FEATURE

Detained Migrant Children, Autonomy, and Positive Duties

Tyra Lennie

What moral and corresponding legal duties do we owe to migrant children in the context of detention?[1] Current philosophical discussions of immigration generally focus on the right to leave one's state and settle somewhere else rather than on the period where individuals are detained while awaiting processing. Arguments for open borders rest on considerations such as common ownership of the earth, equality of opportunity, or a general right to movement. I will diverge from these justifications and motivate the question of what duties we owe to migrant children by utilizing accounts of children's well-being and autonomy. Making this move is necessary because existing explanations do not capture the status of children as nonautonomous agents, and there is currently heavy focus on the right to immigrate and limited focus on the realities of detention. Determining the duties that we owe to migrant children in the context of detention is a pressing task for several reasons. First, examining these duties is essential because children's well-being is heavily impacted by detention. Second, children occupy an incredibly vulnerable and nonautonomous status throughout the process of immigration. Third, this work is theoretically novel since little research exists that connects children's well-being to the global justice literature. Finally, this work is practically essential—as demonstrated by the lived experiences of detained children across the globe.

This article opens with a description of the conditions in which children were detained on the island country of Nauru and the impacts of this experience on

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Ethics & International Affairs, 39, no. 3 (2025), pp. 259–284.
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doi:10.1017/S0892679425100178

https://doi.org/10.1017/S0892679425100178 Published online by Cambridge University Press

children. Next, in the second section, I examine some of the more common justifications for open borders and explain why these arguments do not capture the unique position of migrant children in detention. Moving away from these common justifications, I consider more relevant literature on the unique status of migrant children, with a particular focus on parental rights. In the third section, I describe how extant views of children's well-being and autonomy can prop up our intuitions about some of the duties we owe to detained migrant children. Further, though, this section will point to duties beyond what one might immediately and intuitively grasp—as informed by the intrinsic goods of childhood. In the fourth section, I provide a list of positive rights and the corresponding duties owed to detained children, as informed by the literature on children's well-being and the Convention on the Rights of the Child (CRC). Finally, in the fifth section, I consider two objections to clarify the approach and aims of this article. Ultimately, the article argues that because migrant children occupy a particularly vulnerable and non-autonomous status in the context of detention, they are owed exceptionally weighty positive duties that are not captured in the current literature.

The Nauru Case Study

Between the years of 2013 to 2019, at least 222 migrant children were detained on the island of Nauru.[2] I have chosen to focus on these children as there is sufficient research available demonstrating the detrimental impacts that detention had on these children's well-being, security, and development. Before describing the impact of detention, I will provide a brief background of the policies that led Australia to create the Nauru Regional Processing Centre as part of the "Pacific Solution." Since the 1990s, Australia has focused on curbing the number of stateless asylum seekers arriving to the country, many coming from areas rampant with political conflict,[3] with a particular emphasis on those arriving by boat.[4] During the 2013 parliamentary election, Tony Abbott, who led the Liberal coalition, popularized the slogan "Stop the boats."[5] The closed border rhetoric of the Abbott campaign translated to the implementation of the Regional Resettlement Agreement, which diverted asylum seekers arriving by boat to detention centers on Manus Island and Nauru, where they would either be resettled or sent back to their states of origin. This agreement, and the Pacific Solution more generally, left asylum seekers without the opportunity to enter Australia, even if they were found to be legitimate refugees.[6] Further, this resettlement plan was in direct violation of

https://doi.org/10.1017/S0892679425100178 Published online by Cambridge University Press

Australian municipal law and international law—especially concerning the CRC, given that children migrating with their parents were often affected.[7] Neither the government of Australia nor the government of Nauru accepted the characterization of this process as *detention*—"they argue[d] that asylum seekers in Nauru are not detained because they are accommodated within a regional processing center rather than a detention center" and are "free to return to their home countries."[8] There are two legal reasons that have been identified for this reluctance to characterize what was happening on Nauru as detention. First, the deprivation of personal liberty and detention is prohibited under the Constitution of Nauru, other than in "certain outlined exceptional situations."[9] Second, and more relevant for the goals of this article, detention on Nauru contradicted international human rights law. The legal justification for detaining migrants on Nauru was made based on a difference in treaty ratification. Australia signed the International Covenant on Civil and Political Rights (ICCPR), a United Nations treaty that protects the various civil and political rights of individuals,[10] in 1972 and ratified it in 1980. In contrast, Nauru had *only* signed the ICCPR without ratification in 2001.[11] This, in a sense, created an extraterritorial loophole for Australia to detain asylum seekers on Nauru.[12] However, the illegality of detaining *children* on Nauru was straightforward since, under the CRC, children may not be deprived of their liberty in an arbitrary or unlawful way. Further, detention on Nauru was for a lengthy period of time and was certainly not used as a measure of "last resort."[13] Ultimately, as stated by Amnesty International during a 2012 visit, there was a "toxic mix of uncertainty, unlawful detention and inhumane conditions creating an increasingly volatile situation on Nauru, with the Australian Government spectacularly failing in its duty of care to asylum seekers."[14]

Life on Nauru

Physical conditions. The living conditions on Nauru from 2012 to 2019 were stark, despite Nauruan laws regulating that "asylum seekers be provided with adequate food, clean and sufficient clothing, access to medical facilities, education for children and access to facilities for communication."[15] The United Nations High Commissioner for Refugees, or UNHCR, noted during a 2013 visit that individuals slept in canvas or plastic tents with seven to ten others on stretchers with minimal bedding. At the time of the visit, there were only eight toilets and two urinals for over four hundred people.[16] Nauru is almost exactly on the equator, so families endure intense heat all day on the eight-square-mile island.[17] The detention center

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is surrounded by fences and there is practically no vegetation; the landscape is primarily barren white rocks.[18] Amnesty International reported similar circumstances in 2012, describing conditions with no privacy, oven-like temperatures, no space for meaningful recreation, cramped living quarters, floods, electricity issues, insect and rodent infestation, and phosphoric runoff.[19] In a media release, Amnesty International argued that "the transfer of asylum seekers from Australia to Nauru contravenes international law as it acts as a punishment for seeking asylum by boat."[20] The physical conditions, in this way, acted as deterrence to encourage current detainees to return home and prevent potential asylum seekers from coming at all.

