlike the decision in *Obergefell v. Hodges* (2015), which merely provided state-sanction to one particular form of marriage while coercing others to recognize and provide benefits for all recognized marriages, private marriage would allow a range of organizations to administer marriages without each having a corresponding duty to recognize all such relationships as legitimate. The only form of legitimacy that matters on this ground is whether the marriage contract itself is legally enforceable, i.e. free from force and fraud.

Finally, libertarians believe a dramatic benefit of private marriages is that they have no relevance for, and therefore no effect on, government benefits, such as tax rates or welfare benefits. As Richard Posner notes, marriage impacts “inheritance, social security, income tax, welfare payments, adoption, the division of property upon termination of the relationship, medical benefits, life insurance, immigration, and even testimonial privilege” (Posner 1992, 313). Privatizing marriage would eliminate the ways in which the state explicitly or implicitly incentivizes particular kinds of marriages (e.g., with tax and welfare policies) and would thereby reduce unintended consequences. These include the “second earner penalty” in U.S. tax law that penalizes part-time or lower paid work by a spouse and the various state welfare policies that discriminate against single mothers and same-sex couples by requiring documentation of biological paternity or maternity (Skwire 2020). (Current government policies in the U.S. are internally inconsistent with regard to marriage broadly. Welfare policies tend to disincentivize marriage, since marriage usually increases reportable income for mothers and children, while tax policies usually, but not always, incentivize marriage.)

Complexities and Controversies

Despite such benefits, both libertarians and non-libertarians have raised concerns about privatized marriage (i.e., marriage as contract). One concern is practical: because marriage has been state-controlled for so long, privatizing marriage would be complex and difficult. Privatization requires a variety of changes to tax law, welfare benefits, pension plans, Social Security policies, and employer policies—essentially a comprehensive dismantling of the various ways in which the state has formalized or incentivized a particular kind of family (Kuznicki 2011). Politically, a gradualist approach, whereby state licensing is eliminated in response to decreased demand, seems the best option for reform, though gradualism tends to privilege the middle class and wealthy at the expense of the poor, who are less likely to marry at all and less likely to stay married. There may, then, be equity considerations that a gradualist approach should consider. Still, as it is unlikely that public sentiment will support fully privatized marriage and the dramatic legal reform it would require, gradualism is the most feasible political option.

Privatization raises other questions as well. Libertarians themselves are conflicted regarding the nature of the public-private divide when it comes to marriage creation and dissolution, particularly when such relationships affect vulnerable children or create potential externalities like skewing sex ratios, as is potentially the case with polygamy. Libertarians who believe that marriage creates positive externalities might be content with eliminating incentivizing policies if disincentivizing policies are also eliminated. Most libertarians agree that the economic and social benefits of marriage are probably significant enough that it will persist without government incentives. Nonetheless, libertarians differ about whether, like other kinds of law, marriage law should remain codified and regularized by the state because marriage serves important economic and social purposes, or whether marriage law is fundamentally private in nature and can be dealt with entirely as private contract law.

Finally, and perhaps most foundationally, privatization raises questions about what marriage is for in the first place. A basic libertarian position might be that a marriage contract is any contract between two domestic partners for whatever purposes those partners choose. Some, like Posner, emphasize marriage's traditional role in channeling sexual behavior, limiting conflict, and providing for children (Posner 1992, 245). Others emphasize marriage's economic purposes, making it more like a domestic economic partnership and less like a contract for sexual exclusivity. Steve Horwitz, for example, has argued that capitalism has freed humans to create a variety of previously impossible family forms and that the functions families in general fulfill will continue to change over time (Horwitz 2015).² Contemporary marriage is a complex institution animated by a range of motivations, including sexual exclusivity, financial support and efficiency, shared reproduction and raising of children, and companionship. Marriage is most often a mix of some or all of these.

Consent, Contracts and Controversies

While the contractual nature of marriage is reasonably straightforward, both procedural and substantive approaches face questions of whether some kinds of contracts might be on their face invalid. Marriage itself requires different kinds of consent due to its overlapping functions. The

² See also Becker 1993.

age or capacity required to consent to sexual activity might be (and likely is) different from the ages at which one is able to consent to reproduce or parent. These, in turn, may be quite different from the age or capacity required to consent to a long-term economic and social contract that also encompasses sexual and reproductive decisions. Marriage, precisely because of what it often entails in terms of reproduction and childrearing, is a contract unlike others and may require the consenting partners to demonstrate greater capacities than other kinds of contracts.

