

DEVELOPING AUTONOMY AND TRANSITIONAL PATERNALISM

(This is the final version sent to publisher after peer review)

ABSTRACT

Adolescents, in many jurisdictions, have the power to consent to life saving treatment but not necessarily the power to refuse it. A recent defence of this asymmetry is Neil Manson's theory of 'transitional paternalism'. Transitional paternalism holds that such asymmetries are by-products of sharing normative powers. However, sharing normative powers by itself does not entail an asymmetry because transitional paternalism can be implemented in two ways. Manson defends the *asymmetry-generating* version of transitional paternalism in the clinical context, arguing that it maximises respect for adolescent autonomy. This paper offers an alternative argument in favour of the asymmetry-generating form of transitional paternalism, one that makes appeal to obligations that individuals have to *develop* self-governance in others. We should share normative powers asymmetrically in the clinical context for three reasons. First, the asymmetric version of transitional paternalism takes seriously duties to support adolescents' developing autonomy, alongside other duties that adults have to young people. It does so by enabling young people to be involved in important decisions that they would otherwise be excluded from. This is of value because participation of this sort is central to the cultivation of their self-governance. Second, only the asymmetric version gives young people a voice in respect of *all* clinical actions, and only the asymmetric version leaves open the possibility that the coarse

lines of legislation might be 'fine-tuned' in individual cases. Third, the asymmetric sharing of normative powers is consistent with the kind of social arrangements that best support autonomy.

1. THE BACKGROUND

In England, minors under the age of sixteen, who are considered 'Gillick competent',¹ are able to consent to medical treatment; consent by a person with parental responsibility is not necessary. An adolescent, aged sixteen or seventeen, is able to consent to medical treatment and has the right to refuse treatment. However, if an adolescent refuses, and when a refusal could reasonably lead to death or severe permanent injury, a court can overrule their decision. As such, adolescents can *consent* to medical treatment, but, in some cases, their decision to *refuse* medical treatment is not normatively significant. This asymmetry may appear to be incoherent, and we might ask why we offer adolescents this choice at all.

Previously, attempts have been made to explain and justify asymmetrical consent in the clinical context by appealing to a person's competence.² In the clinical context we are talking about a person's

¹ The legal case *Gillick v West Norfolk and Wisbech Area Health Authority* (1985)

² See, for example: I. Wilks. The Debate Over Risk-Related Standards of Competence. *Bioethics* 1997; 11: 413-426; I. Wilks. Asymmetrical Competence. *Bioethics* 1999; 13: 154-159.

decisional competence; that is, their ability to 'comprehend, deliberate, decide and communicate one's decisions.'³ Competence accounts argue that, even though a person may be competent to consent to a clinical action, they may not be competent to refuse a clinical action when a refusal is risky. Whether or not there are successful arguments for justifying asymmetrical consent in other contexts in terms of competence, I believe we can put these to one side when considering asymmetrical consent in *adolescence*.⁴ When we ask adolescents to consent to a clinical action, what we are actually saying is, 'you may consent to the clinical action, or you may refuse the clinical action. However, we might overrule your refusal when a refusal is too *risky*.' An adolescent's decision to refuse treatment is likely to be overruled when the refusal puts their *welfare* at risk. Therefore, considerations of welfare, and not competence, appear most salient in decisions to overrule refusal of a clinical action by an adolescent. Any account that aims to explain and justify the asymmetry in the adolescent case should

³ N.C. Manson. Transitional Paternalism: How Shared Normative Powers Give Rise to the Asymmetry of Adolescent Consent and Refusal. *Bioethics* 2015; 29: 68.