Psychological conditions. The physical conditions only describe part of the problem on the island of Nauru. The mental health crisis was equally dire. Amnesty described long hunger strikes, with one man who had not eaten in forty days noting that "my psychological condition is even worse than my physical one."[21] Asylum seekers facing incredibly lengthy processing times, some up to five years,[22] resorted to self-harm and suicide, with one man trying to hang himself from a tent pole during the Amnesty visit.[23] Self-harm and suicide were seen as the only option for many detained individuals, with another man stating that "the suicide attempts will increase in the future, more and more of my friends are thinking about it and taking it into their plans" and that "if there is no processing, if there is no release, then what is the point of my life? I prefer to die from my hands and not the hands of the Iranian Government."[24] Patrícia Cavalcanti Schmid, a psychiatrist who spent six months on Nauru with Doctors without Borders (MSF), details the mental health crisis in her 2019 case study.[25] During her time on Nauru, Schmid served asylum seekers who had already been detained for an average period of five years and who presented "intensely complex" mental health issues.[26] Among these cases were "schizophrenia, family violence, and many levels of depression, especially among children."[27] Schmid reports a host of common issues visible during her time:

> Non-choice of being in Nauru, indefinite detention, producing a sense of life imprisonment, and awareness of the presence of the refugee center as the Country's main economic resource, contributing to the development of a strong sense of dehumanization and hopelessness. Another important element identified was that the absolute majority of the patients did not report mental health problems prior to their arrival in Nauru and referred to the development of these problems as a consequence of their forced stay in the Country. [The author] heard significant testimonies, pointing out the fact that even experiences with combat situations, torture and killing of loved ones in the

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> countries of origin, or during the migratory journey, caused less damage to the mental health conditions than living in Nauru.[28]

Some of the most common mental health diagnoses on Nauru among the refugee population were major depressive disorder, anxiety disorder, and post-traumatic stress disorder.[29] Alongside these disorders, Schmid reports that many patients served by MSF had "suicidal thoughts and/or carried out acts of self-mutilation or suicide."[30] Schmid describes how hopelessness was the driving factor for suicidal ideation on Nauru and how suicide functioned "as an act of re-empowerment" for those in prolonged detention.[31] These mental health conditions did not improve from the use of traditional antidepressants, which offered patients low or *no* response.[32]

Impact on children. The exposure of children living on Nauru to these physical and psychological conditions constituted a significant trauma and stressor, leading to high levels of sexual assault, self-harm, mental illness, developmental disorders due to a lack of consistent education, violence, and suicidal behavior within the population.[33] Olivia Rousset, a reporter from the investigative journalism nonprofit Reveal, made contact with a family who had been detained on Nauru for almost six years. The following testimony provides a window into a particular but common mental health crisis on Nauru.[34] Maya, the youngest in the family interviewed by Rousset, described the state of her sister:

> She doesn't like to eat. She don't like see anyone. She talks with the dolls or, she hits her head on the wall. She's eating but not very well. Like little, little bit and she's not drinking enough water and she talks by herself and, she cries every time. She's like getting worse and worse . . . She tried to burn herself. Twelve-year-old girls have tried to do stuff that they're not meant to do to their self. Just, they're trying to hurt their selves.[35]

Maya's sister suffers from pervasive refusal syndrome (PRS), which was also present in clusters on Nauru, as noted by MSF clinicians.[36] PRS presents as a depressive episode that leaves individuals socially withdrawn, unresponsive, and irritable, and leads to food and fluid refusal.[37] In the case of Nauru, clusters of PRS were brought about by the context of indefinite detention. Some children, like Maya's sister, "progressed to a state of being bed-bound, immobile, mute, having minimal oral intake, and being profoundly withdrawn. Parents reported episodes of agitation with attempts to self-harm in otherwise unresponsive children."[38] In a note, another young girl on Nauru writes:

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> I want to tell you I am sick, and nobody is helping me. We're here in hell for five years. I just feel like I'm in the deep, deep ocean screaming and shouting and nobody can hear me. I don't want to be living in this hell anymore. I really want to get out of here. Please help me. Please, I want to study. I want to become an air hostess. Please help me and help my family. Please help us. Please.[39]

It is important to keep in mind that the realities of PRS showcase the severe trauma that detained children experience, which results in a type of mental stress that is not age appropriate for children.[40] Schmid reports similar cases of non–age appropriate mental health conditions: "Children up to 9 years of age reported that they would rather die than live in the hopeless situation they were in."[41] Schmid also describes a new clinical diagnosis, resignation syndrome, which became increasingly prevalent among the child population on Nauru. Four patients from the ages of ten to eighteen were described as starting out with depressive symptoms that evolved into "suicidal ideation, episodes of psychomotor agitation, alternating with stupor marked by hypotonicity."[42] The condition worsened in some cases, with children going on to lack any responsiveness to stimuli and refusing food or liquids, leading to a need for intubation.[43] Remission and the improvement of these symptoms can take months or years and is "dependent on the restoration of hope for the family and the patient," something heavily lacking on Nauru.[44]

Extant Arguments

We have seen how the interests and the well-being of children can be impacted by detention. Can we use any existing literature on immigration to support our intuitions about what we *owe* to detained migrant children? The following section will begin by quickly covering two common justifications for open borders and examining whether these accounts fit the task at hand. Can open border arguments help us identify corresponding duties about what we owe to migrant children? The section aims to show how the current focus on open borders in immigration literature is unhelpful in the context of describing the detention of migrant children. Given the inadequacy of open border arguments here, the article moves on to cover the literature on minor refugees, with a particular focus on how these accounts get closer to helping identify rights and the corresponding duties owed to migrant children in detention.

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Open Borders

In the philosophical literature concerning immigration, there is a heavy focus on open border arguments that justify immigration based, among other considerations, on a general right to immigrate or equality of opportunity. On the former kind of account, one has a general right to immigrate because all people have a more general right to "freedom of movement." Such a right is legally justified at the national level in Article 13(1) of the Universal Declaration of Human Rights, under which "everyone has the right to freedom of movement and residence within the borders of each state."[45] Kieran Oberman ties this general right to interests we all have to exercise political rights and associate with one another.[46] Concerning the latter: "A person's opportunity to obtain jobs, educational places and other advantageous social positions should depend on their own motivation and talent, and not on 'arbitrary factors' such as race or the social class in which they are born."[47] One arbitrary factor that should not influence equality of opportunity on the global level is the country in which one is born. It follows that we must allow people to immigrate in order to have access to the full range of opportunities.

However, accounts like Oberman's fail to address our concerns about detention for three reasons. First, open border arguments seem to focus on justifying two things: the act of leaving one's state and the act of settling—not the intermediate period of processing and detention, the focus of this article.[48] To properly understand the role of detention in the migration journey, the article treats detention as a distinct element of the process, not simply as a side effect of migrating or settling. Second, these accounts tend to privilege the concerns of adults—in particular, when it comes to political association or employment—which are considerations we primarily cast as future, not current, interests for children. The idea that we should focus on childhood as an intrinsic good rather than as a stage of development that is only valuable for future autonomous adults is one that will be discussed in the third section of this article. For now, we can say that these accounts do not sufficiently focus on the current interests of children. Finally, it is also worth mentioning that these two arguments gloss over the fact that children often have little say when it comes to crossing borders. Children usually occupy a nonautonomous role and have little decision-making power when it comes to the choice to migrate.[49] For these three reasons, I turn to the literature on minor refugees in the next subsection to find a better framework.

