THE BEST-INTERESTS STANDARD AS THRESHOLD, IDEAL, AND STANDARD OF REASONABLENESS

ABSTRACT. The best-interests standard is a widely used ethical, legal, and social basis for policy and decision-making involving children and other incompetent persons. It is under attack, however, as self-defeating, individualistic, unknowable, vague, dangerous, and open to abuse. The author defends this standard by identifying its employment, first, as a threshold for intervention and judgment (as in child abuse and neglect rulings), second, as an ideal to establish policies or prima facie duties, and, third, as a standard of reasonableness. Criticisms of the best-interests standard are reconsidered after clarifying these different meanings.

Key Words: abuse and neglect, best-interests standard, children’s rights, ethics, medical decision-making, parental rights

I. INTRODUCTION

Consider some examples where people use the best-interests standard to justify their recommendations for children:

CASE 1: Five year old Karl was in a car accident. Clinicians believe blood transfusions will save his life, but his father, who is a Jehovah’s Witness, objects for religious reasons. Physicians seek a court order. A judge rules that Karl is in danger in his Father’s care, and it is in Karl’s best interest to have blood transfusions.

CASE 2: A national pediatric society sets as its primary legislative priority for children’s best interests, to improve laws to protect children from abuse and neglect.

CASE 3: Margaret’s parents are involved in a custody battle in divorce. She currently lives with her mother whose smoking causes Margaret to have asthma attacks. The judge rules that it is in Margaret’s best interest to live with her father.

In each of these three cases, appeals are made to children’s best interests to justify a course of action, yet they are used differently. In case 1, the best-interests standard is used as a threshold for inter-
vention and judgment. Because clinicians believe Karl's father makes choices for Karl that fall below some acceptable cut-off, they seek state intervention to change the normal course of things, namely, parents giving consent for their children. Parents, who even for religious reasons endanger their children's health or well-being, may find the courts willing to take custody temporarily or permanently to serve the best interest of the child. To override parental authority, the state must prove, often by clear and convincing evidence, that the child has suffered or is in danger of suffering serious harm (Krause, 1986). Once the threshold has been met (that of showing that the child is in danger within the parents' care), the courts apply a second test that can be couched in terms of the child's best interest to determine what to do with the child.¹

In case 1, the two steps would be that a judge decides first, Karl is in danger within his father's care, and second, having transfusions is in his best interest.

In case 2, the pediatric society adopts certain ideals or goals to help foster children's best interests. They may never fulfill their aim of protecting all children from abuse and neglect, yet establishing goals can help direct actions, set priorities, and establish policy. Such norms are related to prima facie duties about what constitutes acceptable parenting, the role of the state, professional responsibilities, unacceptable danger to children, good health care, and so on.

Case 3 describes a custody dispute between parents, where placement of a child may be guided by seeking the best option for the child through a standard of reasonableness. Unlike case 1, where clinicians try to change the normal course of having parents give consent, in case 3 a judge must make a decision because the child cannot live with both parents simultaneously. In a custody battle during a divorce, parental authority is not overruled. The child must go to one parent or the other, and judges try to assess the child's best interests. But this cannot mean literally the best, since neither parent may be ideal. Rather, it is a practical decision based upon available options. The best-interests standard, when used as a standard of reasonableness may be less than ideal, but it is often better than a barely acceptable minimum.

This is intended to be a moral and conceptual paper, not a legal one. I wish to map some closely related appeals to children's best interests as used by clinicians, philosophers, policy-makers, and others. I recognize that there are differences between how I use the
"best-interests standard" and how the "best interests of the child" test is employed in the law. When the best-interests of the child rule is applied as a technical term in the law, "the inquiry is essentially objective in nature and the decisions are made not by, but on behalf of the child...the best interests analysis, like that of the substituted judgment doctrine, requires a court to focus on the various factors unique to the situation of the individual for whom it must act" (Custody of a Minor, 1978). This use comes closest to what I call the use of the best interests rule as a standard of reasonableness. Judges focus upon the needs and interests of particular children, but not to the exclusion of others' rights or interests, to determine which of the available options is best, assuming some option is minimally acceptable.

