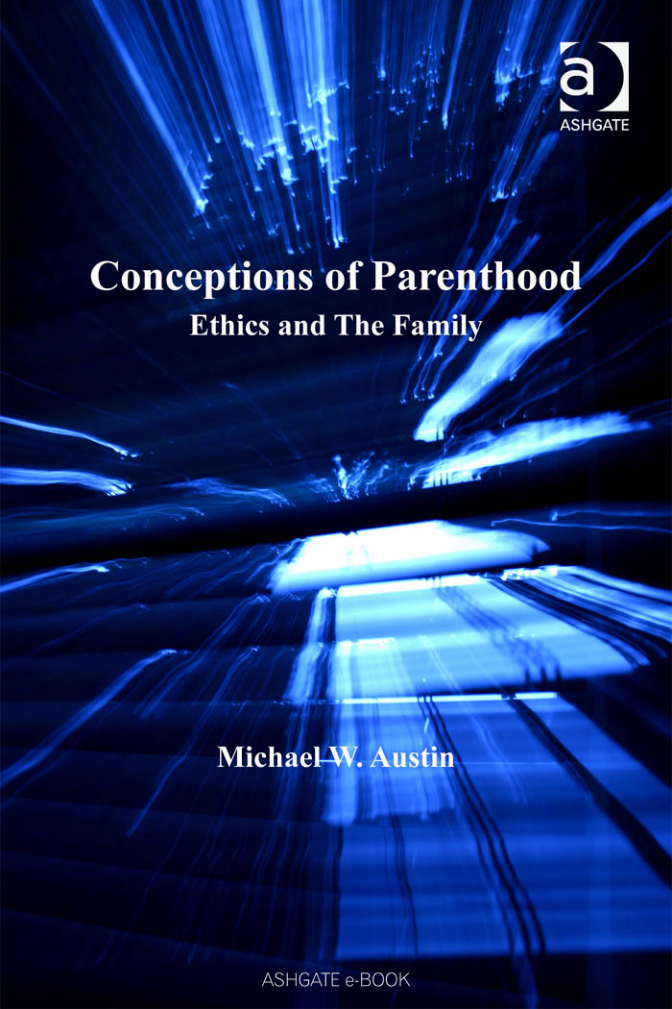
ASHGATE
Conceptions of Parenthood
Ethics and The Family
Michael W. Austin
ASHGATE e-BOOK

CONCEPTIONS OF PARENTHOOD

Our parents often have a significant impact on the content of our beliefs, the values we hold, and the goals we pursue and becoming a parent can also have a similar impact on our lives. In *Conceptions of Parenthood* Michael Austin provides a rigorous and accessible philosophical analysis of the numerous and distinct conceptions of parenthood.

Issues considered are the nature and justification of parental rights, the sources of parental obligations, the value of autonomy, and the moral obligations and tensions present within interpersonal relationships. Austin rejects the 'proprietarian', 'best interests of the child', and 'biological' conceptions of parenthood as failing to generate parental rights and obligations but considers more sympathetically the 'custodial relationship', 'consent', and 'causal' conceptions of parenthood and ultimately defends a 'stewardship' conception.

Finally Austin explores the 'stewardship' view for practical and moral questions related to family life and social policy regarding the family, such as the education of children, the religious upbringing of children and state licensing of parents.

Mike Austin's impressive and important new book, Conceptions of Parenthood*, helps bring to center stage a fundamental set of concerns that contemporary moral philosophers have too often treated as merely peripheral, if they have treated them at all: those issues concerning the rights and responsibilities of parenthood. Written with a rare combination of philosophical acumen and common sense wisdom, Austin's book provides an admirably clear layout of the theoretical landscape and argues rigorously and powerfully for a variety of potentially challenging conclusions. The book immediately becomes required reading for anyone working in the area and deserves to be read by anyone who wants to see what good work in applied ethics looks like and what it can accomplish.*

David Boonin, Department of Philosophy, University of Colorado, USA

Austin's thorough and lively examination of the ethical and conceptual issues surrounding parenthood starts with a refreshingly clear and unprejudiced look at the complications posed by new reproductive technologies. Austin proposes an account of parenthood that depends on moral relationships rather than biological ones, and goes on to discuss the rights and responsibilities of parents. His view is commonsensical but not conservative, and is meticulously presented and defended.

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Conceptions of Parenthood

Ethics and the Family

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For Dawn, Haley, Emma, and Sophie

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Chapter 1

Philosophy and the Family

Normally, the birth of a child is not a newsworthy event. However, as the world's first test tube baby, Louise Brown's birth on 25 July 1978 in Great Britain was front-page news. Three years later, America's first test tube baby, Elizabeth Carr, was born. 'It's hard to look back and remember how surprising and shocking that was – that human beings can actually be made outside the body', remarks Arthur Caplan, a bioethicist at the University of Pennsylvania.[1] There are over one million children alive today who were conceived via *in vitro* fertilization.

Although IVF is no longer as controversial as it used to be, other technologies continue to retain their controversial status. In the 1980s, the now famous Baby M case received national attention. William and Elizabeth Stern paid Mary Beth Whitehead $10,000 to be artificially inseminated with Mr Stern's sperm, carry the fetus to term, and then transfer custody of the infant to the Sterns after delivery. However, Mary Beth Whitehead changed her mind, deciding that she wanted to retain custody of Baby M. A long legal battle ensued, with the courts ultimately granting custody to William Stern and regular visitation to Mary Beth Whitehead, who was recognized as the child's legal mother. Elizabeth Stern was denied a legal relationship to the child, on the grounds that no biological relationship existed between her and Baby M.

In the past 30 years, advancements in reproductive technology and the sometimes swift currents of social change have caused much reflection on the ethics of the family. While these advances have brought the joys and challenges of parenthood to many who otherwise might not be able to experience life as parents, they have also created numerous legal and moral dilemmas. These technological advances also raise more general questions about the nature of the parent-child relationship. How should we think about being a parent? What is the significance of biology for parenthood? Is there an inalienable right to found a family? Should we require prospective parents to be licensed before we allow them to procreate and raise children? We need to take a closer look at our understanding of parenthood.

Framing the Issues

As we know, our lives are often influenced in deep ways by our parents. Much of how we see the world, others, and ourselves is shaped by our relationship with them, or the lack thereof. Our parents often have a significant impact on the content of our beliefs, the values we hold, and the goals we pursue. Becoming a parent can also

1 From http://www.cnn.com/2003/HEALTH/parenting/07/25/ivf.anniversary.

have a strong impact on our beliefs, values, and goals. Given these facts, how we conceive of parenthood is an existentially central issue.

We need a deeper understanding of parenthood and the moral dimensions of the parent-child relationship in both the private and public spheres. Gaining such an understanding is worthwhile because the parent-child relationship is a central feature of so many of our lives, and is the context in and from which many of our choices, moral and otherwise, are made. A consideration of the ethics of parenthood leads into several interesting issues, such as the nature and justification of moral rights, the sources of moral obligations, the value of autonomy, and the moral obligations and tensions present in interpersonal relationships. It also leads into broader questions about what it is that constitutes a good life. A deeper understanding of the moral dimensions of the parent-child relationship therefore has much theoretical and practical value.

What is it that makes someone a parent? In this book, I explore several different conceptions of parenthood and the implications of these conceptions for the ethics of the family. A conception of parenthood is a way of understanding what it is that makes someone a parent, what it is that generates parental rights and parental obligations. In this book, I argue that the proper way to think about being a parent is to conceive of parents as stewards of their children. In the remainder of this brief introductory chapter I note some of my own assumptions about morality and the family, offer an intuitive definition of parenthood, and discuss the moral status of children. Lastly, I provide an overview of the remainder of the book.

Philosophy, the family, and common sense

Philosophers have had a variety of things to say about the family. Plato notoriously advocates the collective raising of the children born to members of the guardian class, for the good of the state.[2] Other philosophers, such as Robert Filmer and Thomas Hobbes, have argued that parents have absolute rights over their children, even to the point of killing them.[3] Collectivism and absolutism both stand in sharp disagreement with our common sense views about the moral dimensions of the parent-child relationship. Other more contemporary philosophical views, while distinct from the collectivism of Plato and the absolutism of Filmer and Hobbes, also contrast sharply with our common sense beliefs about the parent-child relationship. For instance, children's liberationists argue for the claim that children should possess the same rights as adults, and that to deny children these rights is to perpetrate an injustice upon them.[4] Others have advocated a radical restructuring of the traditional family. For example, Ann Ferguson recommends communal living, including a community

2 See Plato, *Republic* (Indianapolis, IN: Hackett, 1992).

3 See John Locke, *Two Treatises of Government* (New York: Cambridge University Press, 1988); and Thomas Hobbes, *Leviathan* (Indianapolis, IN: Hackett, 1994).

4 See John Holt, 'Why Not a Bill of Rights for Children?', in Beatrice Gross and Ronald Gross (eds), *The Children's Rights Movement* (Garden City, NY: Anchor Press, 1977), pp. 319–325; and Richard Farson, 'Birthrights', in Gross and Gross, pp. 325–328.

responsibility for childrearing, as a method for de-emphasizing biological parenthood.[5] Shulamith Firestone calls for the liberation of women 'from the tyranny of their reproductive biology.'[6] She also proposes abolishing the biological family, and in its place setting up households where approximately ten consenting adults apply for a license to set up house and live together for the period of time required for the children of that household to grow up in a stable and structured environment. The highly influential philosopher John Rawls does not advocate abolishing the family, though he notes that the ideal of equal opportunity does lead toward this conclusion, given the ways that the institution of the family contributes to inequality.[7]

Christina Hoff Sommers responds to these sorts of claims about the family by arguing that philosophers must have respect for our moral traditions as they relate to the family, the social environment, and common sense. She is much less willing to depart from these, and argues that '[a] moral philosophy that does not give proper weight to the customs and opinions of the community is presumptuous in its attitude and pernicious in its consequences. In an important sense it is not a moral philosophy at all. For it is humanly irrelevant.'[8]

I agree with Sommers insofar as I believe that we ought to start with our common sense moral intuitions when engaging in moral reflection, and that these intuitions as well as our moral traditions should initially carry significant weight. However, what is at issue in the debates surrounding the family and the competing conceptions of parenthood is whether or not the deliverances of custom and the moral opinions of the community are just and true. In this book I do not assume the superiority of the traditional two-parent family. Nor do I argue in favor of radically revising or abolishing the institution of the family. I assume, consistent with common sense, that a child is generally better off if she has a close interpersonal relationship with at least one adult who is occupying a parental role in her life, offering her focused care, attention, love, and guidance. This does not necessarily rule out all collective forms of childrearing, nor does it entail that biology determines who has parental rights and obligations with respect to a particular child. Neither does this assumption rule out the possibility that the traditional two-parent family is generally the preferable form that the family should take. These questions remain open. Yet the foregoing assumption does mean that it is preferable for children to have at least one parental figure who is consistently and intimately involved in their lives, and that a large number of such parental figures is counterproductive. What do we have in mind, though, when we speak of a parental figure?

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5 See Ann Ferguson, 'Androgyny as an Ideal for Human Development', in Mary Vetterling-Braggin, Frederick Elliston, and Jane English (eds), *Feminism and Philosophy* (Totowa, NJ: Rowman and Littlefield, 1977), pp. 45–69. See also Carol Gould, *Beyond Domination* (Totowa, NJ: Rowman and Allanheld, 1983).

6 Shulamith Firestone, *The Dialectic of Sex* (New York: William Morrow and Company, 1970), p. 233.

7 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999).

8 Christina Hoff Sommers, 'Philosophers Against the Family', in George Graham and Hugh LaFollette (eds), *Person to Person* (Philadelphia: Temple University Press, 1989), p. 103.

Parenthood: a working definition

What is a parent? At first glance, this seems like a fairly easy and straightforward question. Historically, one's parents were nearly always one's genetic progenitors. However, the development of numerous reproductive technologies has stretched our understanding of parenthood and challenged what we have traditionally understood a parent to be, thereby complicating the question of what it is that makes someone a parent.

Several people may have a claim to be the parents of a particular child. Other factors now compete with biology in the context of our understanding of parenthood. For example, an infertile couple may bring a particular child into being via sperm and egg donation and a contract with a gestational surrogate who agrees to carry the fetus to term and then transfer custody over to the contracting couple. All of these individuals – the gamete donors, the gestational surrogate, and the contracting couple – may have grounds for claiming parental rights to and over the child.

Moreover, in this realm of life, complications seem to be incessantly multiplying. For example, it is now possible for a child to have *four* biological parents. In 2001, scientists announced that they had created a child with two genetic mothers.[9] Doctors removed an egg from a woman who had a cytoplasmic defect in her eggs that caused her to be infertile. They also removed an egg from a second woman, extracted its healthy cytoplasm, and inserted it into the egg of the infertile woman. They then inserted the sperm of the infertile woman's mate into her egg. In the process, some of the second woman's mitochondria were accidentally transferred into the infertile woman's egg. Given that the mitochondria have their own DNA distinct from that of the infertile woman, the baby that came into existence possesses genetic material from both women, and so has two genetic mothers.

A brief thought experiment will show how this situation could become even more complicated. We can imagine that not only has the above baby come into existence, but also that the couple decides to seek the services of a gestational surrogate to carry the fetus to term. In this sort of case, the child would have four biological parents. And given the possibility in the future that numerous gestational surrogates could contribute to the gestational development of a single child, the number of those individuals who could rightfully be called a child's biological parent could continue to grow. Such cases and future possibilities pose difficult questions for the biological conception of parenthood.

Given the above, how should we think of parenthood? We generally think of parenthood as both a relation and an activity. A parent is someone who stands in a certain kind of relationship to another person. To be a parent is to be active, to engage in certain activities in relationship to another. Parents care for their children, love their children, discipline their children, and offer instructions and guidance to their children. We intuitively believe that parents have certain obligations and rights with respect to their children that others do not have. An intuitive and provisional definition of 'parenthood' might go as follows: an active relationship in which a

9 See William B. Irvine, *The Politics of Parenting* (St. Paul, MN: Paragon House, 2003), pp. 203–204.

person possesses certain special rights and obligations with respect to at least one child. I do not want to beg any questions here, and so I do not assume a particular view regarding whether or not there are distinctively *parental* rights and obligations. In this book, I intend to consider whether or not belief in the existence of such rights and obligations can be supported, and how they ought to be understood.

As it stands, the above definition does not appear to be very fruitful. It tells us nothing about whether one must be biologically related to a child in order to be its parent, or whether other avenues are available for obtaining parental rights and obligations. It does not tell us what the extent or justification of the purported rights of parents are, nor does it tell us what makes someone a good parent. In this book, I attempt to answer these questions. One important issue that arises when looking for answers to such questions is whether or not children possess a level of moral status sufficient for the possession of basic human rights, such as the right to life and the right to bodily security.

The moral status of children

In the pages that follow, I am chiefly concerned with the rights and obligations of the parents of minors, especially infants and younger children, rather than parents whose children are adolescents or adults. Therefore, a brief discussion of the moral status of infants and young children is in order. What follows in this section is primarily intended for those who are unwilling to grant my assumption that newborn human beings possess a level of moral status sufficient for the right to life and the right to bodily security, and for those interested in philosophical accounts of moral status that support this assumption.

An entity has *moral status* if what happens to it matters, from the moral point of view. It has been argued that human beings come to possess moral status at numerous points in their development. Some believe that this occurs at conception, while others argue that it does not occur until the point at which the human being in question has a self-concept and is a continuing subject of experiences. For example, Michael Tooley argues that an entity 'possesses a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity.'[10] Tooley claims that, practically speaking, the line for the moral permissibility of infanticide could be drawn at one week after birth. This line could be adjusted to fit with empirical discoveries that determine the point at which human beings satisfy the above condition for having a right to life, when such discoveries become available.

Contrary to Tooley's view, I both believe and assume throughout the following pages that human infants do possess moral status: they are objects of concern from the moral point of view such that they possess a right to life and a right to bodily security. However, my purpose at present is not to defend a particular account of the moral status of fetuses or infants. Rather, I merely offer two different types of accounts of moral status that include infant human beings in the group of entities that

10 Michael Tooley, 'Abortion and Infanticide', *Philosophy and Public Affairs* 2 (1972): 44.

possess moral status. If either of these accounts is plausible, then a plausible basis for my assumption that newborns do have a right to life exists.

Two ways of answering Tooley's challenge to the moral status of infants focus on particular properties that infants possess. One way of arguing for the moral status of infants focuses on the intrinsic properties possessed by infants (and developed fetuses) as that which grounds their moral status. The interest view claims that having interests is both necessary and sufficient for the possession of moral status.[11] A being is an object of moral concern if and only if it has interests, and the possession of conscious awareness is both necessary and sufficient for the possession of interests. This is because a being that has moral status must be able to be happy or miserable, comfortable or distressed, even if only in terms of pain and pleasure. In short, if it matters to a being what happens to it, then that being has moral status. According to the interest view, there is a conceptual connection between conscious awareness and the possession of interests, because conscious awareness is required for a being to have desires, preferences, and goals. Nonsentient, nonconscious beings do not care what happens to them, because they are unable to do so. Applying the interest view to the case of human beings, the conclusion is that preconscious fetuses do not possess moral status. Conscious fetuses, however, do possess moral status, given that somewhere late in the second trimester the fetus becomes conscious and so has interests, which are both necessary and sufficient for having moral status.

Another account of moral status offered by Mary Anne Warren is a multi-criterial account that relies on intrinsic and relational properties in order to determine when a human being has moral status.[12] The most salient criteria regarding human fetuses, infants, and children are the Agent's Rights Principle and the Human Rights Principle. The former states that moral agents (those who can be held morally responsible for their actions) have full and equal basic moral rights, including the rights to life and liberty. The latter principle claims that within the limits of their own capacities and of the Agent's Rights Principle, human beings who are capable of sentience but not of moral agency have the same moral rights as moral agents. These principles entail that the interests of young children and the mentally disabled have the same moral weight as those of other human beings. According to Warren, the view that only moral agents possess full moral status is inadequate. Warren argues that this becomes evident when we examine how it is that human beings become moral agents.

Warren observes that we become moral agents via processes that occur during a long period of dependence on other human beings who are themselves moral agents. During this period, we learn language and develop mental and behavioral capacities that make moral agency possible. In view of this, Warren argues that:

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11 See Bonnie Steinbock, *Life Before Birth* (New York: Oxford University Press, 1992). See also David Boonin, *A Defense of Abortion* (New York: Cambridge University Press, 2003) for an intrinsic property argument for the claim that a fetus has the right to life once there is organized electrical activity in its cerebral cortex, because once this activity occurs, the fetus begins to have conscious desires and so possesses a future-like-ours which grounds its right to life. This occurs at some point during weeks 25–32 of pregnancy.

12 Mary Anne Warren, *Moral Status* (New York: Oxford University Press, 1997).

> it is both impractical and emotionally abhorrent to deny full moral status to sentient human beings who have not yet achieved (or who have irreparably lost) the capacity for moral agency. If we want there to be human beings in the world in the future, and if we want them to have any chance to lead good lives, then we must at least value the lives and well-being of infants and young children. Fortunately, instinct, reason, and culture jointly ensure that most of us regard infants and young children as human beings to whom we can have obligations as binding as those we have to human beings who are moral agents.[13]

However, on this view of the moral status of human beings, it is not strictly the case that infanticide is never morally permissible. Given her endorsement of David Hume's view that morality is based on natural sentiment, and given the occurrence of infanticide across numerous cultures, for Warren the claim that our emotional-social nature requires full moral status for infants is problematic. Warren notes that where it is practiced, infanticide normally happens soon after birth, when no holding, washing, dressing, nursing, or introducing to neighbors, relatives, and friends has occurred. It is here that a relational property of newborns is relevant to their moral status, namely, the entrance of the newborn infant into the social community. Once the newborn enters into a social relationship with its mother, other family members, or the broader social community, it possesses moral status and infanticide then becomes morally impermissible, except in desperate circumstances. So for Warren, infanticide is consistent with the Human Rights Principle. If contraception and abortion are difficult to obtain, and if it is impossible to rear all of the infants that are born (or all who are seriously abnormal), then it is more just and kind to tolerate early infanticide rather than to punish or persecute parents who choose it as a lesser evil.

Again, my purpose here is not to defend a particular account of the moral status of fetuses, infants, or young children, though I do think intrinsic property arguments are preferable to those that also make use of relational properties. Rather, I have briefly discussed two distinct accounts of moral status that support the belief that infant human beings do have moral status. In what follows, I will assume that newborns possess a level of moral status sufficient for the right to life and the right to bodily security. This is a widely held and plausible view that can be argued for in numerous ways, and so exploring the rights and obligations of parents on this assumption is a worthwhile endeavor. For those who believe that human beings do not come to possess moral status until they have satisfied Tooley's condition for having a serious moral right to life, the arguments that follow can be adjusted so that they apply only to children who satisfy that condition.

Overview

In the pages that follow, I argue that parents should see themselves as stewards of their children. A steward is someone who has been entrusted with something of great value that does not, strictly speaking, belong to the steward. A steward must care well for that which has been entrusted to her, because of the value that it possesses.

13 Warren, pp. 164–165.

Stewardship can occur in small ways, such as when my neighbor entrusts the care of his lawn to me while he is away.[14] It can also occur in much larger ways, as when an art collector entrusts a priceless and important piece of artwork to a museum. In the chapters that follow, one of my main tasks is to explain and apply a stewardship conception of parenthood.

In Chapters 2 and 3, I consider several different ways to think about what it is that makes someone a parent, and end up endorsing a pluralistic view of parenthood. That is, I endorse the claim that there are numerous ways to acquire parental rights and obligations. Numerous considerations come into play when thinking about what it is that makes someone a parent. Many conceptions of parenthood – including proprietarian conceptions, biological conceptions, and best interests of the child conceptions – fail entirely. In Chapter 3, I argue that the custodial relationship, consent, and causal conceptions of parenthood are all successful, to some degree. After commenting on the significance of this pluralistic conception of parenthood and noting how these conceptions fit into a more general stewardship view, I briefly discuss the relationship between parental obligations and parental rights.

In Chapter 4, I first reject absolutist and quasi-absolutist views of parental rights, which hold that parents have absolute or quasi-absolute rights with respect to their children. I also consider several challenges to the claim that parents have moral rights *qua* parents, and then state and defend an argument in favor of the existence of such rights. The argument rests in part on the claim that certain fundamental interests of both parents and children can be satisfied via the parent-child relationship, and concludes that these interests generate parental rights. I then locate this justification for the moral rights of parents within a stewardship view of parenthood. Finally, I examine several issues related to public policy and the moral dimensions of the family, including parental licensing, child abuse, the religious upbringing of children, the education of children, and medical decision-making on behalf of children, and consider what implications the stewardship view has for these issues.

Chapter 5 contains an examination of the legal and moral obligations of parents. The legal obligations of parents should include the provision of a certain level of care as well as the avoidance of abuse and neglect. In the legal context, I also consider whether or not the current practice of punishing parents for the crimes of their children is philosophically defensible, and argue that in certain cases it is not by virtue of the fact that it involves punishment of the innocent. Next, I consider the obligations parents have as stewards of their children. After a discussion of the negative obligations of parents, I consider the positive moral obligations of parents to their children, and examine these obligations in the following contexts: helping children become autonomous pursuers of a good life, moral development, intimacy and honesty, work, the religious upbringing of children, education, medical decision-making, and materialism.

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14 See William B. Irvine, *Doing Right by Children* (St. Paul, MN: Paragon House, 2001). Irvine also offers a stewardship view of parenthood, though he focuses on parental obligations. His account is narrower than my own, and he draws very different implications when applying the view to what parents ought to do, *qua* parents.

Finally, much of what I conclude in the pages that follow is consistent with many, though not all, of our common sense moral beliefs about the parent-child relationship. My purpose, however, is not merely to restate the deliverances of common sense in philosophical terms. Rather, my aim is to provide philosophical arguments in support of many of our common sense moral beliefs about the parent-child relationship because I believe that many of these beliefs are, in fact, true.

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Chapter 2

Unsuccessful Conceptions of Parenthood

In 1989, John and Luanne Buzzanca decided that they wanted to have a child.[1] For five years the Buzzancas were unsuccessful, trying numerous infertility treatments. Ultimately, they decided to create an embryo using sperm and egg from anonymous donors. This embryo was then implanted in a surrogate mother who would carry it to term. However, one month prior to the birth of Jaycee Buzzanca, John filed for divorce and refused to pay child support, claiming that he was not Jaycee's father. Luanne's lawyer argued that John incurred the obligation to pay child support for Jaycee by virtue of the fact that he signed the contract which gave consent to implant the embryo in the surrogate. Pamela Snell, the gestational surrogate, also tried to obtain legal custody of Jaycee, stating that she agreed to be a surrogate on the condition that the baby would be raised in a stable household with two parents.

This case illustrates the moral and legal dilemmas that can arise with the use of reproductive technologies. Given the fact that five different people were involved in her conception and birth, who possesses parental rights and obligations with respect to Jaycee? In order to obtain clarity with respect to such cases, we must first answer the more general question: how should we conceive of parenthood? What is the foundation of the rights and obligations of parents? A central aim of this book is to argue that the conceptions of parenthood that successfully generate parental rights and parental obligations all fit within a more general conception of parenthood – the stewardship view. I explain and defend the stewardship view more fully in subsequent chapters.

Recall the intuitive definition of a parent offered in Chapter 1, that a parent is someone who has certain special rights and obligations with respect to at least one child. This is a commonsense definition of the term. In what follows I examine several different conceptions of parenthood. In evaluating each conception of parenthood, I will consider whether or not that particular way of understanding parenthood is able to generate parental rights and parental obligations. I am primarily concerned with moral rights and obligations, though at times I discuss the legal issues as well. As I examine the different conceptions of parenthood, I will also consider the implications each conception has for the Buzzanca case. In this chapter I focus on unsuccessful conceptions of parenthood. A conception of parenthood is unsuccessful if it generates neither parental rights nor parental obligations. Numerous conceptions of parenthood have been offered that fail as accounts of the rights and obligations of parents.

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1 From http://www.cbsnews.com/stories/1998/05/13/48hours/printable9352.shtml.

Proprietarian Conceptions of Parenthood

Both historical and contemporary philosophers have advocated proprietarian conceptions of parenthood. On such a view of parenthood, children are the property of their parents. The proprietarian believes that parents own their children.

One way to understand how individuals become parents is within the paradigm of producer-product. Parents produce children, and therefore children are the property of their parents. One way to argue for this is to appropriate Locke's theory of labor:

> every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*.[2]

The idea is that those who have engaged in the labor that produced the child become the parents of that child, by virtue of that labor. Locke himself did not advocate this view, focusing instead on the lack of rationality present in children as that which grounds parenthood. However, these sorts of considerations have been appropriated by proponents of proprietarianism.

Jan Narveson is a contemporary advocate of a proprietarian view who argues that children are, *prima facie*, the property of their parents.[3] This does not mean that parents can do whatever they please with their children, as parental treatment of children is limited by its effects on other rights-holders, which for Narveson does not include children. Parents have the authority to direct the life of a child because they, as producers, exerted themselves to bring that child into existence.

On this understanding of parenthood, the labor engaged in by the woman in the production of the child is obvious, from conception through birth. It is less clear what labor the man has done by which he becomes a parent. However, more may be done by the male than just the procreative act. A man engages in labor that helps to nourish and sustain the fetus by physically and emotionally supporting the gestational mother. Yet on this line of argument, doctors and psychologists could claim ownership of a child by virtue of their contributions to its nourishment and sustenance as a fetus, which appears to be a problem for a labor-oriented theory of parenthood.[4]

The correct response to proprietarian views of the grounds of parenthood is that human beings are not the sorts of things that can be owned.[5] Given this, children

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2 John Locke, *Two Treatises of Government* (New York: Cambridge University Press, 1988), pp. 287–288.

3 See Jan Narveson, *The Libertarian Idea* (Philadelphia, PN: Temple University Press, 1988). See also Narveson's *Respecting Persons in Theory and Practice* (Lanham, MD: Rowman and Littlefield, 2002).

4 See also David Archard, *Children: Rights and Childhood* (New York: Routledge, 1993).

5 See also Phillip Montague, 'The Myth of Parental Rights', *Social Theory and Practice* 26 (2000): 47–68; and Archard, *Children: Rights and Childhood*. Immanuel Kant raises this point in his *The Metaphysics of Morals*, in *Practical Philosophy*, Mary J. Gregor (ed.), The

are not the property of their parents. Additionally, Narveson's claim that what limits parental treatment of infants is not the well-being of those infants, but rather the effects of that treatment on third-parties, is morally troublesome. The moral status of infants entails that the well-being of infants limits how parents may treat them.

It could be argued that in the above response I am begging the question against the proprietarian.[6] This is incorrect. In Chapter 1, I discussed arguments for the claim that children possess moral status. A consequence of children and adults possessing the type of moral status that they do is that children and adults cannot be owned. My claim is that just as it is wrong to conceive of a woman, an African, or anyone else as property, it is also wrong to conceive of children as property.

Barbara Hall discusses a different type of proprietarian conception of parenthood.[7] After rejecting the claim that Locke's labor theory can justify granting parental rights to a child's biological parents, Hall claims that what fuels the intuition that biological progenitors have an initial claim to be parents is the fact that the child is a product of the parents' selves, representing a genetic part of those parents. Hall begins with the concept of self-ownership, and then moves from this concept to the claim that we also own our genetic material. Lastly, given the genetic connections between biological parents and their children, biological parents then have rights to their offspring. As with the above proprietarian model, the proprietarian model discussed by Hall begins with the concept of self-ownership. However, rather than focusing on labor as that which generates parental rights, it is instead the fact that the child is a product of the progenitors' selves which makes them its parents. Aristotle also seems to hold this version of proprietarianism:

> For there is no injustice in an unqualified sense in relation to what is one's own, and a chattel, or a child until it is of a certain age and becomes independent, is like a part of oneself, and oneself – no one decides to harm *that*; hence…'the just' exists more in relation to one's wife than in relation to one's children and chattels.[8]

For Aristotle, it is not the parent's labor that makes a child the property of her parent, but his belief that the child is a part of the parent's person, until the child becomes an independent person in their own right.

What are we to make of this type of proprietarian conception of parenthood? As Hall points out, the concept of self-ownership is problematic. Her argument is not that this concept is a valid one. Rather, Hall merely makes the point that it is the acceptance of this concept that supports the belief that the biological progenitors of a child have an initial claim to be its parents. While the acceptance of this conception of parenthood may explain the intuition that genetic progenitors have an initial claim to

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Cambridge Edition of the Works of Immanuel Kant (New York: Cambridge University Press, 1996), p. 430.

6 See David Archard, *Children, Family, and the State* (Burlington, VT: Ashgate, 2003), p. 89.

7 See Barbara Hall, 'The Origin of Parental Rights', *Public Affairs Quarterly* 13 (1999): 73–82.

8 Aristotle, *Nicomachean Ethics* (New York: Oxford University Press, 2002), Book V, 1134b.

be parents, this proprietarian conception of parenthood is susceptible to the criticism discussed above, namely, that human beings cannot be owned, morally speaking. While the proprietarianism Hall elucidates is distinct from the above proprietarian account that focused on labor, it shares a feature that is the downfall of both accounts – a reliance on the concept of the ownership of human beings.