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Refugee repatriation and parental rights. One place to look within the existing literature to determine how we should treat migrant children in the context of detention is the work on refugee repatriation and parental rights. Mollie Gerver explores this dimension in her book *The Ethics and Practice of Refugee Repatriation* in the chapter focusing on children.[50] Gerver highlights how, since children often "lack the capacity of adults," they do not decide where they will live. Parents should protect the interests of their children by avoiding repatriating to a state that would fail to "provide sufficient security or welfare" for children.[51] Beyond this argument, though, Gerver notes that her work may have broader implications: "States may have a duty to discourage all forms of migration unsafe for children, and not merely repatriation unsafe for children."[52] This broader implication ties in strongly with the aims of this article compared to the author's less connected comments on repatriation. Gerver acknowledges that if states are to hold this weighty duty, this may mean that there are some "slightly disturbing" implications of her argument, such as denying refugees the option to go home: "Even as minors and their parents are forced to live inside the barbed-wire borders of detention and camps."[53]

In a related manner, Iseult Honohan has argued that families should be kept together given that the state is obligated to allow intimate relationships to persist—especially those intimate relationships that involve obligations of care.[54] Families should be permitted to live in "intimate relationships of affection and support that entail giving and receiving care in those aspects of our lives that involve necessary dependence, including childhood and old age."[55] The value of upholding family life includes both physical support and "personal intimacy," thought of by Honohan as both "giving and receiving 'care' in the broadest sense," something that is often curtailed during cases of forced separation.[56] So then, the state should admit family members together during the process of immigration to acknowledge "the importance of such relationships, in which members have agent-specific obligations of care to one another."[57] Since children, in particular, exist in relationships where they are the objects of care, the case for reunification with caregivers is especially strong. In the case of detention, parents are often unable to exercise their ability to provide care and uphold intimate relationships, meaning that children are deprived of the conditions for proper development and stability.

Both Gerver and Honohan are more concerned with the preservation of the family unit and how these units should move through the process of immigration in

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full, rather than focusing on *children* and *detention* in particular. Given this, both authors can provide guidance when it comes to talking about some duties later in the article—especially the soon-to-be-discussed duty of unification. Overall, though, this area of the literature lacks the tools to completely unpack the situations and needs of migrant children in detention. Although Honohan's and Gerver's work do not provide a clear path for determining *all* the rights and corresponding duties owed to migrant children in detention, their work does raise important questions about parental rights, care obligations toward children, and the permissibility of allowing refugees to return to risky and unstable conditions.

The prioritization of child refugees. Gottfried Schweiger suggests that states should prioritize child refugees within reason, along with other vulnerable populations such as "women, the elderly, or people with special needs," considering resource availability, time constraints, and budgetary concerns.[58] There are many clear ways in which children are more vulnerable than their adult counterparts in the context of migration, and Schweiger notes that "greater vulnerability is associated with stronger moral claims."[59] Children are more vulnerable in terms of the risk or realization of harm and because they are at a deficit concerning certain physical and mental abilities.[60] Moreover, though, Schweiger suggests that

> some types of harm, which have only mild consequences for adults, can have lifelong and irreversible consequences for children because of their developmental needs, for example adults are more robust in withstanding phases of malnutrition or acts of physical violence. This is an essential part of children's inherent vulnerability and it is one that gets particularly virulent in the context of child refugees, the countries from where they flee and the places where they will end up if they are not granted refuge. So the situational vulnerability of child refugees makes it much more likely that they will be harmed. This means that children's inherent vulnerability of being in need of care is endangered in the situations of war, severe poverty or dictatorship and where children are on the brink of ending up uncared for, unprotected, exploited or harmed.[61]

However, Schweiger is also wary of thinking of children in a purely homogeneous manner—the category of "children" is a group that contains "vast differences in characteristics and abilities."[62] Further, there are other vulnerable groups that can make similarly weighty moral claims based on ability and vulnerability, particularly people who are elderly, ill, or disabled.[63] Given all of this, Schweiger holds that a state has a duty to prioritize child refugees only when (1) a state has enough knowledge to determine *who* to prioritize in terms of vulnerability and (2) a state has enough resources to screen on the basis of need.[64] When a state can meet

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both of these conditions, it can avoid treating children homogenously and instead screen based on need in a more holistic manner. Schweiger's conclusion helps us consider the unique and vulnerable position that migrant children occupy—one that indicates they should be prioritized throughout the process of immigration and detention. More will be said about this in the fourth section of the article, where the right to timely processing is explored in more detail.

Children's Well-Being and Autonomy

The aforementioned accounts require supplementation to properly include the interests and unique position of detained children. The accounts of Gerver and Schweiger have better applicability than common open border arguments but still focus on considerations outside of the context of detention—namely, repatriation, parental rights, and the prioritization of children. Extant accounts of children's well-being and autonomy can help us focus on the realities and lived experiences of children who occupy a particularly vulnerable and nonautonomous position in most spheres of their lives.

Two disclaimers are essential before delving into Samantha Brennan's view, which will inform much of the discussion here. First, it is critical to acknowledge that although this article considers a wide range of children under the age of eighteen, this does not result in an insensitivity to the varying levels of development between children of different ages. Despite developmental differences, there are meaningful ways we can talk about the well-being of children generally. Second, although this article cannot engage with a lengthy discussion of children's autonomy, I will note that I accept a view primarily informed by Amy Mullin.[65] Mullin considers children to occupy a transitional stage of being autonomous in some areas of their lives with occasional paternalistic influence from caregivers.[66] This view takes children's limited autonomy as action guiding in two senses. First, we need to ensure that we do not entirely overlook the sorts of local autonomy children can possess.[67] Second, we should enhance and support the development of the skills children need to become fully autonomous agents capable of critical reflection.[68]

Mullin's view fits nicely into my discussion of migrant children who should be viewed as autonomous agents but in a qualified sense since they occupy a less autonomous role throughout migration, processing, and detention than their adult counterparts, who occupy the position of chief decision-maker. Such a view gives proper autonomy to children without overstating their responsibilities or understating the reality of the intermittent need for paternalistic intervention.

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In her article "Children's Hope, Resilience and Autonomy," Mullin flags how the "stressors and challenges" children face can undermine not only their autonomy but their ability to *hope*.[69] For Mullin, part of being autonomous involves being able to pursue goals, which can only be done if children can exercise self-control and are not externally prevented from making progress.[70] When stressors such as illness, hunger, or fatigue intervene, children's hope is impacted: "If they cannot imagine alternatives to the present, they will not be able to hope and therefore attempt to pursue their goals."[71] Given all of this, the ability to hope is an often overlooked aspect of what it means to be autonomous and pursue goals. This focus on hope is relevant to the case at hand—the conditions of detention undermine hope; children who are detained for long periods, in particular, will likely lack the ability to *imagine alternatives to the present*. Especially in the case of children who are detained from a young age, these conditions are the only reality they know.[72]

Philosophers writing on children's well-being are quick to note how children have been virtually excluded from philosophical discussion, especially in the realm of political philosophy.[73] Anthony Skelton observes that one cannot seek guidance from the usual sources, like Aristotle, Kant, or classical utilitarians, when developing an account of children's well-being. Under such theories, children are not considered to possess the relevant qualities needed to "fare well" in the first place.[74] Brennan makes a similar point, highlighting how philosophers such as Hobbes and Rawls fail to discuss children at length or consider them as subjects of justice.[75] Further, it becomes clear that even some work done on children's rights focuses too heavily on describing children only in terms of beings that will develop into autonomous adults. This focus fails to appreciate children for who they are at present and ignores the goods of childhood, instead focusing attention on the future entitlements of autonomous adults.[76]

In light of these concerns, Brennan has suggested an objective-list view of children's well-being.[77] Brennan's work on children's well-being takes on the "interest conception of rights," which holds that for children, rights are things that protect well-being, which is comprised of interests.[78] Brennan proposes that the goods of childhood, which promote children's well-being, are as follows:

