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The Best Interest of Children and the Basis of Family Policy

The issue of reproductive caring units

Christian Munthe and Thomas Hartvigsson

Introduction

The notion of the best interest of children figures prominently in family and reproductive policy discussions and there is a considerable body of empirical research attempting to connect the interests of children to how families and society interact. Most of this research regards the effects of societal responses to perceived problems in families, thus underlying policy on interventions such as adoption, foster care and temporary assumption of custodianship, but also support structures that help families cope with various challenges. However, reference to the best interest of children can also be applied to a more basic issue in family policy, namely that of *what is to be considered a family in the first place*. This issue does not raise any questions regarding the proper conditions for when society should intervene in or change the family context of a child. Rather, it is about what social configurations should be recognized as a potentially fitting context for children to enter into and (if all goes well) eventually develop into adulthood within. Any social configuration so recognized constitutes what we will call a *reproductive caring unit* (RCU). An RCU is a social configuration such that society's default institutional arrangements allow it to have (by sexual and artificial reproduction, adoption, and combinations of these), care for and/or guard children – the approved RCUs thereby being the basic ‘menu’ of what families with children there may be in society. Opinions on what should be allowed to be an RCU will frame any further discussion of the questions already mentioned, but also policies having further implications for, for example, the practices of adoption and reproductive technology, as well as regulation of custody in the event of separation or parental disagreement.

There is a communicative problem involved in talking about this issue in terms of the word ‘family’, however. Due to a combination of biological necessities, socio-economic and developmental circumstances, prejudice and

custom, people around the world tend to associate this term with the presence of romantic or sexual relationships (between adults) and/or genetic links (between adults and children). However, the question indicated above does not necessarily imply such things to be in place in the case of a legitimate RCU. What should be awarded the standing of a family in *this* sense, then, may be something that many people find strange to *call* a family. At the same time, if you ask the question whether a single mother and her adopted child, or four adult siblings living together and caring for a foster child could constitute fitting social arrangements for children to enter and develop within, people would not (we presume) rule out this question as empty just because the word ‘family’ seems odd to apply to them. Rather, we suggest, social configurations within which children are raised are called ‘families’ as we tend to view them as legitimate RCUs. Thus, to the extent that there are reasons to allow RCUs not involving the ingredients of romantic/sexual relations or genetic linkage, this will be a reason to change linguistic practice.

The question we want to address, then, is about what is implied by arguments in terms of the best interest of children for the issue of what should be allowed to be a family *in the sense of an RCU*. This is a question not about particular cases, but about general institutional arrangements. Society needs policies as to what RCUs to allow and within these frames, any single initially legitimate RCU may be found unfitting for serving this purpose, just as in the case with dysfunctional ‘nuclear families’. Arguments about what is in the best interest of the concerned children in such cases can (and should) be brought to bear on this issue. However, as will be seen, these arguments involve quite different considerations compared to when assessments in terms of the best interest of children are applied to the issue of RCUs.

The best interest of children as a moral notion

An evident starting point for this investigation is to recognize the importance and standing of the formulation in the UN Convention on the Rights of the Child (CRC), that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (United Nations 1989)

This sentence signals the idea that, when making social decisions or policy, considerations about what is in line with or goes against the interest of children should be given special attention and weight. Over and above that, however, it is not very informative. It does not explain *why* children’s interests should be accorded this standing, for example. Is it because there is something morally special in itself about children or their interests, or is

it due to some instrumental reason? Neither does it explain what the term 'interest' is supposed to include. It is, furthermore, unclear what the expression 'primary consideration' is supposed to imply. For instance, the fact that the interests of a child may conflict with both the interests of other people (some of them children) and with other valid moral considerations cannot plausibly be ignored (Archard 2011; Blustein 1982; Brock and Buchanan 1989; Dawson 2005; Downie and Randall 1997; Kopelman 1997; Miller 2003). The notion of *best* interest can hardly mean that the satisfaction of children's interests must always be maximized (Archard 2010; Brock and Buchanan 1989; Goldstein *et al.* 1996; Kopelman 1997; Lindemann and Lindemann 2008). A maximization requirement would imply, for example, that no matter the cost, society has reason to find the *best possible* guardians of children also in cases where there is no apparent dysfunction to be found in the child's close social environment, or that all societal resources spent on care for the elderly should be transferred to activities aimed at the care of children. Both these latter points seem especially easy to accept in relation to questions about basic institutional arrangements. From this overarching standpoint, there are many interests that need to be looked after, and there has to be some sort of division of responsibility between the state and citizens, implying a limit to how far the state should go to promote various interests. None of this invalidates the general idea of CRC, however. Giving the interests of children special consideration in societal decision-making can, if nothing else, be motivated as a precautionary measure to protect an especially fragile and vulnerable class of people.