One might think that the above dismissal of proprietarianism has been a bit too quick. There are both analogies and disanalogies between parental rights and property rights worth considering.[9] For example, parents can recover compensation for harm to their children, and both parental and property rights can be forfeited under certain restrictions. But the disanalogies are significant enough to warrant the rejection of proprietarian conceptions of parenthood. For example, children are not the private property of their parents, given that parents cannot do whatever they want with their children. We generally believe that parental rights are constrained by the well-being of the child, whereas property rights are not constrained by the well-being of the property. Additionally, parental rights and responsibilities decrease and change over time, whereas property rights remain static as long as the property in question belongs to its owner.

The defender of proprietarianism might point out that it is not strictly the case that people can do *whatever* they want with their private property. For example, it is illegal to intentionally burn down one's home. Nor is it generally legal or moral to use a firearm to injure or kill another human being. There are in fact numerous limitations with respect to what we can do with our property, as evidenced by zoning laws and laws regarding the use and disposal of hazardous substances. While it is the case that our property rights are limited, an important disanalogy remains. In many such cases, it is the well-being of other people who might be harmed by a burning house or contaminated land that limits the rights in question, while in the case of parental rights it is the well-being of the child that is limiting those rights, insofar as one accepts the child's well-being as having fundamental importance.

However, the claim might be made that it is the intrinsic value of the property itself that justifies our limitation of certain property rights. Consider the case of a dog breeder. We generally think that the puppies produced by the dogs she breeds are her property, insofar as she can keep them to produce more puppies and sell them to other breeders or individuals. However, it is clear that the dog breeder cannot do whatever she wants with these dogs. She must treat them in a humane fashion and provide for their physical needs, because of the (at least limited) moral status of the animals in question.

Given these points, a proprietarian might argue that there are important similarities between parental rights and property rights, and hold that proprietarianism survives the above criticisms. However, in order to show that these analogies exist in a sufficiently strong manner to ground the rights and obligations of parents, the proprietarian must rely on the importance of the well-being of children and their moral status as human beings. In trying to defend her account of parenthood, a tension therefore arises within the proprietarian argument. This is because the proprietarian

9 See Avery Kolers and Tim Bayne, '"Are You My Mommy?": On the Genetic Basis of Parenthood', *Journal of Applied Philosophy* 18 (2001): 273–285.

must rely on the moral status of children to defend her view, but it is the moral status of children that serves as the foundation for the initial rejection, stated above, of such conceptions of parenthood. That rejection of proprietarianism rested on the claim that human beings cannot be owned. Ultimately, the analogies and disanalogies that exist between parental rights and property rights are of secondary importance, because of the notion that humans should not be conceived of as property.

What implications do the views of Hall and Narveson have for the Buzzanca case? Both would initially appear to endorse taking the anonymous gamete donors in the Buzzanca case to be the parents of Jaycee. For Hall, this is because Jaycee is a product of the donors' selves, representing a genetic part of these anonymous individuals. For Narveson, the donors initially have a claim to be Jaycee's parents because they exerted themselves, as producers, to bring her into existence. Given that the gamete donors chose to remain anonymous, did not seek custody of Jaycee, and forfeited whatever rights they may have had to her, the next most likely candidate on a proprietarian understanding of parenthood would be Jaycee's gestational surrogate, Pamela Snell. Perhaps we can conceive of Jaycee as a product of Snell's self, given the contributions made by the gestational mother to the physical existence of the child. If this were correct, then Hall's conception of parenthood would endorse granting custody of Jaycee to Pamela Snell. On Narveson's version of proprietarianism, Pamela Snell would also be the next best candidate for being Jaycee's parent, given that she has exerted herself as a producer to bring Jaycee into existence. I will consider the relevance of genetics and gestation for parenthood later in the chapter, but at present one thing is clear. Neither John nor Luanne Buzzanca fit this conception of parenthood, because there is no clear way in which Jaycee is a product of their physical selves, nor have they physically exerted themselves, as producers, to bring her into existence.

Edgar Page also discusses proprietarianism in his argument in favor of the existence of parental rights.[10] Page's conception of parenthood is difficult to classify, because he makes use of both biological and proprietarian considerations in his account of the rights of parents. I classify Page's view as proprietarian, though in what follows I criticize both the proprietarian and biological aspects of his view.

Page begins by noting that whether or not we become parents, that decision has a deep impact both on how we live our lives and how we view ourselves. Because of this, parenthood can be a very valuable component of human life. That is, parenthood is valuable to human life generally and hence it should be protected, so that engaging in it is possible for those who are so inclined. Page argues that there are important analogies between parental rights and property rights that reveal that the foundation for parental rights is ultimately the general value of parenthood in society.

Page argues that the reason that infants belong to their natural parents is that a necessary connection exists between parental rights and natural parenthood. According to Page, infants belong to their natural parents because the biological relationship is essential to the value of parenthood. In this sense, the connection between parental rights and natural parenthood is a necessary one. Page admits that no formal demonstration exists which shows that the biological relationship is an

10 See Edgar Page, 'Parental Rights', *Journal of Applied Philosophy* 1 (1984): 187–203.

essential or even important element of parenthood. However, he thinks that one promising approach is to argue from the following three general principles:

Principle 1: Property owners own or otherwise have rights of control over whatever issues from their property, or over any parts which might become detached from it.

Principle 2: People own or are otherwise entitled to the benefits of what they make, produce, or create.

Principle 3: People are responsible for and are entitled to the benefits of what flows from their own voluntary acts.

While he does not discuss the claim in detail, Page holds that Principles 1–3 form a promising foundation for the claim that biology is an essential element of parenthood. However, a serious problem for Principle 1 is that it is both morally and legally false. If we applied this principle generally, it would entail that if an endangered species settles on land I own, I would thereby have the right to do whatever I wanted to do to those animals. This is false, and points to a larger problem that exists for basing an argument for parental rights on Principle 1, namely, that our property rights are quite limited, especially in cases where the purported property in question has a significant level of moral status.

Page himself notes other problems that can be raised for these principles. For instance, Principle 1 involves the belief that people own their bodies. This is controversial, given that some argue that no conceptual distinction can be made between the owners and what is owned. In support of the claim that people do own their bodies, Page points out the general agreement that exists regarding our ownership of our teeth, blood, organs, and even sperm and ova. If we have rights over these parts of our bodies, then something like Principle 1 seems to be at work. Hence, Page contends that there is no obvious reason for not applying this principle to natural parents and their children.

It is important to point out that the fact that a person has rights over his gametes does not entail that he has rights over or to the children that come into existence from those gametes. Moreover, one clear reason for not applying Principle 1 is that we are discussing children, rather than body parts or material goods. Page, however, believes that several considerations count against this as a good reason for rejecting the application of Principle 1 to natural parents and their offspring. First, infants and very young children are not yet rational, autonomous beings, and so are not yet fully persons. They are therefore unable to give or withhold consent to the considerable control that their parents have over them. Control is an important element of property, and the level of control that parents have over their children is at least as much as that which property owners have over some forms of property. Second, even though infants are potentially persons, a fact that impacts our attitudes towards them, this still does not constitute a reason for denying that they are the property of their parents, according to Page. The potential personhood of infants might lead us to hold that they have absolute value, and cannot be property because they are not mere objects. However, Page argues that we can still regard infants as property, because no incompatibility exists between asserting that they have absolute worth

and are also justifiably under the control of their parents. We can treat infants as ends and retain control over them, acknowledging their worth as potentially rational and autonomous beings. We may not treat adults in the same way, because they can give or withhold their consent, but this is an ability that infants do not yet possess. Moreover, Page argues that while it is inconsistent with their having absolute value as ends to buy and sell adults by virtue of the fact that they are autonomous, the same is not true of infants. No inconsistency exists in having laws allowing people to buy and sell children in the first six weeks of their lives and holding that those children have absolute value as ends, even though good reasons exist for not having such laws. In sum, Page states that his aim is not to show that parental rights are property rights, but rather that a denial of this does not imply that parental rights are not to be accounted for in a way similar to the way we account for property rights. Whatever one thinks of Page's argument for this particular conclusion, the conclusion itself seems correct.

A problem for Page's understanding of parenthood is that he overstates the value of biology by claiming that a biological connection is a necessary component of parenthood and its value for us. People may be parents even if no biological connection exists because the essential goods of parenthood do not include the biological component. Adoptive parents and stepparents both have full access to the essential goods of parenthood. Hence, biology is not an essential component of parenthood and its value for us. The biological or genetic connections may be important to us because they constitute an important part of begetting and rearing a child, but the most important components of parenthood are its social, moral, and relational aspects.[11] The biological connection, while not necessarily unimportant, is of secondary importance when compared to these other goods that potentially exist in the parent-child relationship.

Page is correct that biology is important to parenthood, insofar as we do value the biological connection that exists between parents and children. Part of Page's case for this claim is that the significance of the biological connection that exists between natural parents and their child means that the child is ineluctably theirs. The child belongs to its natural parents because 'natural parents are conceived of as having a positive creative role which sees the begetting and rearing of children as part of a single process.'[12] The aim of this creative activity for parents is to create a whole person in their own likeness, in which they see a part of themselves. Page contends that it is within this conceptual framework that parenthood is desired by us and has value for us. According to Page, if all parents were adoptive parents, parenthood would not have the special value in our lives that it now possesses. This is the case in part because even though adoptive parents may have strong emotional ties to their children, their commitment to their children must be accounted for solely in terms of a commitment of the will. This sort of commitment is vulnerable to the stresses and strains of raising children. Whether in thought or in deed, it is in principle possible for adoptive parents to return or replace their children. This is

11 See Paul Lauritzen, *Pursuing Parenthood* (Bloomington and Indianapolis, IN: Indiana University Press, 1993).

12 Page, 'Parental Rights', p. 201.

not the case for biological parents, because the child is theirs. They cannot return or replace their offspring.

Contrary to Page's assertion, it is possible in principle and in practice for biological parents to return or replace their children. Biological parents can and do forfeit their parental rights and fail in serious ways to fulfill their parental obligations, for a variety of reasons. More importantly, part of Page's case for the crucial significance of biology regarding the value of parenthood is that adoptive parenthood rests on a commitment of the will, whereas natural parenthood rests on the fact that there is a biological connection between the parent and child and that this connection is crucial to the value parenthood has for us. However, both natural parenthood and adoptive parenthood are on the same footing, insofar as both are vulnerable to the stresses and strains of raising children. It is also the case that natural parenthood and adoptive parenthood ultimately rest on a commitment of the will, even if the biological relationship is sometimes part of the motivation for that commitment.

In order to understand Page's view more clearly, and as a criticism of his view, we can imagine a case in which a woman is raped, becomes pregnant, and is forced to give birth. In such a case, there is a full biological relationship between the mother and her child, but there is no commitment of the will. It does not seem that mere biology adds value to her relationship to the child that she was forced to conceive and bear. In response, Page can agree that both adoptive and natural parenthood rest on a commitment of the will, but then argue that it is the biological relation that cements the parental commitment to the child in cases where coercion is not present. However, it is doubtful that the biological relation in fact does this much work, though this may be true in some cases. A commitment of the will, and not biology, is the more central component of the value of parenthood.

The existence of a biological connection may be significant for the value that parenthood has for many parents. However, this should not be the case. In 1988, Ernest and Regina Twigg and Robert and Barbara Mays discovered that their genetic children had been mistakenly switched in the hospital nursery, nine years earlier. Arlena, who was raised by the Twiggs, died in 1988 from surgical complications. In the medical treatment that she underwent prior to the surgery, it was discovered that Arlena had blood type B, whereas the Twiggs were both type O. After an investigation and genetic testing, it was discovered that Kimberly Mays was in fact the genetic offspring of the Twiggs, who agreed not to seek custody of Kimberly. This case has important implications for Page, because on his view the Mays should feel at least slightly less committed to Kimberly, the child to whom they are not genetically connected but have raised for the past nine years. Yet in this and any relevantly similar case, the non-biological custodial parents will likely not feel less committed to the child they have raised, nor is it the case that they should feel this way. Moreover, on Page's account the value of parenthood for the Mays should be at least slightly decreased, because of the essential role of biology for parenthood's value. However, the Mays should not feel less committed to Kimberly, nor should parenthood have less value for them. Page is stuck with both implications, because he overstates the value of biology and its role in the parent-child relationship. This is a serious problem for his view.

Page argues that 'for those adoptive parents who seek adoption as a solution to infertility it is bound to be second best to natural parenthood because of the absence of the procreative role.'[13] While it is descriptively true that many people value biology and the physical creation of children, that which is normatively valuable is helping our children become flourishing individuals with whom we are in a loving parent-child relationship. Given this, and given that some value the rearing of children and not the begetting of them, neither adoptive parents nor stepparents necessarily settle for second best.[14] We can imagine a couple deciding to adopt because they want to give a home to an unwanted child instead of physically creating a child themselves. For Page, such a couple is settling for second best, because they are missing out on something that is essential or at least highly important to the value of parenthood. This is implausible. Page claims that the aim of the begetting and rearing of a child is part of a single process, a creative activity in which parents seek to create a whole person in their own likeness, in whom they see a part of themselves. The problem with this claim is made apparent by the case at issue, as the adoptive couple can help create the person the child is and that they become, even without the biological component. The moral, social, and relational aspects of parenthood, and not biology, are essential to its creative value. Moreover, if our valuing of biological parenthood is grounded in a desire to create someone in our own likeness, then that valuing is morally problematic. Both the value and aims of parenthood should center on helping the child discover who they are and who they can be, appreciating their uniqueness. The desire to create a child in our own likeness is overly narcissistic. The upshot is that while Page may be correct that we do value the biological ties between parents and children, he has neither given sufficient reasons for thinking that biology is an essential component of parenthood, nor that we ought to value the biological connection between parent and child as much as he claims that we do.

In conclusion, proprietarian conceptions of parenthood generate neither parental rights nor parental obligations. Page's account is also problematic because of its overemphasis of the value of the biological relationship for parenthood. In the next section, I consider biological conceptions of parenthood that do not explicitly employ proprietarian considerations.

Biological Conceptions of Parenthood

Are the biological ties that exist between parents and children necessary or sufficient to generate parental rights and parental obligations? Should biology play the primary role in our understanding of parenthood? It is a contingent fact that children often want to be with their biological parents, and that people generally want to be with and relate to their biological offspring. Biological parents often possess an innate tendency to bond with their children, and so it could be argued that they have a

13 Edgar Page, 'Donation, Surrogacy, and Adoption', *Journal of Applied Philosophy* 2 (1985): 171.

14 See also David Archard, 'What's Blood Got to Do With It?: The Significance of Natural Parenthood', *Res Publica* 1 (1995): 91–106.

right to raise their children because of these bonds and tendencies.[15] Moreover, the tendencies of children to want to be with their biological parents could serve as grounds for parental obligations. The emotional and psychological costs of separating children from their biological parents are often very severe. Consider the actual trauma that occurs when biological parents and children are separated. Additionally, even those adopted or surrogate children who are quite happy sometimes try to find their biological parents.

These considerations do not show that a biological connection is a necessary condition for parental rights and obligations, given that adoptive parents clearly possess such rights and obligations. Nor do the above considerations show that biological ties are sufficient for parental rights. A rapist may be biologically related to a child, but that does not entail that he possesses rights over or to that child. This is an issue that the courts are beginning to address. In *Shepherd v. Clemens*, the Delaware Supreme Court terminated the parental rights of four-year-old Christopher's biological father.[16] In this case, the child was conceived by statutory rape, and his maternal grandparents had been raising him since his birth. The biological mother had relinquished her parental rights, and the grandparents sought termination of the biological father's parental rights in order to ensure that he could not obtain custody of Christopher at some point in the future. The father's rights were terminated on the grounds that he had abandoned Christopher. The position being defended here is that the biological father does not have a right to Christopher in the first place, given how he came to be one of Christopher's biological progenitors.

In order to evaluate biological conceptions of parenthood in more detail, it is useful to distinguish between genetics and gestation as types of biological parenthood. Usually a child's genetic and gestational mother are one and the same, but this is not always the case, and different arguments in favor of these different types of biological parenthood have been constructed.

Genetics

The genetic-biological conception of parenthood involves the claim that the genetic connection between parent and child grounds the parental rights and obligations of that parent. There are in turn two ways to interpret what is meant by genetic connection.[17] One of them is to use the blood ties that exist between genetic progenitors and their offspring. When considering such ties, what is referred to is the mere genetic connection between a person and the person's offspring. This conception of parenthood is mistaken, because a mere genetic connection between individuals is neither necessary nor sufficient for parenthood. That Jeff has the same level of genetic connection with his twin brother's child as his own does not entail that he has parental rights over or parental responsibilities to his twin's child. The

15 See Archard, *Children: Rights and Childhood*, pp. 102–104.

16 *Shepherd v. Clemens, Del. Supr., 752 A.2d 533* (2000).

17 These types of genetic accounts are discussed in Tim Bayne, 'Gamete Donation and Parental Responsibility', *Journal of Applied Philosophy* 20 (2003): 77–87; and Archard, *Children: Rights and Childhood*.

relevant difference between Jeff's relationship to his twin brother's offspring and to his own offspring is that Jeff causes his offspring to come into existence. But this is a causal conception of parenthood, which is distinct from the one at issue here. Mere genetic connection is not sufficient for parenthood. Neither is such a connection necessary, as the cases of adoptive parenthood and stepparenthood make plain.

A second sort of genetic-biological account has to do with the genetic derivation of a child from its parents. On this sort of account, it is not just that the child and its biological parents are genetically connected, but that the child is genetically derived from its parents. Genetic derivation does not face the problem that Jeff is just as closely related, genetically speaking, to his twin brother's child as he is to his own child. Jeff's child possesses a feature that his twin brother's child does not possess, namely, that it was genetically derived from Jeff. Hence, this sort of genetic account is not vulnerable to this counterexample. If genetic derivation grounds parenthood it does so because genetic derivation contains the concept of causation. What does it mean that a child was genetically derived from a parent? In the context of parenthood, it means that the child came from the parent, or from that person's genetic material. It means that the parent played a certain kind of causal role in the child's existence. Genetic derivation amounts to a causal account of parental rights and obligations. On this account, causation, and not mere genetic connection, does the work. Finally, it is important to note that a genetic connection is not necessary for causation. A gestational parent who is not genetically connected to her child is a causal parent.[18] The causal account, along with its implications for the Buzzanca case, will be considered in Chapter 3 in great detail.

Gestation

Gestation-biological conceptions of parenthood include an important role for the gestational mother. In favor of a gestational understanding of parenthood, Susan Feldman argues that consequentialist considerations lead to the conclusion that in the best legal and social policy a presumption is given to the gestational mother, in cases where the genetic and gestational mothers are both fit and claiming custody of the child.[19] Feldman notes that it is not merely genetics that impact the embryo, but also the gestational environment. Because the gestational process has an impact on how the genetic material expresses itself, it is important relative to the identity of the child that will be born. These points are important because of the possible conflicting claims to custody that can and do arise between a child's genetic and gestational parents.

The heart of Feldman's argument is a set of consequentialist considerations that she believes lead to the conclusion that we should adopt social policies favoring the gestational mother when conflicting claims to a child arise. First, such a policy would positively contribute to the well-being of gestational mothers and newborns.

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18 See Kolers and Bayne, '"Are You My Mommy?": On the Genetic Basis of Parenthood'.

19 See Susan Feldman, 'Multiple Biological Mothers: The Case for Gestation', *Journal of Social Philosophy* 23 (1992): 98–104.

It would be good for the health of newborns and for the freedom, social standing, and social respect of gestational mothers. The security of the gestational mother resulting from her freedom, social standing, and social respect would in turn have positive consequences for her and the developing infant. For instance, it would benefit the health of newborns, because a likely result of emphasizing gestation is that gestational mothers would be encouraged to have healthy diets and live healthy lives, which produces healthier newborns.

Feldman addresses the possibility that alternative policies might yield the same positive consequences. For example, we could craft and enact laws requiring that pregnant women live healthy lives during their pregnancies, and have contracts between gestational and genetic mothers mandating this. Mothers would be healthy, and newborns would turn out to be healthy as well. The well-being of children and mothers would be enhanced. However, Feldman rejects this alternative, because she foresees several negative consequences that would arise. Pregnant women would face restrictions upon their activities due to the law or the surrogacy contract, and would be subject to fines or punishment if they somehow failed to live up to those restrictions. In fact, pregnant women have been prosecuted for drinking alcohol, putting the fetus in danger by having sex late in pregnancy, and for drug use. In twenty-four states, courts have held that these sorts of prosecutions exceed the intent of the law, and in certain cases exceed the federal constitutional limits on state power.[20] For Feldman, the costs in freedom and dignity are too high, because such policies emphasize coercion and punishment. Feldman favors 'positive inducements and social practices, which minimize or eliminate legal restrictions and sanctions, and recognize the choice, personality and emotional ties of those involved.'[21] In support of such positive inducements and social practices, Feldman points to the similar methods employed to protect the well-being of pets. Pet owners almost always perform the needed care for their pets, because they want to do so and because they have an emotional tie to their pets. Where laws do exist regarding such care, most people do more than the law requires and would care for their pets even if no laws existed, because they are fond of them. Similarly, most pregnant women care for their fetuses voluntarily. Therefore, we do not need laws to compel this type of care. We need the bond and responsibility that women feel to provide sufficient motivation. Moreover, the voluntary nature of the care provided by gestational mothers enhances the bond.

Feldman states that if pregnant women are led to believe that gestation does not count because of its devaluation in society, and due to the threat of legal or social sanctions believe that their relationship with the future child will be limited or severed, they will resist living prudently with the health of the fetus in mind. They would begin to adopt strategies of sabotage, even if the rules exist for their safety and that of their fetuses. Feldman concludes that we should adopt a gestational account of maternity and develop a system of positive inducements instead of legal

20 See Lynn M. Paltrow, 'Punishment and Prejudice: Judging Drug-Using Pregnant Women', in Julia Hanigsberg and Sara Ruddick (eds), *Mother Troubles* (Boston: Beacon Press, 1999), pp. 59–80.

21 Feldman, 'Multiple Biological Mothers: The Case for Gestation', p. 101.

sanctions, because this will more effectively promote the well-being of pregnant women and their children. This means that the claims of the gestational mother are to be preferred when a conflict arises with the genetic mother. An implication of such policies is that women who have given birth will have a presumptive advantage regarding custody when disputes arise with fathers. Feldman contends that this gestational view of maternity and the resultant social policies must be accepted, in order to protect the freedom and dignity of women, until fetuses can be grown without female bodies.

In the Buzzanca case, the conflict is between the gestational mother and the contracting couple, rather than between the genetic and gestational mothers. It is still clear, however, that Feldman's gestational conception of parenthood would take the gestational surrogate, Pamela Snell, to be Jaycee's parent, in line with the larger social policy that Feldman endorses which favors gestational mothers when conflicts over custody occur. However, granting custody to Pamela Snell on these grounds is problematic, for reasons that I will discuss below.

First, though, there are some advantages to be had on Feldman's proposal. Affirming the contribution of the gestational mother would likely lead to some of the positive consequences that Feldman describes. Positive inducements should always be favored over legal sanctions, when they can be effective. The way that legal sanctions have been carried out in the recent past is highly objectionable, from both a moral and a legal standpoint. For example, in Charleston, South Carolina, in 1989, a collaborative effort between police, prosecutors, a state hospital, and the Medical University of South Carolina sought to punish pregnant women and new mothers who tested positive for cocaine use. Women who were tested for cocaine never consented to these tests. Moreover, warrants were never obtained for the tests, even though they were done in order to carry out criminal investigations. Some women were even taken to jail while still bleeding from childbirth. Such policies are fraught with problems, both legal and ethical, and point to the need for non-punitive programs to deal with these social ills.[22]

It is a virtue of Feldman's argument that she emphasizes the importance of the gestational mother's contribution. Also, the voluntary nature of the connection between the pregnant woman and her developing fetus may well enhance the bond that exists. However, there are three problems worth noting for Feldman's argument. First, she overstates the negative consequences of having legal restrictions and sanctions aimed at protecting the well-being of fetuses and the women who gestate them. Second, it is not the case that the existence of laws aimed at protecting fetuses and the newborns that they will become must threaten the voluntary nature of the care provided by gestational mothers. Third, her argument has the implication, which Feldman accepts, that the claims of women who have given birth to children are to be preferred to the custodial claims of fathers when disputes occur.

The first problem for Feldman's argument is her claim that women would seek to sabotage their own pregnancies if they were under the threat of legal sanctions for failing to care adequately for the fetuses in their wombs. Part of her case for a system of positive inducements as opposed to legal sanctions is that positive inducements

22 See Paltrow, 'Punishment and Prejudice: Judging Drug-Using Pregnant Women'.

work well in the case of people and their pets. However, there are legal sanctions in many states making abuse or neglect of pets a felony. It is not the case that pet owners, once such laws were enacted, began feeling resentment toward their pets or began abusing them because of the threat of legal sanctions against those who engage in such abuse or neglect. The only cases in which legal sanctions come into play are when a pet owner engages in some form of abuse. But then we think that such sanctions are justified, because a serious wrong has been done. This counts against Feldman's argument, because if it is only the bad pet owners who will be vulnerable to legal sanctions for the mistreatment of their pets, then we have good reason for having such laws in place, namely, to protect the pets. Similarly, pregnant women who decide to carry their fetuses to term and who do so in a responsible and safe manner, with both their own and their fetuses well-being in mind, will not engage in acts of sabotage because they are internally motivated to care for themselves and their developing fetuses. It is difficult to see how legal sanctions would threaten that motivation. Legal sanctions would be aimed at people who would make choices detrimental to their own health and the health of the fetus, and it is in these sorts of cases that the interests of society in protecting the health of fetuses, children, and women can justify sanctions against pregnant women who abuse or neglect their fetuses, through excessive alcohol use or drug use. While it would be more humane and arguably more effective to focus on the treatment of women who use substances harmful to a fetus during pregnancy, it does not follow that legal sanctions are never justified. Moreover, the point remains that the support that Feldman seeks to marshal for her view through the case of pet ownership is undermined by that very case.

A second problem for Feldman's view is that she seems to think that laws compelling adequate care of fetuses would threaten the voluntary nature of the care that gestational mothers provide. This in turn would damage the bond and responsibility such women feel. This claim is false. Laws prescribing something need not make doing whatever is at issue involuntary. Most parents care for their children voluntarily, feeding and clothing them, even though laws exist that prescribe such behavior. Most of these parents still experience strong bonds with and a strong sense of responsibility for their children.

A third problem with Feldman's argument is that it violates the *parity principle*. This principle states that being a father does not make an individual more of a parent than being a mother, or *vice versa*.[23] The problem is not that it is unequal to claim that gestation is a sufficient source of parental rights and obligations that only women have. The problem raised by the parity principle is that if we take it to be the case that mothers have stronger parental rights and obligations than fathers in virtue of gestation, this is objectionably counterintuitive. The parity principle exhibits the belief that mothers and fathers have equal obligations and equal rights with respect to their children. To the extent that someone holds to the parity principle, Feldman's argument will be troubling. Feldman's justification for rejecting this principle is that only women can be pregnant. Feldman believes that genetic and social paternity are

23 See Kolers and Bayne, '"Are You My Mommy?": On the Genetic Basis of Parenthood.'

important, but she also believes that by favoring gestational mothers we preserve their freedom and dignity.

In view of the impact of pregnancy and birth on the life of the gestational mother, Feldman's position has some plausibility. Even fathers who go to great lengths to assist their pregnant partners do not feel the same impact of pregnancy as women. However, the claim that fathers and mothers should initially be given equal consideration in custody disputes, because something like the parity principle is true, has significant merit. Perhaps we can take parenthood to be a non-degreed property, arrived at by many different routes.[24] Once a certain threshold is crossed via one of these routes, a person becomes a parent. It is helpful to think of parenthood on the model of citizenship. We may imagine a country, Ruritania, where an individual acquires citizenship by being born in Ruritania or by being born to Ruritanian parents. If Ginger is born in Ruritania to Ruritanian parents, and Fred is born in Ruritania to non-Ruritanian parents, it follows that both Fred and Ginger are Ruritanian citizens. Ginger's citizenship is overdetermined, but she is not more of a citizen than Fred. If we conceive of parenthood in this way, as something a person either is or is not, then we have good reason to reject any view that violates the parity principle.

There are at least four other good reasons for believing that the parity principle is true. First, it has a high degree of intuitive plausibility. It is clear that a gestational mother endures more hardship and engages in more labor than a genetic father. However, it is quite plausible to think that this does not make the mother more of a parent than the father. This intuition is contestable, and Feldman rejects it. There are other reasons for believing that the parity principle is true.

The fact that fathers and mothers have an equal interest in relating to and caring for their offspring strongly supports the claim that neither is more of a parent than the other. Both mothers and fathers can experience intimacy, meaning, and deep satisfaction in the context of a parent-child relationship. These goods that are achievable through parenthood are equally accessible to both mothers and fathers. The equality of interests with respect to parenthood supports the parity principle.

Third, consider the case of Maryland state trooper Kevin Knussman, who was denied parental leave to care for his newborn daughter because he is male. Knussman's wife had suffered life-threatening complications during pregnancy, and he had requested several weeks of parental leave after the birth of their daughter. The Maryland State Police denied this request, telling Knussman that only women could be granted parental leave because only women can breastfeed a baby. Maryland State Police personnel manager Jill Mullineaux told Knussman that he could take parental leave only if his wife was either dead or in a coma. Knussman was also told that unless he returned to work, he would be considered absent without leave, which could lead to him being fired from his job. The Knussmans went to court, and in February of 1999, a United States federal court jury found that Kevin's equal protection rights were violated and that the Maryland State Police had violated the Family and Medical Leave Act by its actions. 'We are fortunate to have been able to bring substantial attention to the issue of family leave and the need for equal treatment of men and women with respect to child care benefits,' Knussman said.

24 See Ibid.

'That, in turn, has benefited thousands of public safety personnel. It's very gratifying to hear from troopers and others that our efforts have enabled them to take more time to meet family needs. We have faith in the court system, and truly believe that justice will triumph in the end.' Agreeing with Knussman, attorney Sara Mandelbaum of the ACLU Women's Rights Project said: 'For three decades now, the Supreme Court has condemned the sort of overbroad generalizations and stereotypes about 'appropriate' gender roles that the Maryland State Police applied here. What more does it take to convince the Maryland State Police commanders that fathers have rights too?' Knussman and Mandelbaum are correct. We have good reasons based on a principle of justice for accepting the parity principle.

A fourth reason for accepting the parity principle begins with the claim that mothers and fathers possess equal parental obligations. In a case where conception and birth have occurred without coercion, both parents are initially equally obligated to care for the child. Many who believe that gestation does make the mother more of a parent than the father also believe that mothers and fathers have equal obligations to their children. Historically, more stringent obligations have been placed upon women. This is unacceptable, because it constitutes a sexist understanding of the roles of men and women in and out of the home. Feldman rejects the parity principle, because she believes that mothers and fathers do not have equal parental rights, and that the gestational mother's right to raise her child should be given preference in any situation where a conflict over custody arises. However, if mothers and fathers initially have equal obligations to their children, then mothers and fathers should also initially have equal rights with respect to their children. If mothers and fathers possess obligations to their children, then they also possess a right to fulfill their parental obligations. If the obligations of parents ground the rights of parents in this way, and if the obligations of mothers and fathers are equal, then so are the rights that arise from those obligations. This equality of parental rights and obligations for mothers and fathers is precisely what the parity principle claims to be the case. If the parity principle is true, then we have good reason for rejecting Feldman's gestational account of parenthood. Moreover, any account that includes the claim that gestation is necessary for parenthood is vulnerable to being rejected on the basis of the truth of the parity principle, including those accounts that, in contrast to Feldman's, are non-consequentialist. It is to a discussion of this variety of gestational accounts of parenthood that we now turn.