In what follows, I argue that too little attention has been given to recognizing the differences between these three appeals to the best-interests standard. Thresholds for intervention and judgment involve a two-step test: first, to determine that a cut-off has been reached that requires changing the normal course of things, where guardians make choices, and second, that others should determine the child's best interests. In contrast, we use prima facie duties and ideals about how to improve a child's well-being differently. Ideals help us shape our decisions and priorities, even if they cannot be entirely fulfilled, and balancing prima facie duties help forge our actual duties. Finally, those employing standards of reasonableness seek the most advantageous decisions for children, given the available options. The choices should focus on children without ignoring the needs and rights of others, and are usually less than ideal but better than barely tolerable.

After reviewing these three meanings of the best-interests standard, I consider criticisms stating that the best-interests standard is self-defeating, individualistic, unknowable, vague, dangerous, and open to abuse. I argue that the defense of the best-interests standard to these charges may involve distinguishing these three different meanings.

II. THRESHOLD FOR INTERVENTIONS AND JUDGMENT

In earlier times, it was assumed that guardians had almost unqualified rights to control their children's futures until adulthood, unless they were emancipated. The category of an emanci-
pated minor has been recognized since the eighteenth century, first for men, and then for women who were living independently and were self-supporting. Men who joined the military or women who got married, for example, were recognized as emancipated from parental authority (McGough, 1995).

There were several reasons why it was assumed that guardians had an almost unqualified right to control their children’s destiny. First, since minors were judged incompetent to make rational decisions, complete parental direction was regarded as necessary to help them develop their potential. No consideration in the courts was given to minors’ emergent rationality, hopes, or plans. Their views were not material to a decision, unless they were emancipated. It was considered unnecessary and irrelevant to find out, for example, how the child wanted to be treated or where the child would prefer to reside (Holder, 1985).

Second, minors were thought virtually to belong to their guardians until they reached the age of twenty-one (McGough, 1995). When there were disagreements about the treatment or placement of a child and the dispute went to the courts, the courts’ role would be to decide who “owned” the child, since that person had authority to make decisions. It was a great tragedy if the guardian was abusive or neglectful, and as a result a child died or was maimed for life, but the courts took the view that the decision-maker, usually the parents, had a right to decide (Holder, 1985). The attitude was that competent persons had a right to make even an unfortunate decision for themselves and their wards, and there was little to be done beyond trying to persuade them to act otherwise.

Finally, guardians had a right to children’s labor and earnings. Minors often brought profits to guardians by working on farms, in factories, and in mines. Some of these activities were extremely hazardous, so clearly the child’s needs, interests, or opportunities did not guide the decisions of courts.

Late in the nineteenth century, a major shift occurred and children’s interests were increasingly considered when choices were made about them. One reason for this was that the public became more aware of the plight of many children. For example, Charles Dickens, through his popular novels, highlighted the exploitation, abuse, neglect, and near starvation of many children. In addition to this growing public awareness about their desperate situations, influential lobbies began to form early at the turn of the twentieth
century to press for changes. These included members of the women’s movement, the new speciality of pediatrics, and the nurses’ home health programs, all of whom who sought better treatment of children (English 1989; Wilson, 1989). They wanted children protected from neglect, cruelty exploitation, and other dangers, by setting legally enforceable thresholds of acceptable parenting.

Today, to override parental authority, the state must establish, often by clear and convincing proof, that the child has been harmed or is in danger of suffering serious harm (Krause, 1986; Lee, 1981). Physical, sexual, or emotional abuses inflicted on their children constitute grounds for loss of parental authority. In addition, parents who make imprudent or neglectful decisions may lose custody temporarily or permanently. For example, parents might temporarily lose custody if they endanger their child by declining standard antibiotic care to treat their child’s bacterial meningitis, preferring herbal teas. Parents might also lose custody temporarily if they endanger a child by acting upon certain beliefs. For example, Christian Scientists may object to surgery and Jehovah’s Witnesses to blood transfusions, yet courts can order either intervention, if the child is endangered (Rodham, 1973). When parental acts or omissions pose an imminent danger to children, as in Case 1, then doctors, nurses, hospital administrators, or social workers have a moral and legal duty to seek a court order for proper care (Lee, 1981).

