

SAILING ALONE: TEENAGE AUTONOMY AND REGIMES OF CHILDHOOD

Rutger Claassen & Joel Anderson

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***Abstract:** Should society intervene to prevent risky behavior of skilled and experienced teenagers even if interventions with the same behavior by less competent adults would be impermissible? The problem is well illustrated by the legal case of the 13-year old Dutch girl Laura Dekker, who set out in 2009 to become the youngest person ever to sail around the world alone, succeeding in January 2012. In this paper we use her case as a point of entry for discussing the fundamental question of how to demarcate childhood from adulthood. Much of the public and expert debate is trapped in a ‘demarcation dilemma.’ On the one hand, it seems to be morally imperative ‘to treat like alike,’ which means that both children and adults should be allowed to undertake all actions for which they have the relevant competences. On the other hand, requiring proportional treatment of children and adults seems to neglect the special nature of childhood as a separate stage in life, which is separated by an age of majority. In order to deal with this dilemma in a satisfactory way, we introduce the notion of a ‘regime of childhood’. The elaboration and justification of the regime of childhood at issue here involves demonstrating the relevance and interconnection of several aspects, especially the limited liability for children, the supervisory responsibilities of parents, the role of age-based thresholds, and the overarching purpose of childhood as a context for developing autonomy. We argue that, all things considered, there are good reasons not to shift to a regime with an age-neutral basis for lifting parental responsibility and child tutelage.*

Introduction

Ordinarily, when teenagers are inclined to undertake dangerous or risky activities, the opposition comes from their parents. As a result, debates about the decision-making authority of teenagers collapse into debates over parental authority. But when parents have no objection to their teenagers’ risky behavior, the issue of teenagers’ decision-making authority comes more sharply into focus, raising fundamental questions about the nature of autonomy and the grounds for treating children differently from adults.

In particular, should society intervene to prevent risky behavior of skilled and experienced teenagers even if interventions with the same behavior by less competent adults would be impermissible?

As our point of entry for discussing these problems, we bring in a case that arguably falls into this category, that of Laura Dekker, who in 2009, at age thirteen, announced – with her father’s support – her plans to sail around the world alone. The journey would take approximately two years and if she would succeed in carrying it out in time she would become the youngest person ever to sail around the world. She completed her quest in on January 21, 2012.¹ Her journey was preceded, however, by a lengthy legal battle, that began with the Dutch Council for Child Protection asked the courts to take custody over Dekker away from her father (with whom she was living) so as to prevent her from departing. Parallel to the legal proceedings, the case caused a massive discussion in the Dutch media. Dekker’s plans brought to the surface – and indeed came to symbolize – widespread disagreements about the appropriate norms to be applied to the upbringing of children. Those arguing in favor of Dekker’s freedom to do something adventurous and inspiring were staunchly opposed by those arguing that this is an irresponsibly risky undertaking that any sensible parent (and in the last instance, the state) should prohibit. Intuitions about Dekker’s case diverged widely, among experts as well as the wider public.

Our aim in this paper is not to adjudicate whether Dekker should have been allowed to sail or not. Rather, we will use the case as a stepping stone to assess the different normative strategies that could be used to get a grip on practical questions like these and to show how these strategies reveal different ways of conceiving childhood. First we introduce the case of Dekker in some detail, presenting the main features of the courts’ treatment of her case (section 1). We then formulate the core dilemma that we think is central to the moral problem of when to interfere paternalistically in children’s lives. On the one hand it seems to be morally imperative ‘to treat like alike,’ which means that both children and adults should be allowed to

¹ Details on Dekker’s journey can be found at <http://www.lauradekker.nl/>. She is not the only one to have this ambition: several others aged 16 or 17 completed similar journeys. The 16-year old Australian Jessica Watson completed a similar trip in May 2010 and the 17-year old British Mike Perham completed his trip in August 2009. For an overview, see Anouk Lorie, “Should teenagers be allowed to sail solo around the world?” CNN, October 24, 2009, http://articles.cnn.com/2009-10-24/world/intl.teen.solo.sailing.crash_1_vendee-globe-solo-circumnavigation-solo-trip?_s=PM:WORLD; and http://en.wikipedia.org/wiki/List_of_youth_solo_sailing_circumnavigations (last consulted January 26, 2012).

undertake all actions for which they have the relevant competences (this is the ‘competence-based position’). On the other hand such an imperative of proportional treatment of children and adults seems to neglect the special nature of childhood as a separate stage in life, which is separated by an age of majority (this is the ‘age-based position’). Our main research question in this paper is how to escape this ‘demarcation dilemma’: *how should children’s decision-making authority over their actions be allocated* (section 2)?

In the remainder of the paper we argue that both horns of this dilemma – competences and age – should be avoided; or rather integrated on a higher level, in the context of justifying a specific ‘regime of childhood’. We start our argument for this alternative by a discussion of Tamar Schapiro’s Kantian argument about why childhood should be seen as a separate stage in a child’s development, a stage that requires the room for experimentation that can be provided only by not holding children fully responsible for their actions. While Schapiro’s argument is important, it still is vulnerable to (a reformulated version of) the demarcation dilemma (Section 3). Therefore we propose a broader framework within which to understand the demarcation disputes in terms of arguments for various possible ways of arranging and institutionalizing what we refer to as a ‘regime of childhood’. The elaboration and justification of a regime involves demonstrating the relevance and interconnection of several aspects, especially the purpose of children’s autonomy development, the limited liability for children, parental responsibility and supervision, and age-based demarcation. We argue that, all things considered, there are good reasons not to shift to a regime with an age-neutral basis for lifting parental responsibility and child tutelage. Finally, we will comment on Dekker’s case in the light of this broader framework (Section 6).

1. The Controversy over Dekker’s Journey

In all the court proceedings Dekker and her father were opposed by the Council for Child Protection of the Netherlands. Although child neglect cases often involve courts having to decide between supporting the parent’s or the child’s point of view, here

parent and child were united in a struggle against the state's agencies.² The relevant legal norm is that parent(s) should not show 'grave neglect' in their care for their children. The main question for the courts was whether Dekker's father had shown such neglect by not prohibiting her to carry out her plans to sail around the world. In ruling about the father's duties however, the court had to consider whether the plan itself posed such a threat to Dekker's well-being that all things considered paternalist intervention was necessary. Between August 2009 and July 2010 three different courts have given six verdicts on Dekker's case.³ The first five of them placed and kept Dekker under temporary surveillance, so that she was not allowed to start her journey. The last verdict, in June 2010, lifted this regime, so that she was allowed to go. She began her solo journey from Gibraltar on 21 August 2010, sailing first to the Dutch Antilles, to which she returned, after 27,000 nautical miles, at age 16 years, 123 days.