⁴ It has been argued that there are problems with asymmetrical competence in general. See *ibid*. Also see C.M. Culver & B. Gert. The Inadequacy of Incompetence. *Milbank Q* 1990; 68: 619-643, who argue that a person's competence to decide in favour of, or against, an action is *symmetrical*. In order to properly deliberate and decide in respect of a clinical action, they must be able to weigh up the effects of having the treatment *and* not having the treatment. As such, a person who is competent to decide to consent to a treatment must also be competent to decide not to have a treatment.

take these concerns seriously. This may well make the adolescent case distinctive from adult cases of asymmetric consent in the clinical context, but it is outside the scope of this paper to discuss this here.

The aim here is to provide an explanation and justification of the asymmetry that takes seriously the concerns that we have for adolescents' welfare, and their developing autonomy. The focus of this paper is, therefore, the developmental context in which we find this particular asymmetry, and the nature of and grounds for a period of *transitional paternalism* during adolescence.

2. THE DEVELOPMENTAL CONTEXT AND TRANSITIONAL PATERNALISM

Adolescence is the intermediate period between childhood and adulthood during which an individual undergoes many emotional, psychological, physical and social changes. Adolescents are at a time in their lives when they take on more responsibility – and are *expected* to take on more responsibility – and increasingly acquire authority over areas of their own lives. During this time it becomes unclear in what circumstances adult paternalism towards young people is justifiable.

Neil Manson argues that asymmetries between consent and

refusal arise when normative powers are shared.⁵ The asymmetry of adolescent consent in the clinical context can be explained and justified if we can justify a period of transitional paternalism, a time when normative powers are shared between adolescents and others. Transitional paternalism is a staged transition from the paternalistic normative framework that governs childhood, to the much less paternalistic liberal normative framework governing adulthood, and responds to the question of how we balance welfare interests and autonomy interests during this transition period. Manson accepts transitional paternalism in the clinical context, noting that 'other paternalistic restrictions on adolescent autonomy are 'staged'.⁶ Manson states that:

...if we accept paternalistic restrictions for adolescents (and adults!) in areas where any harm is unlikely to be fatal, at least in the short term, we should not reject paternalistic restrictions in cases where the risk of serious harm to the adolescent is clear and imminent.⁷

Manson's argument is that since we accept paternalistic interventions (even with adults), and since we accept shared normative powers in other contexts, there are no *a priori* reasons for rejecting transitional paternalism in the clinical context. But even if transitional paternalism

⁵ Manson offers the example of a shared bank account. Both parties have the power to consent to a transaction, but in the event that one party refuses a transaction, the other party can still consent. See Manson, *op. cit.* note 3, p.69.

⁶ *Ibid.*: 72.

⁷ *Ibid.*: 72.

is justified, it does not, by itself, entail an asymmetry between consent and refusal. Transitional paternalism can be implemented in different ways.

On version A, the *symmetrical* version of transitional paternalism, the adolescent has her own *unshared* normative power. She can consent to or refuse a wide range of clinical actions. For these actions, the adolescent's normative power is *symmetrical* in that both consent and refusal are normatively effective. For a narrower set of clinical actions, those with the risk of severe harm or fatality, she has no normative power at all, and is not able to either consent to or refuse treatment.

On version B, the *asymmetrical* version of transitional paternalism, the adolescent has the power to consent to *any* clinical action. However, for a narrow set of clinical actions, those with the risk of severe harm or fatality, another party holds the power to consent to treatment when the adolescent refuses it herself. On this version, the adolescent's normative power is therefore *asymmetric*. Manson argues that the *asymmetric* version of shared normative powers is justified in the clinical context because it maximises respect for adolescent autonomy at the moment of decision. That is, it maximises the degree of control that the adolescent has over what is done to her.⁸

Like Manson, I believe that transitional paternalism in general can offer an explanation for the sharing of normative powers during

⁸ Ibid.

adolescence. However, Manson's arguments in favour of asymmetric transitional paternalism are largely negative – there is no good reason to reject it. There is, I will argue, a stronger positive argument in favour of transitional paternalism, grounded in features of adolescence that Manson does not attend to. By returning to the justification for a period of transitional paternalism *in general*, this paper provides positive arguments in its favour, based on duties that adults have to cultivate children's self-governance. This yields alternative reasons for preferring the asymmetrical version of transitional paternalism in the clinical context, that balance adolescents' welfare and autonomy interests at the moment of decision, *and* their distinctive interest in becoming self-governing in the long run.