Consequently, the threshold for intervention in child abuse and neglect cases is not stated in terms of the legal “best interests of the child” test (Krause, 1986; Lee, 1981). Many children live in less than ideal circumstances that are far from abusive, neglectful, or dangerous situations. It might be best for a child to live in a calm, organized, spotless home and eat well-balanced meals three times a day, but failure to provide this environment would not meet the test required as grounds for over-ruling the parents’ authority.

For our purposes, however, abuse and neglect cases may be regarded as falling under the umbrella of a best-interests standard in two ways. First, as noted above, there are two separate steps in such cases, and the second may be couched in terms of the child’s best interests. In the first step, the state must establish that parental choices endanger the child and thus fall below the acceptable threshold; as we noted this is not considered a “best interest of the child” test (Krause, 1986; Lee, 1981). There is a second step where
the court applies a best-interests standard to find the most reason-
able course to take with regard to the child's well-being.

There is a second way child abuse and neglect laws may be
regarded as falling under a best-interests approach. It is in chil-
dren's best interest that such laws exist, and strike a balance
between the harms of abuse and neglect and the harms of exces-
sive state interference with parental authority. Laws permitting
state intervention for such matters as messy homes, irregular meal
times or neurotic parents – done in the name of the child's best
interest – would cause more harm than good. Such rules would be
disruptive, intrusive, and thus, not in children's best interest.
Laws that made it virtually impossible to intervene would also not
be in children's best interest.

A morally and socially defensible policy presupposes a justifi-
able threshold of adequate parenting. These decisions are often
complex and involve ranking many factors, including how much
to tolerate different cultural and religious norms (Krause, 1986).
We may disagree about what norms to use in establishing a
threshold of acceptable parenting. Karl's father, in case 1, would
probably argue that religious liberty and parental authority take
precedence, but Karl's doctors and the judge disagree. In selecting
a threshold, we may dispute over what harms or risks of harm are
sufficient, in magnitude and probability, to justify the restriction of
the guardians' choice. In addition, we can differ about what to do
with the genuinely borderline cases. The problem of borderline
cases is difficult since many values and norms come into play.
Judges must determine, "when parents cross the line between
legitimate discipline and forbidden violence, or friendly caresses
and sexual abuse" (Krause, 1986, p. 238). We can also disagree
about the duties of people, such as lawyers or psychiatrists, who
learn, in the course of providing service, that their clients may
have abused or neglected their children. In case 1, Karl's life is in
danger, so it is not a borderline case. Under such circumstances
clinicians have a clear duty to seek a court order (Lee, 1981).

III. IDEAL

The best-interests standard is also used as an ideal to promote
children's good or articulate our prima facie duties to them. I will
discuss three areas where the best-interests standard seems to
serve as an ideal or to clarify our duties.
A. Social Policy.
The League of Nations in 1924 and the UN General Assembly in 1959 explicitly recognized the fundamental right of all children to legal protection, health care, education, and other special protections regardless of race, gender, religion, politics, national or social origin, property, or other status. These ideals about the best interest of children served as a basis for assigning rights to children to promote their well-being and foster their opportunities.

Children gained entitlement to be provided with certain things. They gained rights to education and to protection from abuse and neglect. In some parts of the world, health care for all children was provided by the government. Child-labor laws were also enacted to protect children from exploitation as workers. Child abuse and neglect laws requiring reports, developed after World War II (Lee, 1981). These rights helped set minimal standards or thresholds of acceptable parenting. In addition, minors also gained certain liberties, or rights to choose certain courses of action. Older minors gained the authority to provide consent for certain treatments without parental consent such as for alcoholism, drug abuse, contraceptive information, contraception, low-risk treatments, and under certain circumstances, abortions. Policies often depended upon the minors' age and whether the procedure has risk or not (Holder, 1985).