The case started with the Council for Child Protection demanding permanent surveillance, both because it believed 13-year-old children in general do not have the so-called 'coping capacities' (dealing with heavy weather, loneliness, lack of sleep) required for such a journey and because they have a series of 'developmental tasks' which will come under serious threat. The court, however, was dissatisfied with a general description of the coping capacities and developmental tasks and abilities of 13 year olds. It granted temporary surveillance, so that experts could investigate to what extent Dekker has these capacities and has satisfactorily prepared this journey. With this move the court determined the course that the legal proceedings would take. An investigation of Dekker's specific abilities would determine her right to sail. The courts split these issues into two sets of requirements.

On the one hand the courts were worried about Dekker's cognitive development, her safety and her coping capacities. The courts took Dekker's preparations with respect to the threats to her cognitive development (schooling), safety and coping capacities as *sine qua non* requirements for permitting her to sail.

² The context is that Dekker's parents are divorced, that Dekker's father is a sailing fanatic, that Dekker was born while her parents were sailing around the world, that Dekker has spent the first four years of her life on the oceans, and, evidently, that she has learned sailing at a very young age.

³ These are in chronological order: 1) Court of Utrecht, 28-8-2009. LJN: BJ 6275. 2) Court of Utrecht, 8-9-2009, LJN: BJ7911. 3) Court of Utrecht 30-10-2009. LJN: BK1598. Court of Appeal of Arnhem, 4-5-2010, LJN: BM2916. 5) Court of Middelburg, 17-6-2010, LJN: BM8125. 6) court of Middelburg, 27-7-2010, LJN: BN2481. All texts can be found at <http://www.rechtspraak.nl/default.htm> (no translation in English available; all translations in the text are ours, authors).

Initially the court saw serious threats on each of these aspects. The surveillance construction was intended to give Dekker the opportunity to make better arrangements regarding distance-learning, safety precautions, ‘sleep management’ and so on.⁴ After almost a year of preparations, the last court judged that these arrangements had been made to a sufficient extent. Dekker had prepared to follow the World Schooling program, written a sailing plan which details the various stages of the journey and taken other necessary precautions.⁵

On the other hand, the courts looked at Dekker’s social, emotional and identity development. Here the courts took a less straightforward approach. The psychologist asked for an assessment concluded with respect to her social development that Dekker ‘is inclined to operate independently (...), so that friendships take on a somewhat functional character and do not seem to rest upon reciprocity (on the basis of reciprocal interests)’.⁶ Dekker’s emotional development was characterized as ‘onesided,’ ‘flatness’ and ‘little emotional touchability’. She was judged to ‘wave aside emotions like fear and sadness’ and ‘the emotional side is little integrated in her personality development as a whole’. With respect to her identity development Dekker shows ‘remarkably little interest in acceptance by her peer group, is self-centered and shows a large satisfaction with herself’.

The Council for Child Protection took all of these psychological judgments as an indication that the solo journey would form a threat to her further development: she will be able to engage in ‘superficial and functional contacts only,’ will not have occasions to work on her emotional development, and will lack people of her own age to develop her identity. By contrast, the Court ruled that there is some reason to worry but does not believe there is a ‘serious developmental threat’. With respect to her emotional development, the Court stated that it is not so seriously one-sided as the Council thinks, and moreover, ‘it is questionable whether this one-sidedness can or will be deflected when Dekker does not undertake her solo sailing journey’. With

⁴ Court of Utrecht 30-10-2009, considerations 2.11-2.14. In May 2010, the Court of Appeal saw still insufficient progress on these dimensions. See Appeal Court of Arnhem, 4-5-2010, considerations 4.24-4.25.

⁵ Court of Middelburg, 27-7-2010, considerations 2.5.5 and 2.5.6. Note that this part of the judgment was largely based on the fact that the governmental agencies at that point in time agree with Dekker and her father that the journey is safe on these scores, not on an independent assessment of the court itself. In May 2010, the Court of Appeal still saw insufficient progress on these dimensions. See Court of Appeal of Arnhem, 4-5-2010, considerations 4.24-4.25.

⁶ All quotations in this paragraph and the next one taken from Court of Utrecht 30-10-2009, considerations 2.7-2.10.

respect to her identity development, the Court judged that it may be true that she is abnormal compared to her peers but that this doesn't mean that 'her self-willed developmental evolution poses a threat to her'. Moreover, 'she will have fewer problems from not being able to mirror herself to her teens than would be the case with an average child.'

All in all, the court in Utrecht did not see an impediment to the journey because of Dekker's current development. As long as these are not aggravated by the journey, these do not form a reason to keep her home. However, this line was not followed straightforwardly by the other courts. The Court of Appeal was much more critical of the threat on these dimensions of Dekker's development.⁷ The Court of Middelburg had the final word. It concluded that it could not make a good judgment of the matter, since it had insufficient information. Meanwhile the relation between the governmental agencies and Dekker and her family had seriously deteriorated, to the point where Dekker and her family refused any further cooperation. Remarkably the court concluded, on the basis of these circumstances, that further prolonging the surveillance arrangements would likely be *more* of a threat to her social, emotional and identity development than lifting it. As a consequence it let her go.⁸

In conclusion, the court's verdict to let Dekker undertake her journey is based on handling the two sets of requirements differently. They were strict on what we will refer to throughout the paper as a child's 'technical competences': these are always related to a *specific* activity which a child wants permission for undertaking (here: sailing). The courts had considerably more difficulty to determine the place of the second set of issues, the threats to Dekker's social, emotional and identity development (later we will take these together in our notion of 'autonomy development'); in the end it even renounced a positive evaluation of these as a necessary requirement for allowing her to sail.

2. The Demarcation Dilemma

Central to our analysis of the Dekker case is what we will refer to as the 'demarcation dilemma.' The dilemma turns on whether to use *age* or *competence* as the primary threshold criterion for decision-making authority. What we will call 'age-based'

⁷ See Court of Appeal of Arnhem, 4-5-2010, considerations 4.21-4.23.

⁸ Court of Middelburg, 27-7-2010, considerations 2.5.8 and 25.9.

theories treat the person's age itself as decisive (be it 12 or 16 or 21), such that all children of a certain age will be subjected to the same rule. This provides a practicable and clear criterion but also seems to do injustice to competent or precocious minors by denying them authoritative decision-making status on the basis of morally irrelevant considerations. By contrast, 'competence-based theories' treat authoritative status as accorded on the basis of each individual's *actual* decision-making competence or proficiency. The courts in the Dekker case did not decide the matter by a fixed age limit (as most states do in determining a well-specified set of often-recurring risks like drinking and driving), nor did it tie Dekker's fate to the average competencies of people of her own age. Rather, Dekker's actual technical competencies were taken to be decisive. In taking this line, the courts adopted a competence-based view, while many opponents in public debate took an age-based view. In this section we hope to show that both age-based and competence-based theories are morally problematic.