In support of the claim that gestation should constitute a basis for a legal claim to be the parent of a child, consider the following from Uma Narayan, '[a] gestational mother undergoes considerable discomfort, effort, and risk in the course of pregnancy and childbirth, and gestation is an intimate process during which a woman could

quite understandably develop a deep attachment to the child she carries and gives birth to.'[25]

Two separate arguments are present in Narayan's argument for gestationalism. First, Narayan points to the labor engaged in by gestational mothers when she alludes to the risk, effort, and discomfort that such mothers undergo. It is in virtue of these factors that a gestational mother is said to be the parent of the child she gives birth to. She has engaged in physical and emotional effort in order to bring the child into the world, and this effort grounds the gestational mother's claim to that child. On this conception of parenthood, Pamela Snell possesses parental rights and obligations with respect to Jaycee. Snell, and not Luanne Buzzanca, has engaged in the physical and emotional effort required to bring Jaycee into the world, and it is this physical and emotional effort that grounds her claim to custody of Jaycee.

On this type of gestational account, it is the labor engaged in by the gestational mother that gives her the right to raise the child. A possible problem for this claim is that the efforts of physicians and other health professionals might give them a right to the infant, which is counterintuitive. However, there are important differences between the labor engaged in by the gestational mother and the labor performed by others in support of the health and well-being of the fetus. The effort of the mother is certainly more demanding and involves more risk. Perhaps these qualities give her a presumptive claim to raise her child that medical professionals and fathers do not have. Problematically, however, appealing to the effort and labor put forth during a pregnancy and birth as the grounds for parental rights begins to sound very similar to proprietarian views of parenthood, which should be rejected because conceiving of infants and children as property is morally impermissible.[26] Moreover, such an appeal violates the parity principle.

More promising, because it avoids proprietarianism and is consistent with the parity principle, is the use Narayan makes of the intimacy of the gestational process and the attachment that occurs. Many women develop deep relational attachments to the children they carry and give birth to, and understandably so. Women who decide to carry their pregnancies to term make numerous physical, emotional, and professional sacrifices, generally place a high value on their fetuses, and make choices aimed at enhancing the well-being of their fetuses. However, these considerations should not be used to support gestation as the basis for parenthood, because it is the fact that the mother is the caretaker of the fetus that grounds her claim to be its parent. The gestational process is merely one way that such caretaking can occur. Therefore, by virtue of the caretaking relationship that a woman has with her fetus,

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25 Uma Narayan, 'Family Ties: Rethinking Parental Claims in the Light of Surrogacy and Custody', in Uma Narayan and Julia Bartkowiak (eds), *Having and Raising Children* (University Park, PN: The Pennsylvania State University Press, 1999), p. 81. While Narayan's focus is on legal parental rights, her view is useful as a foil for considering the moral rights of parents. Moreover, the legal rights of parents should be based on the moral rights they possess.

26 See Peter Vallentyne, 'Equality and the Duties of Procreators', in David Archard and Colin McCleod (eds), *The Moral and Political Status of Children* (New York: Oxford University Press, 2003), pp. 195–211. See also Timothy Bayne and Avery Kolers, 'Toward a Pluralist Account of Parenthood', *Bioethics* 17 (2003): 221–242.

she has at least a presumptive claim to that fetus. This understanding of the grounds of parenthood need not violate the parity principle, because fathers also have access to parenthood on these same relational grounds.

This type of gestational conception of parenthood again points to Pamela Snell as having a claim to Jaycee, to the extent that Pamela is emotionally and relationally attached to her. The evidence in the case does point to the existence of such an attachment. Rightly or wrongly, Pamela held that she only agreed to transfer custody of Jaycee on the condition that she would be raised in a stable two-parent household. Upon hearing about the impending divorce, Pamela decided that she wanted to retain custody of Jaycee, and it is plausible to think that part of her motivation for this decision was that she deeply cared for Jaycee and had developed a strong relational attachment to her over the course of the pregnancy. I will argue in the next chapter that a custodial relationship, which may include a strong relational attachment, is a successful conception of parenthood.

Bayne and Kolers argue that emotional commitment and attachment are not sufficient for parenthood.[27] The problem is that many different individuals can bond with the infant or fetus. This may occur in different ways, as family, friends, and hospital staff all may bond with the infant or fetus. However, this does not mean that they then become parents of the infant in question. While it is true that many people may bond with the fetus, it is also true that they do not do so in the manner that gestational mothers do. It is not that the mother merely bonds with and is emotionally attached to her child. The mother bonds with the child and is attached to her *as* the child's mother, to a degree that hospital staff and friends do not attain. The relational ties and commitment are deeper for her than for them, and it is because of these differences that she has a presumptive claim to be the parent. This leaves room for fathers to claim parenthood on the same grounds, insofar as fathers can experience deep emotional ties to the fetus or infant, *as* a parent. Hospital staff and family friends do not experience these emotional ties either in the same way or to the same degree. It is of course true that some men and women do not feel these relational ties and emotional commitments, but that does not count against the claim at issue here, namely, that this sort of relationship is sufficient for parenthood.

But does mere gestation make one a parent? That is, does the physical gestational relationship generate parental rights and parental obligations? If we emphasize the causal role played by the gestational mother in the existence of the newborn, then gestation can generate parental obligations, but this analysis of the situation would best fit within a causal account of parental obligations. Physical gestation is not sufficient for incurring such obligations, because in a case where a woman is forced to gestate and bear a child, she does not have such obligations given that the relevant causal acts are not voluntary. Hence, mere physical gestation is not sufficient for incurring parental obligations. If we emphasize how even the mere physical support given by the mother to the fetus is a type of custodial relationship, we are again led to a custodial account of parenthood, in which a custodial relationship obtains by virtue of the gestational mother's physical support of the fetus. However, in cases where there is no bonding or attachment, the only connection that exists between a

27 See Bayne and Kolers, 'Toward a Pluralist Account of Parenthood'.

gestational mother and the fetus she carries is on the merely physical level.[28] Absent the existence of emotional bonding or the beginnings of relational attachment and commitment to the fetus, it is difficult to see how mere gestation generates parental rights.

With respect to the physical aspects of the gestational relationship, the fetus is physically contained within the body of the gestational mother and physically integrated with her in view of the fact that she provides nutrition for it and eliminates its waste, and it is materially derived from her body. Given these points, some believe that it is plausible to view the fetus as a part of the woman's body, regardless of the source of the egg and sperm. Bayne and Kolers reconstruct the above points into an argument for a gestational conception of parenthood. First, at least in the early stages of development, a fetus is literally a part of its gestational mother's body. Second, being or having been someone's body part is necessary for being that person's child. Bayne and Kolers grant that the first point possesses some plausibility. Even if we grant for the sake of argument that a fetus is an individual organism distinct from its mother, it does not follow from this that it is not a part of the mother's body. Cells are organisms that are part of other organisms. We therefore have some grounds for accepting the first point. According to Bayne and Kolers, however, the second point does not fare as well. There is no reason for supposing that being a part of someone else is necessary for being that person's child. Bayne and Kolers do not elaborate on why this is so, but in order for this necessity claim to be true, perhaps fathers, and certainly adoptive parents and stepparents, would be ruled out, which is unacceptable.

Some deny the parity principle and accept a gestational account of parenthood that entails that fathers have less of a claim to parenthood than mothers. For example, Barbara Katz Rothman argues that if men want children of their own, they must persuade women: (i) to marry them; (ii) to co-parent children with them; or (iii) to allow men to adopt their children.[29] Apart from these options, the only other way men can have children of their own is by developing technology which allows them to gestate. Until such technology exists, a man will only be able to have a child via a relationship with a woman. In support of her view, Rothman appeals to legal considerations, and Bayne and Kolers correctly point out that her argument for this position is therefore flawed, because what is at issue is whether or not these legal considerations accurately reflect natural relations.

More can be said against Rothman's views. For her, gestation or a relationship to the gestational parent is necessary for parenthood. This is a deeply problematic claim. First, it is inconsistent with the parity principle. Second, if and when the technology for artificial wombs is developed, children developed in such wombs would have no parents, on Rothman's view. There are possible scenarios in which a child has no parents, but for Rothman the problem is that gestation or a relationship to a gestational parent is necessary for parenthood. This is surely incorrect, because there will be adults who possess both rights and obligations with respect to children

28 See Ibid. See also Barbara Katz Rothman, *Recreating Motherhood* (New York: W.M. Norton and Company, 1989).

29 Ibid.

who develop in artificial wombs, if those adults employed their own gametes in bringing a child into existence, or consented to undertake obligations to a particular child. That these are ways in which someone can acquire parental obligations entails the falsity of the claim that gestation is necessary for parenthood.

In sum, if merely physical gestation is sufficient for *prima facie* parental obligations, it is by virtue of the causal element that is present. But, I will argue in the next chapter, a requirement of a causal conception of parenthood is that the relevant causal act be voluntary. So, gestation is not sufficient for parental obligations, because in a case where a woman is raped and then forced to bear a child, she does not have special obligations to that child. One might think that women can acquire parental rights via gestation, but this is because gestation is one way in which a custodial relationship between a woman and her offspring can obtain. In such a case, gestation itself is superfluous, and it is the relationship between the mother and the fetus that generates parenthood. There are cases in which the gestational mother does not bond with or value the fetus she is carrying. In such cases, it could be the caretaking relationship that grounds parenthood. Alternatively, it could be that bonding and attachment are indicative of the woman consenting to undertake special obligations to her offspring, so that her parental obligations are best understood within a consent account of such obligations. It could be argued that it is gestation plus emotional bonding, or gestation plus consent that is sufficient for parenthood. However, in these hybrid accounts, the gestational component is superfluous. The upshot is that we do not have a reason to claim that gestation, in and of itself, gives rise to parental rights or parental obligations.

Best Interests of the Child Conception of Parenthood

Should children be raised by those who will best serve their interests? There is some appeal to answering this question in the affirmative. Given the value we place on children and their vulnerability, it might seem that we are doing them a disservice by allowing them to be raised by a particular parent or set of parents when others would do a better job.

However, the claim that we ought to place children in the home where they will receive the best possible upbringing is vulnerable to counterexamples, because it fails to take into account the interests of parents. If a parent forfeits his parental rights, then removing the child from the parent's custody is of course permissible. Apart from such forfeiture, even in cases where parents might benefit in numerous ways from having their child removed from their custody, it would still be wrong to do so against their will, as long as they are fit. What is crucial here is that parents generally prefer sacrificing some of their non-parental interests because they take their parental interests to be stronger and more significant than whatever sacrifices raising their children might involve.

Consider a case in which it is not, strictly speaking, in the best interests of a child to be raised by its biological mother and father, but by others, such as an aunt and uncle. If we imagine such a case, on the best interests account the aunt and uncle would have parental rights and obligations with respect to this child. This is

highly counterintuitive, in part because they have not taken on these obligations nor done anything else to incur them, and in part because it fails to take into account the interests of the child's current parents. Or consider another type of case which many parents face. Imagine a parent who has been offered a job that is much more fulfilling than the one they currently have, but the educational system in the town they must move to is inferior to the one that exists where they currently reside. We can stipulate that the infant is young enough that whatever harm might come to them by being removed from their biological parent is outweighed by the benefits that accrue to them. On the best interests conception of parenthood, it would not only be morally permissible but in fact morally required, all else being equal, to remove the infant child from their parent's custody and place them with a parent who will remain in the town with the superior educational system. The best interests standard also endorses removing newborns from extremely poor families and giving them to parents who are financially stable, as long as in all other respects the financially secure parents would be as good at parenting the child as its biological parents. However, the removal of children in these types of cases is not morally permissible, and so these cases pose a serious problem for the best interests account.

But perhaps the best interests conception of parenthood can be modified to assuage such worries.[30] We might take the best interests conception not to include removing a child from its natural parents and giving it to better caretakers, or doing this many times over. This is because such practices would be quite harmful to children, as serious costs are involved in taking them from their natural parents. Children need a stable and affectionate environment. Moreover, a child's self-identity is also important. This identity includes their nationality, ethnicity, and social origins. These factors, then, limit the moving of children from family to family.

This modified best interests conception of parenthood may limit the moving of children, but it is still vulnerable to counterexamples similar to those offered above. We can imagine a case where removing a child one time, at a very young age, from its current parents would be in its best interests, all things considered, even if those parents would do a more than adequate job of raising the child. The child could still be given a stable and affectionate environment, and be placed with parents who share its nationality, ethnicity and social origins, so that the child's self-identity remains intact. These factors may limit moving children from family to family, but they do not prohibit a transfer of custody in circumstances such as those just described. This is a serious problem for the modified best interests conception of parenthood that arises because this view of parenthood fails to consider the interests of the child's current parents.

A different sort of modification of this conception of parenthood is also possible, which limits the role of the best interests of a child to custody disputes.[31] In cases where a dispute arises between a child's genetic parents, gestational parent, or sustained caregivers, the claim is that the deciding factor should be what is in the best interest of the child in each particular case. However, it is not clear that the child's

30 See Archard, *Children: Rights and Childhood.*

31 See Narayan, 'Family Ties: Rethinking Parental Claims in the Light of Surrogacy and Custody'.

best interests should always be the deciding criterion in such a case, because of the interests of those who desire to have custody of the child. The problem with this and all versions of the best interests conception is that they fail to take the interests of the child's current and potential parents into account. The point is not that the interests of biological parents necessarily trump the interests of other potential parents, but rather that the best interests conception fails to consider the interests of any parent or potential parent, and this is its downfall. Hence, that it is in a child's best interests to be with a particular person as the child's parent is neither necessary nor sufficient for that person being the child's parent. The best interests conception of parenthood therefore fails. However, the interests of children are of course one important moral component of the parent-child relationship, and should be one of the primary criteria used to determine parenthood.

Prior to examining successful conceptions of parenthood, it must be pointed out that employing a best interests criterion in the Buzzanca case in a legal setting would entail determining whether Luanne Buzzanca or Pamela Snell can provide the best rearing context for Jaycee. Snell claimed that she only consented to be a surrogate on the condition that the child would be raised in a stable two-parent household. Given that Luanne Buzzanca can no longer provide this, Snell's view is that Jaycee would be better served being raised by Snell. Employing this conception of parenthood does not give us a clear answer in the Buzzanca case, because it is not clear where Jaycee's best interests lie. The difficulty in employing a best interests criterion in many cases is that we do not know which home is truly best for the child, and we often have difficulty assessing in general terms what truly is in a child's best interests. Certainly there are clear cases. A child is better served living in a home where she will be cared for and loved, rather than in one in which those who are raising her are liable to abuse or neglect her. However, in the Buzzanca case, no such clear differences exist.

Conclusion

In sum, all of the foregoing conceptions of parenthood suffer from serious liabilities. Proprietarian, biological, and best interests of the child conceptions of parenthood all fail. These conceptions of parenthood are unable to give us sufficient reasons for ascribing either parental rights or parental obligations, and are therefore inadequate for resolving the difficulties posed by the case of Jaycee Buzzanca. In the next chapter, I discuss conceptions of parenthood that have at least limited success. These conceptions of parenthood generate at least parental rights or parental obligations. Successful conceptions of parenthood are therefore more useful in determining who has rights and obligations with respect to a particular child, because they reflect a more accurate view of how we should understand parenthood.

Chapter 3

Successful Conceptions of Parenthood

In this chapter, I consider conceptions of parenthood that are able to generate parental rights and/or parental obligations. Individuals who stand in a custodial relationship with a child, who consent to take on parental obligations to a child, or who stand in a certain causal relationship to a child have parental rights and/or parental obligations. As I discuss these three conceptions of parenthood, I also consider their implications for the Buzzanca case. After examining these successful ways of thinking about being a parent, I discuss the significance of a pluralistic understanding of parenthood. In this discussion, I note that although numerous conceptions of parenthood are able to account for parental rights and/or parental obligations, they all can be united under a stewardship view of parenthood. Finally, I consider the relationship between parental rights and parental obligations.

The Custodial Relationship Conception of Parenthood

The custodial relationship conception of parenthood claims that the individuals who are the caretakers of a particular child, who provide the love and care that the child needs, possess a claim to be that child's parents. As we have seen, such caretaking can occur in the context of gestation. It can also occur in other contexts. For example, foster parents have a defeasible claim to parenthood if they have a custodial relationship with a child involving love, care, and guidance, offered to that child in a parental manner. A person in such a relationship with a child on the basis of that relationship has a defeasible rights-claim to raise that child. This is based in part on the needs of the child, but also on the interests such a person has in being that child's parent. In the next chapter, I offer an extensive discussion of these issues and defend the claim that they constitute a justification for the existence of the moral rights of parents. There, I will argue that the custodial relationship between adult and child plays a central role in the stewardship conception of parenthood.

Turning now to the question of parental obligations, how might a custodial relationship with a child generate such obligations? Being a child's custodian, *prima facie* obligates one to the child in question. These obligations may be transferred via adoption or some other avenue, but they must be satisfactorily discharged in one way or another. People may find themselves in a custodial relationship with a child via consent, causation, gestation, or by some other means. However, the interests of the child in such a relationship have a strong moral pull on the custodial parent, such that the parent incurs special moral obligations to the child.

I address this issue more fully in the next chapter, but at present it is important to point out that serious failure as a parental caretaker can be grounds for the forfeiture

of parental rights. This is consistent with the claim that the adequate caretaking of a child or demonstrated good faith in becoming adequate is in fact necessary for the possession of parental rights. A custodial relationship, in this sense, is necessary for parental rights. A person who fails to adequately care for their child or who fails to demonstrate good faith in becoming adequate forfeits their parental rights. When a person fails to adequately care for a child, they may forfeit their parental rights, but they still have the obligation to ensure that someone is adequately caring for that child.

In the Buzzanca case, both Luanne Buzzanca and Pamela Snell have a rights-claim to Jaycee, on this conception of parenthood. As we have seen, the gestational context is one way in which a custodial relationship can obtain, and Pamela Snell evidently has a strong relational attachment to Jaycee, given her desire to raise Jaycee now that the Buzzancas will no longer provide the type of home desired for her by Pamela. However, Luanne Buzzanca also has a rights-claim to Jaycee on this conception of parenthood, because she has gone to great lengths to bring Jaycee into existence, and it is plausible to think she has a deep relational attachment to Jaycee as her mother. This custodial relationship therefore grounds her rights-claim to Jaycee. John Buzzanca has no rights-claim based on a custodial relationship, given that his denial of being Jaycee's father is evidence that he does not care for Jaycee in the way required for such a relationship to obtain. In fact, it could be argued on the custodial conception of parenthood that his failure to pursue fatherhood of Jaycee gives us good grounds for terminating John Buzzanca's parental rights to her.

The Consent Conception of Parenthood

The consent conception is the least problematic conception of parental obligations, insofar as this account of how one incurs special obligations is a straightforward one that is widely accepted in other realms of life. Blustein is representative of this sort of view when he claims that: 'The duties that go with being a parent are the tasks and assignments for which a person becomes responsible as a result of having taken on this job.'[1] On the consent conception of parenthood, when two people intentionally decide to procreate, they incur the obligations to care for the child they create.[2]

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1 Jeffrey Blustein, *Parents and Children* (New York: Oxford University Press, 1982), p. 101. For others who advocate the consent view, see Onora O'Neill, 'Begetting, Bearing, and Rearing', in Onora O'Neill and William Ruddick (eds), *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979), pp. 25–38; and Peter Vallentyne, 'Equality and the Duties of Procreators', in David Archard and Colin Macleod (eds), *The Moral and Political Status of Children* (New York: Oxford University Press, 2002), pp. 195–211.

2 Some philosophers have conceived of parenthood as a type of social contract. It has been argued that the rights and responsibilities of parenthood arise from a social agreement between the prospective parent and the moral community that appoints the prospective parent to be the actual parent. Alternatively, it has been argued that social conventions have priority over biological ties when determining who will raise a child, and that in social contexts where biological parents generally have the duty to raise their offspring, individual responsibility for

Adoptive parents fall under this conception as well, given that adoption involves a willful choice to take on the obligations of raising a child.

Acquiring special moral obligations via consent is a familiar and widely accepted account of how such obligations are incurred. For example, I have special obligations to my employer, because I have agreed to take those obligations on in return for a salary and other benefits. The special obligations of marriage are obtained via consent as well, given the fact that two people make a commitment of the will to love and care for one another. In these and many other cases, consent is both necessary and sufficient for the obligations in question.

This familiar picture of the relationship between consent and special moral obligations provides good reason for thinking that such consent is sufficient for parental obligations. However, as a possible counterexample consider a case of a rapist who assaults a woman, intending to create a child.[3] The woman becomes pregnant, and for whatever reason, she decides to carry the pregnancy to term and give birth to the child. Given her decision to carry the pregnancy to term, it seems that the woman has obligations to the child (which may be satisfied by giving it up for adoption if she has a good faith belief that the child will be adequately nurtured). But what of the rapist? Does he have any parental rights to or over the child? The intuitive and correct answer is no. His crime shows a deep lack of respect for other persons, and as such his parental rights are forfeited because he is a danger to his child. So the rapist does not possess parental rights over or to the child, but what obligations might he possess? He is obligated to make restitution of some sort to the mother. The rapist also has an obligation to avoid contact with the child. These are not *parental* obligations, however. The only parental obligation that he possesses is that of financially supporting the child, given his voluntary role in its existence. It is only in this very limited sense that the rapist is a parent. There is an intuitive offensiveness to the claim that rapists are parents in any sense of the term. However, it seems clear that the rapist does have the obligation to pay child support, given his intention to create a child, though the manner in which he brought the child into existence gives him the moral obligation to avoid contact with the child. It also justifies the state preventing him from having such contact.

So consent is sufficient for parental obligations. But is it necessary? Francis Schrag comes close to claiming that consent is necessary for parental obligations, when he states that no reason exists for thinking that 'parents have a strict duty to care for and educate their own children, except perhaps in those cases where after

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children is produced by the choice to undertake the duties of raising a child. This can occur by deciding to procreate or deciding not to avoid parental obligations via abortion or adoption. See, respectively, Stephen Scales, 'Intergenerational Justice and Care in Parenting', *Social Theory and Practice* 4 (2002): 667–677; and Blustein, *Parents and Children*. In both of these versions of the social account of parenthood, the notion of consent is primary, and so the most fundamental element of these accounts is evaluated in what follows. See also Mark Vopat, 'Contractarianism and Children', *Public Affairs Quarterly* 17 (2003): 49–63.

3 This sort of example is used in a slightly different context in Melinda A. Roberts, 'Good Intentions and a Great Divide: Having Babies by Intending Them', *Law and Philosophy* 12 (1993): 287–313.

due deliberation they beget a child knowing full well the care and attention which it will require.'[4]

However, consent is not a necessary condition for the acquisition of parental obligations.[5] To see that this is so, consider a case in which two people are in a relationship where a pregnancy occurs. The pregnancy was not intentional, as at the time both parties only consented to sex, and not procreation. The woman later decides to carry the baby to term and raise it, introducing the element of consent for her. The man, however, claims that he only consented to sex, not procreation, and so denies that he has special moral obligations to the child.

Intuitions about the above case will differ. One possible understanding of the case is that the woman, by virtue of her consent, has parental obligations to the child. She is obligated to attempt to ensure that the child's basic needs for food, clothing and shelter are met, and to provide care, attention, love, and guidance to her child. If for some reason she is unable to do this herself, she must ensure that someone else cares for the child in these ways. This seems right. It could be argued that the man, by virtue of consenting to sex and knowing that it could lead to the existence of a child, has tacitly consented to procreation and the relevant parental obligations as well. Perhaps this scenario is relevantly similar to one in which somebody voluntarily crosses the borders of another country. In so doing, they consent to obey the laws of that country, even if they do not explicitly give such consent.

However, an argument can be made that consent is not present in either of these cases. Even if I foresee that a particular state of affairs could come into existence as a result of my performance of an action, where it is reasonably foreseeable that the aforementioned state of affairs will obtain, and I am causally involved via an action in this state of affairs coming about, it does not follow that tacit consent is present.[6]

Consider the actual case of William Barloon and David Daliberti, who were in Kuwait visiting a friend who was working with the United Nations. Barloon and Daliberti accidentally crossed into Iraqi territory, and were sentenced to eight years in prison for illegally entering Iraq. Their trip was voluntary and that voluntary choice was a proximate cause of their illegal entrance into Iraq. And it was a foreseeable possibility that they might stray into Iraqi territory. Both men were released from prison, after their sentence was universally condemned as unjust. What does this case reveal? It reveals that voluntarily doing an act that one foresees may bring about a certain state of affairs does not entail that one has tacitly consented to bringing about that state of affairs. Barloon and Daliberti did not consent to bringing about a state of affairs in which they crossed over into Iraq. Similarly, in cases of voluntary intercourse, the claim I am arguing for here is that consent to bring about a certain

4 Francis Schrag, 'Children: Their Rights and Needs', in William Aiken and Hugh LaFollette (eds), *Whose Child?: Children's Rights, Parental Authority, and State Power* (Totowa, NJ: Littlefield, Adams, and Co., 1980), p. 242.

5 See also Timothy Bayne and Avery Kolers, 'Toward a Pluralist Account of Parenthood', *Bioethics* 17 (2003): 221–242. Bayne and Kolers argue against the necessity of consent for parenthood, but allow that consent may sometimes be sufficient for parenthood.

6 What follows is taken from a discussion of tacit consent and the morality of abortion found in David Boonin, *A Defense of Abortion* (New York: Cambridge University Press, 2003), pp. 154–159.

state of affairs – engaging in sexual intercourse – does not entail that one has tacitly consented to bringing about another state of affairs – procreation and birth – resulting from the bringing about of the former state of affairs. The upshot for parenthood is that by consenting to sex and knowing that it could lead to the existence of a child, one has not tacitly consented to procreation and the undertaking of the relevant parental obligations.

Accepting the conclusion that consent to sex does not entail tacit consent to procreation and parenthood need not include acceptance of the claim that in such a situation one has no parental obligations if a child does come into being. It is tempting to hold that consent is necessary for parental obligations. However, I believe that even if the man and woman know each other well, and have explicitly agreed that if a pregnancy occurs an abortion will be performed, but upon becoming pregnant the woman decides to give birth, then the man still possesses parental obligations to that child because he voluntarily engaged in an act with the foreseeable consequence of a pregnancy and the birth of a child with morally significant needs and interests. I will discuss this claim and argue for it in the next section, because the denial of obligations in such a case constitutes an important objection to the causal conception of parental obligations that I argue for in that section.

While consent is sufficient for the acquisition of parental obligations, it is not clear that it is either necessary or sufficient for parental rights. In the rape case discussed above, the rapist possesses no parental rights. One might think that his consent could generate *prima facie* parental rights, which are then overridden by his demonstrated unfitness for raising the child. This is plausible, if consent is sufficient for parental rights. However, it does not seem that consent is in and of itself sufficient for the generation of parental rights, because consenting to take on obligations in other realms need not include the possession of the relevant rights in those realms. For example, just because I consent to take on the obligations of a particular job, it does not follow that I have a rights-claim to do that job or to do the job as I see fit. Additionally, that I consent to be married to another person does not entail that I have a positive right to marry that person. Similarly, it is difficult to see how consenting to create a child in and of itself entails that one has rights to or over that child. There are other considerations that support the existence of parental rights in such cases, but consent does not do the work needed to support the claim that it is either necessary or sufficient for parental rights. The upshot is that consent is adequate as a conception of parenthood, insofar as it is sufficient for parental obligations, though not for parental rights.

What implications does the consent conception of parenthood have for the Buzzanca case? Both Pamela Snell and Luanne Buzzanca have consented to undertake parental obligations with respect to Jaycee. Pamela Snell undertook those obligations when she decided that she wanted to pursue custody of Jaycee. Luanne Buzzanca consented in many different ways to undertaking special parental obligations to Jaycee. When she pursued anonymous gamete donors, *in vitro* fertilization, a gestational surrogate, and having the embryo placed into the surrogate, Luanne consented to the undertaking of parental obligations. Interestingly, and contrary to his legal argument, the consent conception of parenthood entails that John Buzzanca is in fact obligated to Jaycee as a parent. John's claim was that he was not Jaycee's

biological father, and so was not obligated to pay child support for her. However, he consented at the same points that Luanne consented to undertake special obligations to Jaycee. Hence, on the consent conception of parenthood, he is at least obligated to pay child support for Jaycee's upbringing. In the next section, I argue for a causal conception of parenthood, which includes the claim that John's obligations to Jaycee extend beyond mere financial support.

The Causal Conception of Parenthood

The causal conception of parenthood includes the claim that parents have *prima facie* moral obligations to those children that they cause to come into being.[7] I do not claim that such causation is necessary or sufficient for parental rights, because I do not believe that there is a good argument for either claim. Nor do I claim that the type of causation at issue is necessary for parental obligations, given that adoptive parents and stepparents can have such obligations without causing their children to come into existence. The narrow claim that I argue for is that causation, as described below, is sufficient for the initial ascription of *prima facie* parental obligations. In this section, then, I am attempting to show that we have good reasons for accepting the commonsense belief that if one causes (in a particular way) a child to come into existence, then one incurs special moral obligations to that child. In what follows, I first explain and then offer a defense of the following causal thesis in the context of the parent-child relationship:

> *The Causal Thesis of Parental Obligations* (CT): If a moral agent causes, in the relevant way, the existence of a child, then that moral agent has special *prima facie* moral obligations to that child.

CT reflects a Kantian view of parental obligations, although it is a view that Kant only mentions, and does not defend. Kant states that:

> there follows from *procreation* in this community [i.e. marriage] a duty to preserve and care for its *offspring*; that is, children, as persons, have by their procreation an original innate (not acquired) right to the care of parents until they are able to look after themselves … So from a *practical point of view* it is a quite correct and even necessary idea to regard the act of procreation as one by which we have brought a person into the world without his consent and on our own initiative, for which deed the parents incur an obligation to make the child content with his condition so far as they can.[8]

Before defending CT against some possible objections, I will explain its content. First, a *moral agent* is competent and in possession of the relevant actualized

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7 See Jeffrey Blustein, 'Procreation and Parental Responsibility', *Journal of Social Philosophy* 28 (1997): 79–86; and James Lindemann Nelson, 'Parental Obligations and the Ethics of Surrogacy: A Causal Perspective', *Public Affairs Quarterly* 5 (1991): 49–61.

8 Immanuel Kant, *The Metaphysics of Morals*, in *Practical Philosophy*, Mary J. Gregor (ed.), The Cambridge Edition of the Works of Immanuel Kant (New York: Cambridge University Press, 1996), pp. 429–430.

capacities that enable us to attribute moral responsibility to the agent for her actions. Moral agents are autonomous and rational. This aspect of CT rules out those who are incompetent in a manner that abrogates moral responsibility.