The use of the best-interests standard as an ideal separates how things are from how we think they ought to be. Ideals give us direction to help correct current problems in the system. The pediatricians in case 2, will work more effectively to improve child abuse and neglect laws with goals to steer them.

B. Medical Decision-making.
A very different use of the best-interests standard as an ideal or articulation of prima facie duties can be found in the medical ethics literature discussing how decisions should be made for incompetent persons including children. Philosophers Allen E. Buchanan and Dan W. Brock define the best-interests standard as that of "acting so as to promote maximally the good of the individual" (Buchanan and Brock, 1989, p. 88). Brock uses the same statement in later writings (1996), and I have also employed it in this way (Kopelman, 1995).

Used in this way, the best-interests standard makes little sense unless it is understood not as an absolute duty, but as a prima facie duty or an ideal that should guide choices. If taken literally and
without qualification, it instructs us to evaluate all options and act on that option providing the absolute best outcome for the individual in question, without regard to any one or anything else. Even if this evaluation were possible, it would sometimes be wrong not to take into consideration the rights, needs, or interests of others. It may be in a dying child’s best interest to have a heart transplant for the one-in-a-million chance it could help him. It would be unfair, however, if grasping at this opportunity denied others who have a better claim to this scarce resource. Clinicians sometimes reason: “It would be ideal to have the child get this, but that is not possible. What is next best?”

C. Parental Decision-making.
Parental duties are also shaped by the goal of acting in children’s best interests. Philosopher Robert L. Holmes writes,

If parental responsibility, morally speaking, is to do what is for the best of the child, then the concern of parents will be predominantly a consequential one…. But although parental concern should properly be consequentially oriented in this sense, the ground of their moral responsibility will be deontological, arising from obligations bound up in the very relationship between parent and child (Holmes, 1989, p. 218).

Parents must distinguish what is possible from what is ideal, and our actual duties from our prima facie duties. As parents, we may agree that ideally, teenagers should always live in clean and neat rooms, consume nutritious meals, brush their teeth after eating, be courteous, have regular bedtimes, and never snack or eat junk food. Yet the sort of parental tyranny it would take to enforce such rules would not be in their overall best interest. Still it is often useful in the course of reflecting upon what ought to be done, all things considered, to ponder what would be ideal from some particular vantage. Holmes’ point that parental concern should be consequentialist, but that their obligations are deontological may also apply to lawyers relationships with clients, doctors’ duties to patients and other professional relationships.

Ideals can be like lighthouses when we are at sea, giving us perspective and helping us steer our course. Considering what is ideal for someone or some group from one point of view can be an important part of deliberation about our actual duties. It does not mean that what is ideal can always be followed. In short, a legiti-
mate part of the deliberation about what actions should be taken may be to consider our *prima facie* duties or what would be ideal. The best-interests standard employed in this way does not entail absolute obligations, since often it is not possible to enact the best policy, or provide the ideal treatment, schooling, opportunities, or parenting. This use of the best-interests standard as an ideal or to consider *prima facie* duties is obviously very different from its use in helping children by establishing some minimal threshold of acceptable parenting. Contemplation of what is ideal or our *prima facie* duties to children, however, may be a first step in selecting thresholds of acceptable parenting, the proper role of professionals encountering abuse or neglect, the legitimate role of the state, and so on.