This leaves two issues of clarification: what are the interests of children and what underlies the ethical importance of these interests? The answer to the latter question has a bearing on the extent to which (and, if so, why) CRC can be supported on the basis of ethical theory. On this matter, we may note that there are three major ethical traditions that appear to have some difficulty affirming the presence of ethically important interests in the case of children, at least very young ones. First, some theories combine the ideas that (a) especially powerful moral claims are those of autonomous/rational/self-aware beings to have the plans flowing out of their autonomy/rationality/self-awareness respected by others and (b) the conditions that have to be met for being autonomous/rational/self-aware are such that children, or at least very young and some disabled ones, cannot be ascribed interests of the relevant sort.¹ Second, the contractarian tradition has peculiar problems of accommodating the interests of beings that do not (yet) live up to the conditions imposed on those agreeing to a 'social contract' that determines the content of justified moral rules².

The explanation for why these traditions have difficulties supporting the notion of children as (especially) morally important is that they both represent a general idea about the nature of morality as a collection of reciprocal constraints between rational or autonomous beings³. In effect, just as Kant once

observed regarding our obligations to non-human animals, our reasons for paying attention to other beings become purely instrumental: we have reason to care about the interests of (young or particularly disabled) children only to the extent that this furthers (or is required to respect) the interests of some autonomous/rational beings. This justification, however, fails to supply what is needed in the form of moral reasoning, since it implies that consideration of children's interests is not available to sound moral thinking in exactly those cases where it would seem to be most apt; namely when grown-ups act against or ignore these interests to further their own.

The third tradition that runs into problems with regard to the core idea of CRC is that of classic natural law ethics – especially variants explicitly embracing the main tenets of abrahamic religion regarding family and reproduction (Donagan 1977; The Vatican 1968, 1987). One reason for this is that this type of ethics is made up of absolute bans (such as the Ten Commandments), where promotion of the interests of children does not figure. Another reason is that this form of religiously grounded ethics tends to consider children important mainly due to their role in the realization of a divine procreative plan. How children *fare* is considered important mainly from the point of view of instrumental considerations of having the human species multiply in the prescribed way. To be sure, for example, as within many branches of Christian ethics, these ideas may be complemented by virtue ethical ideals of compassion with and sensitivity to the vulnerability of people, that may give children a special position. However, those latter ideas are logically independent of the natural law ethical stance or the notion of our duty to realize a divine procreative plan, and thus need a separate theoretical underpinning. Our comment here only regards the core natural law elements.

In this chapter, we will proceed on the assumption that these ethical traditions, rather than providing reasons to doubt the idea of CRC, should be seen as seriously challenged by their implications with regard to the moral status of children and the ethical importance of considering their interests.

So, assuming that children do have morally weighty interests, what are these? And how can they be related to the issue of RCUs? Regarding the former question, earlier discussions have distinguished between an *objective* and a *subjective* interpretation (Archard 2011; Dawson 2005). The latter notion signifies a strategy to overcome problems faced by ethical theories that want to keep the basic rationale of ethical claims connected to autonomy/rationality, but still acknowledge that people with no or diminished autonomy/rationality have morally valid interests. The trick employed to accomplish this is a hypothetical 'ideal observer' formula according to which, for example, a child's interests are identical to what this child would have wanted or preferred had he or she been a fully competent adult (Rawls 1999). The basic problem of this idea is that it does not (even in theory) seem to imply definite answers to the question of what children's interests are. Different adults believe and prefer different things

and what a child would prefer as an adult is in part determined by childhood experiences (Archard 2011)⁴. The trick thus failing, there remains the idea of having the wants of non-autonomous/non-rational people still deserve some moral consideration in their own right. However, besides the idea that children have some interest in not being subjected to needless coercion, this suggestion seems to ignore the challenges facing an autonomy/rationality based account of the morally valid interests of children (Dawson 2005).