The problem with age-based theories is that they seem to rely on ageist discrimination against children. Our current legal systems at many points rely on systematic restrictions on the individual liberty and political representation of a large segment of the population, simply on the basis of age. This clearly requires a convincing argument for why this ought to be decided on the basis of how many years one has been alive. It's not, of course, that age *per se* is morally relevant. Age-based theories are characterized by their use of age as a proxy measure for morally relevant factors that often coincide with youth, such as inexperience, impulsivity, or ignorance.⁹ This linkage is what critics of age-based criteria for decision-making authority do not accept. Empirically, cases of precocious children demonstrate how unreliable age can be as a proxy. And as a matter of principle, respect for the equal dignity of persons as individuals would seem to require that they not be lumped together on the basis of a morally irrelevant criterion, but rather that the treatment be tied directly on the individual's possession of the requisite proficiency or competence in the domain in question.¹⁰

⁹ Cf. in a different context (Boxill 1992, 9-18).

¹⁰ This position is taken by child-liberation authors such as (Farson 1974) and (Holt 1974), and is the target of the use of 'proficiency' in Tamar Schapiro's challenge to an understanding of adult in terms of what she call "proficiency" (which we introduce in the next section). Note that a child-liberationist need not be opposed age-based criteria and may simply be opposed to the current age of majority being too high.

This seems to suggest that competence-based views are superior. But they encounter a powerful set of objections regarding what this would actually mean in (legal) practice. As Feinberg puts the point, “the law cannot do without rigid lines dividing ‘standard persons,’ who because of their age are presumed to have sufficient capacity to play some given legal role, from those below that age who are not. That is because direct tests of capacity in particular cases without recourse to such rules would be cumbersome to administer, or unreliable, or both” (Feinberg 1986, 326).¹¹ Moreover, there is a troubling potential for bias in such competence-assessments. Determining how old someone is ordinarily a value-free and reliable affair. Processes of determining whether someone is ‘sufficiently competent,’ by contrast, are ordinarily value-laden, highly contested, and riddled with problems of reliability – all of which opens the door to systematic biases.

In some cases, of course, procedures of competence-assessment are rather well established, such as getting a driver’s license. But matters quickly become much more controversial once we have to assess things like Dekker’s *psychological* preparedness to make her solo voyage. In part, this is a matter of potential for bias and abuse, that is, of vague criteria being interpreted in ways that go against the interests of the agents themselves. In addition, competence-criteria turn out not to be neutral between different ways of leading a life, each way having its own different prerequisites. For example, does Dekker’s cool affect and emotional distance from peers mean that she is at psychological risk or does it rather mean that she is especially well suited for a solo journey around the world? Trying to answer that question quickly draws one into substantive issues of how she can best lead her life, issues that governments and courts are rightly keen to avoid whenever possible.

Up to this point there seems to be a an irresolvable dilemma between ageist discrimination against children, on the one hand, and the risks of unworkable and controversial competence tests, on the other (Schrag 1977, 336). Even so, defenders of age-neutral, competence-based approaches might still claim to have the moral high ground. After all, they will say, the difficulties and even political risks involved in administering tests for psychological maturity or decision-making competence pale in comparison to the moral violation involved in systematic discrimination on the basis of a morally irrelevant criterion of age. If the choice is between pragmatism and

¹¹ Similar points are raised in (Brighouse 2003, 702) and (Archard 2004, 85-90).

morality, the advocates of pragmatism seem to be on shaky grounds, especially when they are adults defending an automatic privilege.

This is too quick, however, for it overlooks the fact that there is a more principled objection to a competence-based approach. For, if age-neutrality is the principle, then that is a principle that cuts two ways. Competence is competence, and so it would not only be those under the age of 18 who would have to demonstrate that they make the grade for decision-making authority. Thus, 40-year-olds who fail to meet the standards would, on this approach, fall into the same category with incompetent 12-year-olds.

But is it really a good idea to start assessing the emotional maturity and relationship-skills of adults in determining whether they should be allowed to sail solo around the world? The unpalatable results of an age-neutral approach is that it opens the door to rampant paternalism towards adults. Defenders of age-neutrality could, of course, bite the bullet here, candidly welcoming an expanded scope for intervening in the lives of immature and incompetent individuals above the age of 18, especially those who take more irrational risks than many 14-year-olds.

At this point, however, it becomes clear that age-neutral, competence-based criteria for adulthood sit very uneasily with the fundamental liberal principle that adult persons have a special authority over their own self-regarding choices, including what others deem 'bad' decisions. If the liberal distinction between harm to others (bases for interference) and harm to self (no bases for interference) is to have any bite, then at least some class of persons needs to have the possibility of actually harming themselves. The paradoxical thing about this class of persons, normally called 'adults,' is that they all have a 'right of autonomy' to an equal degree, even though they may differ markedly in the degree to which they have developed the skills, character, and capacities characteristic of fully autonomous persons. In other words, it is a core commitment of liberalism that, although autonomy, *in one sense*, develops over time and admits of gradations, in another sense it marks a threshold whereby everybody above that threshold has decision-making authority and 'rights of autonomy,' such that further differences in autonomy are of no moral significance (Feinberg 1986). In this second sense, 'having autonomy' is a categorical distinction in *status*: one either is or isn't an autonomous agent. And by ruling out any role for age thresholds, competence-based approaches have trouble avoiding a tight and

problematic linkage between degrees of decision-making authority to degrees of competence.¹²

In light of the foregoing discussion, it becomes clear that resolving the demarcation dilemma ultimately comes down to finding a way to preserve a liberal policy towards adults in a way that doesn't involve arbitrary discrimination against children. For this, however, what we need is a principled way of explaining why treating childhood as a separate stage in life is not just a move determined by pragmatic considerations.

3. Childhood as a Separate Stage in Life

Up to this point, we have presented the demarcation dilemma as about whether age or competence should mark the cut-off point between childhood tutelage and adult decision-making authority. What this focus on a specific criterion misses, however, is the larger context within which the child-adult contrast supposed to make sense. What we propose to do is to reverse the order of explanation, to justify an approach to demarcation in light of the meaning and distinctive purpose of childhood. What first needs elaboration, then, is an overall account of what 'being a child' is about, including the rights, duties, power, immunities, entitlements, etc. are jointly constitutive of what it is to be a child.