IV. STANDARD OF REASONABLENESS

The best-interests standard may also be used to find the most acceptable of the available choices. Used in this way, it does not require us to act in accord with what is literally best for a child, ignoring all other considerations, or even to presuppose that there is always one best solution shaping duties or guiding actions. Rather, it requires us to focus on the child and select wisely from among alternatives, while taking into account how our lives are woven together. It instructs us to try and pick the option that most informed, rational people of good will would regard as maximizing the child's net benefits and minimizing the net harms to the child without ignoring the rights, needs, and interests of others. Such decisions in law and medicine about children's best interests are often composed of many factors and are highly individualized (Krause, 1986). I will consider two important ways the best-interests standard is used as a standard of reasonableness, first, in custody decisions in law and second, in medical decision-making.


By the 1960's in the United States, disputes between guardians, usually parents going through a divorce, about who should gain custody of children were almost always settled by courts using the "best-interests of the child" test (McGough, 1995). This standard became very nearly universal, and, according to McGough, "encourages a court to focus upon the unique needs of a particular
child and his or her parents' comparative capabilities for meeting those ends. Advocates of the 'best-interests of the child' rule also point out that acceptance of this rule is evidence that the law has moved away from considering the child purely as property, having no needs or rights of his or her own" (McGough, 1995, p. 373).

According to J. Goldstein, A. Freud, and A. J. Solnit (1973), the traditional goal of the "best-interests of the child" rule, in the law is to protect children's physical well-being. They argue for its expansion to protect children's psychological well-being as well. They base this view on the need to foster the child's overall well being and the social utility of a policy promoting future citizens who are healthy and have good parenting. They recommend interpreting the best-interests standard when used for custody decisions as the "least detrimental available alternative for safeguarding the child's growth and development" (Solnit et al., 1973, p. 53). Seeking what is the "best" is a daunting standard, they argue, and does not reflect current practices where parental rights sometimes overshadow children's well-being. They point out that there is a tension between the apparent meaning of this standard, seeking "the best" for children – and court decisions which fall far short of this in use. The standard they propose is less "awesome and grandiose, more realistic, and thus more amenable to relevant data-gathering than the 'best-interests'" (Solnit et al., 1973, p. 63).

They want children to get more consideration, arguing their interests are sometimes swamped by deference to parental claims. The "best-interest of the child" rule, they show, is not used in custody decisions to seek what is absolutely best for the child alone, but to "maximize known benefits and minimize known harms for all parties concerned" (Solnit et al., 1973, p. 108). They do not conclude, as they might, that the rule should be renamed "the best interests of everyone" rule. What they stress is that the "best-interests of the child" test guides judges to seek the best available option for a child, taking many people's rights and interests into account. Sometimes this means the least bad alternative for the child. Unlike child abuse and neglect cases, the parents are not ordinarily impugned as surrogates. In case 3, it is in the best interests of Margaret, who has asthma, to live with someone who does not smoke. Thus, the judge rules she is better off living with her father. In a custody battle during a divorce, the child has to go someplace and the courts intervene because the parents cannot
agree. Both parents may be acceptable, and judges decide where the child would be better off.

B. Medical Surrogacy.
The best-interests standard in medical decision-making is often used as a standard of reasonableness, rather than seeking what is literally best. The absolutely best treatment might be neither possible nor justifiable. It is impossible for the best surgeon to operate on everyone who needs the same procedure. Moreover, it would be wrong for physicians to neglect all their other duties to give one child the absolutely best care possible. Similarly, parents cannot be required to neglect all other duties and bankrupt themselves to take their child to the world’s best medical center in order to gain some marginal benefit. Most clinicians and parents want to do better than the barely acceptable minimum for a child, even if they cannot fulfill some ideal of perfection. Karl’s father in case 1 is regarded by doctors as straying too far from what is acceptable by endangering his child, and so they seek a court order. If there were effective treatments available other than blood transfusions that were more acceptable to Karl’s father, in case 1, it might be reasonable for doctors to try that treatment, even if it was less than ideal but did not endanger Karl.