The ‘objective’ take on the interests of children, in contrast, is basically to identify these interests with the furthering of the child’s *quality of life* (Archard 2011; Kopelman 1997). Since there are many competing notions on what determines quality of life, there has been some debate on what this idea implies for children (Archard 2011; Brock and Buchanan 1989; Degrazia 1995; Miller 2003⁵). We will here set out and use a suggestion that combines a number of ideas in this debate, with the overt ambition of including rather than excluding ideas about what may be in a child’s interest:

1. *Experiential interests*: the interest of having enjoyable experiences and avoiding unpleasant ones.
2. *Developmental interest*: the interest of having one’s development into a well-functioning adult promoted as far as possible.
3. *Basic interests*: the interest of being provided with such material, mental and social resources that are a prerequisite for experiential and developmental interests to be satisfied.

This list implies that there are different aspects of children’s interests that may, in particular cases, pull in opposite directions. Such conflicts are familiar to any parent or caretaker of children. A complete ethical theory on the interests of children would thus need to say something about how to handle such conflicts. In the present case, however, we will take another route and investigate if any of the listed types of interests can be shown to tell against any particular suggestion regarding the issue of RCUs.

We also propose that, based on this list, the CRC-idea that children’s interests should be given special attention and consideration is warranted. One reason for this claim is the weak ability of children to promote and protect their own interests – their *incapacity*. Another reason is that, often and potentially, children have more to lose than adults in terms of future detriment if their interests are not met properly – they are more *vulnerable*. A third one is that children are in many respects simply easier to harm – they are *fragile*⁶. Some may want to interpret these reasons as instrumental, others as pointing to more basic moral considerations. In any case, in case of conflicts, children’s interests need to be balanced against the interests of other parties. In the following, however, we will limit our analysis to looking at some suggested types of RCUs from the point of view of the interest of the child.

Are some types of RCUs better for children?

Before we move on to this – the main – question, some initial observations need to be made in connection to the debate on the best interest of children in relation to family policy. It is a recurring pattern of this debate to take the case of a heterosexual couple whose members are involved in a romantic/sexual relationship with each other, and bring up children to whom they are genetically linked, as being the default initial RCU. Questions regarding justifiable state interventions in the name of the best interest of children are then addressed on the basis of that (Archard 2011; Dawson 2005; Kopelman 1997; Goldstein *et al.* 1996). This, we want to underline, is *not* the discussion we are undertaking in the present chapter. We acknowledge the need for policies regarding societal intervention in RCUs from the point of view of children's interests. However, as mentioned at the outset, such policies need to operate within a framework set by a policy as to *what is to be allowed to be an RCU in the first place*. It is this latter issue that we are focusing on.

This focus implies that the considerations that may be mustered in support of the claim that *changing or breaking up* a child's initial RCU always brings important downsides in terms of this child's interest (although these may be balanced by benefits in particular cases, see further below) – important as they are – have *no* bearing on the question that we are considering. Similarly, the fact that these downsides seem to imply a bias in favour of not breaking up or disturbing 'nuclear family' RCUs has no relevance for the question if also other social configurations should be allowed as RCUs. Rather, this apparent bias merely reflects the contingent fact that not many other configurations are presently allowed as RCUs. Had other configurations been dominant as *de facto* RCUs (for example, single fathers of adopted children), the evidence about the problems for children's interests of breaking up or disturbing RCUs would have implied a bias for *that* sort of RCU.

Something similar can be said about the sort of communitarian interpretation of children's developmental interests found in, for example, debates about confessional religious education, or parents' rights (or lack of rights) to apply culturally specific disciplining methods that deviate from those tolerated in general society, and so on. The claims made in these contexts are that children may have important interests of being socialized into a specific socio-cultural environment. It may be challenged if this is really the case in different concrete instances, but making that claim is not our business here. We merely want to highlight that even a *supposed* interest of children to be integrated in a specific socio-cultural environment is no argument in favour of having them so integrated with regard to *one particular socio-cultural environment rather than another*. If socio-cultural integration and belonging bring an important good to children, they do so no matter which RCUs we allow, as long as these are capable of providing *some* such environment for the child⁷.

What *would* be relevant, however, is if there were reasons to think that some particular types of social configurations have clear downsides in terms of the concerned children's interests compared to others, were they to be allowed as RCUs. So, are there any correlations between the composition of social configurations into which children may enter and develop, on the one hand, and on the other, how well the child can be expected to fare in terms of having its interests met? In particular, is the sexual orientation, gender or relationship of and between the adults of the RCU, the number or relative age of these adults and the degree of genetic connection between adults and children linked to how well a child's interest may be met?