Drawing on the work of Tamar Schapiro, I argue that adults have obligations to promote and protect children's fundamental interests, including children's distinctive interest in becoming self-governing. The intermediate step, between a time when an individual has no normative power and a time when they have unshared normative power, prepares young people to be able to take on increased normative powers in adulthood. By way of analogy, it could be useful to think of these two periods of life – childhood and adulthood – as games that have different rules and require different skills to participate. In the 'game' of childhood, the rules are distinctive and individuals lack the power to make normatively significant decisions in respect of certain choices. But, as the child matures and becomes an adult, her decisions become more normatively significant in the adult 'game'. This transition

accounts for the acquisition of the minimal negative conception of autonomy that Manson draws upon in his account. As children become adults there is a shift in whose 'say-so' is effective. Although this captures our intuitions about *some* aspects of development, this raises the question of how young people acquire the *skills* needed to play the adult game. How can we account for the development of a more robust conception of autonomy, something like self-governance, agency, or the ability to act on choices that are our own?

3. JUSTIFYING TRANSITIONAL PATERNALISM

The sharing of normative powers during adolescence in the clinical context is one example of transitional paternalism. To *justify* the *asymmetric* sharing of normative powers, Manson argues that respect for adolescent autonomy at the moment of decision is maximised on this version. By probing more deeply into *why* and *how* we ought to gradually roll back paternalism, and furthermore, what is at stake for young people during this transition, we find that the phenomena and practices under discussion are more complex than Manson describes.

Transitional paternalism, as presented by Manson, takes welfare as its starting point and focuses on the change in normative powers that make actions permissible during adolescence. There *ought* to be a difference between the normative powers that a child has and the normative powers that child goes on to acquire during adolescence and

in adulthood. How we justify paternalism in childhood and go on to justify a period of transitional paternalism in adolescence is fundamental to understanding *why*.

To properly justify a transitional paternalistic period between childhood and adulthood, we must first attend to a justification of adult authority during *childhood*. At a fundamental level adult-child relations are underpinned by a 'paternalistic attitude'. This is the thought that children:

...can be compelled to go to school, live with their parents, and take nightly baths, purportedly just because they are children, and because these measures are for their own good. Moreover ... their voices are accorded at most "consultative," and not "authoritative" force.⁹

It seems that we accept our paternalistic attitude towards children because they are deficient in reason and not yet able to govern themselves.¹⁰ Until they have sufficient reason, and are capable of governing themselves, we have legitimate concerns for children's welfare. However, in an effort to satisfy the concerns of deep liberals who might find this justification weak,¹¹ Schapiro goes beyond these

⁹ T. Schapiro. *Childhood and Personhood*. *Ariz Law Rev* 2003; 45:576.

¹⁰ *Ibid*.

¹¹ For example Howard Cohen, who, Schapiro notes, holds the view that the fact that children might make choices that are bad for them has no bearing on their right to

prima facie concerns. Her task is not to justify individual acts of paternalism towards children, but to justify 'a general practice which sanctions an asymmetrical distribution of authority between occupants of different positions.'¹² I draw upon Schapiro here, as her account provides reasons for accepting adult paternalism towards children, aside from welfare considerations. These reasons can be developed to justify a period of *transitional* paternalism.

Rather than arguing that a child's lack of reason means she is unable to make good choices, Schapiro argues that her lack of reason means the child is unable to make her own choices, *whether good or bad*.¹³ In Schapiro's words, the claim is 'despite appearances to the contrary, there really is no will there, or rather, that the will that purports to be there is not intact or well-constituted.'¹⁴

Schapiro presents an argument for paternalism from attributability. A choice is genuine when it is an agent's *own*, and it must be attributable to them in the relevant way; though a choice may be attributable to a person in the sense that they *produce* the action, it might not be attributable to them in the *normative* sense. The normative sense is 'to identify myself with it, in the sense of claiming

make choices for themselves. See H. Cohen. 1980. *Equal Rights for Children*. Totowa, N.J.: Rowman & Littlefield.