Particularly useful in this context are two articles by Tamar Schapiro: 'What is a Child?' (1999) and 'Childhood and Personhood (2003).' Schapiro starts out from the claim that childhood is not a natural category, the way the ability to walk or sail is. Developing such 'proficiencies' is not sufficient for being an adult. Rather, adulthood (like childhood) is an attributed, normative status that exists only in virtue of its being ascribed and being earned. Just as physically possessing an object is insufficient for being able to claim it as one's own property, developing certain abilities (or reaching the age of 18) is not by itself what makes one an adult. For in the absence of a wider

¹² It might seem that a compromise position is available: adulthood could be attributed automatically above a particular age (whether 16, 18 or 21), but that children below that age could sue for adulthood upon demonstrating exceptional competence. We consider a version of this proposal in section 5 below, but it is important that by itself it remains trapped within the dilemma of demarcation, since from the perspective of critics of age-based criteria, it is question-begging to assume an across-the-board exemption from scrutiny (as to whether one is competent) on the basis of age; in the absence of a legitimate reason for doing so, this amounts to arbitrary unequal treatment.

set of practices and institutions, neither property nor adulthood exists (Schapiro 2003, 585). Thus Schapiro rejects the proficiency argument (which is a species of what we have called ‘competence-based views’), but not in favor of an age-based view. Rather, she presents what seems to be a third alternative, which has the potential to transcend the previous two views. In this alternative, the distinction between children and adults is one of status. But what does this status consist of?

In explaining this, Schapiro draws on Kant’s understanding of the transition from the state of nature and civil society. Civil society is not simply a condition in which certain features present in the state of nature become more pronounced. Rather, the emergence of civil society involves a group of individuals *taking one another to be* members of civil society, as constitutive of a new way of relating to one another. It is a fundamental shift in kind, not just degree. For our purposes, then, the key intuition is this: just as civil society isn’t merely an incremental expansion of the political features present in the state of nature, adulthood isn’t merely an incremental expansion of a child’s abilities. Both involve a seismic shift whereby a fundamental and distinctively normative transformation is brought about – even if the properties and characteristics of the composite parts change only gradually.

Schapiro describes the parallel shift from childhood to adulthood as the emergence of a kind of constitution, a state of being organized as a self-guiding agent around a core of commitments, principles, and perspectives. What children lack is their *own perspective* on their choices, a ‘constitution’ on the basis of which to adjudicate between conflicting inclinations or impulses: ‘Thus the condition of childhood is one in which the agent is not yet in a position to speak in her own voice because there is no voice which counts as hers’ (Schapiro 1999, 729, 2003, 587-589).¹³ Crucial to Schapiro’s account is that, as with the transition from the state of nature to civil society, the emergence of a perspective or voice is not a matter of having a little more voice or perspective, since a point of view is something one has

¹³ Schapiro’s general line of argument is not completely new. Earlier Geoffrey Scarre argued that paternalism towards children is legitimate since they lack ‘the ability to plan systematic policies of action’ (Scarre 1980, 123). Also more recently Robert Noggle suggested that while children sometimes have the capacity for ‘simple agency,’ they lack ‘fully stable moral selves’ (Noggle 2002, 100-101); also (Noggle and Brennan 1997).

only in virtue of one's ways of approaching and responding to situations being integrated.¹⁴

This does make it necessary for Schapiro to explain what children are actually doing when they act. Against Kant's position that prior to self-constitution, humans are characterized by mere 'animality' and cannot actually be said to engage in action proper, Schapiro characterizes what children are doing as a kind of pretending or 'play.' 'By engaging in play, children more or less deliberately 'try on' selves to be and world to be in' (Schapiro 1999, 732). Just as, in pretending, one can make the same movements that one would make 'for real' – think of a bride and groom exchanging vows during a wedding rehearsal – what happens when children express a point of view or plan a course of action is fundamentally different from what happens when an adult does that. The difference is normative: children's doings and sayings do not have the same status or meaning. Many children (especially teens) would understandably chafe at the idea that what they are doing is pretend-play, but the suspension of full responsibility is part of the social reality within which children act. In this sense, even a high level of competence in practical reason, self-understanding, and critical reflection is not sufficient for being an adult, because only self-constitution is.

The other part of Schapiro's account here is that as with other forms of rehearsal and pretend-play, children learn a great deal from the increasingly serious rehearsal of activities such as expressing a perspective or deliberating about significant choices. Playing is a form of experimentation which allows the child to take upon it different roles and positions, so as to build up experiences about the world and one's place in it. There is a kind of bootstrapping going on, according to Schapiro, by which children prepare themselves for adulthood by rehearsing for the point at which they step onto a different stage and play the role of adults. Her discussion suggests, in particular, that what is distinctive of childhood is that the social world within which children play and rehearse is oriented toward that role – and that means that there is

¹⁴ We here follow her 2003 article. In the 1999 article, Schapiro had given a different account. There she argued that children gradually acquire authority over different 'domains of discretion'. In some areas, we allow them to act according to their own wishes while in other areas we are more reluctant to grant them this kind of authority. As children grow older, the number of domains in which they achieve discretion grows until finally all domains are under their control (Schapiro 1999, 733-734). We agree with Schapiro that the new, 2003 model fits better with her overall theory. The 1999 position was mistaken in suggesting that decisions to grant discretion in particular domains relied on the basis of 'local attributability arguments'. The competent child should not be seen as acting as 'herself' in any domain, however well she acts.

room for experimentation and a gradual expansion of challenges, but that children are not held responsible to the same extent as adults, and above all that there is supervision. Without these elements in place, the behavior of children no longer is that of play and rehearsal, but rather hit-or-miss attempts at doing what adults do – or mere attempts to survive. Indeed, in such cases we tend to speak of individuals being ‘denied a childhood.’

Now where does all of this leave us with respect to our central issue in this paper, the demarcation dilemma? On the one hand, we think Schapiro’s account is very helpful in making the shift from technical competencies (proficiency) to the global status of childhood. On the other hand, however, she hasn’t yet developed the arguments to ward off a threatening ‘second demarcation dilemma,’ in which a pragmatic case for age limits yet again stands opposed to a moral case for competence tests – only this time the object of the dilemma is autonomy development itself, not any set of technical competences. Schapiro herself is surprisingly silent on this issue. Self-constitution marks the transition, and it involves self-constitution being attributed to someone. But it remains unclear whether this status is attributed on the basis of age or not. As long as this issue remains unresolved, Schapiro’s account cannot be applied to a case like Laura Dekker’s.