According to the predominant view in developmental and child psychology, one of the RCU's most important functions is to provide the child with a secure *attachment*. Attachment is a special relation that the child develops through interacting with certain people in its proximity. Regardless of the extent to which the attachment that the child develops is secure, a prolonged separation from the persons to whom the child is attached will have severe consequences for the child's social and emotional wellbeing (Cassidy 2008). The nature of the attachment depends on several things, some of them outside the direct control of the RCU, such as socio-economic circumstances, but the most important factor seems to be how attentive and responsive the attachment figures are to the child's emotional signals⁸.

The child becomes attached to its primary caregiver when it is about six months old and it is the pattern of that attachment which is most predicative of its future development. The child may also become attached to other people (which is not uncommon), although there seem to be no findings of a child having more than four attachment figures. The attachment figures are ordered hierarchically and the loss of the primary attachment figure may not be fully compensated by the others (Cassidy 2008).

A secure early attachment is connected to several beneficial traits for the child at a later age. A securely attached child is more likely to have more and better relationships with its peers. The relationships will not only be more stable but also have fewer conflicts. The child is also likely to be substantially more confident in and knowledgeable about coping with and identifying its own emotions and those of others. A secure attachment is also connected to better cognitive functioning (Thompson 2008; Berlin *et al.* 2008) as well as protection from risk factors associated with clinical mental illness (DeKlyen and Greenberg 2008). The connection between the child's early attachment and its adult relationships is more complex, although it is believed that it matters. It is clear that later relationships are important and affect a person's basic attachment pattern throughout life, and that influences from outside the RCU, for example from friends and teachers, may change a child's basic attachment pattern. However, an insecurely attached child is particularly vulnerable to ending up in a vicious circle, where its insecure pattern generates responses which further consolidate this tendency.

The child's primary attachment figure has most commonly been found to be its mother (Cassidy 2008). However, this can probably be explained by the facts that mothers in many societies tend to spend more time with their children than the fathers (Golombok 2000) and that the amount of time spent and social cues are two of the factors which determine who the child's primary attachment figure will be (Cassidy 2008). There is nothing in the ways in which fathers can and do interact with their children that could explain that they more seldom become the primary attachment figure (Golombok 2000).

Since attachment relationships are organized hierarchically and the attachment to the primary caregiver is the most predicative, it seems to follow that there is little risk involved in letting RCUs consist of a single adult raising children. Now, research does indicate that children in 'nuclear families' fare better than children of single mothers and also that the presence of an involved father does have positive effects on a child's cognitive and emotional development. However, there seems to be no reason to believe that this is due to the presence of a father *per se* – it is more likely that it is the presence of an adult person in addition to the first, who is engaged in the child's life, that explains the difference (Golombok 2000; Graham in this volume). Although the amount of research that has been done is not so abundant, what has been done further supports the idea of the father's role as just an extra adult. For instance, there is no difference in developmental problems of children raised by lesbian couples as compared to children of nuclear families. In fact, the evidence suggests that lesbian parents are better than heterosexual couples in terms of emotional regulation and cognitive capacities (Golombok 2000; Gartrell and Bos 2010; Graham's, and Scheib's and Hastings' respective chapters in this volume). This difference could be explained by several factors such as the economic situation of lesbian parents, their parenting style and other things mentioned. Lesbian families also plan for the child in much the same manner as adoptive parents do and this might make the parents more motivated to adapt their lives to the needs of the children, a factor that has been identified as important for how children fare in the adoption case (Golombok 2000; Hamilton, Cheng and Powell 2007)⁹. A further difference between single adult RCUs and the nuclear family is that single adult RCUs only have one source of income. Financial strain may affect the caregiver's capacity to be emotionally responsive towards the child due to stress and time spent apart. Thus when the nuclear family is compared to single mothers with a good income and a supportive social network, there are no indications that the child would suffer from being raised in a single adult RCU (Golombok 2000; Graham in this volume).

Another question relevant for our topic regards the importance of a (perceived¹⁰) genetic link between children and their parents for facilitating the bonding between them. Many studies suggest that adopted children are more susceptible to harm than children raised by biological parents, but most of these children have been adopted after they have formed attachments to their

biological parents, i.e. after six months (Golombok 2000). Nevertheless, the studies mentioned above regarding parental investment and commitment seem to indicate that these, rather than genetics, are primary explanatory factors. If, in addition to being committed, the RCU is open about the child's origin, then it seems likely that there would be no difference between the development of adopted and non-adopted children¹¹ (Golombok 2000; Hamilton *et al.* Gurnham, and Scheib and Hastings in this volume).