Second, what does it mean for a moral agent to be a *cause* of a child's existence, in the relevant way? I do not intend to give a detailed analysis of the concept of causation. It is sufficient for my purposes to employ a commonsense notion of causation which takes genetic (and perhaps gestational) parents to be the primary and proximate causes of the existence of their children and rules out those individuals who make important causal contributions to a child's existence, such as health care professionals. The notion of causation employed in this context also rules out other moral agents who may be causally linked to the existence of a child, but are not thereby morally responsible for that child's existence. For example, a man may receive a phone call from his brother, who is a new parent, and then decide that he wants to become a parent as well and successfully carry out those intentions. Or he may read a book, watch a television program, or see a movie that somehow causes the desire to become a parent to arise within him, which he then successfully acts upon. While many individuals in such scenarios can be seen as links in the causal chain of a given child's existence, the commonsense view is that they are not morally responsible to the child because of this fact. The notion of causation employed here also rules out grandparents and other genetic ancestors, who in some sense are among the causes of a child's existence, given the fact that I would not exist if my parents did not exist, and they would not exist if their parents did not exist, and so on.

Additionally, when referring to a moral agent as a cause of a particular child's existence, I am not interested in cases of intended causation, because such cases fit within a consent account of parenthood. I also do not include cases where coercion has occurred, because of the problems associated with an individual possessing special obligations by virtue of the coercive actions of someone else. For example, it is extremely problematic to claim that a woman has special obligations to her genetic offspring in a case where she is raped and then forced to bear a child. Or imagine a case in which a mad scientist creates a child, but does not use parts that are genetically his. Given that this scientist has stolen reproductive materials from donors who did not consent and then used those materials to create a child, it seems that he rather than the unwilling donors has incurred obligations toward this child. The types of cases I am interested in are those in which someone unintentionally though foreseeably causes a child to exist, absent the element of coercion. The notion of causation I employ, then, includes the requirement that the causal act itself be voluntary.

There are other scenarios that are problematic for CT that do not involve the element of coercion. An important aspect of CT in dealing with such scenarios relates to the source and force of the moral intuition it expresses. Given that CT employs an intuitive and commonsense notion of causation as well as a commonsense morality, as one gets further from the standard context that gives rise to the relevant moral intuitions regarding parental causation, more difficulties will arise. This is because the standard context that has given rise to our commonsense moral intuitions related to parental responsibilities is consensual sex in which pregnancy occurs and is voluntarily carried to term. The more a given scenario departs from this standard

context, the greater the importance of the relevant contextual features for determining the force of the *prima facie* obligations in question.

It is also important for CT that children possess *moral status*. This was discussed in detail in Chapter 1, but to recap briefly, an entity's possession of moral status means that moral agents must take into account the interests, needs, and well-being of that entity from the moral point of view. It is also important in the context of the parent-child relationship that children often desire a loving relationship with the persons who brought them into being, and that such a relationship – or the lack thereof – can have significant ramifications for the well-being of children.

Finally, on CT, the obligations at issue are both special and *prima facie*. The obligations in question are special obligations, insofar as they are obligations that parents have to their offspring that others do not possess. Such obligations are different from those that all people possess. For example, all possess the general obligation to refrain from murder. However, an individual possesses special moral obligations in cases where she is obliged to a particular other.[9] The obligations are also *prima facie*, that is, other considerations or circumstances may obtain which override the obligations. For example, if a child is or becomes able to care for themself, then the moral agent, who in this context is the causal parent, may not have obligations to do so. Or the child may have a strong desire not to have a relationship with their causal parent, and this may override some of the parent's obligations to that child. It is also the case that if the causal parent, in order to fulfill these moral obligations to the child, must sacrifice something of greater moral worth, then that parent's parental obligations are overridden. The points made above with respect to contextual considerations are relevant here as well, such that the further removed from the contexts in which causation is generally believed to generate *prima facie* obligations to a child, the more possible overriders there will be.

An initial objection to CT is that it is trivial. That is, one might think that all moral agents have defeasible obligations to all children, and that the causal role included in CT is irrelevant or superfluous. While it is true that all moral agents have defeasible obligations to children by virtue of their moral status, this does not entail that CT is a trivial claim. First, the obligations in question are stronger for the causal parent, by virtue of that parent's causal role. I agree that every moral agent has weak and general *prima facie* obligations to children, insofar as all moral agents should work to ensure that all entities possessing moral status have their vital needs met, including food, clothing, and basic medical care. However, the obligations referred to in CT are of the special variety, and in the context of the parent-child relationship include the provision of care, attention, love, and guidance to the child by its parents. These obligations first fall on the genetic and gestational parents, given their causal role in the existence of a child. It is their responsibility to ensure that others take their place in the life of the child if they cannot or will not themselves meet those responsibilities. Given this, the causal role is neither irrelevant nor superfluous.

A major objection to CT is that it does not contain the element of consent. This objection springs from the view that consent is necessary for incurring special moral

9 See Christina Hoff Sommers, 'Filial Morality', *The Journal of Philosophy* 83 (1986): 439–456.

obligations. The proponent of this objection might offer the following case. Consider a case in which a man, Archie, and a woman, Edith, have consensual sex. Neither intends to procreate. Moreover, Archie and Edith have discussed the possibility of pregnancy, and have agreed that if it occurs, she will undergo an abortion. Archie, then, has a reasonable expectation that Edith will have an abortion if she becomes pregnant. Archie and Edith also employ birth control. However, Edith becomes pregnant, and upon learning that she is pregnant, she decides to carry the pregnancy to term and give birth to a child, naming her Gloria. Her parental obligations to the newborn can then be grounded in her consent to undertake those obligations. As such, she has special moral obligations to the child. She must attempt to ensure that Gloria's basic needs for food, clothing and shelter are met, and she is also obligated to provide care, attention, love, and guidance to Gloria. If for some reason she is unable to do this herself, she must ensure that someone else cares for the child in these ways.

But what are Archie's obligations in such a case? One possibility is that Archie has no parental obligations to the child in question, because he consented only to a sexual relationship and received assurances from Edith that if she became pregnant, she would undergo an abortion. Such a view functions as an objection to CT, insofar as CT rejects the claim that consent is necessary for incurring parental obligations.

It is true that there are many situations in which consent is necessary for the existence of certain types of special moral obligations. For example, spouses have obligations to one another by virtue of the fact that they have undertaken them. Insurance companies have obligations to pay claims to those they insure in part because they have agreed to do so in return for payment of premiums. Employers are obligated to pay their employees in return for the work they do. Promisers are obligated to keep their promises to promisees. Spouses, insurance companies, employers, and promisers do not have these obligations if they have not consented to undertake them.

However, there are counterexamples to the claim that consent is necessary for the existence of special moral obligations.[10] Interestingly, the parent-child relationship is sometimes alluded to as a counterexample to this claim. For instance, Francis Beckwith argues that moral obligations are incurred by a child's genetic father in a case where there is a sexual encounter, multiple forms of birth control are used, and still the woman becomes pregnant and gives birth to a child.[11] There are other counterexamples to the claim that consent is necessary for incurring special moral obligations. For example, a person arguably has special obligations to her parents, even if she does not consent to undertaking those obligations. Or consider the fact that automobile drivers have special obligations to their accident victims, even if they

10 Patrick Lee employs some of these examples for somewhat different purposes in the context of the abortion debate. See his *Abortion and Unborn Human Life* (Washington, DC: The Catholic University of America Press, 1996).

11 See Francis J. Beckwith, 'Personal Bodily Rights, Abortion, and Unplugging the Violinist', *International Philosophical Quarterly* 32 (1992): 105–118. See also Christina Hoff Sommers, 'Philosophers Against the Family', in George Graham and Hugh LaFollette (eds), *Person to Person* (Philadelphia: Temple University Press, 1989), pp. 82–105.

do not consent to undertake those obligations. Additionally, when I hit a baseball and it breaks my neighbor's window, I still have a responsibility to repair the window, even if I took extreme care to hit the baseball in a different direction. Finally, if I am drowning in the ocean, and a passerby saves my life, I surely am morally obligated to express gratitude to them for doing so.

Even if we accept that consent is not required for one to incur special moral obligations, as the previous cases are designed to show, it certainly does not follow that Archie has incurred special obligations of the parental variety. The important question, then, is whether or not the Archie case is sufficiently analogous to the cases of drivers to their victims, unskilled baseball batters to their neighbors, and poor swimmers to their rescuers. In what follows, I will argue that these cases are sufficiently analogous. Given this, my claim is that if we accept that special obligations are incurred in these latter cases, then we should accept the conclusion that Archie also has such obligations by virtue of his causal relationship to Gloria.

There are several morally relevant analogous features between the cases at issue. First, the element of consent is not present in any of these cases. One might think that a sort of covert or tacit consent is involved, and argue that it is because of this, and not the causal relationship, that drivers, batters, poor swimmers, and Archie incur special moral obligations. However, I discussed this view above, and argued that consent to risk a state of affairs obtaining does not entail consent, tacit or otherwise, to the actual occurrence of that state of affairs.

Second, it is also true that in each of these cases, including the Archie case, the relevant individuals are voluntarily engaging in risky behavior, in which the possible harmful consequences of their actions are reasonably foreseeable. Driving, hitting baseballs in one's back yard, and swimming are all risky behaviors. It is also the case that sex is a risky behavior, insofar as conception and birth are possible outcomes of that behavior. One might respond that sex is not risky, insofar as the proper use of birth control makes it highly unlikely that conception will occur. Hence, the risk is low, because the probability of conception is low. However, in claiming that sex is risky behavior I do not mean to claim that there is a high probability of conception, but rather that there is a real possibility of conception, and that this possible consequence has significant moral weight because it could bring into existence an entity with moral status. Just as the risk of getting into an automobile accident is fairly low each time I get into my car, it is still a risky endeavor because there is a genuine possibility of such an accident occurring, and that serious harmful consequences could occur. The risk, then, has to do with the serious possible consequences of sex, rather than the probability of those consequences obtaining.

In the Archie, driving, baseball, and swimming cases, the harmful effects of the actions are not foreseen. That is, Archie does not foresee that Edith will give birth to his genetic offspring. Drivers do not foresee that they will cause damage to property or human life, the backyard batter does not foresee that the ball will strike his neighbor's window, and the swimmer does not foresee that they will need to be rescued. However, these consequences are reasonably foreseeable, and as such these moral agents arguably incur special moral obligations with respect to those consequences. We can incur special moral obligations related to the reasonably

foreseeable effects of our voluntary actions.[12] The point here is not that automobile drivers, for example, who take all reasonable precautions to avoid an accident are morally blameworthy for the harm done when they cause an accident, but rather that they are morally responsible to their victims. In the Archie case, the point is not that Archie is morally blameworthy for Gloria's existence, but that in view of the particular causal role he played in that existence, he has incurred special obligations to Gloria.

Consider the driving case. Drivers who cause accidents do not foresee that they will cause harm via an auto accident, but it is reasonably foreseeable that they might do so. If, despite the precautions I take, an accident occurs, I still incur special obligations related to the harm that I cause. I may not be morally blameworthy, given the fact that it was an accident, but I still possess special moral obligations to those I have harmed by virtue of my causal role. Similarly, in the Archie case, contrary to the odds, contraception has failed and Edith has decided to give birth to a child, and Archie possesses *prima facie* moral obligations to Gloria by virtue of his causal role in her existence. Archie could have reasonably foreseen that a child might result from his having a sexual relationship with Edith, given the fact that contraceptives are known to fail and that women can decide to give birth to children when at the time of conception they do not intend to do so. Even though Edith freely agreed to have an abortion if a pregnancy occurred, it is not reasonable for Archie to think that because of this there is no possibility that she will change her mind and decide to carry a pregnancy to term. A decision to abort a pregnancy is not the sort of decision that is susceptible to such confidence, and it is certainly reasonably foreseeable that upon actually becoming pregnant Edith might change her mind.

A point that needs to be emphasized is that in all of these cases, the actions in question could lead to harmful consequences. The harmful consequences of the actions of drivers who cause accidents are clear, as are the less harmful consequences of errant baseball batters. Some harm is also done to the lifesaver who receives no thanks, although the harm is fairly small. The existence of potential harm is very important, and, along with the other shared features of these cases, provides good reasons for rejecting the claim that consent is required for incurring special moral obligations in the parent-child relationship. Regarding the potential harm that parents can cause their offspring, Henry Sidgwick argues that part of what grounds the duties of parents to their children is that: 'the parent, being the cause of the child's existing in a helpless condition, would be indirectly the cause of the suffering and death that would result to it if neglected.'[13] Sidgwick seems to have in mind the parental obligations to provide a minimal level of food, clothing, and education. However, this point can and should be expanded to include obligations of personal affection, care, and guidance. It is quite plausible to think that these things are central to the well-being of children as much or more than education. Children often

12 For more on this see Lee, *Abortion and Unborn Human Life*; and Germain Grisez and Joseph Boyle, Jr., *Life and Death with Liberty and Justice* (Notre Dame, IN: University of Notre Dame Press, 1979), pp. 381–392.

13 Henry Sidgwick, *The Methods of Ethics*, 7th ed. (Chicago: University of Chicago Press, 1907), p. 249.

experience significant harm when those who caused them to come into existence do not contribute to their well-being in these ways. This harm matters, morally speaking, because children possess moral status. On CT, then, Archie is obliged to provide these things to Gloria even though he did not consent to her conception and birth. If Archie is unable or unwilling to do so, then he has the obligation to ensure that someone else does provide such care to Gloria.

A third important similarity between the driver, the baseball batter, the poor swimmer, and Archie is that all of these individuals are the proximate and primary causes of the states of affairs brought about by their actions. Intuitively, proximity and primacy are important in determining the relationship between causal responsibility and moral responsibility in any particular case. For example, while it is the case that the employee who installed the bumper on my car is a link in the causal chain leading up to my breaking the leg of an innocent pedestrian with that bumper in an automobile accident, it is not the case that they are morally responsible for the harm that occurred. Rather, it is intuitively and actually the case that I am responsible and have incurred special obligations to my victim, and that this is so because I am the proximate and primary cause of their suffering. Similarly, the notions of proximity and primacy support the claim that it is Archie who incurs special obligations to Gloria, rather than his ancestors, medical professionals, or others involved in the causal chain leading up to her existence. His causal role is unique in its proximity and primacy, and this is important for the causal conception of parenthood.

To sum up, in all of these cases, including the Archie case, the action in question: (i) does not include consent to the harmful consequences that result; (ii) involves voluntary engagement in a risky behavior that produces reasonably foreseeable harmful consequences; and (iii) is done by an agent who is a proximate and primary cause of those consequences. If causal responsibility generates special moral obligations in the other cases, then we have a strong argument from analogy and the principles contained in (ii) and (iii) in favor of the belief that it also does so in the Archie case. Therefore, we have good reasons to reject the claim that consent is necessary for incurring parental obligations, and for accepting CT.

It could be objected that there is an important disanalogy between the Archie case and the other cases. In all of the other cases, others are left worse off than they would have been if the events in question had not occurred. That is, being hit by a driver makes the victim worse off than they otherwise would have been, as does having one's window knocked out by a neighbor's errant hit. This is not true in the Archie case, because Archie's causal contribution to Gloria's existence and then refusing to care for Gloria as her father does not leave Gloria worse off than she would otherwise have been. If Archie had not engaged in a sexual relationship with Edith, then Gloria would not exist. The assumption made here is that Gloria's life, where Archie plays no active parental role, is not worse than her having no life at all. The objection is that this disanalogy between the Archie case and the other cases undermines their support of CT.

What can be said in response to the no-worse-off objection?[14] First, there is a sense in which Gloria is made worse off. If it is the case that Archie is able to fulfill certain parental obligations to Gloria, but fails to do so, then she may be significantly worse off than she would have been if he had fulfilled those obligations. The claim is not that Archie should not have engaged in sex, but rather that once a child comes to be, partially because of his causal role as a moral agent, then he has *prima facie* moral obligations to that child. One thing that is crucially important in this case is whether or not Gloria is significantly worse off than she would otherwise be if Archie fails to fulfill his obligations to her. Gloria would not exist in need of *Archie* as a parent if *Archie* had not committed a voluntary act with the reasonably foreseeable consequence that this would bring her into existence in such a state of need. Imagine that Archie decides against being an active father to Gloria, and that she and Archie somehow meet, several years later. She is now old enough to express her desire to have him in her life as a father, and she does so. Imagine Archie's reply, consistent with the necessity of consent view of parental obligations and the no-worse-off objection: 'Well, I have no moral responsibilities to you because I did not consent to your existence. I just consented to sex with your mother, and nothing more. We had a morally binding agreement, and she broke her promise to me that she would not carry a pregnancy to term. And anyway, you are no worse off than you would have been if I hadn't conceived you, because you would not even exist if I hadn't done that. So, you have no claim on me or to my assistance.'

In both commonsense and family morality, Archie's response to Gloria is highly counterintuitive. I contend that: (i) CT helps explain why this response is counterintuitive in both commonsense and family morality; and (ii) on this issue, both commonsense and family morality are correct. Gloria's interests in having Archie in her life as a father are important. If Archie caused an entity to come into being that had no interests associated with him, relationally or otherwise, then on CT he would have no special obligations to that entity. It is important that Archie is uniquely situated to satisfy her emotional interests in the context of a parent-child relationship.[15] Given that Archie caused Gloria to come into existence, that Gloria is an entity with moral status, and that in this case she needs a loving relationship with Archie, her interests have a strong moral pull on him, such that she arguably has a right to his assistance. She would not exist and be in need of Archie if Archie had not helped to cause her to come into existence. Gloria's special interests do not have a moral pull on others, because others are not uniquely positioned to meet those interests by virtue of a certain causal relationship to Gloria's existence and suffering. If for some reason Gloria strongly desired a father-daughter relationship with Archie's neighbor George that would not entail that George has special obligations to her. Archie has these obligations because he caused Gloria to come into existence.

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14 The no-worse-off objection is an incarnation of the Non-Identity Problem raised by Derek Parfit in his *Reasons and Persons* (Oxford: Clarendon Press, 1984).

15 This does not apply to the financial obligations Archie incurs, however. It does not matter whether or not others are better situated to provide financially for Gloria. Archie incurs this parental obligation because of his causal role.

What else can be said in response to the no-worse-off objection? First, a problematic implication of the belief that Archie possesses no moral obligations to Gloria is that it would also be morally permissible for him to do this many times over. If consent is required for parental obligations, and if Archie entered into several such agreements with many different women and happened to have numerous offspring due to contraceptive failure, then he has no obligations to any of those offspring, given that they are not worse off than they would have otherwise been because apart from his causal role they would not have existed. I take it to be highly counterintuitive that Archie can have scores of offspring but no moral obligations to any of those offspring by virtue of contractual agreements with their mothers and that those offspring are no worse off than they would otherwise have been. And I do not think that this is counterintuitive only by virtue of the fact that Archie would then have a deficient moral character, but rather it is because he is failing to meet the needs of his offspring and to provide them with something that he owes to them.

Second, and more importantly, it is not true that I must make someone worse off than they otherwise would be in order to have special obligations to that individual. Consider the cases of rapists and deadbeat dads. Accepting the no-worse-off objection to my argument for CT implies that they do not have special obligations to their offspring. This is the case because those offspring are not worse off than they otherwise would have been, because they otherwise would not have existed. But clearly rapists and deadbeat dads do have special obligations to their offspring, and the implication that they do not is a serious problem for the proponent of this objection.

Third, we can harm others even if we have not made their lives worse off than they otherwise might have been, and be morally responsible for that harm.[16] To see that this is the case, consider Concepticon, a fictional corporation that produces a drug that enables infertile men to procreate. An unfortunate side effect of this drug is that the children who come into existence end up being afflicted with a very serious disease several years after their birth, unless Concepticon provides them with an antidote. Now imagine that Concepticon chooses to stop producing the antidote, and justifies this decision by claiming that the children are no worse off, because without the infertility drug they would not exist. Surely Concepticon is obligated to provide the antidote to the children in question. Similarly, then, Archie is obligated to provide Gloria with what she needs, namely, a father-daughter relationship.

Finally, to see why we should reject the claim that Gloria must be made worse off than she otherwise would have been in order for Archie to have special obligations to her, imagine the following adjustment in the case. Archie now possesses a strange and rare disorder, which he is aware of, that causes him to be emotionally cold and distant toward his genetic offspring. In spite of this, Archie decides to procreate anyway. Given this, Archie correctly believes that Gloria is not made worse off than she otherwise would have been, because the only way for Archie to avoid being emotionally cold to her would be for him to have refrained from creating her in the first place, and her existence under these conditions is better than no existence at

16 This point and the example that follows comes from Nelson, ‘Parental Obligations and the Ethics of Surrogacy: A Causal Perspective’.

all. Now imagine that a treatment for this disorder is available, which will prevent Archie from being cold and distant toward Gloria. However, receiving the treatment requires Archie to sacrifice much of his free time and a significant portion of his income. Because of these factors, Archie decides to forgo receiving the treatment, reasoning that Gloria is not worse off than she otherwise would have been, because if he had not procreated, she would not exist. Moreover, he reasons that the treatment would be too costly in terms of money and time, and so he sticks with his decision to reject it. Now in this case, it seems clear that Archie is obligated to undergo the treatment in order to refrain from harming Gloria, even if the treatment requires a sacrifice of time and money. Similarly, in the original version of the case, Archie has special obligations to Gloria to be a father to her and avoid inflicting serious emotional harm on her via his absence from her life, even if pursuing this sort of relationship with her is costly to him in terms of time and money.

Another objection to CT is that it is simply a cloaked version of the biological conception of parenthood. Instead of claiming that Gloria wants and needs Archie in her life because of his causal role in her existence, the objector claims that it is the biological relationship that exists between her and Archie that is generating parental obligations. However, this is false. To see that this is the case, consider the fact that Gloria is just as biologically related to Archie's twin brother as she is to Archie, but it is implausible to hold that Archie's twin has parental obligations to Gloria. Consider also an imaginary future scientist who, for research purposes, fertilizes eggs with anonymous donor sperm in his laboratory and grows the embryos in artificial wombs for six months, and then terminates the existence of those embryos. Now imagine that one of the embryos is accidentally allowed to continue to develop and is somehow birthed from an artificial womb at the completion of the gestation process. Setting aside the moral problems and issues that would arise with respect to this type of work, it is plausible to hold that the scientist has incurred special obligations to this child by virtue of his causal role in that child's existence, though no biological relationship (nor consent, for that matter) is present. If he is unable to find suitable adoptive or foster parents for the child, CT rightly entails that he continues to have special obligations to that child.

CT might seem to be too morally demanding, and another possible objection to a causal account of parental obligations is that it has the same implication as the kidnapping victim in Judith Jarvis Thomson's famous defense of abortion, who is obliged to stay hooked up to the famous violinist until he recovers.[17] In Thomson's scenario, you wake up and discover that you are connected to a famous unconscious violinist. He has a fatal kidney ailment, and the Society of Music Lovers has discovered that you are the only individual with the blood type that enables you to help the violinist. The Society kidnapped you and then connected you to the violinist so that your kidneys could be used to extract poisons from his system. If you are unplugged from him, he will die. After nine months, he will be fully recovered and you will be freed from this burden. The point for Thomson is that it is morally permissible for you to unplug yourself from the violinist, and so his right to life

17 Judith Jarvis Thomson, 'A Defense of Abortion', *Philosophy and Public Affairs* 1 (1971): 47–66.

does not create an obligation for you to remain hooked up to him for the next nine months.

Let us assume that Thomson is correct that you may permissibly unplug yourself from the violinist. On this assumption, it seems permissible for Archie to refuse to provide assistance to Gloria. However, I think that there are important differences between the Archie case and the violinist case, such that rejecting the claim that the kidnapping victim is morally obligated to stay plugged into the violinist need not entail rejecting the claim that Archie has parental obligations to Gloria. Imagine that in Thomson's scenario, as you are about to unplug from the violinist, he wakes up. After being apprised of the situation, he says: 'You must stay hooked up to me for me for the next nine months. If you don't, I will be significantly harmed. I have a right to life, and so I have a right to your assistance in remaining alive. You are morally obligated to provide that assistance to me.' Contrast this with the following statement from Gloria to Archie: 'You may have only consented to sex with my mother, and she may have agreed to have an abortion if she accidentally got pregnant. And certainly I am not worse off being alive without you than if I had never been conceived at all. But you helped bring me into this world, and I want and need you in my life as a father, both financially and relationally. You owe me that much.' My own intuitive responses to the above cases differ. The violinist's statement does not seem to have the moral force that Gloria's does. There appears to be an intuitive disparity between the two cases.

But what might be the cause of this disparity? One possible difference is that Archie caused Gloria to come into existence in the first place. That is, if we alter the violinist case such that the violinist is Gloria and Archie the kidnapping victim, then it seems less counterintuitive to claim that it is morally impermissible for Archie to unplug himself. Moreover, even if it is correct that Archie is not obligated to stay connected to Gloria for nine months, this does not entail that he does not have any parental obligations to Gloria, but rather that the scope of those obligations in this case may not include such an action. This leaves the claim that Archie has some parental obligations intact. Imagine that the scenario has been adjusted, such that a medical procedure costing $5,000 will cure Gloria of her kidney ailment. Archie and his neighbor, George, can each afford to pay for Gloria's treatment, though it will require considerable sacrifice for each of them. It seems that Archie is obligated by virtue of his causal relationship to Gloria to pay for the procedure, whereas if George has such obligations, they are less stringent and based on a more general *prima facie* obligation of benevolence.

If we alter the violinist case such that the violinist is Gloria and Archie the kidnapping victim, why does it seem less counterintuitive to claim that it is morally impermissible for Archie to unplug himself? Consider the fact that rights and obligations are relational. I have a right to privacy with respect to agents of the government that I do not possess with respect to my spouse. I also have obligations to my spouse that I do not have to my neighbor. Applying this fact about rights and obligations to Thomson's original case, that the violinist has the right to life need not entail that he has a positive right to the assistance of the kidnapping victim. In my modified version of the violinist case, it is plausible to think that Gloria has a right

to Archie's assistance (and so he is obligated to assist her) by virtue of the fact that Archie caused her to come into existence.

This leads us to another objection that has been raised against Thomson's defense of abortion that is also relevant to the present discussion – the responsibility objection.[18] Understanding Boonin's response to the responsibility objection will then enable us to consider a disanalogy between the driver and baseball cases and the Archie case. The responsibility objection to Thomson's argument is the claim that in cases of abortion the woman is morally in the same situation as someone who hits a pedestrian, causing that pedestrian to be in need of her assistance. In both cases, voluntary actions led to someone else standing in need of the agent's assistance. The claim with respect to the abortion issue is that if a woman's pregnancy is accidental but is also the result of a voluntary action with the foreseeable consequence that a pregnancy could occur, then the fetus has a right to her body even if she did not tacitly consent to give the fetus this right, just as drivers are responsible to their victims who stand in need of their assistance. Boonin's response to the responsibility objection is based on a distinction between: (i) being responsible for the fact that a needy person now exists; and (ii) being responsible for a needy person's neediness, given that he now exists. Boonin argues for the claim that the pregnant woman is responsible for the fetus in the first sense, but not in the second sense. Given this, the responsibility objection fails, because it is based on the plausible belief that if I hit an innocent bystander, she has a right to my assistance because I am causally responsible for her need, given that she exists. However, there is a morally relevant difference in the abortion case, because there the woman is not responsible in the same sense: she is only responsible for the *existence* of a needy person, and not for the existence of that person's *neediness*.

Now consider how the foregoing functions as an objection to CT. In the baseball and driving cases, the batter and driver are causally responsible for the neediness of their victims and they are therefore morally obligated to provide assistance to those victims. However, the Archie case is different, insofar as Archie is not responsible for the neediness of Gloria, but rather he is merely responsible for her existence. According to the objection, this disanalogy undermines my argument for CT. In response, I concede that this does constitute a difference between the cases at issue, but it is a difference that does not make a moral difference. Hence, this difference fails to undermine my argument. Consider the fact that children are needy beings. If all of the children that have ever existed are needy, and if a moral agent causes the existence of a needy being as described by CT, then it seems to me that the moral agent in question is at least *prima facie* obligated to attempt to meet those needs. Even though Archie is not causally responsible (at least directly) for Gloria's neediness, he is causally responsible for her existence. And given the nature of children, Archie is morally responsible to relieve Gloria's needs, because he is causally responsible for the existence of a being *that he knows will be needy*, if it comes into existence. This is sufficient for incurring special obligations. It follows that this objection to CT fails.

18 See Boonin, *A Defense of Abortion*, pp. 167–188.

Setting cases of ailing violinists aside, in the more realistic case in which we are seeking to determine whether or not Gloria has a right to Archie's parental assistance, the claim of CT is that she does because Archie helped bring Gloria into existence via his own voluntary action, with the reasonably foreseeable result that a needy being would come into existence. If for some reason Archie is unable to fulfill his obligations to Gloria, then he must ensure that someone else does. This is because Gloria has moral status, and Archie is causally responsible for her existence, in the way that CT describes. If Archie neglects Gloria and fails to fulfill his parental obligations to her, then he is a direct cause of preventable and unnecessary suffering in Gloria's life, suffering which he is uniquely situated to prevent. He is therefore morally blameworthy for that suffering. And Gloria has a right to Archie's assistance because of his role in the causal chain leading to the existence of a child who suffers and his unique ability to relieve that suffering. Gloria does not have such a right to assistance from George (Archie's neighbor), because George does not stand in this sort of relationship to Gloria. The relationship is crucial for determining what rights and obligations are present.

It is also important to remember that the claim of CT is that the obligations in question are *prima facie*. For example, the child's interests are important, and can serve to override those obligations. So, if Gloria would be made worse off by having Archie in her life as a father, then that overrides the obligations he incurred by helping bring her into existence. It is also important to remember that on my understanding of the *prima facie* obligations in question, if Archie must sacrifice something of greater moral worth in order to fulfill his obligations to Gloria, then those obligations may be overridden. Determining whether or not this latter condition is satisfied will sometimes be quite difficult, and must be done on a case by case basis.

One might also question the requirement of reasonable foreseeability in the above argument from analogy in favor of the claim that Archie incurs special obligations to Gloria. Recall that the idea was that in the Archie, driving, and baseball cases, the agent voluntarily engages in a risky behavior that produces reasonably foreseeable harmful consequences. But it could be objected that this is problematic, unless we determine what percentage of foreseeable risk is reasonable. Some methods of contraception have an effectiveness rate of over 99 percent, and so it seems that when such methods of birth control are employed, the risk involved is so small that it prevents the acquisition of parental obligations in those rare cases in which contraception fails. In response, it seems to me that as the level of potential harm increases, there should be a proportionate change in the percentage of foreseeable risk that is reasonable. For example, one might risk sending their child to school even if they have a cold, knowing that there is a significant chance that someone else in their class will catch the cold from them. And this seems reasonable. However, it would not be reasonable to send one's child to school if they have a potentially dangerous infectious disease, even if the chance that someone else will catch it from them are drastically lower. The problem with applying this type of reasoning to CT is that we are epistemically limited with respect to what the effects of parental neglect will be in any particular case. Some children, and the adults that they become, do well and live happy lives apart from or in spite of the behavior of their causal parents. However, many do not, perhaps due to reasons of temperament, social circumstances,

and/or biology. The relevant point at present is that as the level of potential harm that may be realized increases, there should be a corresponding decrease in the amount of foreseeable risk that is reasonable. And we do know quite a bit in general terms about the potential effects of emotional neglect (that is, being emotionally absent) on children: psychological and emotional pain; behavior problems at school and in other social situations; hindrance of social, educational, and psychological development; anxiety and depression; lowered self-esteem; physical illness; fear of intimacy and commitment; unwise and unnecessarily risky choices; and difficulties in relationships as an adult, to name but a few. Given the potential negative impact of the emotional neglect of children on them and on other members of society, it seems to be plausible to hold that the level of foreseeable risk that is reasonable is very low.