The claim that self-constitution is what is constitutive of adulthood might suggest that Schapiro is actually defending a competence-based criterion for demarcating childhood from adulthood. And, indeed, some of her formulations suggest that she sees self-constitution as *sufficient* for adulthood. But if we view self-constitution – understood as comprising the ability to assess matters critically from an integrated point of view – as the sufficient criterion for adulthood at any age, then we are back to the difficulties faced by competence-based view, discussed in the previous section. This would, however, entail that 9-year-olds who precociously develop mature decision-making skills and a distinctive point of view would no longer be children – and would put Schapiro squarely in the camp of the child-liberationists. This is not only against her stated aim (to refute child-liberationism), but also morally unattractive. On the other hand, if we stipulate a specific age as the point at which self-constitution is attributed to individuals, we seem to be licensing treatment of individuals on the basis of a morally irrelevant category and, furthermore, ignoring the fact that self-constitution does involve capacities that some will not have yet developed at that age and others will have already long had. Laura Dekker, for

example, is not claiming merely that she is a very good sailor but that this trip matters deeply to her, that she is competent to make that choice, and that age thresholds are arbitrary.

How ought one to deal with this second demarcation dilemma, where self-constitution (or, as we will henceforth say, ‘autonomy-development’) has taken the place of technical competencies as the competence criterion? To answer this question, in the next two sections we will argue that Schapiro’s account of the distinction between adulthood and childhood and the importance of childhood tutelage needs to be integrated in a wider context, what we call a ‘regime of childhood.’

4. Regimes of Childhood

As we are using the phrase ‘regime of childhood,’ a regime comprises the set of norms, practices, institutional arrangements, possibilities for contesting, guiding ideals, criteria regarding thresholds, etc. on the basis which a particular status is ascribed to individuals -- in our case, the status of ‘being a child.’ A regime is constituted by institutionally and culturally backed understandings of what this status licenses bearers of the status to do, what they are entitled to, what others (generally and in special relations) are obligated or forbidden to do, and so on.¹⁵ In the case of the regime of childhood, that includes centrally tutelage and limited decision-making authority. To speak of a regime is to speak of this entire, more-or-less consistent network of normative interrelations. As in the case of other normative statuses (such as citizenship or mental competence), a regime of childhood is identified and justified as a package.

As an illustration, take the mundane ‘regime’ governing selling one’s car to someone else. The most relevant change in ‘normative status’ resulting from the sale is that the seller no longer has any claims to the use of the car and that the car is now the personal property of the buyer. But, in many countries at least, the sale is embedded in a further set of relations and institutions. The sale thus also transfers obligations to pay vehicular taxes, insure the car, and get regular safety or emissions inspections. At the same time, the seller retains responsibility for paying parking fines

¹⁵ Perhaps the best-known account of the interdependence of normative statuses (such as being a bearer of rights) and the forms of treatment that those statuses license or prohibit is Hohfeld’s theory of rights (Hohfeld 1913).

incurred before the sale. And so on. These facts are rarely specified explicitly in the terms of sale but are rather part of the relevant ‘regime of vehicular property,’ comprising the laws, regulations, and customs that set the terms of what is entailed by a car sale. This is what it means to become the owner of a car, and it is not up to the buyers and sellers to change this regime. Different jurisdictions may decide to arrange things differently, but the justification for any particular regime will have to be in terms of the regime as a whole. Just as the meaning of a change in status is fixed by the wider framework, the justification will also be similarly systematic.

A regime of childhood comprises an even more complex network of relations, governing the status change from childhood to adulthood. Here we want to focus on four distinctive, interlocking aspects of the specifically ‘modern regime of childhood’: an orientation towards autonomy development, limited liability for children, parental supervisory responsibilities and age-based demarcation.¹⁶ What is ultimately at issue in the Dekker case (and others like it) is whether this regime of childhood is coherent and preferable, in particular, to one in which adulthood demarcated less on the basis of age and more on the basis of competence. Our position is that the current regime is less vulnerable to competence-based challenges than defenders of Dekker’s claim have suggested. In elaborating this position, we describe here a vision of how the first three aspects can be seen as fitting together and then turn, in the next section, to focusing in on the fourth aspect; the specific issue of how to handle the diverse ways in which the precocious development of competence might be viewed as grounds for being exempted from age-based limits on decision-making authority.

First, the guiding purpose of the modern regime of childhood is a commitment to autonomy, not as the criterion for a normative status but as a set of capacities that are important for adult life and that require a period of development. The current regime of childhood is thus by its nature geared toward promoting and making possible a developmental process. This gives it the paternalistic and ‘perfectionist’ character that so irritates many liberals (Scarre 1980, 117). But surely if there is anything that a regime of childhood should be about, it is the enablement of a process of maturation. We take it that Schapiro’s articles have sufficiently established this point. We will here take the paramount importance of autonomy as given, and not

¹⁶ Talking about a modern regime of childhood risks ignoring genuine and important differences in the treatment of children between different (modern) countries. We hope that the reader can agree that for present purposes the similarities are more important than the differences.

defend this guiding purpose against other (say, pre-modern) regimes of childhood in which autonomy didn't play such a fundamental role (e.g. in which adulthood is connected to the maturation of other capacities as central). A full defense of the modern regime would of course require such a comparative investigation of the value of autonomy. We also omit a discussion of which skills precisely are necessary for being an autonomous adult in a given society, and what level of development is necessary for decision-making authority and full responsibility. For example, as societies become more complex and require more complex autonomy-capacities, this may very well require a longer trajectory of development, and therefore a higher age of majority, at least relative to less complex societies.¹⁷

Second, the current regime circumscribes the responsibilities of children. Minors are not fully accountable for their actions, given that they are not fully their own. Although this accountability increases with age, the ultimate responsibility is never entirely with them. As Schapiro's discussion of 'play' suggests, limited liability creates a protected space for the duration of childhood, in which there is room to experiment, explore, and practice with a safety net in place. The guiding intuition here is that autonomy development is facilitated by such a circumscribed period of experimentation. Although this would ultimately have to be supported by empirical research in developmental psychology, support can be found in the familiar idea that there are costs to moving too quickly to a more difficult and demanding level of activity. In the case of musical skills or sports skills, coaches and teachers are regularly cautioning against children doing exercises or activities that they are not yet ready for. Aside from possibilities of injury, the concern here is that once an athlete or a dancer or pianist has started to put all the different component parts of the performance together the individual moves to a different perspective on the performance, and any attempt to look at the component parts again will always be from that perspective. There is in this sense, then, no going back. The 'opportunity costs of premature advancement' involve a lost opportunity for a kind of development that occurs best (or perhaps exclusively) within the framework provided by a particular level of development. This is just one example of the general point that the having a period of being a novice can be functional for the development of certain abilities.

¹⁷ For a discussion of this Durkheimian perspective, see Anderson (2011, 102-5).