Child development is complex and attachment is not the only factor that affects it. For example, the child's genetic make-up, the relationship between the adult members in the RCU and the wider social context of the child are also important factors. Poverty is an obvious example of this and may, as previously said, be stressful for the adult members of the RCU and affect their ability to parent well. Poverty may also place the child in a social context, for example high crime rates and bad schools, which might prevent it from developing its potential.

In any case, it seems clear that available evidence suggests that – with two exceptions¹² – there is no particular *type* of RCU – in terms of the gender, sexual orientation or identity of, the nature of the relationship between, the age-mix or the number of adults, or (perceived) genetic links between adults and children – that stands out as potentially better or worse at meeting the interests of children compared to the present default of heterosexual couples with children to which they are (or believe themselves to be) genetically linked. In single cases, of course, any particular RCU may turn out to be, or be strongly suspected to become, dysfunctional in a way detrimental to the interests of their children and, with regard to such cases, society should be prepared to intervene in some way as well as create tools and structures for prevention¹³. However, none of that supports any resistance against expanding the class of allowed RCUs to include many social configurations beside the nuclear family default.

If this safeguard seems insufficient, one may be attracted to the idea that RCUs – regardless of kind in the terms addressed above – should not be permitted *by default* to have and raise children. LaFollette (1980, 2010) has proposed the idea of parenting licences, where any RCU needs to demonstrate that it meets certain requirements regarding its ability to provide the child with emotional stability and responsiveness, as well as meeting its physical needs. Besides the case of very elderly or sick people already mentioned, such demands would also discriminate against RCUs where domestic abuse is present, as well as RCUs where the adult(s) have a sexual interest in children. Again, though, while this suggestion weakens the legal default position of RCUs (they are not *a priori* assumed to be fitting contexts for children to enter and develop within), it does not imply that any particular *type* of RCU in the terms discussed earlier should be denied this status.

This leaves two arguments in terms of the best interests of children that may be brought to bear on the issue of RCUs. The first argument attempts to

turn the uncertain evidence regarding the significance of (the perception of) a genetic linkage between (some of) the adults of an RCU and the children of that RCU into an argument in favour of RCUs where such linkage exists¹⁴. Such an argument *may* be read into the reasoning of, for example, Archard (1993) that the uncertainty regarding the importance of (perceived) genetic links should make society more hesitant to move children out of RCUs where such links are present¹⁵. Expanding on such a line of thought, the idea in the RCU discussion would be that, in the spirit of a ‘better to be safe than to be sorry’ approach to decision-making, we should hesitate to allow RCUs lacking a genetic linkage between adults and children¹⁶. This argument has several flaws, however. First, it assumes that we have evidence supporting the claim that, due to genetic links between adults and children, RCUs with such links are capable of meeting children’s interests better than those without. However, the evidence collected so far seems equally compatible with the hypothesis that children of such RCU’s enjoy such chances *in spite of* the genetic link. That is, lacking evidence about a *causal* link, mere statistical correlation between some factor and how outcomes score on some scale of desirability works both ways when it comes to providing hypotheses regarding the actual impact of this factor. Second, as a consequence, it does not imply much of sensible caution to assume the effect of the factor in question to be more positive (or less negative) than other factors. Such a commitment to *status quo* rather seems to reflect a sort of ‘simplistic conservatism’ that for no good reason blocks access to alternative options that might very well *better* secure the desirability of the outcome. In plain language, present evidence suggests that genetic links between adults and children of an RCU may just as well harm as they may benefit the children. A morally responsible precautionary thinking would then rather imply a need to look out for other ways of classifying RCUs, where evidence about typical factors actually promoting the interests of children is provided (which is what we have done above)¹⁷.

However, a more pragmatically sensitive argument can be made in terms of caution. Suppose that, in a given societal context, social configuration type A is an established and much accepted RCU. Then requests arise also to allow type B as RCU, although being in several ways markedly different from A with regard to those features that people use to identify A. We can then expect that configurations of type B that become RCUs will initially be viewed with scepticism, prejudice and open dislike. This social response to type B RCUs can be assumed to create some risks in terms of the interests of children of type B RCUs.