1. Unstructured, imaginative play
2. Relationships with other children and with adults
3. Opportunities to meaningfully contribute to household and community
4. Time spent outdoors and in the natural world
5. Physical affection
6. Physical activity and sport

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7. Bodily pleasure
8. Music and art
9. Emotional well-being
10. Physical well-being and health[79]

This list importantly avoids the temptation to cast childhood goods as dependent on how children will progress into adults. Instead, the focus is on how childhood, in itself, is constituted by essential intrinsic goods.[80] Brennan sees children as being in a position where "rights start out protecting interests," and once an individual reaches adulthood, rights "progress to protecting choices."[81] Adults and parents, in particular, can help support children throughout this transition from rights protecting *interests* to rights protecting *choices* by allowing children to make limited autonomous choices with a safety net of paternalistic protection.[82]

The Rights of Migrant Children

Now we are able to critique the sorts of conditions we described on the island of Nauru based on what is needed for children's well-being, as defined by Brennan. We can generate a list of positive rights held by children in detention informed by childhood's intrinsic goods: (1) a right to timely processing, (2) a right to education, (3) a right to play, (4) a right to unification, and (5) a right to the *upkeeping* of mental and physical health. This approach will be supported, in part, by the guidance of the CRC. Notably, the CRC acknowledges that "there are children living in exceptionally difficult conditions, and that such children need special consideration."[83] In particular, children should be afforded protection to allow for a "natural environment for the growth and well-being" containing the "happiness, love and understanding" they require.[84]

One might question the need to generate a specific list of positive rights owed to migrant children in detention when the CRC already exists. Could we not look for guidance just in those existing considerations? As acknowledged in the following subsections concerning specific rights, the CRC certainly can provide guidance on the treatment of migrant children in detention. However, the CRC benefits from being supported by a theory of the intrinsic goods of childhood to make more specific what is owed to children in detention. Take Article 37(b) as an example:

> No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.[85]

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This article gets us part of the way toward effectively thinking about detained migrant children, especially in the manner in which Article 37(b) speaks to detention as a measure of "last resort" only to be used for the "shortest appropriate period of time."[86]

However, the CRC suffers from generality. Given that I focus here on the specific impact of detention on children's development and well-being, especially relative to periods of seemingly indefinite detention, more specifics are needed to fill out even the most applicable articles. In the case of Article 37(b), one can ask what steps must be taken before turning to the use of detention as a last resort and what counts as the shortest appropriate period of time.[87] Questions like these will be answered in the following sections with guidance from the literature on the intrinsic goods of childhood and well-being. Bridging the gap between the guidance provided by the CRC and this extant literature helps fill in the picture when it comes to the specific situation of detained migrant children. In short, international human rights law and the CRC can tell us that what happened on Nauru contravened obligations that Australia had—the literature this article brings in can tell us what we specifically should have owed to the children impacted by this lapse.

Right to timely processing.[88] As observed in the first section of this article, children facing long processing times in detention are prone to developing mental illnesses, developmental disorders, and self-harm tendencies. While adults should also have their cases processed quickly, children are in a unique position when it comes to the right to timely processing. The difference between being detained from ages five to ten compared to being detained from ages forty-five to fifty is monumental, despite the fact that both individuals lose five years to long processing times. Children have a "sense of time as endless, as having one's whole life stretched out ahead."[89] In the case of seemingly indefinite detention, as presented by the conditions on Nauru, children are prone to lose sight of this conception of time as endless and are likely to become resigned.[90]

The early years of a person's life are critical for the foundations of education and knowledge, forming close relationships, and establishing good habits. Young children, in particular, are moldable in a way that their adult counterparts are not, meaning that much more is at stake when it comes to a right to timely processing. This right is decisively in line with the CRC, which states that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."[91]

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State actors need to work with urgency in cases involving children of any age whose development and well-being depend on freedom from the confines of detention. To fulfill this right, states must use detention *only* as a last resort and for the shortest amount of time possible to meet the CRC's requirements and protect children's well-being. In the case of the right to timely processing, the primary holder of the corresponding duty toward children is the state that runs the detention center in question. States should be concerned with developing proper policies that take into account the ways in which seemingly indefinite periods of detention impact the development of children at all stages. Further, states have a duty to exhaust other options when it comes to keeping children in detention, given how this should be taken up only as a measure of last resort. Before considering detaining families or unaccompanied minors, the state should explore other avenues that allow children to avoid detention while awaiting processing. However, as explored below, these other options should avoid forced separation of family units—simply taking children away from their primary caregivers to be put in temporary foster care arrangements still negatively impacts children's development and well-being. When it comes to options other than detention, the focus should remain on keeping families together, meaning that sometimes detention must be used as a last resort if it means that children can maintain important relationships with their family members.

External actors can also help by applying pressure when it comes to timely processing—nongovernmental organizations and nonprofits can often help highlight improper treatment. This external pressure was seen in the case of Nauru, for example, when Amnesty International outlined the dire conditions there during its 2012 visit. Groups like Amnesty can apply pressure in a way that generates international concern, encouraging states to act and shorten processing times. For those external organizations that care about the well-being of children around the globe, there is a duty to highlight the injustices that occur when children are detained for lengthy periods of time without state action. Two clarifications will help frame these comments about the impact of naming and shaming and the role that organizations play compared to states. First, it is worth noting that naming and shaming in the international context can apply the right kind of external pressure needed to generate compliance with international law and human rights standards. As Justin Tingley and Michael Tomz found through an experimental analysis of the Paris Agreement, shaming by foreign countries can shift "domestic public opinion in favor of compliance, increasing the political incentive" to honor an agreement.[92]

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Importantly, for the context of partial compliance in the case of Australia and Nauru examined in this article, Tingley and Tomz note how this kind of external pressure was "more effective against partial compliers than against targets that took no action or honored their obligations completely."[93] In short, naming and shaming from external actors works and is particularly effective in cases of partial compliance. Second, this duty to apply external pressure also pertains to situations beyond the scope of foreign countries—external actors, especially those from groups that have mandates focused on promoting human rights across the globe, can use pressure to increase political incentive to comply. Given that naming and shaming is effective, organizations like Amnesty can use public pressure, such as in the example outlined above, to pursue their mission, self-described as "a global movement of people fighting injustice and promoting human rights."[94]

Right to education. Children need access to proper education for the sake of development, stability, and well-being. Such a right is protected in the CRC on the basis of equal opportunity and accessibility.[95] The right to education is fundamental for any length of detention, but especially for extended periods of detention, as highlighted by the case of a young, unnamed Honduran girl detained from the age of ten to the age of seventeen in the United States.[96] Despite being in America for seven years, she held only a minimal ability to read and write. Educational programs in detention often repeat on a monthly basis, leaving long-stay migrant children with only the basics rather than comprehensive education.[97] This is because education in detention is based on how long children *should* be detained for rather than how long extended stays *really* are. Such a system diminishes the opportunity for academic progress or even the promotion of the foundations of knowledge, leaving children ill-prepared to eventually enter society postdetention.

Proper and consistent educational pursuits give children a sense of routine and normalcy, which are essential goals for the sake of well-being. Continued education in the context of detention ensures that children do not fall behind in their development. Finally, the right to education generates structured time for children to form relationships with other young people, which is a central childhood good.