Libertarians will disagree about what the ages of sexual, reproductive, and marital consent should be. Traditional societies, particularly in rural areas, allow marriage as early as age eleven or twelve, with the age of consent for marriage as low as fourteen in parts of the U.S. (Kershnar 2015). Procedural libertarians might default to something like a common law view of the age of consent, relying on the prevailing norms in a given society. Such a view would allow sexual activity within marriage to take place as early as age nine in some areas of the world. A substantive libertarian position might instead argue that consent in its robust sense requires certain psychological capacities that are not in evidence until closer to age 16 (or even later). Given that very early child-bearing is associated with physical harms, as well as the fact that most young girls in child-marriages are married to men much older than themselves, such marriages might be considered on their face coercive in a way that even easy divorce could not mitigate. This is particularly true since ease of divorce does not address what to do with vulnerable children. It is also, however, true that if sexual activity and reproduction are likely to occur regardless of marital status, there may be powerful reasons to formalize the arrangement with a contract to ensure, for example, that the male partner continues to contribute to child-rearing. Protecting the interests of girls and women, who bear more of the physical (and often other) burdens of reproduction, has always been a challenge in marriage law. As with most of what we discuss, there remain various tradeoffs in terms of protecting individuals in intimate relationships from force and fraud while also protecting intimate relationships from unjustified intrusions by the state. Some combination of parental consent, competency testing, and ease of exit may well be the best of many imperfect solutions.

Libertarians also disagree about a required age of marriage and the acceptable terms of marriage contracts in large part because the addition of children makes a traditional contract between two people difficult to apply. Children themselves usually cannot consent to be a part of a family, and so most marriage contracts assume the existence of unconsenting future members. More practically, a spouse may have strong incentives to remain in an abusive marriage to protect offspring, which challenges the requirement of freedom of exit. Children in general create a problem for libertarian theories, since they are dependent on the choices their parents make and vulnerable to coercion, but this is true for non-libertarian theories as well. Parenting will be discussed at length below, but the well-being of children and the importance of stable home lives for their development poses a potential concern especially for the procedural libertarian approach to marriage where marriage is a mere contract with no inherent substantive content.

Apart from the specific effects of marital instability on children, marriage as an institution creates externalities that merit consideration. Widespread polygamy (understood here as polygyny, the most common form), for example, may skew sex-ratios and lead to a socially destabilizing plethora of young unmarried males (Posner 1992, 258). Polygamous marriage has significant effects on socioeconomic status and economic mobility, potentially leading to

economic instability (Posner 1992). Marriage patterns also have considerable influence on opportunities for the sexes. Divorce and single-parenthood affect women disproportionately, with the highest rates of poverty occurring among unmarried women with children (followed closely by elderly women).³ Marriage patterns affect marriage markets broadly, leading to complicated economic and social effects that then impact broader patterns such as the replacement rate, which may also affect economic growth. Such externalities may, in turn, create a demand for state involvement, a clear concern for libertarians. While most libertarians do not believe these externalities are serious enough to merit state involvement, many libertarians do believe that beneficial forms of marriage (often with an emphasis on reasonably stable monogamy) are worth defending via social norms, customs, and persuasion.⁴

Another area of disagreement relates to how a marriage contract can be dissolved. Clear prenuptial agreements would presumably require little interpretation by courts, but more informal agreements or those where the character of the relationship has changed dramatically over time, may require extensive judicial interpretation and fact-finding. Indeed, some critics argue that privatization would increase government involvement in marriage given the need to interpret and enforce extremely diverse and increasingly complicated marriage contracts (Morse 2012). The rejection of customary marriage norms reduces predictability and may increase conflicts over child custody, spousal support and alimony, and division of property, particularly when more than two partners are involved. Polygamous marriages pose another challenge, as disagreements arise when one member wishes to divorce another but remain married to a third, and so on. Increasing the diversity of methods by which children enter families, including fertility treatments, adoption, and blended families of various kinds, will create additional friction, particularly as multiple partners create ever-more-complex legal and social relationships with the children involved. Such disagreements do not themselves entail state intervention, however, since interpretation of complex contracts and mediation of such disputes could also occur via private arbitration or other non-state mediators.