V. CONCEPTUAL LINKS

I have distinguished three meanings of the best-interests standard, and the contexts in which they are used. In this section, I want to consider how they are conceptually connected. The first use that I discussed is as a threshold for intervention and judgment. In the two step test described earlier, the state must first establish that parental choices fall below some acceptable standard because they endanger the child; in the second, judges apply a test that can be understood as a best-interests test, couched as what I have called a standard of reasonableness. This use of the best-interests standard as a threshold for intervention and judgment, thus, is clearly linked to the best-interests standard understood as a standard of reasonableness, since step two of this process is framed in these terms. This use as a threshold for intervention and judgment also entails the use of moral and socially justifiable ideals and *prima facie* duties about what constitutes adequate parenting, profes-
sional responsibilities, the limitations of parental rights, the proper role of the state, and so on. Consequently, it is also linked to the use of the best-interest standard as an ideal or in establishing prima facie duties.

The second use of the best-interests standard I considered is that of an ideal or to articulate prima facie duties. It is also conceptually related to the other two meanings of the best-interests standard. As we just noted, our ideals and prima facie duties about professional responsibilities, the limitations of parental rights, the proper role of the state, how parents ought to act and provide for their children, and so on, shape the thresholds we select and practical choices we make. Our ideals or prima facie duties also help us to find the most reasonable policies and actions. They assist our reflection about what would, in the best of circumstances, maximize the benefits or minimize harms for someone or some group. In most cases, the ideal cannot be fully realized and our actual duties reflect a balancing of our prima facie duties.

Finally, the best-interests standard can be used as a standard of reasonableness to guide us to wise solutions, often less than ideal but better than absolutely minimally acceptable. It requires some fair balance can be found between many people’s needs, rights, and interests in reaching decisions. As we just mentioned, this standard of reasonableness is used in step two of the threshold for intervention and judgment. It also presupposes ideals or prima facie duties that help guide reasonable and informed people of good will to consider the nature of professional responsibilities, parental duties, the role of the state, and so on.

I have tried to identify and analyze three different meanings and use of the best-interests standard. Some might prefer to regard them as three distinct norms to stress their differences. Insofar as they are joined conceptually and historically, however, I believe that it is preferable to regard them as three uses of one standard.

VI. RECENT CRITICISM

Recent criticisms of the best-interests standard are that it is self-defeating, individualistic, unknowable, vague, dangerous, and open to abuse. I want to respond to some of these charges, highlighting how they may depend upon a failure to clarify different uses of these three meanings of the best-interests standard.
A. Self-Defeating.
One criticism (Veatch, 1995) is that the best-interests standard is self-defeating. Parents, surrogates, doctors, lawyers, and other professionals could not really use it to assess decisions for minors, the criticism goes, because it requires them to do their absolute best for each child. This is impossible because children have conflicting claims, needs, and interests.

Unless the best-interests standard is interpreted as an absolute duty, however, it does not appear to be self-defeating or inconsistent in this way. From the above examination of how the best-interests standard is used, there seems little evidence that it is actually employed in this way. In applying the best-interests standard as a threshold for intervention and judgment, judges determine they must take custody of a child because parents make unacceptable choices. Karl's father, in case 1, endangers his son, so the judge orders a transfusion. Judges do not consider what is absolutely best, but what is minimally acceptable in overruling parental authority. In applying the best-interest test in custody disputes, the judge may be picking the best of the available options, not what is ideal. It would be better for Margaret, in case 3, if she were not around a smoker, so the judge rules that she should live with her father.

Moreover, we do not apply the best-interests standard without balancing different interests, even if we focus on a single child. There may be complex choices among the child's interests such that what is best for one purpose may be a poor choice for others. It may be best for the child as a potential figure-skating champion to have the family move next door to her trainer, but not best for her social and moral development to cater to her interest in this respect.