Once again, the state is responsible for upholding this duty—those states that choose to detain children should ensure that these children can access proper education that allows for development, stability, and a sense of structure.[98] States may choose to contract out this work to external groups that can provide quality educational programs on a rotating basis to children who may have varied lengths of detention. When the state contracts this work outward, these nongovernmental

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groups have a duty to generate community and normalcy for migrant children in detention. This duty held by nongovernmental groups or contractors follows from the duty to educate that the state holds, passed down when the work is contracted out. Ultimately, the state and any contracted groups have two instrumental reasons to uphold proper education in detention. First, any children who are processed and enter the general population will benefit greatly and have an easier time in state educational institutions if they are allowed to access and enjoy proper education before this point. Second, and perhaps more importantly for contractors in a detention center, there are social service benefits that come with having a well-adjusted, socialized, and developed population of residents.

Right to play. The right to play, explore, and be active is vital to childhood development. Children play to engage with others, discover facts about the world, and simply for the sake of enjoyment and release. In "What Is a Child?," Tamar Schapiro emphasizes how "by engaging in play, children more or less deliberately 'try on' selves to be and worlds to be in."[99] Play involves discovery and enjoyment, which promote well-being but also allow children to practice for adulthood in terms of discovering their sense of self.

A childhood without play lacks the carefree and exploratory nature that constitutes being a young person. Many detention centers are not set up in a way that encourages recreation and play. Thus, in detention centers across the globe, children are denied something at the very core of what it means to be a child.[100] Further, the right to play is intimately connected to the way in which children develop and exercise their growing autonomy. Children who engage in play get to work on decision-making, value formation, and desire identification, among other skills that are integral to being future autonomous adults. Play is a low-stakes way to practice high-stakes skills that a child will develop over time as they pass the threshold into holding adult-level autonomy.

The right to play has a corresponding duty that is held by three primary parties in very divergent ways. The first two parties, the state and the contractors who are hired by the state to run many facilities, are responsible for the environment of a detention center and hold a duty to create conditions that allow for meaningful play and recreation. On Nauru, play was not possible, given the cramped and barren state of the physical environment and landscape. In a detention center where children will be occupants, the state should be focused on creating physical architecture that allows for play—whether that is vegetation to allow for active endeavors or a setting with space for imaginative or creative play. The state also has

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a connected duty to allow parents the ability to engage in play and recreation with their own children. Parents, the third party, have a duty to help children develop their autonomy, as explored by Mullin[101] and Brennan,[102] and often, this duty is exercised in the context of play and recreation, as exemplified by Schapiro's work.[103] So then, both parents and the state have a duty to facilitate and encourage play, but the state must first create conditions that allow detained parents to exercise this parental responsibility.

Right to unification. The importance of keeping families together throughout detention and processing cannot be overstated, as explored earlier in the context of Gerver's and Honohan's accounts. Various mental health aberrations brought about by detention are heavily impacted by unification or lack thereof. In the case of pervasive refusal syndrome observed on Nauru, for example, clinicians "noted that separation from a parent contributed to the child's deterioration, [and] there were also cases where children developed PRS following the removal of a sibling with the same condition to Australia for treatment."[104]

Since children occupy a vulnerable and nonautonomous position, ensuring that their primary decision-makers, their parents, are available throughout detention is essential. Keeping families together allows children to work on important developmental skills—especially when it comes to the formation of autonomy. Without unification, children are more susceptible to mental health crises, suicidal and self-harm tendencies, and human rights violations. Families must be kept together, not separated as yet another type of deterrent wielded against migrants. The CRC only permits separation between child and parents in the case that it is "necessary for the best interests of the child."[105] As we have seen, in the context of detention, keeping families together is in the child's best interests for the sake of well-being. This is true even when it comes to separation from *one* parent or caregiver. As mentioned above, in the context of timely processing, the state holds a duty to keep families together in the context of detention—children should not be sent into temporary foster care arrangements or kept in detention without access to their caregivers. The state also holds this duty because it should create the conditions needed for parents to properly exercise their parental rights, fulfilling a negative duty to not separate families. The state should ultimately be interested in creating an environment where family units can flourish and be unified, even in the context of lengthy processing in detention.

Right to the upkeep of mental and physical health. The conditions on the island of Nauru were especially dire in part because the proper physical and mental healthcare

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was outsourced. This left children and their families vulnerable to health crises, as receiving proper care often involved requests to travel to Australia or the occasional visit from outside medical organizations like Doctors without Borders. Children affected by PRS, for example, were often admitted to Australian hospitals with up to 20 percent body weight loss due to an inability to receive adequate medical care on Nauru.[106] Even when children faced deterioration of their physical or mental health, wait times to receive care were commonly several weeks.[107] Mental and physical health crises are increasingly likely in contexts that involve stressors such as "lacking basic necessities, restricted movement, and continued concern for safety."[108]

Given this, proper medical care is a basic need that becomes increasingly essential in the context of detention, which can impact a detainee's health in profound ways and limit their access to a range of medical treatment options.[109] Since it is not possible to delineate and quantify *exactly* how much health is owed to migrant children in detention, or the right to health more generally, this section will focus on obligations and duties the state, which holds this corresponding duty, has in relation to the upkeep of physical and mental health in detention, in terms of practical steps.

The state holds this corresponding duty because it is responsible for examining how the physical environment of a detention center impacts physical and mental health. Further, since mental health is tied to and impacted by other rights, for example, the right to timely processing, the state must uphold these other duties in order to maintain health. Alongside the state, it is worth mentioning that some external actors, especially organizations and charities focused on medicine that are *called in by the state*, hold a duty to administer high-quality healthcare services to detained migrant children. As described when discussing the right to education, nonstate groups that accept contracts inherit the state's duty to provide proper healthcare, both physical and mental.

The state can take several practical steps to ensure that the health of detained migrant children is upkept. First, the state is responsible for creating a physical environment and set of material conditions that promote health. This can be accomplished by ensuring that detained migrant children have access to meaningful recreation and play and by providing adequate nutrition. Second, the state must ensure that populations in detention have access to regular and timely visits from either state medical professionals or external organizations. Regular visits are essential to ensure detained migrants are consistently protected and healthy—some issues may only become apparent during routine checkups, even when no

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specific treatment goal is intended. Visits must also be timely when medical assistance is needed to address a specific problem. For example, in some contexts, migrant children in detention must be able to visit a specialist outside the confines of detention. This second duty has two related duties that require further elaboration. First, the state must allow outside actors to enter detention centers to provide medical care and, second, it must allow for visits outside of detention to access specialists. When it comes to the quality and level of treatment provided, the state must ensure that culturally sensitive healthcare is accessible in a context where migrants come from different backgrounds. Of utmost importance to upholding this duty is ensuring that children and their parents can advocate for themselves without barriers—translators or translation technology must be available to allow for autonomous decision-making and informed consent. Finally, the state has a duty to keep proper records that report mental and physical health levels and occurrences of health crises among detained children. This should be done primarily for reasons of transparency but also to help external actors provide care and services in an informed manner.[110]

Some Qualifications

This final section of the article deals with two separate objections. The aim here is to qualify and clarify the approach taken regarding children's autonomy and lingering questions on the state's rights when it comes to processing immigrants.[111]