Finally, libertarians must be sensitive to coercion within marriages, including spousal abuse and violence. The state may legitimately be called in to the intimate sphere in cases of violence and coercion. What is less clear is how libertarians would deal with situations of emotional or psychological abuse that do not clearly rise to the level of legal force or fraud but look very much like it. Does the state have any responsibility to intervene in a relationship where a partner has exerted such financial, emotional, or psychological power or control over another partner that the latter can no longer effectively choose to exit? The libertarian approach to issues of gender in general remains an underdeveloped area (INSERT CITE FROM VOLUME). Some “cultural” libertarians might argue that marriage itself is inimical to freedom in some way or that the way marriage has traditionally been structured places undue burdens on women in particular, thus hampering their freedom. Such libertarians push the substantive argument, emphasizing the ways in which intimate arrangements may have even more of an effect on individual freedom than state-sponsored activity.⁵

³ Some argue that more egalitarian custody laws would mitigate some of these inequalities.

⁴ Paleolibertarians, for example, might argue for a more substantive understanding of the role of marriage in passing down norms and values crucial for a liberal society.

⁵ See, for example, “Are Property Rights Enough?,” *Reason.Com* (blog), October 20, 2009, <https://reason.com/2009/10/20/are-property-rights-enough/>.

Marriage Contracts in Practice

The complexity regarding how and when state involvement in marriage is justified manifests in debates about same-sex marriage and polygamy. Some libertarians argued that expanding marriage recognition to same-sex couples merely increases the power of the state when libertarians should instead support government neutrality toward all marriage; other libertarians argued that, since state-created marriage increases freedom, including legal decision-making for partners during crises, the state must extend that right to as many people as possible rather than restrict it on arbitrary grounds.⁶ Religious libertarians might claim that because marriage itself has an implicit religious meaning, other intimate contracts between consenting adults should not be called “marriage” even if they should be accepted as legally valid. Other libertarians instead emphasize the way marriage can help internalize the costs of private decision making (Posner 1992, 115).⁷ Regardless of their broader positions, all libertarians are committed to the recognition of legal contracts between consenting adults, including those that specify intimate and domestic legal rights and responsibilities, regardless of the gender of those contracting.

The libertarian approach to polygamy is relatively straightforward in this regard as well. Most analyses of the economics of polygamy, for example, find that polygamy will be less common in societies where the marginal contributions of men to their offspring are greater, such as complex societies that require intensive investment in education and where women are much more likely to work outside the home (see Becker 1993; Horwitz 2015; Posner 1992). Libertarians generally assume that widespread polygamy will be restricted to pre-industrialized societies or to very particular sectors of industrialized societies where men with excess wealth can support numerous wives and children. A substantive libertarian could argue that some kinds of polygamous marriage contracts are *prima facie* coercive, but so too are authoritarian monogamous marriage contracts. A more coherent libertarian position is that the state should restrict itself to prosecuting any actual force and fraud that results from any relationship, rather than focusing on particular forms of marriage that are likely to remain marginal and that may not in fact result in force or abuse of any kind. This position, of course, usually requires the added clarification that if the state removed itself from incentivizing or disincentivizing marriage via tax and welfare laws, individuals in polygamous communities would be less likely to be able to abuse the system and the women in these marriages would be better protected than in the current system where their marriage is ostensibly outlawed but ignored in practice (Posner 1992, 357).

Criticisms of the Libertarian Approach

Some critics, such as conservative libertarian Jennifer Morse, reject any application of libertarian principles to the family, arguing that both as a unit and as a foundational institution, family cannot be understood on mere contractarian terms (Morse 2012). Moreover, in allowing total flexibility in marital contracts, the state would then be called upon to construct parental relationships in custody disputes, placing even more power in the hands of family courts and the

⁶ For the latter, see Horwitz 2015, 243–48.

⁷ See also Becker 1993 and 2009 and the Becker-Posner Blog, <https://www.becker-posner-blog.com/2008/08/should-gay-marriages-be-allowed-becker.html>.

state broadly. Morse argues that family law and marriage must be viewed by libertarians as akin to property law: part of the framework on which all other systems rest.