¹² Schapiro, *op. cit.* note 9, p.579.

¹³ *Ibid.*

¹⁴ *Ibid.*: 584. Schapiro claims that we tacitly appeal to this claim when we defend our paternalistic attitudes towards some adults, for example the mentally ill.

representation by it and taking responsibility for it.'¹⁵ When an action is attributable to me in this normative sense, I am the 'author' of that action. Paternalism towards another person is only justified when that person is unable to 'author' her own actions. For Schapiro, there is an imbalance in status between adults and children. Childhood is a 'liminal stage during which a person is still on the way to constituting herself as a source of activity in the normative sense.'¹⁶ Children are on their way to *becoming* self-governing, and adults have a duty to help them work their way out of childhood.

According to Schapiro, adult authority is only preferable to children's own instincts insofar as it does a better job of protecting her interests. As stated, the paternalistic attitude that adults hold towards children *appears* to be justified by concern for children's welfare and the thought that they are as yet unable to *choose well* for themselves. However, considerations of *proficiency* in decision-making only appear most important because considerations of *attributability* are already settled.¹⁷

Adult paternalism towards children can only be justified if:

- 1) Children are still on the way to constituting themselves as a source of activity in the normative sense.
- 2) Adults do a better job of protecting and promoting children's fundamental interests than children's own instincts.

¹⁵ Ibid: 586.

¹⁶ Ibid: 589.

¹⁷ Ibid.

Importantly, these conditions are supplemented by the claim that among the fundamental interests that children have is *a distinctive interest in becoming self-governing*. Accordingly, adult authority can only be justified when it protects and promotes children's interests better than children's own instincts, and it can only be compatible with autonomy if its goal is the promotion of the child's capacity for self-governance in the long run.

Manson's account of the acquisition of normative powers during adolescence is framed in terms of balancing welfare interests and autonomy interests. In contrast, Schapiro's depiction of adult-child relationships encompasses children's *developmental*-autonomy interests, and highlights the duty that adults have to help children become self-governing in the long run. As children become adolescents, they get closer to being self-governing agents and, therefore, paternalism ought to be *gradually* rolled back. However, they have not yet completed the task of becoming self-governing, and adults still have duties to discharge towards adolescents. Accordingly, adult-adolescent relationships are not yet fully reciprocal and adolescents ought not to be treated like adults. The best justification of a period of *transitional* paternalism in general is the obligations that adults have towards children and young people to protect and promote their interests, in particular children's distinctive interest in becoming self-governing.

4. THE GENERAL PRACTICE OF TRANSITIONAL PATERNALISM

So far I have argued that the best defence of a period of *transitional* paternalism in general is the duty that others have to foster children's self-governance. In this section I will offer some exposition of the general practice of transitional paternalism. Out of the discussion at a general level, we can draw guiding principles for transitional paternalism. The intention of the remainder of this paper is, therefore, to reveal which considerations are involved in judgments of transitional paternalism in general, what guiding principles we might draw, and how these guiding principles might inform our practice in the clinical context specifically.

a) What is autonomy and why does it matter?

In its simplest sense, autonomy is about a person's ability to act on her own values and interests. In Manson's minimalist negative sense, this means that individuals have an obligation of non-interference with other's choices. However, looked at psychologically, autonomy is made up of a set of skills and attitudes. Relevant skills include the ability to reason, to appreciate different points of view, and to debate with others. In order to do these things, and make known her choices, the autonomous person must have a sense of self-worth and self-respect. Self-knowledge is also important, including a well-developed understanding of what matters to them. Many of these requisites for autonomy develop, or can be stunted, during adolescence. To develop autonomy in this sense, a person needs the opportunity to consider

meaningful alternatives. This depends on dialogue between persons as we often learn about ourselves through others' responses, and it is easier to reconsider our values when we hear other people's reasons and encounter other ways of looking at the world. Therefore, the kinds of skills and attitudes that are compatible with autonomy are not developed in isolation from the world, or other people.