Third, the current regime of childhood can only facilitate modes of exploration by arranging for a period of tutelage, on the grounds that there are skills and dispositions required for autonomous adulthood that are best acquired as a novice and with a safety net in place. The justification of parental authority and responsibility fits in here, in that parental fiduciary duties are not merely arbitrary impositions of power but partly constitutive of the possibility of exploration, rehearsal, and play as such, since this involves supervision being in place so that the full responsibility regarding things going wrong does not have to lie with the child. Parents are responsible not just for giving a child the possibility to act upon her own decisions as she gradually becomes capable of doing so. They are also responsible for protecting the interests of the adult that the child is to become. Harry Brighouse has usefully drawn a fourfold distinction between immediate and future welfare interests and immediate and future agency interests (Brighouse 2003, 701).¹⁸ Parents have to take all of these interests into account.

With these three elements of the modern regime of childhood in the picture, we can now approach the fourth aspect: the demarcation of childhood on the basis of age. Within the context of a regime of childhood, the question about demarcation now becomes: What scheme of supervisory responsibilities on the part of parents and what duration of the period of childhood tutelage best serves to realize individuals' fundamental interest in autonomy development? No longer are we talking about a dilemma of demarcation. Rather, we are talking about selecting the package of age-based thresholds for adulthood that best promotes the autonomy interests of individuals. In the next section we take a closer look at this fourth element of the regime of childhood.

5. Emancipation

Any regime of childhood should be explicit about how it deals with children's gradual acquisition of competences, both more technical and autonomy-related competences. To what extent should children be allowed to act upon their growing competencies and thus be emancipated from their childhood status? In this section we propose a

¹⁸ See also MacLeod, who distinguishes primary goods and 'intrinsic goods' of childhood. (MacLeod 2010, 182), and Feinberg, distinguishing a child's interest in self-determination (autonomy) and in self-fulfillment. (Feinberg 1980).

way of answering this question in terms of a distinction between local emancipation and global emancipation. ‘Local emancipation’ will refer to specific exemptions to age-based status-ascriptions while still remaining under tutelage more generally, while ‘global emancipation’ will refer to exemptions whereby those below the age of majority are no longer under tutelage at all (although they may not automatically acquire all rights typically accorded to adults, just as U.S. laws prohibit adults under the age of 21 from purchasing alcohol).

Local emancipation serves to accommodate precocious children who have reached certain technical competencies early on in specific domains. Thus, for example, a regime of childhood might allow for numerous procedures by which minors can appeal for exemptions from default age thresholds, and differing degrees of responsibility and decision-making authority might be accorded differently across different domains of activity. Commercial and occupational choices for example might be treated differently from choices in medical contexts, and experimentation with hobbies and sports might be treated differently from experiments with drugs or alcohol. In some cases, for example, liability or responsibility for foolish or harmful actions might be shared between children and guardians, and to varying degrees. Local emancipation allows for these competence-based exceptions. Making these arrangements, in which children gradually take on responsibility and ‘suffer the consequences’ of poor choices are necessary for autonomy development to be effective. But, as we saw, the very idea of childhood as a separate status presupposes that parents keep the final responsibility for the overall process of their children’s development. The buck stops with them.¹⁹

Global emancipation is a different matter, because the decision-making authority granted is no longer limited to specific contexts. Here, a child is granted the status of an adult before reaching the legally prescribed age of majority, and the supervisory role of parents or guardians is terminated. There are roughly two ways of arranging this with a given regime of childhood. One is to restrict global emancipation to exceptional circumstances, such as an insurmountable conflict between parents and children in the absence of suitable guardianship arrangements, or (more controversially) when a child marries. This is how the law in most countries

¹⁹ One might compare this to the responsibility a Minister has for all the actions by his civil servants. Although the latter are competent to perform tasks, only the former can be held accountable for these acts in Parliament.

handles global emancipation.²⁰ In such cases, global emancipation is not view as a good thing per se, but as part of the best solution to a difficult situation (call this ‘exceptional global emancipation’). A second approach is to make global emancipation into a straightforward, elective option for qualified children. A regime that takes this approach effectively abolishes the age of majority and endorses an age-neutral, competence-based approach to demarcation. Most likely this would involve retaining a default age of majority but permitting some children to apply for an assessment of their level of maturity and autonomy. In a regime of childhood that permitted this ‘elective global emancipation,’ no appeal would need to be made to exceptional circumstances relating to familial hardship. Allowing for the option of suing for adulthood would not abolish the status-distinction between children and adults altogether. Everyone still first goes through a phase of childhood, and then reaches adulthood. But the moment of transition would be radically transformed into a competence-based, age-neutral approach.²¹

Our position is that it is this elective global emancipation that is problematic, and that both local emancipation and exceptional global emancipation can be more easily defended. In defending this, we must explain, in particular, why we oppose giving children who meet the minimal requirements for autonomy the corresponding decision-making authority. If we are willing to endorse exemptions from age restrictions in specific domains and on grounds of technical competence, why not allow it for the form of restriction that ultimately matters most, childhood tutelage itself? Of course, the kinds of pragmatic considerations mentioned in section 2 – administrative costs and dangers of biases in testing – play a role here as well. Elective global emancipation would be an addition to the current legal system and so raise administrative costs. The biases when judging autonomy development are, if anything, likely to be much more severe than when testing competencies for relatively

²⁰ Even in cases of emancipation, at least in the Dutch system, the judge must still specify *which* adult rights the child will be allowed to have. To the extent that a child is not granted one or more adult rights, it could be argued that the case remains one of local emancipation rather than global emancipation, if one takes it that the latter requires full assimilation to adult status. For an in-depth treatment of emancipation in actual legal practice, we refer the reader to (Gardner 1994). Our discussion of “global emancipation” here is best understood in the context of our analysis of the demarcation dilemma and regimes of childhood. A comparison with the details of contemporary law and legal practice would require a separate discussion.

²¹ In addition to exceptional and elective emancipation, which both originate in a wish to be emancipated on the part of the child and/or parent, one might consider non-voluntary forms of emancipation, such as when a child is prosecuted and convicted on the basis of adult criminal law. We thank one of the referees for drawing our attention to this additional form of emancipation.

restricted sets of activities (like driving). As we mentioned in section 2, the courts' treatment of Dekker's developmental opportunities was much more contentious than her sailing competencies. However, these pragmatic considerations alone do not provide a knock-down argument against elective global emancipation and therefore still keep us trapped in the second (higher-level) demarcation dilemma.