First, one might question why the article advances the claim that we should think about the rights owed to migrant children in light of the intrinsic goods of childhood and children's *current* interests rather than casting these rights in light of children's *future* status as autonomous adults. Earlier in the article, I noted how Brennan's list is right to avoid the temptation to think of childhood goods as *dependent* on how children will progress into adults. Joel Feinberg, on the other hand, takes this latter kind of approach. For Feinberg, some rights of children are distinctive, but other rights of children are not unique and are shared in common with the rights of adults.[112] For example, although children hold a certain class of dependency-based rights, similar rights are also held by those adults who are not capable of supporting themselves independently.[113] Feinberg argues that children hold a class of "rights-in-trust," which are saved for when children become adults —these rights cannot be exercised by children "until later when [they are] more fully formed and capable."[114] In short, Feinberg states that a child is owed rights that

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keep their future open, rights that are held prematurely by the child to "have these future options kept open until he is a fully formed self-determining adult capable of deciding among them."[115] Tied into this statement is the idea that respect for a child's future "often requires preventing his free choice now" through the exercise of paternalism.[116]

Most relevant to the goals of my argument, Feinberg argues that the existence of rights-in-trust generates certain duties for parents and the state.[117] In the context of the treatment of migrant children in detention, there is a straightforward way in which one could discuss children's rights-in-trust. I could describe the treatment owed to children and the corresponding duties by the state as owed in light of the fact that detained migrant children will be *future* autonomous adults. However, this approach seems to miss something important—the status of current children and the condition of childhood in itself. First, it seems that this approach glosses over the rights of children as only morally weighty due to future status—if we solely focus on rights-in-trust, the moral weight of children's interests is cast as important exclusively for their future development. Second, this approach misses the fact that childhood, in itself, has a particular character and set of requirements. The previously explored right to play may be the most straightforward example of how childhood has associated intrinsic goods. Certainly, the right to play can be cast as important for future interests—a childhood that contains the space for imaginary and exploratory play helps one develop skills that are crucial in adulthood. But in an even clearer sense, play is simply good in itself for children because of the immediate and present impacts. Children who play are given the space to *be children* in the most basic sense, something that is often denied in the context of detention, where children are often expected to act above their age. In short, this article avoids taking a Feinberg-style approach in proposing the view that childhood has an important status in itself that should not be glossed over. For the purposes of my argument, in particular, it is important to foreground children and childhood over future *adult* interests.

The second distinct objection one might have is that much of my argument could be sidestepped by two related moves. Given that I am primarily concerned with children's well-being in the context of detention, one could either argue that given that the state has a concrete right to exclude or deport certain immigrants, parents should either leave children out of this precarious situation and migrate alone, or argue that families should return to their country of origin to avoid the particular wrongs explored in this article that crop up during extended periods of detention.

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Thomas Carnes explores this set of questions and develops several interconnected arguments that support my position. Carnes begins by claiming that there is nothing "inherently wrong with deportation," given that the state has a right to exclude.[118] However, deportation can have serious harms, especially to children, so we should question when a state is morally permitted to deport.[119] Carnes acknowledges the importance of examining the moral claims of children in the context of deportation, given their status as members of a vulnerable population.[120] Part of children's vulnerability stems from the fact that they are not fully developed and, therefore, cannot fully author their own lives. Given this fact, the state should play a part in protecting children's autonomy by setting up the conditions for their autonomy to properly develop, so that they can eventually "become the authors of their own lives and access an adequate range of life options."[121]

An important part of children's development is the ability to have close and nurturing relationships with their parents—this kind of "intimate relationship involves sustained interactions that create a shared history; emotional proximity that helps the child develop her physical, cognitive, emotional, and moral capacities."[122] Children who are not given the allowance to sustain these types of relationships suffer harms; namely, developmental harms that impact the proper formation of autonomy.[123] Alongside this important component of children's development, Carnes argues that the state has an interconnected duty to "enable sociopolitical conditions" that allow parents to properly raise their children.[124] When the state plays a part in the legally mandated separation of parents from their children, they contribute to conditions that negatively impact a child's ability to cultivate their autonomy, violating a negative duty by way of forced separation. This is the case when children are separated from both or even one of their parents.[125] Carnes notes how

> forced separation can impair emotional development by increasing risks to children of experiencing anxiety, depression, post-traumatic stress, and emotional dissonance caused by feelings of loneliness, fear, and guilt. These can lead to behavioral issues such as aggression, defiance, and disobedience.[126]

Given all of this, Carnes argues that the state has a general duty to keep families unified and avoid policies and procedures that separate children from their parents. Carnes's position on regularization ultimately suggests, as does this article, that family unification is of utmost importance during the process of

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immigration, especially in the context of detention. To once again bring in the discussion prompted by Feinberg's work on a child's right to an open future,[127] forced separation not only impacts a child in the sense of their future autonomy as an adult but also results in more limited autonomy for a child as a child and diminishes certain childhood goods. Harms to future autonomy are just one consideration among others regarding children's well-being when it comes to the importance of keeping families together. Families held in conditions of indefinite detention during the process of immigration ultimately cannot take returning to their country of origin lightly and deserve to be kept together, especially for the sake of children who can suffer great harms in cases of separation.

Conclusion

It is worth noting that although these rights and duties do imply high standards for the treatment of children in detention, they are not unattainable. Implementing these rights certainly requires allocating funds to establish proper educational programs, health and well-being supports, and space for recreation and play. Implementing them also involves a fundamental reimagining of our immigration systems and a move away from the criminalization of migrants. Detention centers do not *need* to be carceral; they are this way by design and as a product of current attitudes toward immigrants. This fact about our immigration systems is *changeable*. We can decide to move toward a system of immigration that prioritizes the well-being of migrants rather than one that uses the conditions of detention as a deterrent. Ideally, we will eventually have no need for the long-term detention of children. Until then, a focus on how children's interests generate certain rights can help ensure that we prioritize well-being and childhood goods.

In this article, I have argued that children occupy a vulnerable and nonautonomous position, as seen by the conditions children faced on Nauru. Existing literature on immigration and political philosophy, more generally, fails to account for the unique position and interests of detained migrant children. For this reason, literature on children's well-being is needed to generate the rights held by migrant children in the context of detention. This article has focused on detention, covering the rights we owe to migrant children in just one area. We owe them timely processing, education, the means to play, unification, and proper mental and physical health safeguards.

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Notes

[1] In this article, the terms "child" and "children" will be used to refer to an individual or individuals under the age of eighteen. The age of eighteen is in line with the United Nations definition of who is considered to be a child, as noted in Article 1 of the Convention on the Rights of the Child. See United Nations General Assembly, Art. 1, Convention on the Rights of the Child, General Assembly Resolution 44/25, November 20, 1989.

[2] Karen Zwi, Louise Sealy, Nora Samir, Nan Hu, Reza Rostami, Rishi Agrawal, Sarah Cherian, et al., "Asylum Seeking Children and Adolescents in Australian Immigration Detention on Nauru: A Longitudinal Cohort Study," *BMJ Paediatrics Open* (2020), Art. e000615, pp. 1–7, bmjpaedsopen.bmj.com/content/bmjpo/4/1/e000615.full.pdf.