Autonomy matters when adolescents make choices, including in cases where adolescents have to make important decisions about medical procedures. Since adults have obligations to young people, it is important that we protect young people from making 'bad choices', that is choices that have bad consequences for them. However, if we are to promote adolescents' distinctive interest in becoming self-governing agents, we must also foster their capacity to 'choose well'. That means, alongside supporting self-control, adults must help young people 'to establish a deliberative perspective which speaks for them,'¹⁸ from which they can consider what matters to them, and from which they can reason effectively. Manson's account focuses on the *end result* of adolescents' choices, rather than the *process* of choosing. With closer attention to the justification of a period of transitional paternalism, we can see that the general practice of transitional paternalism is guided by what is at stake for adolescents *beyond* consideration of their welfare. Transitional paternalism may well protect adolescents from some bad choices, but in order to capture the sense in which young people are in

¹⁸ Ibid: 589.

a stage of *transition*, this period must also foster their capacity to choose well for themselves in the long run.

b) Fostering a deliberative perspective

The development of a deliberative perspective that speaks for them requires that children and young people develop the kinds of skills and attitudes compatible with autonomy. A young person's experience of, and participation in, the choosing-process is fundamental to her learning about choices and to her understanding of what matters to her, and therefore *central* to developing a deliberative perspective from which to make her own choices.

Adults can promote children's distinctive interest in becoming self-governing in the long run, in part by providing them with experience of making decisions. Along these lines, Hugh LaFollette argues that 'lack of practice making decisions'¹⁹ undermines autonomy. He writes:

As toddlers become [...] adolescents, they become increasingly able to assume responsibility and to make decisions about their own lives.

We must nourish these abilities if children are to become responsible, autonomous adults. That requires that we treat them as if they were already partially autonomous. [...] we must find ways to

¹⁹ H. LaFollette. 1998. *Circumscribed Autonomy: Children, Care and Custody*. In *Having and Raising Children: Unconventional Families, Hard Choices, and the Social Good*. U. Narayan & J.J. Bartkowiak, eds. State College, PA: Pennsylvania State University Press: 137-152: 148.

Faye Tucker 'Developing Autonomy and Transitional Paternalism'

accommodate children's volitional and experiential deficiencies
while respecting and cultivating their burgeoning autonomy.²⁰

LaFollette recognises that children are deficient in the capacities that enable an individual to be autonomous, and in the experience of using them. However, he also recognises that we ought to support the *development* of these attributes. As Schapiro states, adults have special obligations to children, which are paternalistic in nature.²¹ These include, 'duties to protect, nurture, discipline, and educate them.'²² When discharging these duties, adults must take into consideration children's distinctive interest in becoming self-governing alongside other considerations. The sharing of normative powers, in general, facilitates the developmental transition by enabling adults to act paternalistically to various degrees. On LaFollette's account, we should let children participate in important matters and allow them to express their views, varying the degree of participation that adults have in children's decision-making throughout their development. Other parties ought to participate in children's decision-making only as part of the developmental course, the end of which is the young person's capacity for independent decision-making. When we include adolescents in decisions, we consider their current values and reasons and enable them to mature in ways that will allow them to make

²⁰ Ibid: 138.

²¹ T. Schapiro. What is a Child? *Ethics* 1999; 109: 715-738: 716.

²² Ibid: 716.

decisions on their own and make them well. By recognising the adolescent as a deliberator, we acknowledge her capacity for autonomous agency and provide the space to develop the capacities required for autonomy.

c) What guiding principles can we draw?