Next, in my defense of the causal conception, I consider a possibly objectionable implication of CT, and argue that this implication, rather than being a problem for the view, actually counts in its favor. If we accept CT, must we also accept that gamete donors have *prima facie* obligations to their genetic offspring? If so, this seems counterintuitive. However, this implication is defensible, given both the nature and transferability of the obligations alluded to by CT. First, CT implies that sperm and egg donors are shirking their moral responsibilities if they causally contribute to the existence of a child but have insufficient evidence that the child will be adequately cared for and loved. For many, this might be difficult to accept. However, playing the sort of causal role that such donors do in the existence of a child who is capable of experiencing great suffering and great joy, and has various interests, needs, and desires, is a morally significant act. As such, entrusting that child to the care of others one has never met is morally problematic. This is not to say that such practices should be illegal. There may be other reasons for allowing gamete donors to legally opt out of their parental rights and obligations, while still holding that if they do so it is morally problematic. Legally, parents may choose to forfeit their parental rights and jettison their parental obligations, and so it is consistent to allow gamete donors to do the same. However, there is a moral difficulty here. We think that a parent who forfeits their rights and obligations without sufficient reason is morally failing their child. This seems less problematic in the case of gamete donors, because they have not been in a custodial relationship with their genetic offspring. However, a moral problem is still present, and is worth considering. The moral difficulty of such a practice centers on the interests of the children brought into being by such practices, who often want to know something about their origins, and in some cases desire to forge a relationship with those who helped bring them into existence.

Related to this last point, consider the case of Ryan Kramer.[19] Ryan's genetic father is only known to him as donor number 1058. In 1989, Wendy Kramer and her husband resorted to artificial insemination due to infertility issues, and in May of 1990 Ryan was born. Wendy and her husband divorced when Ryan was thirteen months old, and she has raised him by herself ever since. At the age of seven, Ryan wrote the following letter to Conceptions Reproductive Associates, who procured the donor sperm that led to Ryan's conception:

19 From http://www.donorsiblingregistry.com/MountainEar.php. Accessed 4 June 2004.

> Dear haspitl. My name is ryan. I am a doner baby. Im 7 years old and my mom is wendy kramer. i have been witing to get in toch with you to find my dad. But you wont let me til im 18. i will try to keep contakt with you to keep getting infurmachin about my dad, like his phon number. Becos id like to meet him as a kid ensted of being 18.

Ryan and Wendy have set up a donor registry website, designed to connect children with their donor parents, if possible, as well as with their half-siblings. Ryan knows that he may never find his genetic father, and has said that he will not be terribly upset if that occurs. However, this case underscores the claim that children want to know who helped bring them into existence, and that they desire to have a relationship with their causal parents.

But perhaps gamete donation is a special case, and donors do not incur special obligations because they are assisting people who otherwise might not be able to have and raise children. Along these lines, James Nelson argues for a causal view of parental responsibility, and adds that gamete donors cannot excuse themselves from their obligations for personal gain or for performing a service for those unable to create children.[20] What such donors must do is be present to answer for the obligations they have incurred because of their causal role in the existence of a child who is vulnerable to harm. Apart from cases in which a donor is unable to care adequately for a child, Nelson claims that donors are obliged to provide such care. Even if the parents to whom the child is contracted are capable, this does not justify a transfer of custody, according to Nelson, in part because we can only *predict* that others will fulfill their obligations, but we can *bring ourselves* to fulfill our own obligations.

I think the points raised by Nelson are important, and agree that it is important for donors to take seriously the obligations they incur by playing a crucial causal role in producing a child. However, I believe that a causal view of parental obligations can allow for the practice of sperm and egg donation. Taking into account the claims I have made in this section regarding the moral responsibilities of causal parents, I believe that gamete donors can fulfill their special *prima facie* obligations if certain conditions are met. Gamete donors should know the individual or individuals who will raise the child at a level which gives them strong justification for the belief that these individuals will love and care for that child. Alternatively, organizations that provide gametes to infertile couples should carefully screen prospective clients so that donors can have a strongly justified belief that those who will become the parents of their genetic offspring are up to the task. Another possible arrangement would be for the donor to be present in the child's life in some capacity, and when the child is able to understand and cope with their origins, they could be told. This avoids the morally problematic practice of creating a child and then entrusting that child to the care of others whom one has never met. It also satisfies Nelson's condition that one ought to be present to answer for one's moral responsibilities. This is important because if the custodial parents do fail in serious enough ways, the causal parent (that is, the donor) is able to be an advocate for the child, and defend that child against abuse or neglect if it occurs. However, my claim is not that this sort

20 See Nelson, 'Parental Obligations and the Ethics of Surrogacy: A Causal Perspective'.

of presence in the life of a child is morally required. What is required is that there be a strongly justified belief that the future caretakers of one's genetic offspring will be good parents to that offspring. Such a belief constitutes an additional factor that may counterbalance the *prima facie* parental obligations gamete donors possess to their genetic offspring. In the context of gamete donation, the interests of the child, the custodial parents, and the gamete donor may constitute sufficient reasons for the donor transferring his or her obligations. That is, in this context those obligations may be overridden by these countervailing considerations. Alternatively, we might think that one way to fulfill the special obligations incurred by gamete donations is to transfer them on the basis of a strongly justified belief that the future caretakers will be good parents. *The crucial point for CT is that those obligations are the donor's own to transfer or contract away in the first place, by virtue of his or her causal role in the child's existence*.

Another possible response is to note that on CT the obligations in question are *prima facie*, and so we can take the responsibilities of gamete donors to be weaker than those of the child's custodial parents.[21] Given this, the special obligations of parenthood would fall upon gamete donors in only a very small number of real life cases, because even if a child conceived using gamete donation loses their custodial parents, it will nearly always be in the child's interests to be raised by family members or friends of their custodial parents rather than the gamete donors, who are in all likelihood unknown to them.

Another problem presents itself for CT in the context of gamete donation and special obligations. CT includes the requirement that the relevant type of causation be both proximate and primary. Consider a case in which a couple uses their own gametes to achieve a pregnancy via IVF. In such a case, a lab technician inserts a sperm into the egg, and it is plausible to hold that the technician is both a proximate and primary cause of the resulting child's existence. Hence, on CT, the technician incurs special obligations to the child. This seems implausible and highly counterintuitive.

There are two possible responses I would like to offer, consistent with CT. First, it could be argued that given the fact that the child does not need the care, love, and support of the lab technician, the special obligations referred to in CT are not incurred by that technician. Ryan Kramer did not write a letter in search of the lab technician who helped in his creation, but rather he is in search of his genetic progenitor. The special obligations of CT trace both the relevant causal acts as well as the needs of the child in question.

Second, the role of the causal parents in the case of IVF under consideration is more primary, so to speak, than that of the lab technician. The child would not exist apart from the causal acts of its causal parents, but numerous other lab technicians could have played the relevant causal role. Given this, on CT it could be argued that the parents and the technician incur special obligations to the child, but the obligations of the parents are much stronger given that their causal role is more primary than that of the technician. So, one could argue that the parents as well as the lab technician have special obligations to the child that comes into being. The parents have incurred these via consent and causation, while the lab technician

21 I owe this point to Rob Epperson.

incurs them via his causal role. It seems counterintuitive, and admittedly it does sound unnatural – in a non-pejorative sense – to say that a lab technician could incur special obligations. However, in such cases where the means of procreation are unnatural – again, in a non-pejorative sense – then such a result is unsurprising and fails to justify rejecting CT.

The above points do place a high burden on gamete donors, but the position being defended here is that such a burden is appropriate, in view of the obligations incurred by playing this type of causal role in the creation of an entity possessing moral status.[22] We often take bringing children into existence much too lightly. If we think that gamete donors who help bring children into existence without having sufficient evidence that those children will be adequately cared for are doing something morally wrong, then CT gives us a theoretical basis for holding them morally responsible for that action, which I take to be a virtue of the thesis.

In opposition to the view that the transfer of the parental obligations of gamete donors is morally permissible, Agneta Sutton claims that: 'in the case of gametal donation the child … is forsaken by one of its genetic parents – or even by both.'[23] She argues that gamete donors fail to assume the parental responsibility that belongs to them, and that:

> the child created by donation is intentionally orphaned by the donor. The receiving parents take care of a child who has been abandoned by at least one of its parents. Their situation is therefore very different from that of adoptive parents. Adoptive parents also take care of an orphaned child, but they take care of a child who was not orphaned on purpose.[24]

First, Sutton's criticism of the similarities between gamete donation and adoption is misguided, given that it is sometimes true that adoptive parents often take care of children who have been intentionally orphaned. Nevertheless, some of Sutton's points may apply to situations in which a gamete donor has no idea who will raise the child they have helped bring into existence. However, it is not the case that gamete donation always involves abandonment or the intentional orphaning of a child, nor that it must do so. Gamete donation, with the limiting conditions I described above, would not entail orphaning or abandoning a child, given the strongly justified belief of the donor that the child's intended parents will be good parents to that child, and given that the child is transferred to the custody of others who will raise it.

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22 David Benatar also argues that gamete donation, as it is currently practiced, is usually (though not severely) morally wrong, because donors take their responsibilities too lightly when they transfer their parental obligations to others. He rejects causal accounts of parental responsibility, however. See his 'The Unbearable Lightness of Bringing into Being', *Journal of Applied Philosophy* 16 (1999): 173–180. See also Edgar Page, 'Donation, Surrogacy, and Adoption', *Journal of Applied Philosophy* 2 (1985): 161–172; and Tim Bayne, 'Gamete Donation and Parental Responsibility', *Journal of Applied Philosophy* 20 (2003): 77–87.

23 Agneta Sutton, 'Revisiting Reproductive Technology's Slippery Slope in the Light of the Concepts of *Imago Dei*, Co-creation, and Stewardship', *Ethics and Medicine* 18 (2002): 148.

24 Ibid., p. 149.

Even if this sort of response is correct, Sutton's worry that gamete donation constitutes a failure of parental stewardship on the part of the donor is worth considering. If the donor will be present in some capacity in the child's life, or has a strongly justified belief that the intended parents will be good parents, then it is unclear how a failure of stewardship has obtained. If I give a valuable family heirloom to my daughter and have a strongly justified belief that she will care for that heirloom, then I see no way in which a failure of heirloom stewardship has occurred. Or if someone gives their dog to their grandchildren, and has a strongly justified belief that they (and their parents) will care for the dog, the original owner still has not failed as a steward (or caretaker) of that dog. Similarly, a gamete donor who has a strongly justified belief in the competency of the child's intended parents does not commit a failure of parental stewardship.[25]

Next, consider that the causal conception of parental obligations has at least two other advantages over views that require consent for the existence of such obligations. First, it is an advantage of the view that it is in harmony with our intuitions regarding particular cases, such as that of deadbeat dads. We think that deadbeat dads who financially and relationally neglect their children are failing to fulfill the moral obligations they possess by virtue of their role in creating those children. This is contrary to a view of parental obligations that contends that consent is necessary for incurring such obligations. The causal conception does not let deadbeat dads off the hook, whereas the consent view does just that. Additionally, the causal view entails that rapists have obligations to their offspring, though they would be solely financial in nature, because of the harm to the child of knowing their genetic father in such cases. However, on the consent view, if he does not intend to conceive a child via his criminal act, then a rapist has no financial obligations to that child. The existence of special obligations in all of the above cases is accounted for by the causal conception, and this fact counts in its favor.

Another virtue of the causal conception of parental obligations is that it is consistent with the claim that fathers and mothers are equally obligated to their children. Does the causal view really have this implication? Nelson notes that a possible problem for a causal view of parental obligations is that the duties of fathers may turn out to be weaker than those of mothers, if mothers make a greater causal contribution to the existence of children (by virtue of gestation).[26] If this is so, mothers then bear more causal responsibility for the existence of children and hence more moral obligations to those children. Nelson's response is that this is only the case if we take gestation to contribute to the child's existence. An alternative he suggests is that gestation is

25 Given the claim that gamete donation is morally permissible in and of itself, it does not follow that it is always so, all things considered. Perhaps adoption is sometimes a better option, given that many children already exist who are unwanted. Greater social support of adoption in public policy and in general attitudes would greatly benefit parents and children. See Kenneth D. Alpern, 'Genetic Puzzles and Stork Stories: On the Meaning and Significance of Having Children', in Kenneth D. Alpern (ed.), *The Ethics of Reproductive Technology* (New York: Oxford University Press, 1992), pp. 147–169.

26 See Nelson, 'Parental Obligations and the Ethics of Surrogacy: A Causal Perspective'. See also Blustein, 'Procreation and Parental Responsibility'.

not contributory to the child's existence, but rather it is the first kind of maternal nurturing provided to a fetus that came into existence at conception.

Some may find Nelson's response to be unsatisfactory, given that the gestational mother causally contributes to the existence of the child who is born. She is involved in the development of the heart, the lungs, and the brain of that child. However, the causal conception can accommodate these facts, without undermining the existence of equal obligations for fathers and mothers. If we take parenthood to be a non-degreed property, arrived at by many different routes, we can then hold that once a certain threshold is crossed via one of these routes, one becomes a parent.[27] So, that the causal conception of parental obligations allows for fathers and mothers to be equally obligated to their offspring is a second virtue of the view. In contrast to this, a necessity of consent view lets deadbeat dads and rapists who have offspring via their crimes off of the hook, if they do not consent to the procreation that has occurred. This is a serious problem for the consent view.

What implications does a causal conception of parenthood have for the Buzzanca case? I have claimed that the causal conception does not give us grounds for attributing parental rights, but that it does generate parental obligations. So, the anonymous gamete donors initially incur special obligations to Jaycee, but as long as they have a strongly justified belief that her custodial parents will do an adequate job, they may permissibly transfer their parental obligations to the Buzzancas. On the causal conception, the gestational surrogate, Pamela Snell, also incurs parental obligations. She also may transfer those obligations to the Buzzancas, if she has a strongly justified belief that they will adequately care for Jaycee. In this case, however, Pamela Snell in fact does not have such a belief. Whether or not she is correct, she contends that it is better for Jaycee to be raised in a two-parent household, and so she is unwilling to transfer custody of Jaycee to Luanne Buzzanca. It is important to note that accepting a causal conception of parenthood does not mean that John and Luanne Buzzanca have not incurred parental obligations regarding Jaycee. As I have previously argued, they have incurred those obligations via their consent to undertake them. The difficulty in the Buzzanca case lies in determining who has the right to fulfill those obligations in a parent-child relationship with Jaycee, and a causal conception of parenthood is unable to answer this question.

The Significance of a Pluralistic Understanding of Parenthood and the Stewardship View

First, the fact that there are many avenues to parenthood has important moral and legal implications. One such implication is that it does not follow from the fact that a person is a child's genetic parent that the person has an ironclad claim to parental rights with respect to that child. In cases in which many people have an initial claim to a child, it need not follow that the genetic or gestational parents have a stronger moral claim that automatically trumps the rights-claims others have to the child in

27 See Avery Kolers and Tim Bayne, '"Are You My Mommy?": On the Genetic Basis of Parenthood', *Journal of Applied Philosophy* 18 (2001): 273–285.

question. In cases in which a child's custodial and genetic parents are different, the claim of the custodial parents to the child will often be stronger, morally speaking, and should often be given more legal weight as well, as the Kimberly Mays case shows. Moreover, pluralism about parenthood tells us that parents who are neither genetically nor biologically connected to their children are not losing out on what is most valuable in the parent-child relationship. The most important goods of parenthood are found in the relational and formational aspects of parenting, and these aspects need not depend on genetic or biological connections. If this belief was more widespread, there might as a consequence be more adoptions and so fewer unwanted children, which is highly desirable. This is not to say that the physical creation of a child has no value, but that its value is secondary to that of helping to create the individual that the child becomes. This latter form of relational and creative activity is where the far superior value of parenthood lies.

With the above examination of the several proposed accounts of parenthood in mind, it will be instructive to revisit the Jaycee Buzzanca case. In 1999, Luanne Buzzanca was granted legal custody of Jaycee, and the courts recognized John as the legal father, legally obligating him to pay child support until Jaycee reaches adulthood. The arguments of this chapter are consistent with the decision of the court. John and Luanne Buzzanca each consented to becoming Jaycee's parents, and pursued Jaycee's coming into existence via anonymous sperm and egg donors and a gestational surrogate. By consenting to become parents, John and Luanne incurred parental obligations to Jaycee, but on a causal conception of parenthood so do the anonymous sperm and egg donors. However, it is plausible to think that the *prima facie* obligations of the donors are overridden in this context, given the willingness of others to undertake those obligations and the donors' transfer of those obligations. Pamela Snell, by virtue of her custodial relationship with Jaycee (in a gestational context), has special obligations to her as well. Thus, the arguments of this chapter are consistent with the court's finding that John is obligated to pay child support for Jaycee, given his consent to undertake parental obligations in this case.

But what of parental rights? Pamela Snell has a defeasible rights-claim to Jaycee, depending on the level of caretaking and attachment that she has engaged in and experienced beyond the mere physical gestation of Jaycee. The Buzzancas also have *prima facie* parental rights, because there is a sense in which any person who acquires parental obligations to a child has a defeasible rights-claim to that child. This is because it is arguably the case that once one possesses parental obligations, it is *prima facie* the case that one ought to be given the moral and legal space to carry out those obligations. Given the fact that John Buzzanca has in essence abandoned Jaycee and so shown himself to be unfit, his parental rights (both moral and legal) should be terminated. So, we are left with a conflict between Pamela Snell and Luanne Buzzanca over who has the stronger rights-claim to Jaycee, a conflict that is not easily sorted out by the arguments of this chapter. Both can plausibly state that they are in a custodial relationship with Jaycee, which is the lone successful account of parental rights.

In the final court decision, Luanne was granted legal custody of Jaycee, a finding that is consistent with the arguments of this chapter. When, as in the Buzzanca case, two individuals have a theoretical basis for a parental rights-claim and they are not

willing to share custody, the specific contextual features of the case are all we have to turn to in order to determine who should be granted legal custody. Given this, elements of other conceptions of parenthood could come into play. For example, while I argued above that the best interests conception of parenthood fails, it does not follow that the interests of the child should not be a factor in a case such as this, in which two individuals both have a parental rights-claim with respect to a particular child. I expand on this in the next chapter, but it is important to note here that it is not solely the interests of parents, children, or society that are important, but rather all three must be included when considering who possesses parental rights in any particular case.

So, another significant feature of a pluralistic understanding of the grounds of parenthood is that it includes a consideration of the interests of current parents, potential parents, children, and society as a whole. Some conceptions of parenthood, such as proprietarian and the best interests of the child conceptions, fail to possess this feature, to their detriment.

While I advocate a pluralistic understanding of parenthood, insofar as all of the conceptions of parenthood in this chapter achieve some measure of success, it is also true that each of these successful conceptions of parenthood fit within a more general view of parenthood, called the stewardship view. This is true in part because each of these successful conceptions of parenthood recognizes the moral status of children, and that parental obligations include helping to meet the physical and psychological needs of children. Stewardship is a helpful concept with respect to parenthood, because there are many ways in which parents are caretakers, or stewards, of their children. First, a parent can see themself as caring for the body and mind of their child, and acts as if the adult human person who the child will become is away on a trip, a trip they will return from in approximately twenty years.[28] At that time, the parent's stewardship is finally and fully transferred over to the child, and the child who is now able to govern their own life is free to exercise control over that life. A parent holds a child's life in trust, and ultimately transfers the care and stewardship of that life to the adult that the child becomes. A parent is also a steward of their child because society has entrusted the raising of that child to them. A good society expects parents to raise their children, and to do an at least adequate job. The quality of child-rearing will have a deep impact on who our children will become, and who our children become will have an impact on society, as our children enter fully into that society.

The concept of stewardship has been employed in environmental ethics and green political theory, and it will be helpful to briefly examine the use of this concept in these areas in order to understand more fully its application to parenthood. John Barry argues that a central part of being a good ecological steward is that one considers the interests of other people, non-humans, and future generations:

> For example, it may be in the interests of a particular collection of non-humans that their habitat be preserved while it may be in the interests of citizens that it be developed. To

28 See William B. Irvine, *Doing Right by Children* (St. Paul, MN: Paragon House, 2001).

> be a good green citizen does not entail an obligation to actively promote the interests of non-humans or others over one's own, but rather to justify and assess one's interests in the light of the interests of others.[29]

Good ecological stewards, according to Barry, seek to satisfy as many interests as possible. They reject a strong anthropocentrism, which justifies decisions that impact the environment on the basis of human preferences alone, because this insulates our preferences as humans from critical appraisal. It is not wrong to include our interests in ecological decision-making, but our interests must be evaluated in light of the other interests that are in play. Similarly, the stewardship view of parenthood rejects a strong parent-centered view of the parent-child relationship, and assesses the interests of parents in light of the interests of their children. However, being a good parental steward need not entail that one must always actively promote the interests of one's children over one's own interests. Instead, good parental stewards evaluate their interests as parents in light of the interests of their children. Sometimes the child's interests win out, but other times the parents' interests carry the day. This is an important feature of stewardship as it relates to the rights and obligations of parents, and the next chapter contains some concrete illustrations of how the concept of stewardship might function in parental decision-making.

The Relationship Between Parental Obligations and Parental Rights

The view of parental rights advanced in Chapter 4 also fits within a stewardship view, and so both the successful accounts of parental obligations discussed in this chapter and the successful account of parental rights given in the next are unified by the concept of stewardship.

Another important point of the present chapter worth emphasizing is that parental rights and obligations are separable. To see that this is so, consider the all too common problem of deadbeat dads. Imagine a case in which a child's genetic father is divorced by her genetic and gestational mother due to the father physically abusing the child over a period of several years. By virtue of this behavior, the father has forfeited his parental rights with respect to that child. However, it is also the case that he still possesses parental obligations toward that child, as the courts currently and correctly recognize. These obligations may be solely financial in nature, but they remain important obligations that in this case he would not possess apart from his being the father of the child.

Next, consider the relationship between parental obligations and the legal rights of parents. The fulfillment of parental obligations requires at least some legal rights for parents, in the sense of protection from social and/or state interference in the parent-child relationship. Setting aside cases where the only parental obligations that exist are financial, it seems that certain legal rights of parents should be respected. In order to fulfill some parental obligations, a sphere of privacy is required, and if this is so then others have a *prima facie* obligation to refrain from interfering in that sphere.

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29 John Barry, *Rethinking Green Politics: Nature, Virtue, and Progress* (Thousand Oaks, CA: Sage Publications, 1999), p. 231.

It is useful to encode some of our obligations into law, so that the power that the law wields can serve to protect the interests of citizens. It makes sense from a public policy standpoint to grant and respect a certain set of legal parental rights, given the very real possibility that the state or some other social entity may, for morally insufficient reasons, try to intervene and stop parents from fulfilling their obligations to their children. Often the obligation to do x is insufficient motivation for the actual doing of x, for individuals and social entities. Hence, legal rights need to be in place to ensure that parents are able to carry out their obligations, free from the intrusions of others (as long as no compelling interest exists for such intervention). If it is true that parents possess certain obligations, then from a legal perspective the parent must at least initially be given the space to fulfill those obligations.

What about the relationship between parental obligations and moral parental rights? It is my view that moral parental rights are partially grounded in parental obligations. A problem exists if we claim that parents have a duty to care for their children, but that there is no parental right to provide that care.[30] To fulfill the obligations that raising a child involves requires the existence of a negative right to do so. If parents have obligations to their children, they must be given the moral space to carry out those obligations. If this is correct, then the right to raise a child is in part derived from and conditional on the existence and fulfillment of one's parental obligations. The claim that the existence of parental rights depends upon the fulfillment of parental obligations does not entail that parents cannot take their own interests into account when making decisions which will impact their children. As long as parents engage in a satisfactory performance of their duties, they may allow their interests to come into play. However, parents who aspire to go above and beyond the call of parental duty will often sacrifice their own interests in order to benefit the children they love.

In this way, then, parental obligations are more fundamental than parental rights. Concerning this claim, John Locke states that: '…only as he [the father] is Guardian of his Children, that when he quits his care of them, he loses his power over them, which goes along with their Nourishment and Education, to which it is inseparably annexed.'[31] For Locke, parental rights are dependent on the needs of children and on the obligations of parents to care for them. If a father does not fulfill his obligations to his children, then he no longer possesses rights to and over them. I am sympathetic to Locke's views here, and indeed the argument in favor of the existence of parental rights that I offer in the next chapter is consistent with his view of the relationship between the rights and obligations of parents.

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30 See David Archard, *Children: Rights and Childhood* (New York: Routledge, 1993); and Barbara Almond, 'Family Relationships and Reproductive Technology', in Uma Narayan and Julia J. Bartkowiak (eds), *Having and Raising Children* (University Park, PN: The Pennsylvania State University Press, 1999), pp. 103–117. See also Kant, *The Metaphysics of Morals*, p. 430, for the view that parental rights arise from parental duties.

31 John Locke, *Two Treatises of Government*, Peter Laslett, (ed.) (New York: Cambridge University Press, 1988), p. 310. Locke states in sec. 64 of the Second Treatise that mothers share in this power with fathers.

Chapter 4

Stewardship and Parental Rights

Do individuals have the right to become and to be parents? That is, is there a right to bear children, and a right to raise them as one sees fit? How much intrusion by the state into the parent-child relationship is morally justifiable? Do the rights of children conflict with and outweigh the rights of parents to the extent that there are very few (or no) parental rights? Do distinctly parental rights exist at all? My focus in this chapter will be on the moral rights of parents, and in what follows I will: (i) reject absolutist and quasi-absolutist views of parental rights; (ii) respond to certain challenges to the existence and extent of the moral rights of parents; (iii) offer an argument for the claim that parents do have moral rights with respect to their children; (iv) locate the argument within a stewardship view of parenthood; and (v) examine the implications of this argument for issues in family life and public policy.

Absolutism and Quasi-Absolutism

Historically, some have proposed an absolutist view of parental rights, in which parents are thought to hold even the power of life and death over their children. It should be pointed out that one is hard-pressed to find a contemporary proponent of an absolutist view of parental rights. It will be useful, however, to consider and critique absolutism, in order to understand its flaws as well as to understand how our views of the parent-child relationship have changed.

Jean Bodin, a proponent of absolutism, maintains that children owe complete obedience to the head of the household, and that fathers as such have the right to command such obedience.[1] Bodin denies that a son is justified in using force even to resist his father's unjust coercion, and goes so far as to claim that parents have the authority to end the lives of their children.

Bodin's justification for such extreme parental authority is threefold. First, he claims that this authority is granted to parents by the law of God and the law of nature. Second, Bodin holds that this level of parental authority prevents the young from many harmful vices. Third, Bodin sees the family as a model of the commonwealth, so that the members of the family owe obedience to the father, who possesses the right to command such obedience. When individuals learn to fear their parents and God, this teaches them to then respect the laws of the commonwealth, which will in turn enable the commonwealth to prosper.

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1 See Jean Bodin, *Six Books of the Commonwealth*, abridged and translated by M.J. Tooley (New York: Barnes and Noble, 1967), pp. 6–14.

Bodin considers one obvious objection to the above claims, namely, that a father may abuse his authority and be cruel towards or even unjustly kill his children. Bodin argues that those who would do this because of mental illness will be incarcerated, and so such cruelty would rarely happen. If a father is mentally competent, however, he will only kill his child with good cause. Hence, the government should not intervene. Moreover, the natural affection parents have for their children will prevent them from abusing their authority.

To the contemporary ear, this all sounds wildly implausible, and rightly so. What should be said in response to this absolutist view of parental rights? One could obviously challenge Bodin's derivation of parental rights from natural or divine law, questioning whether there is such a thing. Alternatively, one could grant that there is such a law, but reject the extreme degree of authority that Bodin argues parents have over their children. Also, in response to Bodin's claim that absolute parental rights discourage vice and encourage respect of the commonwealth's laws, it is useful to point out the many cases that serve as counterexamples to these claims. When parents do attempt to exercise an excessive amount of authority and fail to encourage their children to become truly free and autonomous agents, the reaction of children is often one of moral and/or legal rebellion, which can cause many relational and social problems. Finally, that the natural affection parents have for their children would prevent them from abusing their authority by being excessively cruel or unjustly killing their children is certainly a desirable state of affairs. However, this state of affairs is all too often not the actual one. Hence, the state is justified in intervening in cases where this degree of harm is occurring in order to prevent it from continuing.

Sir Robert Filmer also holds an absolutist view of parental rights.[2] For Filmer, parental power is grounded in the fact that children are created by their parents. This power is absolute and extends to the point of parents having the power of life and death over their children. This view is so morally offensive that it amounts to an absurdity. There is simply no justification for this view, insofar as it involves the authority to end a human life on the mere grounds that one helped create that life. Locke argues that Filmer merely asserts that this power is grounded in the generation of children by their parents, but gives no reason for accepting this claim. It is merely asserted, rather than argued, and it is a virtual certainty that no cogent argument for this view could be developed.

Hobbes also presents a view that is similar to that of Bodin and Filmer in certain respects.[3] For Hobbes, prior to the existence of the commonwealth, the father has absolute sovereignty over his children. When the commonwealth is formed, the father only loses the amount of authority that the laws of the commonwealth take from him. A problem for this view is that it leaves open the possibility for the commonwealth to continue to grant absolute sovereignty to fathers with respect to their children, which would seemingly include the power of life and death over those children. As I previously claimed, this is strongly counterintuitive and upon reflection is seen to

2 See John Locke, *Two Treatises of Government*, Peter Laslett, (ed.) (New York: Cambridge University Press, 1988), Book 1, Chapter 6, Section 51.

3 See Thomas Hobbes, *Leviathan*, Edwin Curley, (ed.) (Indianapolis, IN: Hackett, 1994), pp. 152–153.

be morally reprehensible. For the reasons stated above, then, absolutism regarding parental rights is to be rejected.[4]

As I previously stated, there are very few, if any, proponents of absolutism in our day. However, many people are quasi-absolutists, that is they hold the view that parents should have near absolute control over their children, though not to the point of life and death. No philosopher that I am aware of espouses a quasi-absolutist view, but such a view of parental rights is one that a significant number of people in society hold to, and as we will see, such a view has had an impact on public policy. A critique of this view of parental rights is therefore a worthwhile endeavor.

A quasi-absolutist believes that parents should have the final say in matters that will have an impact on their children. For example, parents should be able to determine the religion of their children, the moral outlook of their children, the form and extent of their children's education, and the types of medical care administered to or withheld from their children. While quasi-absolutism, as I have defined it, does not suffer from the same level of moral offensiveness as absolutism, it does have serious problems. The more moderate view of the existence and extent of parental rights that I argue for in this chapter functions as a critique of quasi-absolutism. That is, to the extent that one accepts my argument and the stewardship view that it fits into, one should also reject quasi-absolutism. It is important to note that a key point of criticism of quasi-absolutism is that although it does not justify the killing of children by their parents, it still suffers from the flaw of placing too little emphasis on the moral status and value of children. The stewardship view does incorporate the belief that children have moral status, while also taking into account the interests parents have in trying to influence their children. Before I state and defend this view of parental rights, however, I will first consider several challenges to the moral rights of parents.