B. Too Individualistic.
Critics (Veatch, 1981, 1995; Ruddick, 1989) argue that the best-interests standard gives us inappropriate guidance because it recommends that we should consider only one person's interest. Such partiality would be wrong for many reasons. Parents may have competing duties to themselves or other children that should also be considered, as Ruddick points out (1989). Moreover, allocation decisions sometimes require denying people marginally beneficial care, as Veatch discusses (1995), showing that what is absolutely best for someone may have to be denied.
If people use the best-interests standard in this way, they should be criticized for unfairly ignoring other people’s rights and interests. For example, clinicians who somehow rigged the system so that donated organs went primarily to their own patients would be guilty of unwarranted bias. In addition, families can be intimidated by zealous professionals who may say what they believe to be in the child’s best interest in a way that brooks no opposition or consideration of other people’s rights or interests (Ruddick, 1989; Silverman, 1996). It is neither unfair nor improper, however, to reflect initially on what might be ideal for someone as a prelude to making a practical decision. As we have noted, the best-interests standard can be used as an ideal to offer initial guidance about how we should proceed.

It may be ideal for someone to obtain a scarce and expensive resource to extend life for a week; yet it might be unfair because others’ claims are greater. Similarly, the family may not be able to set aside every other consideration to do what is best for the sick family member. Resources have to be allocated in a sensible way, and what is the absolutely best way to confer a marginal benefit for a single individual may not make any sense from the vantage point of reasonable family, or social planning.

Reflection upon what would be ideal helps formulate a reasonable course to take. It does not constitute an absolute duty to follow that ideal, as this criticism suggests, without reference to other priorities. Stating and evaluating different conceptions about what is best is often a first step to reaching practical decisions. Similarly, considering what is ideal for a child does not constitute an actual duty to provide it.

C. Unknowable.

Another set of criticisms concerns whether we can really know what is in people’s best interests. The best-interests standard, critics argue, seems to suppose we can always agree about what is best, consider all the options, calculate all their benefits and harms, and pick the alternative that maximizes benefits and minimizes harms (Veatch, 1995; McGough, 1995). This is not just a daunting task, but virtually impossible, especially when one contemplates the myriad possibilities of the indefinite future.

This criticism raises substantive theoretical issues about justifying moral and knowledge claims. If this reasoning succeeds in defeating the best-interests standard, however, it probably also
succeeds against many others, perhaps all other, forms of consequentialist reasoning. It would also apply to medical choices and court decisions intended to maximize benefits and minimize harms. Doctors often must try to maximize benefits and minimize harms to their patients by making choices with incomplete data. They should use the best available information and be willing to modify decisions as changes in data warrant this. Court decisions may also be plagued by uncertainties. For example, in child custody cases so many factors can be brought to bear that McGough (1995) concludes it is hard to find expert witnesses who can really understand and assess them. This criticism would also apply to consequentialist reasoning about city planning, environmental policies, and so on. Critics have not shown, in my view, that the best-interests approach presents unique problems about consequentialist reasoning that should lead us to view the best-interests standard as unknowable while these others are knowable.

D. Dangerous or Open to Abuse.

Some of the harshest attacks on the best-interests standard have come from those who believe it is too easily misused. Critics like former president Ronald Reagan (1986) and his Surgeon General C. Everett Koop (1989) maintain that this standard is routinely abused. They argue that it can be employed to withhold or withdraw care inappropriately from disabled infants, largely because parents and doctors use quality-of-life considerations. For this reason, they sponsored the so-called Baby Doe regulations (U.S. DHHS 1985). According to these rules, unless an infant is permanently comatose (a diagnosis virtually impossible to make in the newborn period) or dying, the infant must receive maximal lifesaving treatment.

One difficulty with their objection is that they criticize the best-interests standard because they dislike the quality-of-life norms used by some of those employing the best-interests standard to withhold or withdraw treatments. Yet they propose different norms to judge what is best for severely disabled infants, namely, withdraw or withhold treatment only if the child is dying or in an irreversible coma. Thus, they do not reject the best-interests standard as much as wish to change the values shaping how to judge what is best. Many physicians disagree with their assessment, arguing that the Baby Doe regulations are not in infants' best
interest. These rules sometimes give insufficient recognition to infants suffering, thereby requiring all-but-futile and painful interventions (Kopelman et al., 1992). Even if quality-of-life considerations are sometimes abused, however, the use of irreversible coma or impending death as the only means to justify withholding or withdrawing treatment, offers a different standard for judging what is best to do, rather than entirely rejecting the best-interests standard.