Conservative libertarians are less comfortable with a simple contractarian view of marriage precisely because marriage serves crucial public functions, such as the raising and educating of children and care for the elderly, and also has profound effects on distribution (through education and inheritance) and social and economic stability. From an educative standpoint, libertarians may very well have a stake in incentivizing stable families that are best able to support the development of stable citizens. Furthermore, feminist critics might argue that a totally private approach to marriage could place people, particularly women, in isolated situations more at risk. Women raised in authoritarian families in isolated areas may not be able to access the protection of the state or freedom of exit even in (or especially in) cases of serious abuse or fraud.⁸

B. Children

When two (or more) people marry, they may consider raising children. For this reason, many of the controversies that attend marriage spill over into the areas of reproduction and childrearing. Even more than marriage, libertarian attitudes toward children and parenthood tend to be both diverse and under-developed. As already noted, standard political philosophy pays unfortunately little attention to children—to their interests, their rights if any, the role they play for specific others, or the role they play in broader society. When it is discussed, the standard view involves a triadic relationship: children-parents-community (for some, society or government may occupy the third place). Unsurprisingly, the standard libertarian view displays a lesser concern with the third part of that triad. For libertarians, groups themselves have no value apart from the value of or to the individuals, so it is the children and parents that take center stage. Libertarians, like everyone else, realize that this is a relationship based on need.⁹ Children cannot survive on their own when they first come into the world — and for some time after that — so need others to protect them and, hopefully, promote their well-being.

Reproductive Freedom

The first question is whether to have children in the first place. Libertarians generally agree on issues like birth control and sterilization: the decision to reproduce or not rests entirely with the individual and state coercion, either for or against reproduction, is unjustified.¹⁰ Libertarians also agree that because the burdens of pregnancy and childbirth fall so heavily on women, the decision about whether to become pregnant or not rests entirely with the woman, despite the interests a particular man might have in reproducing in general or with a particular woman (as in the case of a committed partnership).

⁸ See Okin 1991.

⁹ See, for example, Schmitz 2006, Part V.

¹⁰ See McElroy 2002 for a collection of essays on the topic.

The question of abortion is more complex. The majority of libertarians agree that abortion must remain legal and easily accessible in order to preserve women's bodily autonomy.¹¹ Many libertarians, however, raise concerns about the personhood of fetuses at various stages of development. Walter Block argues that a woman's right to abortion is absolute until the point of viability (around 24 weeks) because, until that point, an unwanted fetus is "trespassing" on the woman's property. At viability, however, the woman has a moral duty to deliver the baby if someone is willing to step in and adopt (or homestead) the infant (Block 2014).¹² Sean Parr counters Block's "evictionism" with a theory of "departurism" that argues that the personhood of a fetus requires a mother to allow a fetus to depart the womb in a gentle way consistent with fetal quality of life (Parr 2013).¹³ Other libertarians may worry that such views would, by parity of reason, compel involuntary landlords to allow unwanted tenants (squatters) to remain until they can be gently pushed out and maintain *their* quality of life. They may thus favor a more absolute right to abortion. Jessica Flanigan has argued that the right to abortion extends to other decisions pregnant women make, including potentially injurious behavior like drug use, thus limiting the power of the state to intervene in any pregnancy for any reason (Flanigan *forthcoming*).

There are competing views about the foundations of libertarianism and a rights-based libertarian may come to very different conclusions about abortion than a consequentialist libertarian would, and a libertarian committed to the non-aggression principle may run up against conflicts with libertarians who believe that a person's body is their sole property.¹⁴ There are too many nuances to the libertarian position on abortion to go into more detail here, but what all libertarian positions about abortion share is a belief that state authority in this area must be carefully circumscribed due to the potential for abuse and unintended harm. One could be a consistent libertarian who believes that fetuses are persons but that state interference with most abortions is unjustified. Abortion represents a uniquely difficult case for libertarians precisely because pregnancy is the only (common) situation in which two humans inhabit the same body, which creates obvious difficulties for a doctrine usually defined by a methodological individualism that assumes individuals are separable.