Challenges to Parental Rights

In what follows, I discuss three distinct challenges to the existence of parental rights. First, I consider whether or not individuals have the right to bear children. Liberationism, the second challenge to parental rights considered below, is a strong challenge to such rights because it emphasizes the rights of children to the extent that the state should severely limit parental rights, or even dispense with them entirely. The justification offered for this view is that the moral rights of children either limit the extent of the moral rights of parents, or serve to show that parental rights do not in fact exist. The final challenge to parental rights that I will consider is that the notion of parental moral rights is in fact a theoretical myth.

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4 For other arguments against absolutism, see Rosalind Ekman Ladd, 'Rights of the Child: A Philosophical Approach', in Kathleen Alaima and Brian Klug (eds), *Children as Equals: Exploring the Rights of the Child* (Lanham, MD: University Press of America, 2002), pp. 89–101.

Is there a right to bear children?

In March of 2004, New York family court judge Marilyn O'Connor ordered Rodney Evers and a 35-year-old woman identified only as Stephanie to stop having children until they are able to prove that they can be adequate caretakers for the ones that they already have.[5] Several factors led to this decision. In the spring of 2003, Stephanie consented to the removal of her newborn child and her subsequent placement in foster care along with her other three children (Stephanie has four children, ages six and under, three of whom were fathered by Evers). Additionally, Stephanie's three youngest children all tested positive for cocaine at birth. In her ruling, Judge O'Connor was explicit that she was neither forcing the use of contraception nor an abortion if Stephanie does become pregnant. Instead, the couple could be jailed for contempt if they violate the order. Critics argue that the order violates the right to procreate and invades the couple's privacy rights, while supporters underscore the ruling's emphasis on the interests of children in being raised by adequate parents.

What are we to make of this? Is there a right to procreate? This first challenge to parental rights is limited in its focus, insofar as it centers on whether or not there is a right to bring a child into existence. David Archard holds that there are two types of considerations that determine whether or not someone possesses the right to bear a child, and argues that this right is conditional, limited by the well-being of the child and by the consequences for society of that child coming into existence.[6]

Archard contends that parents should not bring a child into existence unless its rights to life and an adequate level of overall welfare can be secured, whether by themselves or someone else. Depending on what is meant by the phrase 'can be secured', this standard may be too strong. Does this mean that it must be more probable than not that these rights can be secured? If so, there would be numerous cases in which this standard would not be met, and so in such cases the right to bear a child may not exist.[7] However, Archard states that biological parents may bear a child, as long as it will be well cared for, even if someone else is the caretaker once the child has been born. So his argument has the conclusion that anyone can bear a child, on the condition that the child will be adequately cared for by someone.

What about cases of poverty, political instability, and the like, in which a prospective parent likely cannot secure the rights in question for the child that will come to be? Do people in such situations not have the right to bear a child? A person in these circumstances may or may not be able to secure the child's safety and welfare, but if Archard's standard is taken in the strong sense, then in such situations the right to bear a child does not exist, unless the prospective parent can secure an adequate level of welfare for that child via someone else.

However, it is often the case that someone in a situation of poverty or political instability may be unsure about whether or not they will be able to secure their

5 From http://www.newsday.com. Accessed 17 May 2004.

6 See David Archard, *Children: Rights and Childhood* (New York: Routledge, 1993), pp. 97–98.

7 See John Harris, 'The Right to Found a Family', in Geoffrey Scarre (ed.), *Children, Parents, and Politics* (New York: Cambridge University Press, 1989), pp. 133–153.

child's rights to life and an adequate level of overall welfare. It seems to me that a conditional right to bear can still be had in such situations, if we take Archard's standard in the following weaker sense: P has the right to bear a child if there is a reasonable chance that P can secure that child's rights to life and adequate welfare. Such a right will not be absolute, as Archard rightly points out, and will depend on the reasonableness of the parent's belief that they (or someone else) can secure the rights in question for their child. It is difficult to draw a precise line as to what counts as reasonable. The probability the chances of securing the rights in question would have to be at least .5, given the rights and interests of the future child that are at stake. The lower the probability, the less justification there will be for believing that a truly reasonable chance for securing those rights exists, and hence the greater the justification for believing that P does not have the right to bear a child. Returning to the case of Rodney Evers and Stephanie, on this standard it could be argued that they do not have a right to procreate, if we take the positive testing of her offspring for cocaine and the other past parental failures of Stephanie and Evers into account. Alternatively, in our society it might be the case, strictly speaking, that this couple retains the right to procreate because they can secure an adequate life for their children by transferring custody of those children to others who are able to secure the relevant rights of those children. Yet intentionally having children in such a situation and knowing that they will be placed into the care of the state is not only undesirable, but also morally problematic.

Archard claims that social consequences also can nullify the right to bear children. In some situations, this is not too controversial. If the new life threatens in a serious way the lives of those already in existence, then such a right will not exist, according to Archard. For example, if a woman suffers from a highly dangerous and contagious disease that will be transmitted to the fetus, then she does not have the right to conceive a child. If the members of a particular society where resources are scarce would be in danger of not surviving if a member was added to their numbers, this would also limit the right to bear a child. These seem to be good reasons for limiting the right in question.

However, a last possibility raised by Archard is more problematic. He states that the general goal of maintaining the population at a desired level could be a consideration that would constrain the right to bear a child. Archard remarks that we could concede a right to have one child (as is done in China) in order to maintain the population at a desired level. In principle this is morally permissible, but there are practical problems with such a proposal. How would it be enforced? Would the state engage in compulsory abortions or sterilization, or merely rely on social pressure against conceiving and bearing a child?[8] Moreover, there is the problem of sexism present in situations like China, where a strong preference for male offspring exists. How would the state seek to prevent problems such as this?

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8 In a different context, Archard suggests that compulsory abortions and sterilization are unacceptable. Given this, it seems he must either opt for social pressure, or perhaps a program of legal disincentives for refraining from having children, such as tax credits. See his 'Child Abuse: Parental Rights and the Interests of the Child', *Journal of Applied Philosophy* 7 (1990): 183–194.

There is a third type of consideration that ought to be included when seeking to determine whether or not someone possesses the right to bear a child, namely, the interests of those who want to be parents.[9] Most people want to be in a parent-child relationship and to engage in the activity of parenting. They want to satisfy some of their desires for love, intimacy, meaning, and significance via such a relationship. Given the centrality and importance of these interests for such people, it seems that only very strong concerns about the population level should outweigh these interests. The point I want to underscore here, however, is that in considering whether or not the right to bear a child exists, it is a mistake to focus only on the well-being of children or society. The interests of prospective parents are important as well, and should be given significant weight, which Archard fails to do. Archard can simply reply that he is only speaking of a right to bear children, and not to raise them. This is an important point. Moreover, he does discuss parental interests as they relate to the right to raise children. However, in view of the fact that people in general only bear a child so that they can then raise that child, the problem with Archard's line of argument with respect to the right to bear children is that he fails to adequately take into account the relevant parental interests. I will consider the interests that potential and actual parents have in more detail later in the chapter.

Liberationism

Several justifications have been offered for the paternalistic treatment of children by their parents and society, including claims such as: (i) children are the property of their parents; (ii) parents have authority over their children simply because they are their creators; and (iii) children are incapable of taking care of themselves. The children's liberationist rejects all of these arguments. One proponent of liberationism claims that 'what is good for the goose is good for the gosling', that is, that children should be able to do, without permission, whatever adults are allowed to do.[10] Supporters of liberationism argue that children should have the same moral and legal status as adults. Children should be granted the same rights and freedoms possessed by any other member of society, such as the right to self-determination, the right to sexual freedom, the right to vote, the right to design their own education, the right to forgo education altogether, the right to alternative home environments, and the right to select guardians other than their parents.[11] Liberationism is a serious challenge to the legal and moral rights of parents. Of course not all liberationists agree that all of the aforementioned rights should be granted to children, but liberationists at least

9 For more on this issue, see Rivka M. Weinberg, 'Procreative Justice: A Contractualist Account', *Public Affairs Quarterly* 16 (2002): 405–425.

10 Richard Farson, *Birthrights* (New York: Macmillan, 1974), p. 27.

11 See John Holt, 'Why Not a Bill of Rights for Children?' in Beatrice Gross and Ronald Gross (eds), *The Children's Rights Movement* (Garden City, NY: Anchor Press, 1977), pp. 319–325; Richard Farson, 'Birthrights', in Gross and Gross, pp. 325–328; and John Harris, 'Liberating Children', in Michael Leahy and Dan Cohn-Sherbok (eds), *The Liberation Debate: Rights at Issue* (New York: Routledge, 1996), pp. 135–146.

share the belief that the current level of paternalistic treatment of children by parents and the social and legal structures of our society is unjustified.

One way of responding to liberationism is to note that another possible justification of paternalism exists. If paternalistic treatment is consented to, then it is justified.[12] With children, hypothetical consent might do the justificatory work, that is, a parent is permitted to treat their child in the way that the child would consent to if it were not in need of paternalistic treatment. So, paternalism is justified if it would be consented to by the child when they become an adult. This consent retroactively legitimizes the paternalistic treatment of children. The problem is that this amounts to a self-justifying paternalism, insofar as its effects on the child cause the child to subsequently give consent. People can be brainwashed into thinking that brainwashing is a good thing. Many upbringings that fail to include brainwashing, but are still objectionable, could be approved of by the adult that the child will become. Hence, such approval is not enough to justify paternalism.

However, the hypothetical consent thesis can be modified to alleviate such worries. If we add the condition that such consent must be the sort that could be rationally given by the adult the child will become, we avoid problems such as these. This modified hypothetical consent justification for paternalism is similar in its substance to the view advocated by John Rawls regarding such justifications.[13] Rawls first notes that the lesser liberty of children is a natural feature of the human situation. He then states that in view of the facts that children are not fully rational and cannot advance their interests in a rational way, it follows that in the original position the parties would acknowledge certain principles of paternalism in order to protect themselves against the weakness (through lack of development or pathology) of their own reason and will. Others can then act on behalf of such people and do what they would do if they were rational. Of course, the difficulty here lies in the question of which standard of rationality to employ when standing in the original position. Nevertheless, with this qualification, the brainwashing case as well as other forms of upbringing that are morally objectionable can be ruled out. I believe, however, that a stronger argument is available for the proponent of parental rights, which attempts to justify some paternalistic treatment of children but is not based on any type of hypothetical consent thesis. Later in the chapter I will state and defend this argument. The upshot of this modification for the present discussion is that the hypothetical consent thesis has some force as an argument against liberationism.

The most difficult problem facing opponents of liberationism is the consistency problem. John Harris raises this problem in his argument in favor of the liberation of children.[14] Harris argues that rights are possessed by beings who themselves possess certain capacities. Whatever these capacities end up being, the main point is that if x has the relevant capacities, then x has rights. On this account of the possessors of

12 See Archard, *Children: Rights and Childhood*. See also Samantha Brennan and Robert Noggle, 'The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice', *Social Theory and Practice* 23 (1997): 1–26.

13 See John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Harvard University Press, 1999).

14 See Harris, 'Liberating Children'.

rights, consistency requires either denying certain rights to particular adults (those who do not possess the relevant capacities) in order to preserve paternalistic control of children, or granting full human rights to particular children (those who possess the relevant capacities).

In response to the possible objection that limiting the rights of children best enables them to become competent, autonomous beings who can then be granted full moral and legal status, Harris reiterates that consistency requires denying full human rights to many adults and granting them to many children, since many children are competent and autonomous, and many adults are not. Given that we do not deny full human rights to adults who are incompetent in the relevant respects, we have no grounds for this practice with children. The foundation of Harris's argument is his belief that autonomy is not an existential state, but rather a trait of individual decisions. In order to respect autonomy and be consistent, we must respect autonomous decisions, regardless of whether the decision in question is made by someone who is five, fifteen, or fifty. Whether or not a particular decision is autonomous (and so whether or not it should be respected) must be determined on a case-by-case basis for both adults and children.

One difficulty for the above proposal is that determining whether or not a particular decision is autonomous can be extremely difficult. It seems that from a public policy perspective, we have strong pragmatic reasons for not sifting through decisions in order to determine whether or not they are autonomous.[15] Given that (in general) most adults are autonomous in the required and relevant sense and most children are not, there are good reasons for limiting the rights of children. For example, in a society that embraced liberationism, there would be cases of very young children rejecting the opportunity to receive an education, and this type of society would have no effective way to deal with such behavior. Children would forego education, without realizing the long-term impact of this decision on the course and quality of their lives. Limiting the right of self-determination of children also helps enable them to develop and protects them from exploitative employment. Granting equal rights to children might also prevent parents from providing the moral training children need, and cause adolescents to be even less likely to consider seriously the guidance offered by their parents.[16] Additionally, the costs of determining whether or not individual decisions made by children are autonomous, which must be done on a case-by-case basis (according to Harris), would seem to be prohibitive relative to the benefits. One can imagine a family in which there is a period of much conflict between a teenager and her parents going to competency court for numerous decisions made by the teenager in question. Given the nature of teenage children and the manner in which many of them relate to their parents (and *vice versa*), it is easy to see that the social institutions required to adjudicate such conflicts and determine whether or not particular decisions are autonomous would be rather extensive and costly. There will

15 David Archard also makes this criticism in *Children, Family, and the State* (Burlington, VT: Ashgate, 2003).

16 See Laura M. Purdy, *In Their Best Interest?: The Case Against Equal Rights for Children* (Ithaca, NY: Cornell University Press, 1992); and Archard, *Children: Rights and Childhood*.

always be problematic cases in which autonomous decisions are thwarted by parents and others in authority, but such a cost-benefit analysis is impossible to avoid when making public policy, and counts strongly against Harris's proposal.

Another reason for rejecting liberationism, distinct from those offered above, is that to allow for the contravention of a limited number of autonomously made decisions prepares a child for life as an adult in society. This is because life within a community often requires that autonomous decisions be thwarted. Consider the fact that we require that certain standards be met before we allow someone to practice medicine, police our communities, or teach our children. Society denies many people the freedom to enter these professions, due to a lack of competence, even if these professions are pursued autonomously. So, perhaps another advantage of having an age requirement (rather than a competency one) for the acquisition of the right of self-determination is that it is good for people to learn to deal with not being able to carry out *all* of their autonomous decisions, given that this is a feature of life lived in community with others. This point is not sufficient on its own for rejecting liberationism, but when taken into account along with the other problems that exist for the view, provides some additional justification for rejecting it.

For the philosopher not burdened with implementing her views in society, however, the consistency problem remains. Another possible theoretical solution to this problem is offered by Laura Purdy, who argues that autonomy is not the sole criterion to be employed when deciding whether to grant full human rights to children.[17] She argues that the capacity for moral behavior is important as well. The claim is that children must not only be autonomous, but they must also be sufficiently morally developed before we grant them the right of self-determination. In response to this, it is crucial to note that such moral development is not required for adults to possess and exercise the right of self-determination, and so why should it be for children?[18] Again, it would seem that the consistency problem remains and that Purdy has not satisfactorily dealt with this portion of Harris's argument.

Purdy also argues that Harris's view places him in a difficult dilemma. She claims that if children are autonomous, it is only in a weak and undemanding sense of the term. She offers several examples of such weakly autonomous decisions (a child who neglects his homework because he wants to be a race car driver; a 14-year-old who decides to continue a pregnancy, or drop out of school, or run away from home), and then claims that Harris faces a dilemma. Either he must deny the autonomy of the children in these cases, which undermines his position in favor of liberationism, or he must argue that these are legitimately autonomous decisions, which is simply false.

However, Purdy's argument is misguided as a criticism of Harris's position, insofar as his argument need not place him in the dilemma that she describes. It is clear, at least from his discussion of the consistency problem, that Harris is advocating the view that autonomous decisions should be morally and legally respected, regardless of the age of the person whose decision it is. In defense of Harris, one can reply that

17 See Laura M. Purdy, 'Children's Liberation: A Blueprint for Disaster', in Leahy and Cohn-Sherbok, pp. 147–162.

18 See Harris, 'Harris' Reply', in Leahy and Cohn-Sherbok, pp. 163–165.

the examples offered by Purdy do not constitute autonomous decisions, and hence may be thwarted by parents and/or the state. This only undermines the view that all children should be given the full moral and legal status possessed by adults, a view which on my reading of Harris he does not hold. However, Harris's proposal is a bit unclear. He calls for 'a revolution in our thinking about children which we might well call *children's liberation* on the model of women's liberation,' so that most children would have the same protection and the same freedoms as adults, but he also states that 'where children's decisions or preferences cannot be shown to suffer from any of the defects that render decisions non-autonomous, they should be given absolute control over their own destiny as are adults and for the same reasons.'[19] If we emphasize the former statement, then Purdy is correct that Harris faces a difficult dilemma. If we emphasize the latter claim, then no such dilemma arises, as the decisions in question can simply be classified as non-autonomous.

In sum, if a child possesses the relevant actualized capacities, then theoretical consistency requires that they be granted the same moral and legal status accorded to adults. However, this may simply be a case where theory and practice cannot coincide due to the practical barriers in attempting to bring the two together. A point that is highly relevant later in this book, which I will examine more fully in Chapter 5, is that parents have a moral (but not a legal) obligation to respect the autonomous choices of their children. Perhaps this is the best way in which to bring theory and practice together. Those who know their children the best are morally obligated to respect the autonomous choices of those children. This obligation should only be encoded into the law when children reach a certain age, due (primarily) to the pragmatic considerations discussed above.[20]

The myth of parental rights?

Phillip Montague has argued for the claim that biological parents do not possess even a qualified moral right to impact the lives of their children in significant ways.[21] In what follows, I will consider Montague's argument for this claim.

For Montague, the purported rights of parents are general claim rights, that is they imply that others possess obligations corresponding to these rights. If parental rights exist, they obligate others to refrain from interfering in the decisions a parent makes on behalf of their child. For example, if a parent has the right to educate their child in a particular way, this is a general claim right, given that anyone in a position to interfere would be obligated not to do so. Montague, however, rejects the notion of parental rights on the grounds that such rights lack two essential components

19 Harris, 'Liberating Children', pp. 137, 143.

20 Purdy does state that both parental and legal respect of children's decisions are appropriate in cases where those decisions are autonomous. See her 'Children's Liberation: A Blueprint for Disaster'. See also Christina M. Bellon, 'The Promise of Rights for Children: Best Interests and Evolving Capacities', in Kathleen Alaima and Brian Klug (eds), *Children as Equals: Exploring the Rights of the Child* (Lanham, MD: University Press of America, 2002), pp. 102–126.

21 See Phillip Montague, 'The Myth of Parental Rights', *Social Theory and Practice* 26 (2000): 47–68.

of moral rights: (i) they are oriented towards their possessors; and (ii) they have a discretionary character.

Montague argues that if parental rights did exist, their function would be to protect either the interests parents have or the choices they make regarding the parent-child relationship. Montague draws upon a particular distinction between the interest and choice conceptions of rights offered by L.W. Sumner.[22] Sumner claims that on the interest conception, rights function to promote the welfare of the rights-holder, whereas on the choice conception, they function to promote the freedom or autonomy of the rights-holder. Montague argues that, on the interest conception, if parental rights exist it is because parents have an interest in taking care of their children. Hence, this parental interest is not fundamental, insofar as it is worth protecting only because the welfare of children is itself worth protecting. Montague then claims that if the interest conception of rights can accommodate parental rights, it does so only by associating parental rights with property rights. Since it is morally objectionable to conceive of children as property, we have further reason for rejecting parental rights as protections of parental interests.

In Montague's estimation, the choice conception of rights fares no better. On this conception of rights, one could argue that given the possessor-orientation of rights and the significant impact of parenthood on one's life, parental rights belong in the category of those activities engaged in by rights-holders that significantly shape their own lives. Parental rights, then, protect an important realm of personal autonomy for those who decide to become parents. Against this, Montague points out the manner in which some parents distort the parent-child relationship by treating their children as a means to their own development. Parents who seek to accomplish their dreams vicariously through the lives of their own children come to mind. Consider the high school athlete who failed to achieve his dream of playing professional baseball and is now a driving force behind his son's athletic endeavors, regardless of the son's own dreams, or the mom who dropped out of law school and now pushes her daughter toward a career as an attorney. Given that we recognize that treating children in this way is in fact a distortion of what the parent-child relationship ought to be, Montague concludes that 'to the extent that parental decisions regarding their children are *properly* concerned with the promotion and protection of autonomy, these decisions *directly* relate to the autonomy of children, and only indirectly concern that of parents.'[23]

The problem for the proponent of parental rights, then, is that no other right shares this feature of parental rights, namely, that the relevant set of interests or autonomy is only worth protecting because of the value of protecting the interests or autonomy of others. With the above points in mind, Montague holds that we have strong reasons for rejecting the notion that parents have a right to impact, in a significant way, the lives of their children.

Montague next argues that upon an examination of the obligations of parents, we have further cause for believing that parental rights do not exist. He contends

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22 See L.W. Sumner, *The Moral Foundation of Rights* (New York: Oxford University Press, 1987), p. 47.

23 Montague, 'The Myth of Parental Rights', pp. 55–56.

that parental rights to care for children are in tension with parental obligations to do so. The problem is that the notion of parental rights is in tension with the fact that parents are obligated to protect their children's interests and help them develop into autonomous agents. Montague argues that, practically speaking, an emphasis on the notion of parental rights focuses on what is good for parents in the parent-child relationship, while a focus on parental obligations emphasizes the well-being of children.

We are now in a position to see why Montague believes that parental rights are incompatible with parental obligations. While it is true that parents do have discretion regarding how to fulfill their obligations, they do not have such discretion regarding whether to do so. If there were parental rights, however, parents would have discretion regarding whether to protect and promote the interests of their children, and this is unacceptable. The incompatibility that exists between parental rights and obligations is also a function of the theoretical conception of rights that Montague employs, which states that a moral right has a discretionary character. That is, one may refrain from exercising a moral right. But if parental rights exist, they are rights to care for one's child and contribute to their overall well-being. Such care is not discretionary, but rather it is an obligation incurred by the parent upon the voluntary creation of the child that centers on the child rather than the parent. Given this fundamental moral feature of the parent-child relationship, and given that parental rights and parental obligations are therefore incompatible, Montague concludes that we ought to embrace parental obligations and reject the mythical notion of parental rights.

Moreover, Montague claims that we can accommodate all that we want to accommodate regarding the parent-child relationship within the conceptual realm of parental obligations, without employing the additional concept of parental rights. He states that we can 'acknowledge that people are obligated not to interfere with parents as they implement certain decisions regarding their children's welfare while denying that they have rights to implement those decisions.'[24] This would allow parents to make decisions regarding the welfare of their children free from unwarranted interference from others, without adding the claim that parents have a right to such non-interference. Even our presumption in favor of allowing biological parents to raise their offspring can be explained solely in terms of obligation, according to Montague. We are morally obligated to care for the children that we intentionally and freely create. We also possess a *prima facie* obligation to refrain from preventing others from fulfilling their obligations. Given these two facts, Montague concludes that we have a *prima facie* obligation to allow biological parents to fulfill their obligations to their children. This explains the presumption in question without appealing to the notion of parental rights. Moreover, it also enables us, within the conceptual realm of parental obligations, to recognize that while parents do not have discretion regarding whether to care for their children, they do have some discretion regarding how to do so. Therefore, we ought to reject the claim that parents have the right to impact, in a significant way, the course of their children's lives.

24 Ibid., p. 63.

To recap: Montague's case against parental rights stands upon a particular theoretical conception of moral rights which takes such rights necessarily to have a discretionary character and to be fundamentally oriented towards their possessors. Parental rights fail to possess both of these essential features of moral rights. First, parental choices related to the well-being of a child are only important to the parent insofar as they are important to the child, and so the relevant parental rights are not fundamentally oriented towards their possessor. Second, parental rights are not discretionary, insofar as a parent must exercise their authority for the sake of their child's well-being. In view of these points, Montague concludes that we ought to reject the notion that parents have a right to significantly affect the course of their children's lives.

One objection considered by Montague is that while parents may not have discretion regarding whether to fulfill their obligations to their children, they do have discretion regarding how to do so. Montague's responses to this objection are not fully satisfactory, and so it is important to press this objection to his argument. The first step in his response is that when we are obligated to perform some action, we are obligated to perform a type of action rather than a particular token of that type. If you are obligated to return a borrowed book on Friday, 4 February, you could fulfill the obligation by returning it in person on Tuesday, 1 February, or via the mail on Monday, 31 January. You are permitted to select from many different tokens in the fulfillment of your obligation, but the fact that you are permitted to select how you fulfill your obligation does not imply that you have a right to act according to your choice. For Montague, others do not possess even a presumptive obligation 'to refrain from interfering with your fulfilling your obligation *in a particular way*, as long as this does not, in the circumstance, prevent you from fulfilling your obligation.'[25]

The second step of Montague's response is that having discretion with respect to how to fulfill one's obligations is distinct from having discretion to determine what counts as actually fulfilling those obligations. If I borrow one hundred dollars from a friend and promise to repay him within one week, I have discretion regarding how to fulfill this obligation. I may send a check by mail or repay my friend with cash in person. However, if I give my friend a gift certificate to a local restaurant, it does not follow that I have actually repaid my friend, even if I believe that I have fulfilled my obligation to do so.

In response to this, the proponent of parental rights can agree with the second part of Montague's reply – that parents do not have discretion regarding what counts as fulfilling their obligations towards their children – but can argue the point that the discretion regarding how to do so is sufficient for thinking that there are some parental rights. The first step in Montague's rejection of the latter claim is unsatisfactory, because parental discretion regarding how to fulfill parental obligations is better characterized as a right rather than a mere permission. I disagree with Montague's claim that no one has even a presumptive obligation to refrain from interfering with how others fulfill a particular obligation, as long as this does not prevent them from fulfilling that obligation. First, consider a non-parental case against Montague's claim. Returning to the library book case, it seems that I do have a right to determine

25 Ibid.

how I fulfill my obligation to return the book. Others are not only obligated to refrain from interfering with my fulfillment of the obligation, but they possess a *prima facie* obligation to refrain from interfering with how I fulfill it. By mutual agreement with the library, I have several different options regarding how I fulfill my obligation to return the book. If someone prevents me from returning it in person and limits my options to the extent that I can only return the book by mail, then it is plausible to think that a right has somehow been violated, specifically, the right to autonomy.

Parental cases more strongly support this point, because of the weight of the parental interests involved. For example, consider the obligation I have to educate my child. While it is true that I do not have discretion regarding what counts as fulfilling this obligation, I do have discretion regarding how to fulfill it, based in part on my interests as a parent. That is, as long as my child is receiving an adequate education, I have discretion to send them to a public school, private school, or even educate them myself in the home, and I can base my choice on the interests, preferences, and desires I have as a parent, as long as my obligations to that child are being fulfilled.

The upshot is that characterizing such choices as mere permissions is unsatisfactory. Permissions can easily be revoked, whereas the conditions that must be satisfied for the overriding of a right are more stringent. In the context of the discretion parents possess regarding how to fulfill their obligations to their children, at least some of that discretionary territory should not be revoked unless overriding conditions (of considerable weight) obtain. Others are *prima facie* obligated to refrain from interfering in this type of parental decision in a way that the characterization of these obligations as mere permissions does not capture. Such decisions regarding the welfare of children are better characterized as parental rights.

Moreover, a feature of the parent-child relationship that is important to emphasize is that the interests and choices of parents as parents can be and often are in harmony with the interests of their children. Given this, the exercise of and an emphasis on parental rights can be compatible with a strong concern for the fulfillment of parental obligations on an interest-based account of rights. This is the case because it is desirable that there be a significant level of intimacy between parents and their children. Part of what it means to be in an intimate and loving relationship involving commitment and trust is that there is a mutual sharing of interests and concerns. If x is important to C, and if P is in an intimate personal relationship with C, then often x will become important to P because it is important to C. This mutual sharing of interests and concerns can be seen as a fundamental feature of any close interpersonal relationship, including the parent-child relationship. Moreover, it is in the interests of children to have a competent and loving parent guide and direct them in ways that significantly impact their lives. Given this, parental rights (the right to be in an intimate relationship with one's child and the right to try to impact that child's life in significant ways) are compatible with parental obligations. Additionally, the autonomy and interests of parents are worth protecting in and of themselves, in the following sense. In cases in which multiple means exist by which a parent can fulfill their obligations to their child, the rights in question are oriented towards the parent, and it is within their discretion to determine how to fulfill their obligations to their child. If two different means to fulfilling a particular obligation are available to a parent, and both involve the fulfillment of the obligation in question, then that parent

is free to choose the one which is more consistent with their values, more satisfying to them, provides more meaning to their life, and/or more strongly enhances their well-being. So the relevant set of interests is worth protecting, but not only because of the importance of the autonomy and interests of children. Parental choices related to the well-being of a child are not only important to the parent insofar as they are important to the child. This, then, is how an account of parental rights can be given in which the rights in question are oriented towards their possessors (parents) and retain a discretionary character, without usurping the fundamental status of the moral obligations parents have to their children.

In the next section, I offer an argument for the existence of parental rights that is grounded in the interests of parents and children alluded to above (the overall well-being of parents and children, the interest in an intimate parent-child relationship that both parents and children possess, and the meaning and satisfaction available within that relationship). The argument is consistent with much of the content of Montague's argument, insofar as: (i) I do not claim that parents have the right to impact, in a significant way, the course of their children's lives; and (ii) I do claim that the obligations parents have towards their children are the more fundamental feature of the parent-child relationship. The argument is opposed to Montague's view, however, because it claims that parents do have some *prima facie* rights, including, among other things, the right to try to influence the course of their children's lives, based on certain interests possessed by both parents and children. These rights are constrained in important ways by the obligations that parents possess *qua* parents, but they are not to be accounted for solely in terms of parental obligations and mere permissions.

A Fundamental Interests Argument in Favor of Parental Rights

In Indiana in June of 2001, Caleb Hope died at the hands of his biological father.[26] Caleb was born addicted to cocaine, an addiction he shared with his biological mother. Indiana laws related to the family have been criticized because they place too much weight on the rights of parents. In so doing, they often place too little weight on the interests and rights of children and so represent a quasi-absolutist view of parental rights. In Indiana, children are allowed to ride in the open bed of a pickup truck, and they are not required by law to wear bicycle helmets. But what is especially troubling is that it is arguably the case that by prioritizing parental rights, specifically the rights of biological parents, preventable deaths, such as that of Caleb Hope and others like him, are allowed to occur.

Caleb was cared for by foster parents Sean and Lisa Curran during the first four months of his life. The Currans helped Caleb overcome his addiction to cocaine. However, during a court-ordered stay with his biological father, David Drummond, Caleb died. Drummond's girlfriend, Sandra Shearer, killed Caleb when she slammed

26 From http://www.indystar.com/articles/9/006744-6669-009.html. Accessed 31 May 2004.

him into his crib. She was sentenced to twenty years in prison in a plea bargain. Drummond was sentenced to fifty years in prison for sexually abusing Caleb.

The Currans spent time with Drummond and Shearer, and reported the serious problems that they saw, but to no avail. They claim that child welfare workers wanted to give Drummond the benefit of the doubt, because he was Caleb's biological father. Drummond was resistant to suggestions regarding how he could be a better parent, and seemed more focused on controlling Caleb, according to the Currans. As I have previously argued, such a presumption in favor of biological parents is unjustified.