I have provided some discussion of what the general practice of transitional paternalism might involve, in light of the earlier justification of a period of transitional paternalism. From this discussion there are some general principles that we can draw.

First, adults have obligations to promote and protect young people's interests. Among these interests is children's distinctive interest in becoming self-governing in the long run. Second, to become self-governing, children do not simply need to be trained in which choices will be good for them, but must establish a deliberative perspective of their own, become aware of what matters to them, and have experience of and practice at decision making. Children and young people should be involved in decisions that affect them as much as possible. Third, in addition to cultivating *individual* self-governance, we have a duty to foster the kinds of *social conditions* that support autonomy and self-governance.

Adult-adolescent relationships are complex and must respond to an adolescent's increased willingness and capacity to take responsibility for her life and her actions. This is further complicated by

adult expectations that adolescents *ought* to be more responsible in respect of some aspects of their lives, even though they may be reluctant to assume authority themselves. Adults, who have the right kind of knowledge about an adolescent, are in a position to respond sensitively to her needs and demands.²³ In light of this, parents and carers are best placed to be able to react to the changes that their adolescent is undergoing. As children mature and become more capable of self-governance, and adults no longer do a better job at protecting and promoting young people's interests than their own instincts, adults must find ways to discharge their obligations to young people that are not unjustifiably paternalistic. This might mean, for instance, ensuring that adolescents come to this part of their lives equipped with the right kind of skills and attitudes to make decisions well on their own, or providing young people, as far as possible, with real and worthwhile opportunities

However, transitional paternalism in the context of the family is likely very different to transitional paternalism in formal contexts.²⁴ In the family context transitional paternalism is about responding to each

²³ It should be noted that, during adolescence, adults become more reliant on adolescents themselves as a source of information about their lives, further complicating adult-adolescent relationships. There is much at stake for adults that 'get it wrong', as channels of communication can be readily shut down by young people.

²⁴ Developing an account of transitional paternalism in the family context is a project of great interest to me. However, here I have to put this to one side in favour of pursuing an account of transitional paternalism in general, and specifically, how transitional paternalism is implemented in the formal, clinical context.

adolescent's particular capacities as she matures. Within LaFollette's model of circumscribed autonomy, for instance, are different stages that reflect the gradualism of the development of autonomy in young people. These stages facilitate the practice of decision-making and range from a period when parents can always participate in their children's choices, to a period where parents are more likely to allow children to make more serious mistakes and bear the consequences. Samantha Brennan worries that although this model works well for parents, it is not so successful when the freedoms of the child require state-protection.²⁵ Parents are able to adopt a more nuanced perspective than the state, when it comes to responding to their child's developing capabilities, and as such transitional paternalism is likely to be executed differently in formal contexts.

As children mature, spheres of activity become open or closed to them. We could think of formal transitional paternalism as mapping onto these spheres of activity. With each of these spheres come different responsibilities, and different normative powers. Consider, for example, the sphere of compulsory education in which a child or adolescent must participate until a particular age. Or, the sphere of sexual activity that becomes open to adolescents, in the UK at least, at the age of 16. In each case, we could view the legislation and norms around the opening or closing of each sphere of activity as a case of

²⁵ S. Brennan. 2002. Children's Choices or Children's Interests: Which Do their Rights Protect? In *The Moral and Political Status of Children*. D. Archard & C. M. Macleod, eds. Oxford: Oxford University Press: 53-69.

transitional paternalism. Each is a formalisation of the transitional stage, which reflects the young person's move towards becoming self-governing and promotes and protects their interests. The movement through these spheres in stages reflects ideas about what is distinctive about the developmental period of adolescence, a time when individuals are coming gradually closer to being self-governing.