Locke, Individuals, Community

Once children exist, libertarians must account for them. As with marriage, John Locke's approach provides a model for thinking about children and parents' responsibilities to them. In *The Second Treatise*, Locke notes that children are not equal to their parents, that they must rely on their parents or others to care for them, and that they are incapable of consenting to (and thus, for Locke, being subject to) the authority of another. They are, in a nutshell, "produced ... ignorant and without the use of reason" (§ 57). Guardians have an obligation to raise children to become rational and capable of consent (§ 61), at which point the guardian's right to command

¹¹ See McElroy 2002 for McElroy's essay in support of an unqualified right to abortion.

¹² Given the health risks associated with pre-term birth, Block's approach may not be compelling for most people.

¹³ See also "Abortion & Libertarianism: Nick Gillespie, Ronald Bailey, Mollie Hemingway, & Katherine Mangu-Ward," *Reason.Com* (blog), May 26, 2013, <https://reason.com/video/libertarian-perspectives-on-abortion-w-r/>. Block and Parr's discussions, like much of the contemporary debate about abortion, benefits from Thompson 1971.

¹⁴ See Tabarrak 2002 for an individual sovereignty position.

the child ceases (§65, 67). The decisions of her parents cannot bind her; only her own autonomous decisions do so. Should she choose to accept the benefits of her community (the community of her family, church, location, or what have you), she is obligated to abide by its norms. Should she choose not to, she is not.

Libertarians recognize that community is important, but insist this is because (and *if*) community is good for individuals (Cohen 2000). Some believe this is shown by the fact that individuals choose to remain in community; others may believe it due to what community contributes to individuals becoming what they are or how it helps provide necessities. The idea that libertarians think of individuals as isolated atoms is a myth. Most accept Locke's claim that man is naturally "such a creature, that in his own judgement, it was not good for him to be alone" and thus has "strong obligations of necessity, convenience, and inclination" that "drive him into society" (§ 77).

Stewardship or Propertarianism, Not Best Interests

Locke's view is a *stewardship* view. Parental guardians are responsible for stewarding the children they raise into adulthood, at which point, the adult children are responsible for themselves, free to choose with whom they associate. The stewardship view entails that parents have rights over their children and includes a clear explanation as to why those rights are in place—to help the children become rational adults. The children's interests are primary: the rights parents have over their child are for the benefit of the child. This adheres nicely with the contemporary view that it is the interests of the child that should dictate what parents and other guardians can permissibly do to and with children. It does not require, on the other hand, that parents or others seek to determine what is in the "best interests" of the child, thereby eliminating an impossibly demanding requirement. The interest in question is simply the interest we assume all persons have in becoming rational and able to consent, thus able to engage in mutually beneficial relationships with others.

There are at least two important reasons libertarians are unlikely to endorse a view that requires pursuing the best interests of a child. First, it is not clear what the best interests of any particular child would be. These could be the actual interests the child has, including interests in unhealthy foods and activities, or they could be the interests the child would have if the child were fully rational. Those interests—hypothetical or ideal interests—would likely be conceived of as the interests that would lead the child to become a certain type of adult. But is that the type desired by the child, by the parent, or by some group the child is a member of? The first option reduces the hypothetical best interest of the child to her actual interest. The second and third ways of interpreting hypothetical interests reduce the best interest of the child to the *actual* interests of someone else. This approach is problematic as even the most enlightened parent or community has limited knowledge and may desire a variety of outcomes that are incompatible with a specific child's goals, talents, or wellbeing.¹⁵ Of course, libertarians all reject the idea that individuals must be raised in specific ways to serve the needs of the community.

¹⁵ For non-libertarian discussions, see Feinberg 1992, Fineman 2003, and Mills 2003.

Libertarians (and others) are also unlikely to endorse a view that requires pursuing the best interests of a child simply because doing so may be extremely demanding. If a child's best interest is (somehow) determined to be studying piano to become a world class concert pianist, but the parents have no savings and only earn \$15,000 per year, providing for the best interest would be impossible or at best unbearable. Parenting should not be—and is not usually—unbearable.¹⁶

While libertarians would reject the claim that parents must provide for the *best* interest of the child, all accept that the interests of the child matter. (How could they not?) The stewardship approach, as noted, insists the child's interest in gaining reason and the ability to consent be protected and promoted by their guardians. This is also thought by many libertarians to undergird much of what provides for a good life. The individual needs reason not only so that they can autonomously consent, but also so that they can have rational preferences.