Within the context of a regime of childhood, we are now in a position to supplement these pragmatic considerations with inherently *relational* considerations. We have to see whether allowing some children to leave the childhood phase earlier than others undermines the beneficial effects that the regime is to have on *all* children. We think there are three good regime-specific reasons to be critical of elective emancipation.

A first reason is the need for *stable expectations* with respect to the parent-child relationship. A regime needs to give parents feasible structures to perform the responsibilities attributed to them as part of the regime. For example, it is plausible that a strongly competence-based approach to demarcating childhood and adulthood would undermine the ability of parents to carry out their responsibilities effectively (thereby jeopardizing the long-term autonomy interests of the children involved). This is because, at least in many societies we are familiar with, having the child's status a constant focus of negotiation and renegotiation creates uncertainties and unclarity that put counterproductive strains on parent-child relationships. If this is right, one of the advantages of age-based criteria, with publicly recognized rites of passage at particular ages, is that it introduces much-needed, stabilizing points of reference into the complex process in which parents navigate with their teenage children the transition to adulthood, as in, 'When you're 18, you can decide that for yourself, but not yet.'

A second reason for not allowing global emancipation is that it will tend to undermine healthy *in-group relations* between children. Compare this to the discussion about mandatory health insurance. In many countries, the state requires non-indigent individuals to purchase health insurance, because that enables the state to pool many different risks, so that health coverage can be extended to all at a moderate price. If 'good risks' (those with good health expectations) are allowed to exit the collective pool and insure themselves, this will be advantageous to them. The 'bad risks' that remain behind will however face a much higher price, given their

higher on average health care costs.²² A similar argument can be made against the elective emancipatory regime. If most children would turn out not be interested in early emancipation, then there wouldn't be any consequences for the regime (in the same way that the collective health pool wouldn't suffer much if only a handful of people would exit).²³ But if many would try to exit, this would arguably create a schism between children, who are often intensively interacting with their peers. Some would feel losers, because they haven't gone up for the adult-test (or even worse, failed it). Others would feel stress for trying to meet the test, etc. This would put relations between children under severe strains. And it would transform childhood into a period marked off by failing to perform well enough.

A third reason has to do with *inequality* between children. In an elective emancipatory regime it might well be children from stable and fortunate family backgrounds who will apply earliest and most successfully to opt out. If this happened, it would likely exacerbate existing inequalities of power, wealth, and social status. Although it is difficult to foresee the practical consequences of such a generalized practice of differentiation in seeking adulthood status, it would be surprising if the sphere-transgressing influence of money would here not come to play a role as it has in so many other spheres of life (Walzer 1983).

Before continuing, we would like to address two potential objections. The first is that we are exaggerating the problems with permitting elective global emancipation, on the grounds that the number of cases of global emancipation will be vanishingly small.

Suppose we grant there would be no point in prohibiting global emancipation if it only occurred in extremely rare circumstances. Are there reasons to assume that it will be rare? There are two scenarios here: the level of global emancipation might be low because few children request it, or it could be low because most requests for emancipation would be denied on the merits. Take the first case. If the criteria are set at a relatively relaxed level, such that 10% of 12-year-old children qualify, it might still be thought that few would actually take advantage of this before the age of 16 or 18. But it strikes us as very risky policy-making to permit, on the basis of

²² The mandatory scheme is justified since, under a veil of ignorance where you don't know if you are a good or bad risk, most would choose to have mandatory collective pooling.

²³ This might well be the case: after all, not bearing final responsibility is also comfortable. The question is what these children would gain, if there are no pressing circumstances such as those that already count as a reason for exceptional global emancipation.

assumptions about whether people are inclined to take advantage of the option, something that would be problematic if pursued widely. These trends can change, and trying to roll back these permissions would be politically difficult. Alternatively, it might be thought that few children would qualify, even if they wanted to. Indeed, a regime of childhood could ensure that by setting the bar for qualifying very high. But suppose it then turned out, as we think likely, that the only way to keep the number of qualifying 15- or 16-year-olds to low levels would be to require that aspirant adults demonstrate exceptionally well-developed skills in self-discipline, rational planning, emotional maturity, and so on. If so, then we are back to the objections raised earlier by critics of age-based approaches to demarcating childhood. Not only are young persons required to meet a higher standard for full-fledged adulthood, it is also the case that defining full-fledged adulthood in such demanding terms would also put pressure on the touchstone liberal assumption that individuals above the age of 18 (or 21) ought to count, by default, as genuine adults.

Furthermore, we don't actually accept the assumption granted above that elective global emancipation is problematic only if large numbers of minors take advantage of the opportunity. There are compelling reasons to take global emancipation off the table as an elective option (and to permit it only when doing so is required to avoid a significant harm). The foremost reason is grounded in the expressive value of a competence-neutral boundary between childhood and adulthood.

As several legal philosophers have argued, part of the purpose of the law lies in what it says about the significance of certain actions, institutions, and practices (Anderson and Pildes, 2000; Sunstein 1995). This message may be intended to have a particular effect, but the meaning conveyed by laws is not limited to that. What a policy of elective global emancipation would express is a view of childhood as defined by thresholds of competence. It thus equates childhood with a condition of lacking ability, and condition that children can leave as soon as they can get acquire the skills and get their act together. It becomes a golden cage that children escape by convincing their parole board that they are ready for life on the outside. Rejecting elective global emancipation in favor of regime-based approach replaces this message with an emphasis on a period of time in which the development of individual autonomy is central as a societal value and goal. It is a phase of life devoted to the structured and supervised acquisition of autonomy.

This is not to deny that there are also important practical advantages to a clear line of demarcation. As we acknowledged in section 2, it is often appropriate to rely on a notion of the ‘standard person’ (Feinberg 1986) in order to avoid unnecessarily taking on administrative and juridical responsibilities that drain public coffers, overburden the legitimacy of the courts, or expose individuals to the risk of biased treatment. Thus, the courts and legislatures could just say that the ‘standard 15-year-old’ is ill-prepared for global emancipation and leave it at that. Our point is that focusing only on administrative reasons leaves fails to take seriously both the strongly held objections of teens such as Dekker and the real importance of childhood as a context for autonomy development.

Having now formulated a principled set of objections to elective global emancipation, on the basis of a reconceptualization of the demarcation dilemma in terms of regimes of childhood, we now finally return to the Dekker case.

6. Sailing Alone?

Although we do not aim to resolve the question of whether Laura Dekker ought to have been allowed to sail or not, in this section we will point to relevant features of the case that would need to be decided in order to answer that question. As we will argue, what is intriguing about Dekker’s case is that part of what has been in dispute is whether allowing her to sail alone constitutes local or global emancipation, as we are using those terms. Our position is that *if* she (together with her father) was suing for merely local emancipation, that would have been less problematic, but in that case, provisions would have to have been made for the father being able to carry out his supervisory duties; otherwise, we have a situation of *de facto* global emancipation.