Brennan argues that 'some legal rules may need to be applied on the basis of coarse lines even if the moral facts are more complex.'²⁶ In formal contexts, transitional paternalism is executed on the basis of coarse lines informed by the guiding principles drawn from transitional paternalism in general. The guiding principles I have drawn might, for example, inform the coarse lines that delineate 'the magical age'²⁷ when a sphere of activity becomes open or closed to a child, adolescent, or adult. The principles that guide transitional paternalism in general also inform which version of transitional paternalism – symmetric or asymmetric – we adopt in different contexts. In the final section, I will offer reasons for preferring the *asymmetric* version of transitional paternalism in the clinical context.

5. TRANSITIONAL PATERNALISM IN THE CLINICAL CONTEXT

²⁶ Ibid: 61.

²⁷ LaFollette, op. cit. note 19, p.139.

So far I have offered a justification for a period of transitional paternalism and argued that this justification can provide insight into how transitional paternalism might be implemented. Cultivation of a young person's capacity for self-governance provides the best justification of transitional paternalism in general, and explains why normative powers are shared during this transitional period. Transitional paternalism therefore explains how we come to have shared normative powers in the clinical context. In this section I will argue that cultivation of a young person's capacity for self-governance also provides the best defence for adopting the *asymmetric* version of shared normative powers in the clinical context. There are three reasons why we should implement transitional paternalism asymmetrically in the clinical context. First, the asymmetric version of transitional paternalism takes seriously duties to support adolescents' developing autonomy, alongside other duties that adults have to young people. Second, only the asymmetric version gives consideration to young people's voices in respect of *all* clinical actions, and this leaves open the possibility that coarse legislative lines might be fine-tuned in individual cases. Third, the asymmetric sharing of normative powers is consistent with the kind of social arrangements that best support autonomy. I will elaborate on each of these reasons in turn.

First, only the asymmetric sharing of normative powers enables young people to be involved in a set of important decisions from which they would otherwise be excluded, and participation of this sort is *central* to the cultivation of their self-governance. As Schapiro writes:

Faye Tucker 'Developing Autonomy and Transitional Paternalism'

The aim here is ... to put them in a position where they are forced to come up with provisional principles of deliberation, principles whose applicability is likely to extend beyond the limits of the questions at hand. By entering into the business of acting on principle, children begin to construct provisional starting points for deliberation across ever widening domains of discretion.²⁸

An analogy might go some way to illustrating this. Consider the dual controls in a driving instructor's car. In this situation, the learner driver is given some autonomy in her inexperienced driving decisions, but there is a second set of controls that can be used by the instructor should the learner need assistance. The sharing of power in *this* case provides a space where the learner is able to experience a limited amount of autonomy in which to learn to drive, without assuming complete responsibility for her decisions. In this way the learner is protected from making bad mistakes, and she is also acquiring the skills she needs to drive unaided in the future. Returning to the clinical context, the asymmetric sharing of normative powers is most compatible with the adolescent's development. The 'learner' is treated as if she is, to some degree, already autonomous providing the right conditions to foster her developing autonomy. The constrained nature of this situation provides security, transparency, and opportunity for reflection, which are fundamental to the learning process. With time and practice, a young person will develop the self-awareness, self-

²⁸ Schapiro, *op. cit.* note 21, p.736.

knowledge and the self-trust needed to develop a deliberative perspective of their own.

In the clinical context, adolescents are able to make decisions for themselves insofar as their decisions do as good a job as adults' decisions in protecting and promoting their own interests. Participation in important decisions presents them with the chance to consider meaningful alternatives, both opportunities for action and ways of thinking about what matters. In fact, participation in decisions, whether life-saving or not, has the potential to involve adolescents in meaningful processes of critical reflection. They are able to 'try out' their reasoning skills, and may even reconsider their values in light of other people's reasons.