A different view of the parent-child relationship is sometimes associated with libertarians: propertarianism. According to propertarians, parents have ownership rights over their biological children and perhaps over those they adopt.¹⁷ If a parent has ownership rights over a child, the parent can contractually sell the child to another, simplifying adoption in the same way marriage law would be simplified by privatization. Of course, on this view, the adopting parent—as contractual buyer—gains property rights over the child by purchasing him. This is in sharp contrast to all of American family law and much family law elsewhere.

Given the history of ownership of persons of African descent in the American context, propertarianism has a political hurdle that makes it unlikely to gain traction. This may be unfortunate as propertarians may be able to provide defense of their view, including defense of a specific form of property under consideration, explanation of how a child goes from being property to not being property, as well defense of when it would be impermissible to have property in another. With that, propertarianism may have advantages over the stewardship model, including simplifying the adoption process, itself in need of reform. In a global system where adopting an infant regularly costs between \$30,000 and \$60,000 (domestically or foreign),¹⁸ we have far too many children growing up in orphanages and then released with little means of survival. With liberalized laws allowing for more straightforward transactions, this problem might be significantly reduced. In short, interests of children themselves might well be served by a propertarian approach.¹⁹

A difficult question, for both stewardship and propertarian approaches, is what might be called the particularist problem: why does *this* particular adult have a relationship, with rights over *this*

¹⁶ See Blustein 1979 for non-libertarian agreement.

¹⁷ See Rothbard 2002, e.g., for the claim that parents ownership of their children is not a claim of simple ownership the way one owns, e.g., a toaster. The parent, on this version of propertarianism, is more of a trustee for the child with guardianship rights. Those interested in this should also see chapter 4 of Susan Moller Okin's *Justice, Gender, and Family*, where she argues against Nozick's libertarianism.

¹⁸ For one approximation of the costs, see https://www.americanadoptions.com/adopt/the_costs_of_adopting.

¹⁹ There is a worry that such a system would facilitate a child sex market; we believe there are factors that can at least partially mitigate this.

particular child.²⁰ The libertarian answer to this question tends to be the conservative answer: because *this child* was born to *this adult*. (That, of course, is meant by conservatives to include both mother and father, despite the difficulty of determining the father and despite the fact that there may be no male figure present.) Successful substantive defense of this claim—that parental rights are essentially based on the biological (likely, genetic) relationship—has not, thus far at least, been brought to light. This is not a libertarian issue; *no one* has offered a well defended answer to the question. Some have argued that all parents should be licensed (LaFollette 1980 and 2010); this would provide an answer to the particularist problem—the adult or adults licensed by the state to raise a child would have the requisite relationship with, and rights over, that child. Parental licensing is widely rejected, but it is especially frowned upon by libertarians who are likely to see it as another attempt to expand state power over individuals. Nonetheless, one of us defends it on the grounds that the only (or main) purpose of the state is to protect people from harm and such a program would not only protect children from abuse as they are raised to adulthood, but would also prevent harms these children might themselves cause others when they become adults (Cohen 2017).

One question that divides libertarians is the moral status of having children in the first place. Most libertarians would argue that no one has a duty to bring a child into the world, though the issue of abortion remains vexing (see above). Some have argued that having children in the first place is a violation of consent since no child can consent to be born, and some have argued that no child would consent to be born into a world of climate change, global pandemics, and economic precarity.²¹ Propertarian and stewardship advocates might approach such “anti-natalism” by arguing, on the one hand, that property does not need to consent to be brought into existence or, on the other hand, that existence is a predicate to stewarding. Libertarian advocates of either view might also argue that having children is a morally good act both for the child and for the rest of the world, since with more people, innovation and economic growth are stimulated.²² Either way, both versions would avoid the requirement of consent to exist, which is obviously impossible.

Society and Schooling

Regardless of the proper understanding of the relationship between parents and children, as noted, all agree that children need to be cared for. Part of that care is clearly education. Children, we are taught, need to go to school. That last claim is often challenged by libertarians.

Society, we are told, needs to reproduce itself.²³ Unsurprisingly, non-libertarians thus claim the state needs to have some control over how children are raised. More clearly—but not always meant synonymously with the claim of necessary societal reproduction—people in society need for children to grow up and take on important roles. We need to replenish the supply of medical

²⁰ See Rothbard 2002, Chapter 14 for discussion.