[3] The majority of people arriving by boat were coming from Pakistan, Afghanistan, Sri Lanka, Iraq, Somalia, Sudan, Myanmar, Iran, and Syria. See J. C. Salyer, Steffen Dalsgaard, and Paige West, "'It Is Not Because They Are Bad People': Australia's Refugee Resettlement in Papua New Guinea and Nauru," *Contemporary Pacific* 32, no. 2 (2020), pp. 435–48.

[4] Ibid., p. 437.

[5] Ibid., p. 437.

[6] Ibid., p. 438.

[7] Azadeh Dastyari, "Detention of Australia's Asylum Seekers in Nauru: Is Deprivation of Liberty by Any Other Name Just as Unlawful?," *University of New South Wales Law Journal* 38, no. 2 (2015), pp. 669–94, at p. 672.

[8] Ibid., pp. 677–78.

[9] Ibid., p. 678.

[10] Most relevant for this article are the various sections on detention, liberty, and humane treatment.

[11] Ibid., p. 685.

[12] Ibid., p. 685.

[13] United Nations General Assembly, Art. 37(b), Convention on the Rights of the Child.

[14] Amnesty International, "Nauru Camp: A Human Rights Catastrophe with No End in Sight," ASA 42/002/2012, *Amnesty International Australia Nauru Offshore Processing Facility Review* (Amnesty International media release and Nauru brief, November 23, 2012), pp. 1–5, at p. 1.

[15] Dastyari, "Detention of Australia's Asylum Seekers in Nauru," p. 674. The particular law in question is the Asylum Seekers (Regional Processing Centre) Act 2012 (Nauru).

[16] Ibid., p. 675.

[17] *Five Years on Nauru*, Reveal podcast, 53:19, February 16, 2019, revealnews.org/podcast/five-years-on-nauru/.

[18] Ibid.

[19] Amnesty International, "Nauru Camp," pp. 3–4.

[20] Ibid., p. 2.

[21] Omid quoted in ibid., p. 4.

[22] Louise Newman, Beth O'Connor, Vernon Reynolds, and George Newhouse, "Pervasive Refusal Syndrome in Child Asylum Seekers on Nauru," *Australasian Psychiatry* 28, no. 5 (October 2020), pp. 585–88, at p. 585.

[23] Amnesty International, "Nauru Camp," p. 4.

[24] Quoted in ibid., p. 4.

[25] Patrícia Cavalcanti Schmid, "Mental Health and Deprivation of Liberty: Experience Report as a Psychiatrist in a Refugee Detention Center," *Saúde Debate* 43, no. 121 (April–June 2019), pp. 626–35.

[26] Ibid., p. 628.

[27] Ibid., p. 628.

[28] Ibid., p. 629.

[29] Ibid.

[30] Ibid., p. 629.

[31] Ibid., p. 630.

[32] Ibid.

[33] As will be explored in later sections of the article, there is also a substantial psychological and developmental impact on children who are separated from their families and guardians, which was a common practice on Nauru and in detention centers across the globe more generally.

[34] These excerpts are from the incredibly impactful and important podcast *Five Years on Nauru*, produced by Reveal. Listening to the voices of Maya and her family firsthand is recommended for readers of this article.

[35] Maya, interview by Olivia Rousset, *Five Years on Nauru*, 9:45.

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[36] Newman et al., "Pervasive Refusal Syndrome in Child Asylum Seekers on Nauru," p. 585.
[37] Ibid., p. 586.
[38] Ibid., p. 586.
[39] Alia, quoted by Olivia Rousset, *Five Years on Nauru*, 28:35.
[40] Newman et al., "Pervasive Refusal Syndrome in Child Asylum Seekers on Nauru," p. 587.
[41] Schmid, "Mental Health and Deprivation of Liberty," p. 629. Also see, "MSF warns of an alarming number of suicide attempts among refugees detained on Nauru," from *Europa Press*, www.europapress.es/internacional/noticia-msf-alerta-numero-alarmante-intentos-suicidio-refugiados-detenidos-nauru-20181011124031.html.
[42] Ibid., p. 631.
[43] Ibid.
[44] Ibid., p. 631.
[45] United Nations General Assembly, Art. 13(1), Universal Declaration of Human Rights, General Assembly Resolution 217A, December 10, 1948.
[46] Kieran Oberman, "Immigration as a Human Right," in Sarah Fine and Lea Ypi, eds., *Migration in Political Theory: The Ethics of Movement and Membership* (Oxford: Oxford University Press, 2016), pp. 32–56.
[47] David Miller, "Immigration," in Thom Brooks, ed., *The Oxford Handbook of Global Justice* (Oxford: Oxford University Press, 2020), pp. 395–410, at p. 398.
[48] An anonymous reviewer suggested that one might argue that humane treatment during detention could be *independently* justified by state obligation, outside of any justifications concerning open borders. The article takes this comment as true but still looks for an existing focus in the literature on the conditions and realities of detention. It seems that tacking considerations about detention onto open border arguments leaves these realities as an afterthought.
[49] This is not to say that there are no cases where children cross borders as unaccompanied minors and occupy a thorough decision-making role—especially in the past five years, countries like the United States have seen many accompanied minors who do exercise decision-making. However, in many central cases, children travel with adults who exercise their right to movement.
[50] Mollie Gerver, *The Ethics and Practice of Refugee Repatriation* (Edinburgh: Edinburgh University Press, 2018).
[51] Ibid., p. 161.
[52] Ibid., p. 161.
[53] Ibid., p. 162.
[54] Iseult Honohan, "Reconsidering the Claim to Family Reunification in Migration," *Political Studies* 57, no. 4 (December 2009), pp. 768–87.
[55] Ibid., p. 771.
[56] Ibid., pp. 771–72.
[57] Ibid., p. 772.
[58] Gottfried Schweiger, "Should States Prioritize Child Refugees?," *Ethics & Global Politics* 12, no. 2 (2019), pp. 46–61, at p. 48.
[59] Ibid., p. 49.
[60] Ibid.
[61] Ibid., p. 49.
[62] Ibid., p. 53.
[63] Ibid.
[64] Ibid., p. 59.
[65] Amy Mullin, "Children, Autonomy, and Care," *Journal of Social Philosophy* 38, no. 4 (Winter 2007), pp. 536–53.
[66] Ibid.
[67] Ibid., pp. 547–48.
[68] Ibid., p. 549.
[69] Amy Mullin, "Children's Hope, Resilience and Autonomy," *Ethics and Social Welfare* 13, no. 3 (2019), pp. 230–43, at p. 232.
[70] Ibid.
[71] Ibid., p. 235.
[72] Thank you to an anonymous reviewer who suggested the connection between hope and the conditions of detention.
[73] See Anthony Skelton, "Children and Well-Being," in Anca Gheaus, Gideon Calder, and Jurgen De Wispelaere, eds., *The Routledge Handbook of the Philosophy of Childhood and Children* (London: Routledge, 2019), pp. 90–100; and Samantha Brennan, "The Goods of Childhood and Children's

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Rights," in Françoise Baylis and Carolyn McLeod, eds., *Family-Making: Contemporary Ethical Challenges* (Oxford: Oxford University Press, 2014), pp. 29–48.