Above, we argued that an essential component of any regime of childhood is the suspension of full responsibility. One way to bring this out is by imagining the public response to news that Dekker had drowned as compared with the news that someone twice her age, undertaking the same feat, had drowned. In the case of adults, we would view it as a tragic loss, but perhaps also partly as the results of foolishness on the part of the adult sailor. In the case of a young teen, such as Dekker, we suspect that any doubts about the judgments involved would be directed not at the child but at her parents. And, for the reasons discussed earlier, this is entirely appropriate.

Children take risks, but their risk-taking and the results of this risk-taking are at least in part the accountability of parents. And it is, we have suggested, central to the currently accepted regime of childhood that children be protected from the full brunt of responsibility for their exploratory and risk-taking activities, in the interest of their development as autonomous persons.

In this regard, it is interesting to consider the role of Laura's father, Dick Dekker, who had his daughter's support throughout the proceedings.²⁴ Dick Dekker's willingness to let Laura undertake the solo trip could be interpreted as entailing a willingness to accord to her the status of an adult. On this view, he could be seen as supporting his daughter's plan by effectively ceding his guardianship. And, indeed, given a regime of childhood in which children's (partial) immunity from full responsibility is tied to the parents bearing that responsibility, Dick Dekker's relinquishing his parental responsibilities amounts to an attempt to effect his daughter's global emancipation. But this is, importantly, not something that a parent can decide on his or her own, even if it is what the child wants. It is essential to the regime of childhood as we know it that a child cannot be removed from the status of being a child by parental fiat. Dekker's father can decide to relinquish guardianship, but the state automatically steps in to the resulting vacuum. Were Mr. Dekker's aim to end his daughter's childhood, the Court would be correct to treat this attempt as moot.

Alternatively, Mr. Dekker might actually understand himself to be still exercising his parental responsibilities by adequately and appropriately supervising his daughter, albeit at a distance. This is, in our opinion, the more fruitful route. Dekker's case has to be interpreted as one of local emancipation. What does this mean for judging the permissibility of her journey?

First, this means the courts cannot avoid saying something about the scope of the responsibility that parents have to exercise. Using the fourfold distinction introduced by Brighthouse (see section 4 above), Dekker will normally enjoy her trip (she has an immediate welfare interest in it) and the trip will if all goes well train several parts of her agency (immediate agency interest). However, it remains to be

²⁴ We see no reason to doubt that the impetus and driving force behind the plan to sail around the world lay with Laura Dekker and not her father, although this may well play a decisive role in analyzing other cases, such as those of child performers. Here, it is the daughter who is seeking (some form of) emancipation. Note that a potentially complicating factor that we bracket is the opposition of Laura's mother, from whom she was estranged. Of course, since we do not have full access to the court documents, we cannot here make any adjudication of what Mr. Dekker's *actual* motives, intentions, or judgments are in the case. We focus instead on the implication of possible scenarios.

seen whether the trip will also serve the person she is later going to be, both in terms of agency and welfare. It might just as well thwart her future agency (e.g. if she will be disabled because of an accident) or her future welfare (e.g. if she later regrets not having spent her teenage years among peers). The court treats these kinds of future interests in terms of Dekker's social, emotional and identity development. As mentioned in section 1, a proper assessment of these turned out to be impossible due to a lack of cooperation on the part of Dekker and her family. However, on our account such an assessment is imperative and the court would have to be judged too permissive in its waiving of this assessment.

Second, children's development of autonomy requires parental supervision. The parent needs to be able to intervene if it judges the child to be insufficiently competent in making decisions or carrying out specific plans. Whether this requires a more or less continuous monitoring of children by their parents, clearly will depend heavily on circumstances: the precise details of the planned journey Dekker is undertaking, the technological resources that are available for monitoring at distance, and so on. We are not in position to judge whether or not the relevant criteria are met in this specific case, and so our main point here is simply that this is the kind of consideration that ought to have been central in the courts deliberations about this case. Note that this is a different point from the one on which the court deliberations focused, i.e. Dekker's technical competences. The point about supervision is not merely a point about safety. Rather it is an issue of whether or not the supervisory responsibilities constitutive of parenthood can be exercised under the circumstances of a solo circumnavigation. Childhood requires guardians, whose role is often – particularly in adolescence – one of a safety-net, background monitor, and 'sleeper' supervisor, who swings into action as needed. But to fulfill this role, there needs to be not only enough communication, but also an ongoing relationship that provides a supportive context for intervening in a constructive way.

Of course, the supervisory responsibilities of parents do change as the child approaches the age of majority, and this means that parents must judge the extent to which their children are able to handle new responsibilities, even if the children never have ultimate responsibility. So it might not be problematic that Dekker receives a lot of decision-making responsibility on her journey, if she turns out to have developed her personality to such an extent that she can independently handle a great variety of unexpected situations. However, one might still worry that the waiver from actual

supervision that Dekker gets from her father is so generic and across-the-board that she seems to gain something like decision-making *authority* on her trip – just the thing that distinguishes global emancipation from local emancipation. Whether this is the case is something that the courts need to decide. If Dekker’s sailing plan turns out to exclude global emancipation in words only, but in effect would be a case of global emancipation under the guise of local emancipation, then the courts would have reason to prohibit her plans.

Conclusion

In this paper we have taken the Dekker case as a point of departure for thinking about the legal, moral and political status of childhood. We have shown how the debate about the Dekker case deadlocked by being framed in terms of the dilemma ‘age versus competence’. We have argued that we should move beyond this dilemma by reconceptualizing the distinction between childhood and adulthood as one of status. This opens up a more fruitful – though decidedly more complicated – debate over various ways of arranging and institutionalizing a ‘regime of childhood’. The issue of emancipation is one important part of the specific regime of childhood of modern western societies, which exhibit a lot of emphasis on the idea of growing into an autonomous person. The usefulness of thinking of childhood as a normative status accorded within a regime extends beyond the issue of emancipation, though. We think that these notions can help us think about other controversial issues surrounding childhood, and be extended to analyze arguments in other controversial court cases in this area.²⁵

²⁵ For feedback on previous versions of this essay, we wish to thank audiences at the annual meeting of the Dutch-Flemish Political Science Association, as well as at the University of Amsterdam’s Colloquium in Philosophy and Public Affairs, where we benefitted especially from Peter Rijpkema’s prepared remarks. Joel Anderson also gratefully acknowledges the Netherlands Institute of Advanced Study for the fellowship support during much of the writing of this paper. We also wish to thank two anonymous reviewers for pressing us to clarify several key points.

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