²¹ For the anti-natalist view, see Benatar 2006.

²² See, for example, Caplan 2012. Lyman Stone and Jessica Flanigan have made similar arguments in public talks. See Lyman Stone’s discussion at “The Global Fertility Crisis,” *National Review* (blog), January 9, 2020, <https://www.nationalreview.com/magazine/2020/01/27/the-global-fertility-crisis/>.

²³ See, e.g., Galston 2001 and Gutmann 1999.

professionals, carpenters, factory and farm workers, etc. Without a supply of new people taking on these and countless other roles, our society would atrophy. The state, we are told, thus needs to impose rearing and schooling requirements.

Libertarians, of course, will not agree that the need we all have for doctors or plumbers (or any other service provider) creates obligations on anyone to bring children into the world or to raise children to fill specific roles. Still, libertarians can and do agree that raising a child to reason is likely to produce productive members of society. The idea is simply that with reason, individuals can autonomously choose how to lead their lives and that leading one's life with reason likely involves providing value to others in exchange for value to oneself. The obligation is not to society, on libertarian views, but to the child or the parent herself. If there is an obligation to the community or broader society, libertarians will insist, it must be the parents' voluntarily agreeing to the group and its norms that make such ostensible duties real. For her part, the child cannot have an obligation regarding her adult role to anyone until she is of age to consent. She may, though, have a moral obligation to herself or her parents. Indeed, a standard part of the stewardship view is that children are obligated to not interfere with (on some views, also to help) their parents raise them to the age of reason and consent.

*The education requirements—perhaps not via schooling—that non-libertarians would impose vary. Some argue for mandatory attendance at state run schools.²⁴ Others accept that privately run schools can meet the same sorts of demands as state schools and may offer more. Still others accept that home schooling can suffice. Libertarians might be thought of as providing an inverse view. Home schooling might be the first choice for many, with privately run schools as a clear and useful option, and state mandated schools as simply unacceptable (for reasons discussed below, some might accept state schools if optional). The first two respect individual choice; state schools can do so only if they are optional.²⁵

Some libertarians might take an extreme view that imposing schooling on a child who expresses a desire not to be schooled is unacceptable. Such (generally non-academic) libertarians might favor either no imposed schooling or, more likely, an “unschooling” approach where the child chooses what she wants to learn and investigates the topic on her own, though she is free to ask for assistance (Illich 1970; Goodman 1964; Holt 2013). Most libertarians, however, realize that school age children are incapable of the reasoning needed for consent to schooling, just as with healthcare. They would say that parents—as rightful guardians—should decide for the child (perhaps, using the stewardship approach, as this is for the benefit of the child).

On the stewardship model, the reason parents are empowered to decide for the child is as noted above: parents are obligated to raise children in such a way that they develop reason and the ability to take care of oneself. This is an obligation *to the child*. The propertarian model can follow a similar line of reasoning, though complicated by the fact that the child is a form of property. Some would insist that we can have obligations to certain forms of property (e.g., an obligation not to torture a puppy); some would claim the obligation is to oneself as a parent (e.g.,

²⁴ In practice, the U.S. Supreme Court ended this in its unanimous 1925 decision in *Pierce v. Society of Sisters*.

²⁵ For a statement of a libertarian view that there should be no state involvement in education see Rogge and Goodrich 1973. See also Richman 1995.

to be a good parent); still others would insist the obligation is not to the child qua child, but the child qua adult the child will become. The exact obligation, under any formulation, is also a subject of contention.

The basic idea that children must be educated so as to be able to provide for themselves masks difficult questions: what sort of education? How much of an education? In what setting? By whom? These are questions where libertarians again have disagreements about how to draw the public-private divide. On one view, none of these questions should be answered by the state. On another view, closely associated with John Stuart Mill, the state has the authority to impose minimal requirements of education though it does not have the authority to impose *schooling* at all (see Mill 1859, 104 ff). Mill's claim is that the state can impose exams that citizens must be able to pass, though *how* they learn what is needed to pass the exam is left to parents. Some might accept government imposition of a civics exam that ensures citizens can participate in their own government or minimal examinations in mathematics and reading to ensure that children can both participate in their governance and provide for themselves. Central to the view, though, is that making school attendance mandatory (whether with state schools or not) is more invasive than a requirement that parents ensure children have some adequate level of learning needed to live on one's own.²⁶