We concede this point, but want to highlight two things about it. First, the argument is in itself unbiased as to what type of social configurations that should be allowed as RCUs. Although many readers of the preceding paragraph may have spontaneously identified type A with a ‘nuclear family’ and type B

with some radically different type of RCU, this is not assumed by the argument. That is, if the initial position of a society would be that the dominant RCU type is a single male parent with adopted children, the argument would imply that there are risks in terms of children's interests to introducing nuclear or single female parent families as RCUs. Second, the argument is unable to ground any wholesale opposition to the idea of allowing RCUs different from the nuclear family default, even if present realities are assumed. What it supports is the idea of a reformative rather than a revolutionary view on how changes with regard to which RCUs are allowed are to be implemented. Although this may frustrate some adult persons eager to become parents in configurations presently not recognized as RCUs, there are reasons to make such changes in a moderate pace that allows people in general to adjust their attitudes and responses¹⁸. At the same time, however, we find *strong* moral reasons to be wary of the danger of allowing such 'moderate conservatism' to take a rigid, simplistic form. Giving in to prejudice and unfounded hostility is not much different from succumbing to blackmail – a strategy well confirmed as both irrational and morally objectionable (regardless of what basic ethical outlook that is applied) and would, in the present case, mean allowing policy to be directed by confirmed *bad* reasons (a similar point is argued by Macintosh in this volume).

Concluding discussion

Based on the facts and research findings so far available, we have failed to find weighty reason in terms of the best interest of children to refrain from widening what is allowed as RCUs from the present 'nuclear family' paradigm to include variations as regards either the sexual orientation/identity/relationship or number of adults, or the genetic connection between adults and children. Consideration of children's interests may, as before, provide reason for societal intervention in particular RCUs or even support a licensing system of the sort proposed by LaFollette, but neither of those undermine our main thesis. While we concede the need for some pragmatic caution when changing existing RCU paradigms, we have also noted that the very same pragmatism supports the idea that refraining entirely from such changes for fear of social dislike would mean supporting and affirming views that deny children to have what is in their best interest.

It is notable that some well-established ethical traditions face difficulties in justifying what we have proposed as an obviously plausible understanding of the best interest of children statement of the CRC. In spite of this, proponents of these traditions often figure strongly in societal debates on family and reproductive policy.

Notes

- 1 Famous arguments to these effects can be found in rights-based ethical argumentation (Tooley 1984), certain qualified versions of consequentialist thinking (Singer and Kuhse 1985), as well as attempts of mixing the two (Warren 2000). Similar arguments have been used to deny that non-human animals have any morally valid claims on us to be treated in any particular way (Frey 1980). The most well-known example of this sort of general theory is the one set out in the peculiar ethics of rights of Nozick (1974).
- 2 There are differences between different variants of contractarian ethics with regard to this. David Gauthier (1986) sees this conclusion as a major result of his theory. Rawls (1971), in contrast, struggled with the question of whether or not the formula of what self-interested, rational parties would agree to had they been unaware of whether or not they are really rational beings is a coherent (denied in Brandt 1972) or morally valid notion. Rawls eventually solved the problem by an ad hoc assumption that the parties to the contract all feel obliged to consider the interests of posterity. In the real world, of course, this is many times not the case.
- 3 This notion (represented by such diverse thinkers as Aristotle, Hobbes, Locke and Kant) usually employs a rather rigid, binary (in addition to demanding) idea of what it means to be autonomous/rational. It is unclear to what extent it could be accommodated to a more enlightened and gradual view of how these features appear and develop in human beings as they grow up. In any case, we concede David Archard's point (1993) that any serious account of the moral status of children needs to be consistent with such an accommodation.
- 4 These problems of the hypothetical ideal observer solution are very similar to those afflicting similar solutions to similar problems in other areas, for example the idea of hypothetical consent and the so-called substituted judgment standard as a guiding principle for clinical decision making in the case of incapacitated adult patients. See, for example, Broström *et al.* 2007 and Wrigley 2011.
- 5 The case of Richard Miller is a bit ambiguous. Miller's literal suggestion is to use a 'thin theory of the good' for identifying children's interests. That is, children's interests are to be identified with what Rawls (1971) called *primary goods*. However, Rawls offer two distinct and different explanations of what a primary good is. One explanation is in terms of what 'every rational man is presumed to want' (Rawls 1971: 62, 93) and that idea would rather seem to place Miller in the 'subjective' hypothetical ideal observer theory camp. Another idea of Rawls, however, is to conceive of primary goods as resources *that will often be of use whatever one's more exact plans, wants and needs* (Rawls 1971: 92–93), which is how we assume Miller's idea to be meant in the present context.
- 6 As Archard (1993) notes, as children overcome these impediments to self-sufficiency, we attain stronger and stronger reasons to treat them as adults – i.e. our reasons for applying the rule of extra attention and consideration disappears. Also, piece by piece, new interests may enter the picture, for instance, the interest of having one's wants respected.
- 7 This point echoes the argument (Kymlicka 1989) with regard to the importance of cultures: the fact that people need a cultural context to fare well does not in itself speak in favour of any particular cultural context, as long as it is capable of delivering that which makes our cultures contribute to the value of our lives.