E. Vague.
Some critics (Rodham, 1973; Veatch, 1995) charge that the best-interests standard is vague. I agree that it is sometimes unclear what values people use to judge what is best. If they do not articulate their norms, it may be obscure how people decide what options are reasonable, who are adequate parents, what treatments are best, the nature and scope of professional responsibilities, the duty of the state to intervene, and so on. Some of these decisions draw on complex considerations and potentially conflicting values that are unstated, undefended and unranked. It may also be uncertain how people decide what options to consider in deciding what is best. In Case 3, for example, some might question whether the mother should be given more time or help to stop smoking in the presence of her child, especially if, in many other respects, Margaret would be better off living with her mother than her father.

In addition, the best-interests standard may seem vague if reasonable and informed people of good will cannot agree about how to use it. There would be widespread social agreement supporting clinicians in a situation like case 1, where doctors want a court order to save a dying child with a proven therapy. To the community of Jehovah’s Witnesses, however, it is best not to give the child a blood transfusion, because to do so may compromise his salvation in an eternal life. In their view, this is a more important consideration. They may also give more weight to the consequence that a transfusion risks having the child being “seen” as an outsider by some people in this community.

It is hard to use the best-interests standard in a clear way in medicine or in the law without moral, social, and professional agreement about paradigmatic cases, or about the norms and thresholds to employ (Krause, 1986; McGough, 1995; Veatch, 1995). Sometimes we disagree about what values to use. Other times we lack good information. Still other times we disagree
about what to do with the borderline cases. Despite these difficulties, there are also many unambiguous instances of what is best for children. There are examples of abuse and neglect where there is clear moral, social, and professional agreement that intervention is unquestionably a duty.

There are many areas of our lives where we disagree or fail to state and defend our values about what is best. Uncertainties, insufficient data, and disposing of borderline cases plague many domains. In my view, critics have not shown that the use of the best-interest standard presents unique problems, different in kind from consequentialist reasoning about what is best in environmental politics, education, or international diplomacy.

Finally, I have argued that the best-interests standard can be understood in different ways. I have tried to sort out three different meanings to help address charges of ambiguity. The remedy for this vagueness, I believe, is not to get rid of the standard, but to clarify and defend how it is being used.

VII. CONCLUSION

The best-interests standard is an umbrella concept for three different but related uses. As a threshold for intervention and judgment in child abuse and neglect cases, it employs a two step test, and the second of these tests may be understood in terms of the best-interests standard. The first step is to determine if parents make acceptable decisions and, if they do not, the second step is to decide what is best for the child using the best-interests standard understood as a standard of reasonableness. The best-interests standard is also used as an ideal to promote children's good or to establish *prima facie* duties to them. It may be impossible or unreasonable, all things considered, to fulfill such ideals or *prima facie* duties, so they do not entail actual duties. They should help us, however, frame our actual duties, policies, or decisions. It is in children's best interest that there are good laws against child abuse and neglect, even if they are not perfect. Finally, the best-interests standard used as a standard of reasonableness, guides us to select what most informed, rational people of good will would regard as maximizing net benefits and minimizing net harms for children, given the legitimate interests and rights of others and the available options.
Although the best-interests standard is currently under attack, I believe that, properly understood, it has many important roles to play in helping children individually and collectively. Distinguishing these different meanings or uses of the best-interests standard helps answer some current criticisms that the standard is self-defeating, individualistic, unknowable, vague, dangerous, and open to abuse.

NOTES

1 I am indebted to Ellen Wright Clayton for this point.
2 I appreciate Kenneth DeVille and Ellen Wright Clayton for helping me with this and other aspects of the law. They along with John C. Moskop, made many helpful comments on earlier drafts of this paper. I take responsibility, needless to say, for any errors.

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