[74] Skelton, "Children and Well-Being," p. 91.

[75] For more on how traditional approaches, such as the Rawlsian primary goods approach or the capabilities approach, fail to account for children's interests, see Colin M. Macleod, "Primary Goods, Capabilities, and Children," in Harry Brighouse and Ingrid Robeyns, eds., *Measuring Justice: Primary Goods and Capabilities* (New York: Cambridge University Press: 2010), pp. 174–92.

[76] Brennan, "Goods of Childhood and Children's Rights," pp. 33–34.

[77] There are important objections to the use of objective-list theories of well-being; however, they cannot be covered in this article. See Skelton, "Children and Well-Being," for some common difficulties with objective-list theories.

[78] Brennan, "Goods of Childhood and Children's Rights," p. 33.

[79] Ibid., p. 42. Directly worded numbered list added for clarity.

[80] It is worth noting here that there are competing accounts to the idea that there are intrinsic goods of childhood. Anca Gheaus, "The 'Intrinsic Goods of Childhood' and the Just Society," in A. Bagattini and C. Macleod eds., *The Nature of Children's Well-Being* (Dordrecht, Springer Science and Business Media, 2015), for example, argues that any intrinsic goods of childhood are not *only* valuable for children—they are also valuable for adults. Although this article is not particularly interested in the relationship between childhood and adulthood in terms of intrinsic goods, it is an open question if the list generated here could have equal benefit to adult migrants in detention. This question is outside the scope of this specific article but could be examined at length elsewhere. Even further, there are views that cast childhood as *bad* overall for children. Sarah Hannan defends a "predicament view of childhood," which flags how the "impaired capacity for practical reasoning, lack of an established practical identity, [need] to be dominated, and profound and asymmetric vulnerability" make childhood bad for children. See Sarah Hannan, "Why Childhood Is Bad for Children," in "The Nature and Value of Childhood," special issue, *Journal of Applied Philosophy* 35, no. S1 (February 2018), pp. 11–28, at p. 18.

[81] Brennan, "Goods of Childhood and Children's Rights," p. 43.

[82] Ibid., pp. 43–44.

[83] United Nations General Assembly, Preamble, Convention on the Rights of the Child.

[84] Ibid., Preamble.

[85] Art. 37(b), ibid.

[86] Art. 37(b), ibid.

[87] These are the types of questions that human rights monitoring bodies usually elaborate on to make the general more specific, but the Convention on the Rights of the Child in itself lacks the specificity needed in this article.

[88] The violation of this right on Nauru was arguably against the rules set out in the Convention on the Rights of the Child, as argued by Azadeh Dastyari. See Dastyari, "Detention of Australia's Asylum Seekers in Nauru."

[89] Brennan, "Goods of Childhood and Children's Rights," p. 43.

[90] Here I have in mind the testimony from young children on Nauru, such as the girl who describes herself as "in the deep, deep ocean screaming and shouting and nobody can hear me." Alia, quoted by Rousset, *Five Years on Nauru*, 28:45.

[91] United Nations General Assembly, Art. 37, Convention on the Rights of the Child.

[92] Dustin Tingley and Michael Tomz, "The Effects of Naming and Shaming on Public Support for Compliance with International Agreements: An Experimental Analysis of the Paris Agreement," *International Organization* 76, no. 2 (Spring 2022), pp. 445–68, at p. 445.

[93] Ibid., p. 445.

[94] "What We Do," Amnesty International, amnesty.ca/what-we-do/?gad_source=1&gad_campaignid=10026012873&gbraid=0AAAADlHcEsZrgMvBC6UKL3kuW83m_T0o&gclid=CjwKCAjw7MLDBhAuEiwAIeXGIVYAkh-54X3bUHX6K-bckX_JhxwJyrLPEXZDaSQpWOWGPgZrwegNNBoCTAUQAvD_BwE.

[95] United Nations General Assembly, Art. 28 and Art. 29, Convention on the Rights of the Child.

[96] *An Adolescence, Seized*, Reveal Podcast, 1:47, October 17, 2020, revealnews.org/podcast/an-adolescence-seized/.

[97] Ibid., interview by Aura Bogado, 6:34.

[98] Beyond the scope of the need for education in the context of detention, there also exists a more general right to education. For example, when thinking about Australia and Nauru, see Article 13 of the International Covenant on Economic, Social and Cultural Rights, which recognizes "the right of everyone to education," which should be "directed to the full development of the human personality

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and the sense of its dignity." United Nations General Assembly, Art. 13(1), International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI), December 16, 1966.
[99] Tamar Schapiro, "What Is a Child?," *Ethics* 109, no. 4 (July 1999), pp. 715–38, at p. 732.
[100] Legally, the right to play falls under Article 31 of the Convention on the Rights of the Child. This article recognizes the rights children have to "rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts." United Nations General Assembly, Art. 31, Convention on the Rights of the Child.
[101] See Mullin, "Children's Hope, Resilience and Autonomy"; and Mullin, "Children, Autonomy, and Care."
[102] See Brennan, "Goods of Childhood and Children's Rights."
[103] Schapiro, "What Is a Child?"
[104] Newman et al., "Pervasive Refusal Syndrome in Child Asylum Seekers on Nauru," p. 587.
[105] United Nations General Assembly, Art. 9(1), Convention on the Rights of the Child.
[106] Newman et al., "Pervasive Refusal Syndrome in Child Asylum Seekers on Nauru," p. 586.
[107] Ibid.
[108] Sameena Hameed, Asad Sadiq, and Amad U. Din, "The Increased Vulnerability of Refugee Population to Mental Health Disorders," *Kansas Journal of Medicine* 11, no. 1 (February 2018), pp. 20–23, at p. 21.
[109] This right is laid out in Article 24 of the Convention on the Rights of the Child. Here, the UN notes that no child should be deprived of access to healthcare services. See United Nations General Assembly, Art. 24, Convention on the Rights of the Child.
[110] Some of the discussion here, such as the emphasis on regular visits, is motivated directly from the discussion of the conditions on Nauru. Other elements, such as the focus on proper recordkeeping, goes beyond what was discussed about Nauru to cover more general needs in the context of detention.
[111] Thank you to the three anonymous reviewers and the editors at *Ethics & International Affairs* for bringing these considerations to light during the review process.
[112] Joel Feinberg, "The Child's Right to an Open Future," in Daniel Engster and Tamara Metz., eds., *Justice, Politics, and the Family* (London: Routledge, 2014), pp. 145–58.
[113] Ibid., p. 146.
[114] Ibid., p. 146.
[115] Ibid., p. 146.
[116] Ibid., p. 147.
[117] Ibid., p. 152.
[118] Thomas Carnes, "Forced Separation and the Wrong of Deportation," *Social Philosophy Today* 36 (2020), pp. 125–40, p. 125.
[119] Ibid., p. 126.
[120] Ibid.
[121] Ibid., pp. 129–30.
[122] Ibid., p. 130.
[123] Ibid.
[124] Ibid., p. 131.
[125] Ibid., p. 132.
[126] Ibid., pp. 132–33.
[127] Feinberg, "Child's Right to an Open Future."

Keywords: political philosophy, immigration, detention, global justice, children, autonomy

https://doi.org/10.1017/S0892679425100178 Published online by Cambridge University Press