- 8 Thus, the difference between secure and insecure attachment patterns is about the quality of these responses, for example regarding recognition, support and consistency.
- 9 The longing for parenthood and the complicated process necessary to attain that end tend to make parents to invest more commitment in their children. This is common to all 'alternative' RCUs, such as lesbian mothers, DI and IVF mothers and adoptive parents (Golombok 2000; Hamilton *et al.* 2007; Graham, and Scheib and Hastings in this volume).
- 10 This is to indicate a general source of uncertainty regarding all opinions, arguments and studies on the possible connection between actual genetic links between parents and children and children's wellbeing. Lest we were to systematically use genetic testing technology to actually reveal it, we presently do not know the extent of such linkage within actual 'nuclear' families. Nevertheless, most people *believe* such linkage to be in place.
- 11 This apparent fact seems to be of particular importance for how to assess new possibilities of having children without any genetic connection to the adults of the RCU made possible by reproductive technological developments, such as gamete or embryo donation and surrogacy, that may be used by homosexual people, single adults or groups of adults who are not sexually involved albeit wanting to form a family (see, further, Macintosh's chapter in the present volume).
- 12 The exceptions are, first, the single adult RCU, which is more vulnerable to disturbances that may affect the child negatively – although much of this vulnerability can be compensated for through economic support and well-developed social support structures (such as publicly funded daycare). However, it may be observed that the same factors making single parenthood more risky for the child seems to suggest that 'nuclear' families are worse for children than RCUs made up of more than two adults (cf. Cutas 2011). The few studies there are, as we saw, suggest that two person homosexual RCUs function just as well as their heterosexual counterparts from the point of view of the child's interests. Second, if all of the adults of the RCU are very old (or for some other reason likely to die before the child has developed enough of self-sufficiency and security to fare well as an adult) this would seem to be a clear downside. Since such potential RCUs could have children only through adoption or the use of reproductive technology, this may be a reason for society to deny them access to such means.
- 13 As we have noted, this may imply that some heterosexual couples that today are allowed as RCUs by default, would not be so allowed in a system focusing on the interests of children, for example in the case of documented paedophiles.
- 14 There is no space in this short chapter to account for the complex mass of suggested evidence for rivalling opinions on this topic, where arguments range from speculations in evolutionary biology, over data of the sort considered earlier in this chapter, to official statistics on abuse of children within families. Some of it is considered when Archard (1993) ponders the issue of the importance of genetic linkage, when Hamilton, Cheng and Powell (2007) speculate about evolutionary mechanisms that may explain parental investment in children – and for Golombok (2000) it is one of many contenders in the debate on what explains a family situation that is beneficial for the children. However, we do think that some of the evidence considered earlier (such as the apparent importance of parenting style and socio-economic context) puts the onus rather heavily on anyone pursuing the idea that genetic linkage as such is a vital factor for successful parenting.

- 15 It should be mentioned, though, that *literally* this claim implies nothing with regard to the question of what social configurations should be allowed as RCUs.
- 16 This argument, it must be emphasised, is *not* made by Archard.
- 17 Cf. the theory about morally responsible decision-making on the basis of uncertain evidence presented and defended in Munthe 2011.
- 18 An example might be that allowing homosexual couples as RCUs should be precluded by a development towards increased social acceptance of homosexual love, at least enough to shield children from serious bullying. As a matter of fact, this was an important part of the reasoning underlying the acceptance in Sweden of homosexual couples as eligible as adoptive parents, in 2003 (one of the authors of this chapter took part in this process as member of the National Council for Medical Ethics).

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