Second, only the asymmetric version allows the adolescent to have a voice in respect of *all* clinical actions, and this is important because it leaves open the possibility of nuancing the necessarily 'broad-brush' legislation around adolescent consent. We have legitimate and important concerns that young people make choices that are good for them, as well as make choices well. The asymmetric version of transitional paternalism takes seriously developing autonomy *and* concern for an adolescent's welfare. When refusal of a clinical action puts an adolescent's welfare at risk, others hold the power to consent on her behalf. This is the 'coarse line' that is drawn in the formal context in response to the complex moral facts about adolescence, a time when young people are nearing self-governance but when adults continue to have duties towards them. However, in those

occasional cases when an adolescent does refuse treatment, the courts and doctors must give the adolescent's opinion *consideration*. The practice of considering the adolescent's reasons for refusal when coming to a decision about her treatment offers an opportunity to 'fine-tune' the coarse lines that have been drawn in the clinical context. It could be argued that the point at which symmetrical normative powers become available to individuals (when they achieve adult status) may be a 'blunt instrument', but the practice of including adolescents in these important decisions before that time does mean that adolescents' opinions are, at the very least, given consideration. This leaves open the potential for respecting the adolescent's wishes in some cases, and only the asymmetric version allows this to happen.

Third, the practice of including adolescents in all decisions about clinical actions that affect them is in line with the kind of principles that underlie clinical practice more generally, and fosters the kind of social conditions that promote autonomy and self-governance. This paper, and others that defend an asymmetric position, face the *prima facie* objection that the choice offered to adolescents is bogus, and represents the very antithesis of autonomy. That is, the 'choice' offered to adolescents is not a real choice at all because only the 'right' decision will be respected by others. As I have argued in this paper, far from being the antithesis of autonomy, the practice of asymmetric consent in the clinical context is compatible with autonomy. Returning to the analogy of the learner driver, it seems intuitively obvious that the learner driver is exercising a degree of real autonomy. If the analogy

holds, then it follows that the adolescent participating in clinical decisions under the conditions of transitional paternalism is likewise exercising a degree of real autonomy. Furthermore, if the argument presented in this paper is right there are good reasons to let young people have a go at making their own decisions, even though they might be overridden if they put themselves in danger. Again, if the learner driver analogy holds, there are good reasons to let the learner try the tricky move, even knowing that the instructor will have to override them if it goes wrong.

The practice of including adolescents in important decisions that affect them, under conditions of transitional paternalism, supports young people's ability to use their normative powers effectively in the future, and more properly prepares them to take responsibility for their choices in the long run. The justification for presenting the adolescent with a choice, all be it provisionally and not conclusively, in this context is not to maximise their autonomy in the short-term, as it might be in other situations where we are presented with choices, but to cultivate self-governance in the long run.

6. CONCLUDING REMARKS

This paper has discussed how the general practice of transitional paternalism might look in formal contexts. It is clear that adolescence presents a complex developmental period, and is a time when decisions

about how to treat any one individual must respond to their particular capabilities and needs. When we are considering transitional paternalism within formal contexts, there are obvious limitations to how well we are able to respond to the capabilities and needs of individual adolescents. Any 'coarse lines' are bound to inadequately respond to the nuances of each adolescent's developmental progress. In some contexts, when we require a set of general guidelines to provide consistency, 'blunt instruments' may be the best we can do. At some point adolescents must acquire adult status in respect of the different spheres of their life, and we may have to adopt less than perfect standards in some cases. Transitional paternalism, in general, offers guiding principles that can protect and promote adolescents' fundamental interests in formal contexts. It might appear that questions about which version of transitional paternalism best promotes adolescent interests in a particular context are decided by considerations about welfare. However, this is because the *transitional paternalistic period* in general has been settled at a more fundamental level by the obligation adults have to promote children's distinctive interest in becoming self-governing.

ACKNOWLEDGEMENTS

My thanks go to Dr Neil Manson and Dr Garrath Williams for their careful and insightful comments. I am extremely grateful to them both for their continued support. Thanks go to the organisers and participants of the Open Minds X conference at which I presented an

early version of this paper. Finally, I would also like to extend my thanks to two (anonymous) referees for constructive comments.