Cases like those of Caleb Hope move us to consider whether parents have any moral rights at all, or at least whether we should place more restrictions and conditions on the legal rights of parents. However, a proper understanding of the moral status of children does not entail that parents have no rights, *qua* parents. In what follows, I state and defend an argument in favor of a moderate view of parental rights (both moral and legal), which rests on the claim that certain fundamental interests of both parents and children ground the existence of such rights. The argument has intuitive plausibility, insofar as it makes use of several commonsense beliefs about the goods available in the parent-child relationship. My view is that this is a case in which commonsense is correct, and I seek to advance and defend a philosophical argument in favor of the claim that parents possess parental rights, *qua* parents.

I noted above that Montague is concerned that employing an interest conception of rights to accommodate parental rights will have the unhappy result of associating such rights with property rights. However, the following argument employs an interest conception of rights without embracing the morally problematic claim that parental rights are a form of property rights. The interest conception of rights that I employ below is different from that employed by Montague. It is an interest conception of rights in the sense that the function of the negative rights in question is to make possible the satisfaction of certain fundamental interests. However, choice also plays a crucial role, given that the rights in question also function to protect the freedom or autonomy of parents. So, in my view the interests spelled out below are primary and of fundamental importance, but a realm of choice must be protected so that parents can pursue and satisfy these interests, which enables certain interests of children to be satisfied as well.

Consider the following argument for parental rights:

(P1) Each fundamental interest that human beings possess generates a correlative *prima facie*[27] negative right.

(P2) Among the fundamental interests of human beings are psychological well-being, intimate relationships, and the freedom to pursue that which brings satisfaction and meaning to life.

27 Throughout the argument, *prima facie* is meant to communicate 'unless overriding conditions obtain', following the discussion of *prima facie* obligations in W.D. Ross, *The Right and the Good* (Cambridge: Oxford University Press, 1930). For more on *prima facie* rights, see Phillip Montague, 'Liberties and *Prima Facie* Rights', *Pacific Philosophical Quarterly* 68 (1987): 79–93.

Therefore,

(C1) The fundamental interests stated in (P2) generate correlative *prima facie* negative rights.

(P3) For each significant and distinct means of satisfying a fundamental interest, that interest generates a correlative *prima facie* negative right.

(P4) The parent-child relationship is a significant and distinct means by which the fundamental interests in (P2) may be satisfied, for both parents and children.

Therefore,

(C2) Parents, *qua* parents, have *prima facie* negative rights.

(P1) makes use of a fundamental interest conception of human rights.[28] A fundamental interest is something that is crucially important to human life. A human right, then, is a claim of assistance or non-interference with respect to something that is crucially important to human life. Such rights are grounded in the fact that humans have fundamental needs that make certain goods and freedoms important to our continued existence and well-being as human beings. Such goods and freedoms, then, constitute our fundamental interests. These interests are significant insofar as their satisfaction makes human life worth living.

Though the content of (P1) is limited to negative rights (rights of non-interference), I do not intend to rule out the possibility that fundamental interests can in fact generate positive rights to have those interests promoted. However, at present, I am only concerned with the negative rights that certain fundamental interests arguably generate. The general idea is that if I have a negative right, then some particular aspect of my well-being serves as a reason for holding others, including the state, to be under a *prima facie* duty of non-interference to me. One last point is worth noting. Whatever the relevant preconditions are for the possible satisfaction of the fundamental interest protected by a *prima facie* negative right R1, if I have R1 then that means that those preconditions *prima facie* should not be interfered with because I possess R1. If the preconditions required for the exercise of R1 are not protected in this way, then my possession of R1 is not in fact being respected.

Turning to possible justifications for (P1), it is the case that, regardless of the particular theoretical perspective one takes, a plausible argument in its favor can be made. That is, (P1) can be justified on consequentialist, deontological, and contractarian grounds. Consequentialists, deontologists, and social contractarians all have reasons, on their own theoretical terms, for accepting (P1).

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28 What follows draws upon the following analyses of an interest-based conception of human rights: James W. Nickel, *Making Sense of Human Rights* (Berkeley, CA: University of California Press, 1987); Susan Moller Okin, 'Liberty and Welfare: Some Issues in Human Rights Theory', in J. Roland Pennock and John Chapman (eds), *Human Rights: Nomos XXIII* (New York: New York University Press, 1981), pp. 230–256; and J. Raz, 'On the Nature of Rights', *Mind* 93 (1984): 194–214.

Consider first a consequentialist argument that can be made in favor of (P1). In recognizing the rights generated by our fundamental interests, the consequentialist will take into account the central role in maximizing the individual and social good that such recognition plays. Given that a fundamental interest is something that is vitally important to our well-being, the consequentialist has ample justification for (P1). On the individual level, it is clear that such interests are by definition important for maximizing the good in our individual lives. Moreover, in a society where the rights generated by our fundamental interests are not recognized, it is unlikely that social goods are being maximized, because of the contribution to social well-being made by the recognition and respect of such rights.

There are also deontological justifications available for (P1). A deontological intuitionist might simply argue that (P1) is a self-evident truth, though they will be hard-pressed to defend this assertion when those who disagree demand a more detailed argument in its favor, or fail to share the intuition in question.[29] A more detailed Kantian argument in favor of (P1) is available. Respect for persons is of course central to Kant's moral theory, and as expressed in the second formulation of the Categorical Imperative provides a Kantian justification for (P1). For the Kantian, it is a necessary condition of respect for persons that as such, persons should be treated as ends in themselves, and never as mere means.[30] Given that fundamental interests are by definition vitally important for human persons, for the Kantian it follows that such interests generate negative rights. This is because it is very difficult to see how respect for persons is obtained within a social system if those persons do not have at least a presumptive right to the protection of their fundamental interests.

Finally, consider a contractarian argument in favor of (P1). In the original position envisioned by Rawls, there is no knowledge of certain contingencies such as social status and natural talents and abilities. The parties in the original position are not only behind this veil of ignorance, but they are also rational. It is from a hypothetical initial situation of equality and rationality that Rawls argues we can derive a justification for certain principles of justice. The final version of the first principle of justice that those in the original position would agree upon is as follows: 'Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.'[31]

Now we are in a position to see how a contractarian case for (P1) can be made. From the original position, it is reasonable to set up social structures in such a way that the negative rights of human beings related to their fundamental interests are both recognized and respected. It is both reasonable and equitable to construct the basic social structures in such a way that they protect these interests. A society that did not accept (P1) would not be constructed from the original position, because

29 For a defense of ethical intuitionism against this and other objections, see Michael W. Austin, 'On the Alleged Irrationality of Ethical Intuitionism: Are Ethical Intuitions Epistemically Suspect?' *Southwest Philosophy Review* 19 (2003), pp. 205–213. See also Michael Huemer, *Ethical Intuitionism* (New York: Palgrave Macmillan, 2005).

30 See Immanuel Kant, *Grounding for the Metaphysics of Morals* (Indianapolis, IN: Hackett, 1993).

31 Rawls, p. 266.

if it were considered morally permissible to disregard these interests via the social structure, the level of individual and social welfare would be less than acceptable. The system advocated by the first principle of justice offered by Rawls, in which we each have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all should include (P1) in both theory and practice.

At this point I am not offering an argument regarding the actual content of the moral rights which exist based on our fundamental interests, but rather I am claiming that whatever these rights turn out to be, they can be justified on contractarian grounds. However, at this point it is not critically important to determine (in great detail) the content of our fundamental interests and the rights they generate. What is critical here is that (P1) can be reasoned to from the original position. That this is so seems quite plausible. Hence, there are contractarian, deontological, and consequentialist justifications available for the claim that each fundamental interest of human beings generates a correlative *prima facie* negative right. In what remains of my argument for parental rights, I will argue that the possible satisfaction of certain fundamental interests grounds the existence of such rights.

Turning to the argument's second premise, what reasons exist for thinking that psychological well-being, intimate relationships, and the liberty to pursue that which provides meaning and satisfaction in life are among our fundamental interests? First, I will assume that psychological well-being is one of the fundamental interests of human beings. That this is so is very difficult to deny. But what of intimate relationships and the ability to pursue meaningful and satisfying ends? Consider a right – the right to privacy – that is arguably based on these interests. James Rachels argues that the reason we value privacy is that it enables us to carry on different sorts of social relationships with others.[32] Our social relationships are defined in part by the amount of information about ourselves that we allow others to have. Part of what distinguishes our close friends from our mere acquaintances is the amount and level of knowledge of ourselves that we choose to make available. Some given fact about ourselves is someone else's business if a relationship exists between us and them that entitles them to know that fact. The reason we value privacy, then, is that it enables us to retain a level of control in our relationships and pursue deeper relationships with others of our own choosing. Both the control and the relationships themselves have value for us. The right to privacy is important, because it protects the special interest we have in retaining such control and pursuing and enjoying such relationships. The upshot for my present purposes is that if Rachels is correct that our valuing of privacy and the right to privacy itself rests on such reasons, we have further justification for believing that (P2) is true.

Moreover, observation and experience provide us with ample evidence that these goods are valuable to human beings. When people lack one or more of these goods, the result is often unhappiness and dissatisfaction with life. We know that a state of affairs in which these interests are not being satisfied is undesirable for human

32 See James Rachels, 'Why Privacy is Important', *Philosophy and Public Affairs* 4 (1975): 323–333.

beings. Moreover, we often do all that we can to obtain these goods, because we find them to be quite valuable.

Given that (C1) follows from (P1) and (P2), I will now turn to a consideration of (P3). The claim that each relevant fundamental interest generates a correlative *prima facie* negative right for each significant and distinct means of satisfying that interest is important because it protects individual liberty and promotes social diversity. If there are several significant and distinct morally permissible means by which a particular fundamental interest can be satisfied, then that interest generates a right to pursue such satisfaction via any of those means. The assumption here is that a state of affairs containing more liberty and diversity in our pursuit of the satisfaction of our fundamental interests is preferable to those states of affairs in which such liberty and diversity is unnecessarily limited. I will explain the relevance of this assumption for the existence of parental rights in my discussion of (P4).

First, though, consider that the United States Supreme Court has rightly observed that 'It is not the biological fact of parentage alone … but the existence of an actual or potential relationship that society recognizes as worthy of respect and protection.'[33] (P4) reflects this point of view in its claim that the fundamental interests alluded to in (P2) can be satisfied within the realm of the parent-child relationship.[34] It is not biology that is crucial here, but rather the character, both actual and potential, of the parent-child relationship. It is therefore important to consider how these interests can be satisfied from the perspective of both parents and children.

A child can enjoy the relational intimacy provided by her relationship with a parent, and it is arguably true that this sort of relationship does much to foster well-being in the child's life, both in the present and far into the future. If a child receives caring, intimate, and focused attention from a parent, this can aid the child in ultimately becoming an autonomous agent capable of pursuing and enjoying intimate relationships and psychological and emotional health, and in creating a plan to pursue ends which they find to be rational and worthwhile. The lack of such attention and care often has very detrimental effects on the development and life prospects of a child. Additionally, children need guidance and direction as they grow, due to their lack of development. Moreover, children need guidance so that

33 *Lehr v Robertson,* 463 U.S. 248, 259–262 (1983).

34 Many philosophers have alluded to the well-being of children, the intimacy of the family, and the meaning available via the parent-child relationship as possible reasons for thinking that family life is valuable, should remain private, and/or that parents should be given some level of autonomy. For examples of this, see John Bigelow, et al., 'Parental Autonomy', *Journal of Applied Philosophy* 5 (1988): 183–196; Jeffrey Blustein, 'Child Rearing and Family Interests', in Onora O'Neill and William Ruddick (eds), *Having Children*: *Philosophical Reflections on Parenthood* (New York: Oxford University Press, 1979), pp. 115–122; Edgar Page, 'Parental Rights', *Journal of Applied Philosophy* 1 (1984): 187–203; and Ferdinand Schoeman, 'Rights of Children, Rights of Parents, and the Moral Basis of the Family', *Ethics* 91 (1980): 6–19. My argument is distinct from these insofar as I: (i) develop and defend an extended argument for the moral rights of parents; (ii) provide a more detailed explanation with respect to why these things are valuable; (iii) discuss how these goods obtain within family life; and (iv) locate this understanding of parental rights within a stewardship view of parenthood.

they have an initial framework from which to view the world and can make progress in formulating a view of the good life.

Parents also have fundamental interests that can be satisfied in the parent-child relationship. It is clear that a parent can derive much meaning and life satisfaction from the activity of parenting, offering guidance, knowledge, and care to a child. A parent can make a significant and unique contribution to a child by helping the child to experience meaning and satisfaction in life, psychological well-being, and relational intimacy. Making such a contribution can in turn give the parent a sense of well-being and of satisfaction and meaning in life. This feature of parenthood makes it a uniquely valuable activity. Of course, no guarantee exists that a parent will have such an impact on their child's life, and a parent does not have a right to do so in whatever way they see fit. However, they do have the right to try to have an impact on their child's life while respecting the autonomy of the child. This is important because autonomy is among the fundamental interests of every human person. The parental activity of attempting to have an impact on one's child is itself a source of meaning in the life of a parent. This aspect of parenting highlights the value to parents of the choices they make regarding how they fulfill their obligations to their children.

The character development that a parent often undergoes in seeking to be a good parent is also important. Parenting facilitates the moral development of parents in numerous ways, and this moral development can bring satisfaction and meaning to those who value it. Becoming less self-centered and more centered on the needs of one's child can be a fulfilling, though sometimes difficult, experience. A parent also can deeply enjoy the relational intimacy that is possible in the parent-child relationship. To love, know, understand, and appreciate one's child is a deeply satisfying and meaningful experience. As the child grows, to be known and loved by that child is deeply satisfying as well. All of this is evidence, then, that there is great potential within the parent-child relationship for certain fundamental interests of both parents and children to be satisfied.

A precondition for the satisfaction of the interests stated in (P2) via the parent-child relationship is that in order to make such satisfaction possible, a significant realm of that relationship must be *prima facie* free from intrusion. In order to see why this is the case, consider this claim from the parental point of view. If the state is in control of how an individual parents their child to an absolute or even somewhat significant extent, then that parent may become nothing more than a mediator of the will of the state in the life of the child. If this is the case, then a major factor that makes parenthood so meaningful and satisfying will be eliminated. If a parent is often playing the role of a mere mediator of the will of the state in the life of their child, then the satisfaction that comes from making a unique and personal contribution which potentially has a significant impact on the life of that child is no longer attainable. This is analogous to a situation in which an employee's boss is overbearing and always looking over their shoulder, correcting their mistakes, and essentially doing their work for them. The employee is not receiving satisfaction from their work, because *they* are not really doing the job they were hired to do. The same point is true with respect to a parent who is a mere mediator of the will of the state, because *they* are not making as significant a personal contribution to the well-being

of their child as they might otherwise be able to do, and so are not able to achieve some of the goods that more autonomous parenting makes possible. Finally, if there is not a realm of parental autonomy, this also threatens the intimacy of the parent-child relationship. The unnecessary intrusion of the state into that relationship is a potential threat to intimacy, just as any intrusion potentially threatens the intimacy of any interpersonal relationship. There are certainly cases in which this is warranted, such as instances of abuse, but in these types of cases there is no longer a genuine intimacy present to be threatened, given that abuse blocks relational intimacy. The upshot is that if there is no *prima facie* freedom from intrusion, then the state is no longer allowing parents to obtain the satisfaction of certain fundamental interests via the significant and distinct means of the parent-child relationship.

From the child's point of view, a similar point with respect to intimacy is relevant. That is, if no greater good exists which justifies intrusion by the state, then such intrusion is objectionable because it is a potential barrier to relational intimacy with the parent from the child's perspective. Additionally, if the state is overly intrusive and limits parental autonomy to a significant degree, the child no longer looks to the parent for guidance, but to agents of the state, who are in effect providing that guidance. This is not always objectionable, but it seems that the interests of all are better served by giving presumptive autonomy to parents so that both parents and children can benefit from the goods found in and produced by the parent-child relationship. If children do need parental guidance and individual parental attention based on an intimate knowledge of their preferences and dispositions, and if included among the fundamental interests of parents and children are the intimacy, meaning, and satisfaction that the parent-child relationship may yield, then the state has an interest in refraining from interfering in that relationship until overriding conditions (for example physical or emotional abuse or neglect) obtain.

A final point to be raised regarding (P4) is that it could be argued that as long as the satisfaction of the cluster of fundamental interests referred to in (P2) – psychological well-being, intimate relationships, and the freedom to pursue that which brings satisfaction and meaning to life – can be pursued via some avenue, the state need not allow for its pursuit via many different avenues. The line of argument here would be that as long as these interests can be satisfied via friendship or romantic relationships, then the state can justifiably restrict their satisfaction via the parent-child relationship. The aforementioned point regarding the preferability of states of affairs with more liberty and social diversity is relevant here. It seems preferable to allow for the pursuit of these interests via many different avenues, including the parent-child relationship. Additionally, the previous discussion of (P4) supports the claim that the parent-child relationship is a significant and distinct means of satisfying these fundamental interests. Given this, the pursuit of the fundamental interests of (P2) via the parent-child relationship is worth protecting in and of itself. It is true that many people do not wish to pursue these interests via parenthood. However, it is also true that many people would be deeply dissatisfied if the state merely allowed friendships and romantic relationships, but not parent-child relationships, because they either prefer pursuing the relevant fundamental interests via the parent-child relationship, or at least want to pursue these interests via many different means, including the parent-child relationship.

The argument's second and final conclusion is that parents have *prima facie* negative rights. This means that others are under a *prima facie* obligation to refrain from interfering in the parent-child relationship. This obligation is not merely to allow for an intimate personal relationship to exist between parent and child. It also includes allowing the parent to try to have a significant impact on the course of that child's life, limited by the developing autonomy and well-being of that child, as well as the autonomy and well-being of the adult that the child will become. The moral rights of parents are *prima facie* because overriding conditions (such as abuse or neglect) may obtain, which nullify these rights. When this occurs, others are justified in interfering in the parent-child relationship.

Before examining some possible objections to this argument, I will note some of its strengths. First, it takes into account the interests of parents, children, and society as a whole, rather than excluding the interests of any of these groups. Second, it respects the rights that children possess, but not to the extent that parents have no rights, *qua* parents. Third, it gives a theoretical basis for recognizing that both the mother and father initially have an equal interest that generates parental rights for both of them, given that both can experience intimacy, meaning, and satisfaction with their child. Fourth, it is flexible insofar as it can account for the changing authority parents have over their children. As a child matures, gains knowledge, develops morally, and becomes more autonomous, the relationship between the parent and child changes. Given that the above argument takes into account the character of the parent-child relationship, it can account for the changing level of parental authority in attempting to guide and direct the choices of children. The character of an intimate relationship between a parent and their pre-schooler is of course very different from the character of an intimate relationship between a parent and their teenager. This change in the relationship also effects how a parent ought to seek to influence and guide their child. These facets of the parent-child relationship are accounted for by my argument for parental rights, which I take to be a feature that counts in its favor.

However, there are several objections that can be raised against the argument. One objection worth noting is the claim that rights are somehow incompatible with interpersonal relationships.[35] Rights stress separateness and conflict, whereas relationships are constituted by unity and harmony. Given that I have offered an argument for parental rights based in part on the intimacy possible in the parent-child relationship, if this objection is correct then my argument is deeply flawed. However, a focus on the rights possessed by children and the rights of parents that I have argued for are neither incompatible with intimacy nor necessarily damaging to interpersonal relationships. On the contrary, if a relationship is intimate and a source of meaning and satisfaction, it would include a mutual respect for the rights and obligations possessed by the parties in that relationship. If one party in a relationship does not respect the other's autonomy or bodily integrity, then there are deep problems in that relationship. In such relationships, we usually do not engage in high-level debates about what rights and obligations are present. Moreover, the

35 See Brennan and Noggle, 'The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice'. See also Iris Marion Young, 'Rights to Intimacy in a Complex Society', *Journal of Social Philosophy* 14 (1983): 47–52.

parties may be motivated at one level by affection and care to respect each other's rights and fulfill the obligations that exist in the relationship. I believe that this is because there is a mutual and often unspoken understanding that respect for persons, which includes an appreciation of the rights and obligations that are required for such respect to obtain, is a necessary ingredient in any functional and meaningful personal relationship. Often when there is a failure in a relationship regarding the respect of rights or fulfillment of obligations, this leads to conflict that must be resolved for harmony to be restored to the relationship. Hence, this objection fails.

Another possible objection is that the rights in question are not really *parental* rights, but merely rights that all human beings have which can be expressed within the parent-child relationship. This is true insofar as the interests that we have with respect to intimate relationships and in seeking to have a positive influence in the lives of others can be satisfied outside of the parent-child relationship. However, if a parent fulfills the obligations that are peculiar to them as a parent, they then have a right to try to impact their children as their parent, and this is a right that others do not possess. Additionally, parenting is a significant and unique avenue by which many pursue intimacy, love, and having a positive impact on the lives of others. In view of this, the rights in question are parental, insofar as they extend to the particular sphere of the parent-child relationship, and often arise in ways that are unique to that relationship.

David Archard raises several other points that can be construed as objections to my argument.[36] He notes that the parent-child relationship is different from other intimate relationships in the following ways: (i) in intimate relationships, both persons have rights of choice; (ii) we choose our friends and lovers, but not our parents; and (iii) protecting intimate relationships via privacy is done in order to allow for the disclosure of personal information, yet this sort of sharing is not what privacy for parents protects. The upshot is that the notion of privacy should not be used to protect the parent-child relationship from intrusion by others.

With respect to (i), Archard describes the parent-child relationship as a relationship between an independent superior and a dependent subordinate. If the parent-child relationship is intimate in the same way as other relationships (for example lovers and friends) are, then children should be able to opt out of the relationship, which they cannot. However, at least in the case of young children, the capacity for choice is limited or non-existent, and so to require that young children be able to opt out of the relationship in order for privacy to come into play is a mistake. Additionally, older children can legally divorce their parents, and so the freedom to opt out is available to those minors who autonomously decide to do so.

A second difference between the parent-child relationship and other intimate relationships is that we choose our friends and lovers, but not our parents. This is true in the case of biological parents and in some cases of adoption, but it is not clear what follows from this. It seems that we can grant this difference without being forced to abandon privacy as a means of protecting the goods available in the parent-child relationship.

36 See Archard, *Children: Rights and Childhood*.

Finally, Archard explains (iii) by noting that the sorts of activities which parents engage in – caring for kids, disciplining them, educating them, comforting them – are not essentially about parents revealing information about themselves and so are not the sorts of relational activities that privacy should protect. On this point, Archard is simply mistaken. How a parent cares for a child, the reasons for disciplining a child and the form that discipline takes, the type of education and the value placed on education generally, as well as the comfort a parent gives his child all do essentially involve that parent revealing information about himself. For example, when a child is emotionally troubled by something, the parent, in an effort to comfort that child, may share deeply personal stories from their own experiences, empathizing with what the child has gone through and perhaps sharing what helped the parent to deal with that experience, all in the hope of developing intimacy with the child and helping that child mature and cope. Such communication certainly involves a parent revealing the sort of information about themself that we generally think is protected by the right to privacy.

The final objection I will consider is that on the argument, if intimacy is severely lacking within a family, then the parents do not possess rights with respect to their children. It is certainly true that a state of affairs where intimacy is lacking exists in many families. This, then, leaves the door open for the state to remove children from homes in which meaningful intimacy does not obtain. One might find this to be too intrusive, or raise pragmatic concerns about the evaluation and monitoring of meaningful intimacy within a family. Ferdinand Schoeman argues that any state effort to gauge whether or not such intimacy exists within a parent-child relationship would involve intrusions into that relationship which, if practiced, would have the result of changing the nature and possibility of such relationships. He argues that the state is not capable of investigating souls, and that even if it could, the required intervention would damage the very relationships that the state would be trying to protect as well as force it to engage in too much social control regarding how people find meaning in life.[37]

There is certainly some merit in the foregoing response. However, I believe that some sort of intervention by the state is possible which protects the well-being of children and society, maintains a sufficient level of state neutrality with respect to what constitutes a good life, and does not have the effect of destroying the parent-child relationship in general. I see no problem in principle with the suspension or termination of parental rights in a particular range of cases where meaningful intimacy does not obtain. Certainly allowances must be made for the normal ups and downs that relationships endure and the seasons that they go through. Additionally, where the opportunity for meaningful intimacy is present, room must be given for such intimacy to come into being. Many people lack the requisite knowledge and/or skills for forming such relationships, and so in some cases, it may be appropriate to mandate counseling and engage in close monitoring of family life, and this could be done in a way that enhances family intimacy, rather than preventing it.

37 See Schoeman, 'Rights of Children, Rights of Parents, and the Moral Basis of the Family'.

The other difficulty, noted above by Schoeman, is that the liberal state must seek to maintain a certain level of neutrality with respect to how people find meaning in life, including the ways this occurs in family life. In order to do this, it seems wise for the state to focus on pathological relationships that have bad consequences for individuals and society. So in cases where there is physical abuse, when a threshold of verbal or emotional abuse is crossed, or there exists a consistent pattern of failing to pursue a relationship with the child and further her interests, mandated counseling and the suspension or termination of parental rights is justified. In these extreme sorts of cases, the resulting damage done in the lives of children, parents, and society at large warrants such intervention. Given the results in the lives of parents and children and the impact on societal well-being of alienation in the family, we have sufficient motivation and justification to explore the possibility of procedures aimed at fostering intimacy within families, and suspending or terminating parental rights in extreme cases where such intimacy does not obtain.

In conclusion, I take it that the argument has survived the objections considered above, and so is a plausible account of the justification of parental rights. At this point it is important to note that this argument reflects a stewardship conception of parental rights. Recall that a steward is someone who has been entrusted with something of great value that does not, strictly speaking, belong to them. A steward must care well for that which has been entrusted to them, because of the value that it possesses. Given this, it might seem strange to claim that parental rights fit within the concept of stewardship. However, consider that a steward need not disregard their own interests when carrying out their stewardship responsibilities. Moreover, a steward's interests can come into play regarding how they carry out their stewardship obligations, as long as they are fulfilling those obligations in an adequate way. However, the more valuable the entity over which they are a steward, the more sacrifices they may justifiably be called upon to make. A steward should be willing to sacrifice more in order to care for a piece of artwork than they would be willing to sacrifice in order to care for their neighbor's lawn, because of the higher value of the former compared to the latter.

Stewardship with respect to parenthood includes the realization that parents ultimately transfer stewardship of the lives of their children over to those children. Ideally, this transfer will be a gradual process, such that as the child matures, the parent will grant more and more autonomy to that child, appropriate to their abilities and stage of development. A parent holds a child's life in trust, and ultimately transfers the care of that life to the adult that the child becomes. The above argument does not represent a strong parent-centered view of the parent-child relationship, and assesses the interests of parents in light of the interests of their children. The argument also reflects a stewardship view of parenthood because it incorporates the interests and rights of children and parents while emphasizing the value and moral status of children.

In many ways, parental stewardship is similar to environmental stewardship. An environmental steward realizes the intrinsic value and worth of the environment, as well as its value for current and future generations. They allow the intrinsic and instrumental value of the environment to influence their decisions that have a potential impact on the environment. They can allow their interests to come into play

when making such decisions, but those interests do not always win the day, because they are assessed in light of the value of the environment and the relevant interests of others. Similarly, steward-parents realize that children have intrinsic value, and that they will have an impact on others in their communities and on future generations. Steward-parents can allow their interests to come into play when making decisions that will impact their children's lives, but in making those decisions they will assess their interests as parents in light of the value and interests of their children, as well as the interests of both others in their communities and future generations. In the next section, I examine the implications of the stewardship view of parental rights for certain family and public policy issues, and consider how these implications impact the credibility of the view.

Family Life, Public Policy, and the Implications of the Stewardship View

A point in favor of the stewardship view is that it can account for cases in which we believe parental rights ought to be suspended or even terminated, and yet allows parents to have a limited realm of autonomy as parents. This is so because the view makes use of the interests of both parents and children in its justification of parental rights. In what follows, I examine several issues related to public policy and the moral dimensions of the family, including parental licensing, child abuse, children divorcing their parents, the religious upbringing of children, education, and medical decision making, and then consider what implications the stewardship view has for these issues.

Parental licensing

In February of 2004, Joseph Dowler was sentenced in Boulder Colorado District Court to 60 years in prison for child abuse leading to the death of his infant son, Tanner Dowler.[38] In his nine weeks of life, Tanner suffered horrific injuries: eleven broken ribs, fractures in every limb, and oxygen deprivation that led to severe brain damage. The judge in the case noted that all of these injuries could have been produced by shaking, but the second-degree burns that Tanner suffered on the soles of his feet could only be the result of torture. At the sentencing hearing, Boulder District Attorney Mary Keenan read a statement from Tanner's perspective, saying 'I will never get my first tooth, sit up alone, crawl, or take my first step. I will never get to learn that neglect and rejection and fear and pain are not the way other people live their lives.'

This case is but one example of the terrible treatment that children receive from people who are not qualified to be parents. A recent study performed by the US Department of Health and Human Services estimated that 1,400 children died during 2002 because of abuse or neglect.[39] In 79 percent of these cases, one

38 From http://www.dailycamera.com/bdc/lafayette_news/article/0,1713,BDC_2425_2643088,00.html. Accessed 18 May 2004.

39 From http://nccanch.acf.hhs.gov/pubs/factsheets/fatality.cfm. Accessed 26 October 2005.

or both of the perpetrators were the child's parents. What can be done to prevent fatal cases of abuse and neglect from occurring? What can be done to prevent child abuse and neglect in general? One answer that has been proposed and defended by contemporary philosophers is that the state should legally require people to obtain a parenting license before they are allowed to raise a child.[40] A program of parental licensing would be aimed at preventing unqualified people from having custody of a child, with the ultimate aim of preventing the suffering and death inflicted on children by incompetent parents. The parental licensing proposal is not a challenge to the existence of parental rights *per se*, but instead imposes limits on who has such rights, making these rights conditional rather than absolute. Requiring licenses for parents is controversial in part because the limits proposed with respect to who can raise children would be more stringent than those currently in force for biological parents.

Proposals for licensing parents can be placed into two categories, relative to the standards prospective parents must meet in order to be licensed by the state. The *weak standard* for parental licensing is aimed at those parents who would likely abuse or neglect their children. The weak standard is designed to prohibit those individuals who would be very bad parents from raising children. *Strong standards* for parental licensing are intended to go further than the weak standard, insofar as the intent of those who favor stronger standards is not merely to prevent those who would be very bad parents from raising and harming children, but rather to pick out those individuals who would be good (or good enough) parents.

In what follows, I first summarize the argument in favor of the weak standard for parental licensing. Next, I describe the viewpoints of those who advocate a strong standard. The position I defend is that we have good reasons to reject the weak and strong standards for parental licensing, but also good reasons to move beyond the status quo with respect to our protection of children.

Hugh LaFollette's defense of the claim that the state should license parents is arguably the most influential and widely discussed version of the philosophical argument in favor of licensing parents. As we shall see, LaFollette advocates a weak standard for parental licenses. LaFollette argues that if an activity is potentially harmful to others and requires a certain level of competence that can be demonstrated via a reliable test, then it should be regulated by the state. For example, we require that physicians obtain medical licenses from the state to ensure their competency due to the potential harm caused by medical malpractice. In order to drive an automobile, a level of skill must be demonstrated because of the potential harm to others that can be done by incompetent drivers. Critical to this argument in favor of licensing parents is that (as with other activities for which we require licenses) parenting is potentially harmful and requires competence that can be demonstrated via a reliable test.