We should be clear about why mandating attendance in state run schools is universally opposed by libertarians: such a mandate impedes the freedom either of the child or, more likely, the child's parents. There is also a concern with the sort of social conformity that would be encouraged if all children were required to attend state run schools. The worry is straightforward: a state education system would be naturally allied with the state itself, and thus encourage—indoctrinate—students to believe what the state's agents say, to follow all of the state's laws (just or unjust), and to never question the state's authority.²⁷ Such conformity is naturally inimical to libertarians for good reason. Libertarians—as advocates of market power to improve the lives of everyone—insist that diversity of beliefs, skills, and ways of living are what make markets work. If we all have the same skill set, we will produce limited goods and services.²⁸ Diversity allows and encourages greater and more efficient productivity; conformity does the reverse. On Millian lines, we also want diversity of thought so as to encourage discussion amongst the citizenry who would thus be better situated to contribute to political rule. Opposing views, Mill argues, force us to improve our own thinking and this allows us to better publicly discuss how the state should operate.²⁹ This is a clear reason to favor education, though not a clear reason to favor *uniform* education.

Bleeding heart libertarians,³⁰ perhaps alone amongst libertarians, are likely to champion school vouchers for those who would otherwise be unable to provide their children an education.³¹

²⁶ See Currie-Knight 2019.

²⁷ See Smith 1982, esp. 124 ff.

²⁸ See Smith 1982, 128 ff, Mill 1859, 35-36, and Muldoon 2017, chapter 5.

²⁹ See Mill 1859, chapter 2. See also Cohen 2014, 136-140.

³⁰ See www.bleedingheartlibertarians.com and Cohen 2020.

³¹ The idea originates with Milton Friedman, but is largely ignored by other libertarians. See Friedman 1955. Murray Rothbard took issue with this in his 2002. See also West 1994. Ayn Rand interestingly advocated for education tax credits in her 1990.

(Some bleeding heart libertarians might prefer this be universal, or might even prefer a universal basic income.) The voucher would presumably be enough to allow the parent to afford a decent school, even if not the best. What makes vouchers superior to state run schools is straightforward: it takes advantage of the difference between the state *paying* for schools and the state *running* schools. It is the latter that necessarily encourages conformity; the former would only do so if the state limited funds to schools that accepted state rules about what should be taught and how. Because vouchers could be used at schools that teach different views and topics, and that teach using different methods, parents would be able to choose a school that best suits their needs and those of their children.

Consent and Other Issues

If children were able to reason well enough to be able to consent to schooling (or lack thereof), much of the difficulty just discussed would disappear. That same inability to consent undergirds other difficult questions. Questions of medical ethics are the most common. Should parents have infants circumcised when the child obviously cannot consent? Should parents force a child to undergo an elective surgery the child fears? What about non-elective and lifesaving surgery? Or medicine the child hates?

Current controversies over cochlear implants for deaf children and the more recent debate over parental consent and sex-reassignment surgery for transgender children create even more complicated dilemmas, though in both cases the debate is too new and the science too unsettled for a libertarian consensus to have emerged. The age and capacity of the child to consent may be the most relevant factors in accepting or overriding parental decision-making, particularly by third parties. Libertarians like Ronald Bailey argue that parents can and do make a variety of permanent and irrevocable medical decisions for their children, including vaccination, cochlear implants, IVF to choose children with various traits (including sex or deafness), and even genetic enhancements of various sorts. Bailey takes the perhaps most common libertarian position that most parents can be trusted to make decisions that will support their children's growth into autonomous individuals and that state intervention is only justified in rare medical situations (Bailey 2009). These issues comprise another area libertarians would do well to investigate further.

Conclusion

The family creates a range of challenges for libertarian thinkers, from questions of what constitutes consent, to what kind of activity is truly public or private (and whether that divide is or should be impenetrable), to questions of gender and autonomy, to the status of dependent children in a philosophy predicated on rationality and autonomy. Greater attention to these issues will help clarify the range of social policy positions libertarians might take, including those that require state involvement to protect dependent individuals. This exploration can and should move outside of the discussion of the family to incorporate a wider set of concerns dealing with dependency, child-rearing, education, disability, and the range of ways in which private relationships might legitimately require state or, at the very least, community attention.

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