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40 See Hugh LaFollette, 'Licensing Parents', *Philosophy and Public Affairs* 9 (1980): 182–197; William B. Irvine, *The Politics of Parenting* (Saint Paul, MN: Paragon House, 2003); and Peg Tittle, *Should Parents Be Licensed?* (Amherst, NY: Prometheus Books, 2004). See also Jack Westman, *Licensing Parents* (Cambridge, MA: Perseus Publishing, 1994).

Parents can harm their children through abuse, neglect, and lack of love. This often results in physical and psychological damage. In turn, children who suffer in these ways may become adults who are neither well-adjusted nor happy, which can lead to cyclical patterns of abuse. It is also true that many people lack the competency required to parent children in an adequate way, due to factors such as an unsuitable temperament, a lack of knowledge or energy, and psychological/emotional instability. If the state required parental licenses, then those who lack the competency required to be a parent and would therefore be likely to harm their children in serious ways would be prevented from doing so. Those who fail to obtain a parental license and yet bear a child would face having that child removed from the home and given to qualified adoptive parents. Alternatively, LaFollette suggests that 'a system of tax incentives for licensed parents, and protective services scrutiny of nonlicensed parents, might adequately protect children.'[41] If so, LaFollette would endorse these less drastic measures. However, if these measures were not sufficiently effective, LaFollette argues that children should be removed from the custody of unlicensed parents.

If we deny that parental licensing is justified, then, by parity of reasoning, we have no justification for requiring physicians or automobile drivers to be licensed, given that we have licensing for doctors and drivers because the relevant actions are potentially harmful and require a level of demonstrable competence. Moreover, we screen adoptive parents, and require that they demonstrate a level of competence before they are allowed to adopt a child. There is no compelling reason not to require the same of biological parents. And it is important to point out that, on reflection, we think that requiring some sort of screening for potential adoptive parents is a good thing, because it reduces the chance that adopted children will be neglected or abused. LaFollette concludes that since a state program for licensing parents is desirable, justifiable, and feasible, we should implement such a program.

LaFollette places an important limitation on the scope of the requirements for obtaining a parenting license. In order to understand this limitation, it will help to consider an objection that LaFollette himself responds to, namely, that we can neither efficiently nor justly implement a program of parental licensing because there may not be, or we may not be able to discover, an adequate set of criteria for determining whether or not someone is a good (or good enough) parent. LaFollette admits that there is much about child development and adult psychology that we do not know, but then points out that his argument does not require that we formulate a set of criteria that enables us to pick out good parents. As LaFollette puts it, his proposal 'does not demand that we license only the best parents; rather it is designed to exclude only the very bad ones.'[42] This is a critical distinction that is often overlooked. Very bad parents are those parents who would likely abuse or neglect their children. Clearly someone who beats or neglects a child is inadequate as that child's parent. Given that this is the criterion advocated by LaFollette, his proposal can be understood as advancing a weak standard for parental licensing. The aim of the weak standard is not to pick out good parents who satisfy numerous criteria, but rather to filter out those

41 LaFollette, 'Licensing Parents', p. 195.

42 Ibid., p. 190.

who would be very bad parents. The intent is to prevent serious harm to children, as well as the harms others suffer because of the social impact of child abuse.[43]

Those who advocate *strong standards* for parental licenses argue that more stringent requirements should be satisfied by those who wish to be parents. The intent of those who favor such standards is not merely to prevent those who would be very bad parents from raising and harming children. Rather, it is to pick out those individuals who would be good (or good enough) parents.

Those who advocate instituting strong standards for parental licensing offer numerous criteria that prospective parents would have to satisfy. For example, William Irvine suggests that parents should at least be able to provide food, clothing, and shelter to their children. But, he quickly adds that we should also 'take into account the cost of providing a child with educational and recreational opportunities, and maybe even the cost of providing him with postsecondary job training or a college education.'[44] Irvine also advocates a test for prospective parents that covers nutrition, non-violent techniques of discipline, dealing with and preventing common childhood diseases, and infant first aid. Edgar Chasteen has suggested that the number of children present in a particular family should be a criterion of parental fitness, because with too many children, the ability to care for them diminishes.[45] Peg Tittle raises the possibility that prospective parents might also be screened for intent, given that there are morally dubious reasons for having children, such as carrying on the family name, having someone to take care of you in old age, proving that you are able to do so, or to stabilize a relationship.[46] Still others propose that the completion of a high school education should be a necessary requirement for individuals to receive a parenting license.[47] The primary justification for the strong view is that by adopting such standards we ensure the well-being of children, perhaps motivated by the belief that children have a right to the best possible upbringing.

However, this list of stronger standards, or any subset of it, is problematic. First, I argued in Chapter 2 that there are counterexamples to the claim that parenthood is grounded solely in whether or not it is in a child's best interests to be raised by a particular parent. Those same counterexamples also undermine the notion that because children have a right to the best possible upbringing, we should institute a strong form of parental licensing. A second problem with the strong version of

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43 It is important to note that this would prevent other harms as well, such as the harms that abused and neglected children often inflict upon others, and the burdens that they place on society. For more on this, see Westman, *Licensing Parents*.

44 Irvine, *The Politics of Parenting*, p. 151. Irvine's argument is that some sort of licensing for parents is needed, not that these factors are required components of a licensing program. However, these further suggestions are represented as possibilities worth considering, and in this section I offer reasons to reject them.

45 See Edgar R. Chasteen, *The Case for Compulsory Birth Control* (Englewood Cliffs, NJ: Prentice Hall, 1971), p. 209.

46 See Tittle, p. 12. See also Carl Wood and Ann Westmore, *Test-Tube Conception* (London: George Allen and Unwin, 1984), pp. 3–4; and Lynda Beck Fenwick, *Private Choices, Public Consequences* (New York: Penguin Putnam, 1998), p. 25.

47 See Katherine Covell and R. Brian Howe, 'A Policy of Parent Licensing', in Tittle, p. 87.

parental licensing is that there is too much about child development and adult psychology that we do not know. Given this, we cannot make fine distinctions between those parents that are good enough, and those that are not. This is why LaFollette proposes designing parental licensing so that only the very bad parents are excluded. We do not have, and likely will not ever have, the knowledge required to draw a sharp line between adequate and inadequate parents.

As I argued above, the parent-child relationship is a significant and distinct means by which certain interests can be satisfied, for both parents and children. Among our most important interests as human beings are psychological well-being, involvement in intimate relationships, and the freedom to pursue that which brings satisfaction and meaning to our lives. Given these interests and their relevance to the parent-child relationship, there are certain implications for parental licensing. There are strong reasons for thinking that parental liberty is in many ways similar to religious liberty. Given this, we should reject the strong standards for parental licensing. In order to see that this is the case, consider the role that religious belief (or the lack thereof) plays within the lives of human beings. Such belief often shapes our self-concept and our understanding of reality, including our view of morality and what it is that constitutes a good life. Many religious believers see their faith as a central part of their identity and of their conception of the good life for human beings. Parenthood often shapes an individual's perspective regarding these issues as well. It changes one's self-concept, insofar as being a parent becomes a central part of one's identity. Additionally, becoming a parent can change one's view of what is important and desirable in life. What previously seemed to be a crucial ingredient for living a good life often loses some of its luster. Upon becoming a parent, the responsibilities in the parent-child relationship become highly important, just as the responsibilities advocated by a particular religion are elevated in significance in the mind and life of the person who becomes a religious believer.

The similarities between parental freedom and religious freedom have an important implication for parental licensing: they show that the weak standards for parental licensing are preferable to the strong standards. In the case of religious freedom, the state generally gives wide latitude to its citizens, in part because religious faith is so central to the lives of so many people. The state has a compelling interest to intervene, however, when religious practice results in a level of harm to others that warrants limiting religious freedom. However, to warrant such intervention, the harm must be considerable, because of the centrality and significance of the interests in play related to religious faith and practice. Similar considerations apply in the case of parenthood. Those who advocate some sort of licensing for parents do so at least in part because of the harm that is done to children by parental abuse and neglect, and share the belief that the freedom of parents should be limited when its exercise perpetrates harm upon children. The disagreement, as we have seen, concerns the level of harm (real or potential) that must exist before denying licenses to prospective parents is warranted. Given the centrality and significance of the parental interests in play, the state is justified in intervening only when the harm rises to the level of abuse or neglect. This is the case because the more central a given activity or relationship is to our identity, self-concept, and view of the good life, the greater the amount of (potential) harm that the state should be willing to tolerate.

The foregoing points do not entail that parents have absolute rights. Just as we should and do limit religious practices that cause bodily harm to others or lead to child abuse and neglect, so should we limit parenting practices that do the same, which is the aim of parental licensing proposals that employ the weak standard. The purpose of the weak standard is to filter out those who would be very bad parents. Those who would neglect or abuse their children very likely would not see parenthood as being an important part of their identity or derive much meaning and satisfaction from it. Those who do take being a parent to be a central part of their identity and find meaning, love, and satisfaction within the parent-child relationship would likely not be denied the opportunity to be parents under the weak standard.

However, this is not the case under the strong standards for parental licensing. That is, under the strong standards, many individuals who take being a parent to be a central part of their identity and would not abuse or neglect their children would be denied the opportunity to be parents. For example, consider the proposal that parents must have completed their secondary education in order to be licensed. This is problematic for many reasons. First, it is certainly the case that many people who have failed to complete their secondary education have not only been adequate parents, but exemplary. To deny such individuals the opportunity to have and raise children is wrong. Moreover, adopting this strong standard for parental licensing would likely produce much harm in the lives of children and their parents. And this harm would not be offset by the harms that would be prevented by only allowing parents who have completed their secondary education to raise children. These same points apply to other proposed strong standards for parental licensing that aim for something other than the prevention of abuse and neglect.

One final reason against adopting the strong standards of parental licensing is that employing such standards would constitute the state imposing particular values upon its citizens in areas in which the government should remain neutral (or at least in which it should not penalize those citizens who do not share those particular values). There is wide agreement that abuse and neglect of children are wrong, and such treatment of children clearly violates their rights to bodily integrity and to (at least) a minimally decent upbringing. Such agreement does not exist with respect to the values reflected in the strong standards, such as requiring parents to provide recreational opportunities, postsecondary job training, or a college education for their children. These are certainly quite *good* things for parents to do, but it does not follow that the state should *compel* those who want to be parents to provide such opportunities for their children. Finally, it should be pointed out that it is all too easy to place the blame on parents who fail to provide these opportunities to their children, when often the primary reason that they are unable to do so is the existence of social and economic barriers that lie outside of their control.

I have argued that the weak standard version of parental licensing is preferable to the strong standard view, but a problem arises for the former. By parity of reasoning, if we should adopt the weak standard rather than stronger standards because of the similarities between parenthood and religious faith and practice, then this has the implication that we should require licenses for people to be able to practice a particular religion in order to ensure that they do not abuse or significantly harm others via their religious practice. Requiring religious licenses is problematic, but

if such licenses were designed to prohibit people who likely would commit harms against others that are serious enough, then the above argument does have the implication that such licensing is appropriate.

For some, this implication may be sufficient for rejecting the weak standard for parental licensing. However, it may be the case that the continual and long-term proximity of parents to their children as well as the widespread incidence of abuse and neglect may distinguish parenthood from religious faith and practice, such that licensing is justified in the case of parents but not in the case of religious practitioners.

Another related problem for LaFollette's argument in favor of a weak standard is that there are many activities that involve potential harm, require a certain level of competence, and are susceptible to a satisfactory test for competence for which we rightly do not require licenses. For example, there is potential harm and a necessary competence required in a marriage relationship, but no license is required for this (insofar as marriage licenses do not require any demonstrated marital competence). It is clear that harm occurs in the context of many marriage relationships, both to the individuals in that relationship as well as to society at large. LaFollette's argument would seemingly support requiring those who intend to get married to demonstrate the relational and psychological competence required to successfully navigate the marriage relationship. Other activities that involve potential harm and require a certain level of demonstrable competence for which we do not have licensing procedures include engaging in a sexual relationship, applying chemicals such as pesticides and herbicides, and engaging in certain athletic endeavors.

LaFollette can accept that we should license people who apply dangerous chemicals. Additionally, he might accept the licensing of athletes who engage in activities that involve potential harm and require a level of demonstrable competence. But what about marriage and sexual relationships? These activities pose a problem for his view. Requiring prospective marriage partners to demonstrate a certain level of relational and emotional competence is too intrusive. This is also true for sexual relationships in general, insofar as requiring someone to demonstrate psychological competence or the ability to use birth control properly before allowing them to engage in a sexual relationship is too intrusive. The justification for not accepting licensing for marriages and sexual relationships is that these activities and relationships are somehow central to who we are, how we conceive of ourselves, and our views about what is valuable for human existence. It is precisely these features that also apply to both religious freedom and parental freedom, and which therefore count against LaFollette's argument for licensing parents.

The important question for the proponent of parental licensing is this: must *every* activity that is potentially a cause of serious harm and that requires some sort of demonstrable competence be licensed? If not, then why require licensing for parenthood, but not marital and sexual relationships? If so, then it seems that the pro-licensing argument proves too much.

The most persuasive component of LaFollette's argument in favor of the weak standard for licensing parents is the inconsistency that exists in requiring screening for adoptive parents but not biological ones. However, we can resolve this inconsistency without resorting to parental licensing, because a different solution

to the problems of child abuse and neglect exists that safeguards the well-being of children and sufficiently takes into account the interests of parents. This possibility is also less likely to have the effect of denying parental rights to those who are in fact qualified to be parents.

Tests similar to those described by LaFollette could be formulated and then implemented that are narrowly focused on predicting parental incompetence, looking for factors that point to a tendency toward abuse or neglect as a way of determining who would likely be a bad parent. For those who fail this test, close monitoring of the well-being of the child and of the general character of the family would be justified. Additionally, in these types of situations, psychological and family counseling should be mandated by law, so that parents who fall under this category have the opportunity to deal with their liabilities as parents, as well as demonstrate in good faith that they value the well-being of their children. If such parents fail to undergo counseling, or fail to deal with their liabilities in a satisfactory manner, or the level of risk to the child is serious enough, then removal of the child from their custody would be justified.

Legally mandated family monitoring and counseling is preferable to a program of licensing parents because it does a better job of taking into account the interests people have in becoming and being parents and continues to place a high theoretical and practical value on the protection, interests, and well-being of children. A program of monitoring and counseling also better avoids the possible injustices that may occur given the fallibility of any test aimed at predicting human behavior, and would give some parents who are predicted to fail a chance to succeed and prove the prediction wrong. This is important in part because many people who would seemingly be incompetent parents do rise to the occasion once they have the actual responsibility of raising a child. When such people see the child that they have created and begin to experience emotional bonding with the child and a sense of responsibility for that child's well-being, though they otherwise would not rise to the occasion, they now find it within themselves to do so. This class of prospective parents would be ruled out by both the weak and strong licensing proposals, which in my estimation is a serious liability of both. People can change, and it is better to give them the opportunity to do so under close supervision, monitoring, and counseling, allowing them to be with their children when they are young and so much bonding occurs. Such a practice would protect the interests of children, society, and parents. For those parents whose incompetence is severe or who fail to deal with their incompetence in a satisfactory manner, the monitoring/counseling proposal rightly prevents them from raising children.

In view of the above, my claim is that legally mandated family monitoring and counseling shares the most important theoretical and practical strengths of parental licensing, while avoiding many of its problems.[48] Hence, such monitoring and counseling is preferable to parental licensing.

It must be emphasized that our current policies in the United States of America related to family life are unacceptable. These policies are inconsistent with the

48 For more on some possible forms of monitoring, see Archard, 'Child Abuse: Parental Rights and the Interests of the Child', and Archard, *Children: Rights and Childhood*.

value that we claim to place on the well-being of children, and they allow too much suffering in the lives of children and parents, as the case of Tanner Dowler makes plain. A *laissez-faire* approach with respect to who is allowed to raise children that allows so much suffering to occur is unjust. As a solution, when such measures are appropriate, we should engage in close family monitoring and legally mandated family counseling.

Child abuse

Common sense and public policy recognize that the physical abuse of a child can constitute grounds for the termination of parental rights. The stewardship view reflected in the fundamental interests argument justifies such termination by virtue of the fact that the relevant interests are no longer being satisfied in such a situation. There is no longer a significant level of relational intimacy and psychological well-being, but rather turmoil, suffering, and emotional distance within the parent-child relationship. The abusive parent is no longer deriving satisfaction from having a positive impact on the child's life, nor is he enjoying any genuine relational intimacy with his child due to his abusive behavior. From the child's perspective, the problem of a lack of intimacy is also present, because insofar as the child undergoes physical and emotional suffering at the hands of the parent, such relational intimacy does not obtain. Moreover, the behavior of the parent is actually psychologically damaging to the child, and has the potential to threaten the child's well-being far into the future. Given that the goods that justify parental rights are no longer being instantiated in situations of child abuse, there exists a compelling reason for the state to intervene.

Whether a particular situation calls for the suspension or termination of parental rights will depend on: (i) the extent of the damage done to the child; (ii) the extent of the damage done to the parent-child relationship; and (iii) the potential for re-establishing an intimate and satisfying parent-child relationship. The occurrence of (i) or (ii) or the non-occurrence of (iii) can be sufficient for the termination or suspension of parental rights. For example, some parents receive a certain sort of satisfaction from an abusive relationship in which only the child is conscious of being harmed, by virtue of the power and control they are able to exert over the child. In such cases we are justified in claiming that the satisfaction of the parent is somehow pathological, and so does not carry moral weight in determining whether or not parental rights ought to be terminated. Moreover, that the child is being seriously harmed is a sufficient reason for terminating parental rights. The upshot, then, with respect to the stewardship view of parental rights is that it can justify the existence, suspension, and termination of such rights, which is a feature that lends it some added credibility.

Children divorcing parents

The stewardship view of parental rights that I have argued for in this chapter does allow for and can in fact support children divorcing their parents in cases where it is warranted. This type of action would be warranted when abuse or serious neglect has occurred, be it physical or emotional. However, given the centrality of the interests

at stake for both parents and children, an effort at family monitoring and counseling should be made prior to moving forward with this type of divorce proceeding. If the child's parents are unwilling to do this, or if it is determined that there is no significant potential for a solution to the difficulties present in the parent-child relationship to be solved, then I would argue that this type of divorce is justified, given the past failure to satisfy the interests in the parent-child relationship and the future unlikelihood that this will occur. In a family in which the fundamental interests – physical and psychological well-being, intimacy, and meaning in life – have not been and likely will not be satisfied, we owe it to our children to give them a better context in which to develop.

Consider a specific case that is relevant to this discussion. In 1992, the case of Gregory Kingsley received national attention. Gregory, who was twelve at the time, sought a divorce from his parents, and was ultimately successful. It is obviously preferable to avoid creating the need for such divorces to occur. While we can grant that Gregory Kingsley's parents were not providing him with adequate care, meeting neither his emotional nor his physical needs, we must also see that other contributing factors, if properly dealt with, could have kept this family together, and surely would help keep many other families intact.[49] Gregory's mother Rachel had taken responsibility for him, but failed to provide him with an adequate level of care. At times she was trying to raise three children on a $2.15 per hour wage. As Rachel stated, the state would pay $1,200 per month for foster care for her children. Perhaps if the state would have paid Rachel Kingsley $1,200 each month, she would have been better able to provide for her children's needs, both material and emotional. Imagine the stress and anxiety that permeated her life, and that permeates the lives of many parents in her situation. Such parents are not only trying to raise their children, but are in material need and so are unable to meet the material needs of their children. Being in this type of situation can make meeting the emotional needs of children much more difficult as well. Purdy claims that if we truly value keeping families together, then we must come up with more effective measures, such as more extensive and better funded social work programs, mandatory counseling, and parenting classes. Such measures place a high value on the welfare of parents and children, and by making possible the satisfaction of the interests of parents and children that I have emphasized in this chapter, these measures would help eliminate the factors that lead to children having good reasons for seeking a divorce from their parents.

The religious upbringing of children

In order to evaluate whether or not there exists a parental right to raise children within a particular religious framework, and to determine the implications of the stewardship view with respect to this issue, consider two parents, Dan and Melissa, who want to raise their six-year-old daughter Kate within a particular religious framework. Dan and Melissa want to teach Kate the main tenets of their faith, send

49 See Laura M. Purdy, 'Divorce, 90s Style', *The World and I* (September 1994): 364–375.

her to Sunday School, and give her other experiences in and out of the home designed to foster religious faith in Kate's life. Do Dan and Melissa have the right to do this?

In order to answer this question, consider first a court case in which parents attempted to shield their children from beliefs present in elementary school readers which they found morally repugnant and opposed to their own religious views. Vicki Frost, one of the plaintiffs in *Mozert v Hawkins County Public Schools* (827 F.2d 1058, 1987), said that she was upset by the content of the readers used by the school to teach her sixth grade daughter reading and critical thinking, because they discussed points of view and topics she found to be opposed to her own religious beliefs, including mental telepathy, evolution, and false views of death.

LaFollette argues that in such cases parents do not have the right to determine the religious beliefs of their children, when in so doing the rights of those children are violated.[50] The main idea is that when parental indoctrination harms the adult that the child will become, the state has a compelling interest to intervene. LaFollette's view is that in certain cases, the state's interest in having an informed citizenry and the child's right to future autonomy can override the right of parents to shield their children from opposing views of reality.

Presumably, these parents want their children to make this particular religious faith their own. Their failure to expose their children to perspectives that diverge from their faith is a barrier to this. If these parents think that their religious beliefs are reasonable, true, and/or valuable, then they should be open to allowing critical reflection upon those beliefs. Not allowing this does a disservice to the children involved in this case. If a child is not encouraged to engage in at least some level of such critical analysis, their interests as a rational agent, and as a human being, are not being served. However, it is not clear that children who are in elementary school should be exposed to materials that their parents strongly object to, because such children may not yet be able to engage in the level of critical analysis required in such a situation. That is, it may be in the child's best interest not to expose them to such material, allowing them time to develop intellectually and emotionally. Once such development has occurred it becomes highly problematic for parents to continue to shield their children from certain materials, for reasons such as those given by LaFollette.[51]

What about parents who do not attempt to shield their children from opposing views, but merely educate their children about their own perspective? On the view of parental rights I have defended in this chapter, there is justification for the claim that Dan and Melissa do have the right to educate and seek to influence Kate with respect to religious belief and practice. This sort of education and influence can help foster intimacy between Dan, Melissa, and Kate. Additionally, Kate has an interest in understanding and ultimately having the opportunity to share her parents' views

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50 See Hugh LaFollette, 'Freedom of Religion and Children', in Rosalind Ekman Ladd (ed.), *Children's Rights Re-Visioned* (Belmont, CA: Wadsworth, 1996), pp. 159–169.

51 The case in question is a borderline case, given the age of the children involved, and the actual content of the readers objected to by the parents. In my view, it is not objectionable for sixth graders to be exposed to such material, even if it stands in opposition to the viewpoints of their parents, whereas this is more problematic for children at earlier stages of development.

about the world, if she so chooses. If the religious outlook of Dan and Melissa is central to their view of a good life, it would be odd for them not to attempt to educate and influence Kate in this way. Dan and Melissa also have interests in play, that is, their welfare could in part depend on being free to raise Kate within their particular religion. Given the centrality of their religious faith to their own conception of what it is that constitutes a good life, and the harmful effects of state intervention regarding this decision on the fundamental interests of Dan, Melissa, and Kate, there exists a *prima facie* right to raise Kate within a particular religious framework.

However, it is not the case that any manner of religious upbringing is permissible. This is because, as LaFollette alludes to, Kate has other interests in play here as well. Dan and Melissa do not have the right to indoctrinate Kate. They do not have the right to influence her toward their religion in a way that fails to respect her autonomy.[52] Under certain conditions, Kate's interest in developing her capacity for being an autonomous and rational human being will outweigh the interests of her parents. If Dan and Melissa were members of a religious cult that employed tactics of brainwashing, or encouraged activities that were clearly harmful to children (such as using hallucinogenic drugs), then Kate's interests would outweigh those of her parents and state intervention on her behalf would be justified. Moreover, given that the use of such tactics for influencing children blocks parent-child intimacy and threatens the autonomy and overall well-being of children, the factors employed by the above argument to justify parental rights would no longer be present. Hence, it is an implication of the stewardship view that parental rights can be suspended or terminated in these sorts of cases where serious harm has occurred. A failure to respect autonomy may not warrant the termination of parental rights, depending on how detrimental it is to the child and the parent-child relationship. However, if a threshold of severity is crossed, then it is in principle consistent with the stewardship view of parental rights that suspension or termination of those rights is warranted.

What about other types of values education that may occur within families? Is there some relevant difference between religious beliefs and non-religious political or moral beliefs? There are differences regarding these classes of beliefs. For example, it is clear that it is immoral to cause others to suffer solely for one's own entertainment. It is also clear that totalitarian regimes do not promote individual and social well-being as effectively as representative democracies. It is sometimes less clear, however, whether religion A is more conducive to human well-being than religion B. Such differences, however, are not crucial to the points raised here related to the religious upbringing of children. Parents have interests relative to trying to influence their children towards their religious, political, and moral beliefs, and children have an interest in communicating on these topics with their parents. However, the well-being and autonomy of the children involved are important

52 For more on this and other issues related to the religious upbringing of children and autonomy, see Kenneth Henley, 'The Authority to Educate', in O'Neill and Ruddick, pp. 254–264; Peter Hobson, 'Some Reflections on Parents' Rights in the Upbringing of their Children', *Journal of Philosophy of Education* 18 (1984): 63–74; and T.H. McClaughlin, 'Parental Rights and the Religious Upbringing of Children', *Journal of Philosophy of Education* 18 (1984): 75–84.

constraints here. Whether a particular belief is religious, political, or ethical, a parent does not have the right to try to inculcate that belief within their children in a way that fails to respect their autonomy.

Finally, I take it that the stewardship view's handling of this issue also counts in its favor. It is a virtue of the view that it leads to a conclusion consistent with what we already generally recognize, namely, that some forms of religious upbringing are morally permissible, and some are not.

Education

When considering the question of the education of children, numerous interests are relevant. The state has an interest in its citizens being well-informed, children have interests in acquiring knowledge and skills that prepare them for living and working as adults in society, and parents have an interest in their children's education.

What implications does the stewardship view of parental rights have regarding education? The view includes the claim that psychological well-being and the liberty to pursue that which brings satisfaction and meaning to life are fundamental interests for human beings. Obviously education bears very strongly on these interests, and so it is important that children receive an adequate education that contributes to their satisfaction. The form and extent of education will vary by culture, but the claim here is that parents do not have the right to prevent their children from being educated, unless more crucial fundamental interests require children to forgo an education. This might be the case in an agrarian culture, for example, where the labor of the child is required for the survival of the family. Even in these situations, however, the child is learning important life skills and acquiring knowledge that contributes to the child's ability to live and work in such a society.

Parents, then, do not have the right to withhold an education from their children, nor do they have the right to limit their children's education in a way that unduly limits the child's present and future autonomy. This is because forming a view of the good life and pursuing it requires certain analytical and critical skills as well as a level of background knowledge about such issues. It also contributes to the autonomous and rational pursuit of a meaningful life if one is aware of many options, and is thereby able to consider which has the most appeal.

Education can also contribute to children being able to form and maintain intimate relationships with others. Additionally, education can contribute positively to the parent-child relationship, insofar as it can foster intimacy between parent and child, as the child learns and grows and acquires more ability to interact and communicate with the parent. This is especially true if the parent takes an active role in the child's education.

Finally, with the above in mind, there are good reasons for compulsory education. Given the benefits that can accrue to parents, children, and society as a whole, in those cases in which parents do not want their children to be educated, the interests of the state and of the child are stronger, and hence the autonomy of such parents is justifiably limited. However, this does not mean that the state is justified in prohibiting parental choice with respect to education. What the state can do, and has an interest in doing, is ensuring that whatever education parents choose for their

children is adequate to further the relevant interests of that child. Parents have an interest in the particular form of their child's education, and this interest is important and generates some parental freedom in this context, constrained by the interests of the child in receiving an adequate education.[53]

Medical decision-making

The stewardship view of parental rights that I am advocating has several implications for medical decision-making. Ideally, the interests of parents and children will coincide, given the intimacy that should be present in the family and hence the mutuality of interests. However, this is not always the case, and so we need some sort of procedure by which to adjudicate difficult cases. When making medical decisions in the case of children, the interests of the parent, of the child, and of society must all be taken into account.

My account of parental rights does not have the implication that parents possess unlimited autonomy over medical decisions regarding their children. Hence, it would reject a standard such as the following: 'When death is not a likely consequence of exercising a medical care choice there is no justification for governmental intrusion on family privacy; nor is there justification for overcoming the presumption of either parental autonomy or the autonomy of emancipated children.'[54]

My view of parental rights allows for a different standard than this, and rightly so. The weight of all of the relevant interests in any given case must be taken into account, and so it is clear that in cases where the long term health and life of the child (both psychological and physical) is in play, the scales tilt towards the child, based on the significance of the interests that are at stake. The state, in its role of *parens patriae*, can legitimately intervene on behalf of children in such cases. And the courts have intervened in cases where the illness or injury in question is of a life-threatening nature but for one reason or another the parents have declined treatment. Otherwise, the state has been more reluctant to engage in such intervention. However, society's interest in healthy children is apparently leading to a greater willingness to intervene in less drastic cases.[55]

There are cases in which society has a clear and compelling reason for intervening in medical decisions. For instance, there is justification for the state to instantiate a quarantine, force treatment against parental wishes, and require compulsory immunizations, given the state's interest in preventing the spread of dangerous infectious diseases. In less drastic cases, however, the level of justifiable state interference is not so clear. Ferdinand Schoeman points out that the principles of the liberal state of individual welfare and preventing harm to others are valid, yet they

53 For more on the interests and liberties of the state, parents, and children with respect to education, see Henley, 'The Authority to Educate'.

54 Joseph Goldstein, 'Medical Care for the Child at Risk: On State Supervention of Parental Autonomy', in Willard Gaylin and Ruth Macklin (eds), *Who Speaks for the Child: The Problems of Proxy Consent* (New York: Plenum Press, 1982), pp. 178–179.

55 See Edwin N. Forman and Rosalind Ekman Ladd, 'Making Decisions—Whose Choice?' in Ladd, pp. 175–183.

are not exhaustive when it comes to what carries moral weight in the family.[56] Other factors are important here as well, namely, those related to the welfare and overall character of the family unit. In view of this, the standard proposed for intervention regarding medical decision-making by parents on behalf of their children by Schoeman is as follows: if the decision would not, from most perspectives, seem shockingly negligent or grossly inept, then it should be respected. Such a standard will largely but not exclusively depend on social practices, according to Schoeman.

While his concern for the well-being of the parent-child relationship and the broader welfare of the family unit is laudable, it seems that the threshold Schoeman sets for state intervention is in certain cases too high, while in other cases it is too low. Schoeman's standard is arguably too high, because there are cases other than those which can be classified as grossly inept or shockingly negligent in which state intervention in medical treatment decisions is justified. For example, consider Jason, an eight-year-old who is obese, though not to the point that it poses an immediate threat to his health, and it is possible that it will not have extremely adverse effects over the course of his life. *Perhaps* Jason will die at eighty years of age due to a cause unrelated to his lifelong obesity. Jason's obesity is not due to some genetic or other medical cause, but rather to the failure of his parents to adequately monitor his diet and encourage good eating habits. While many people would find this to be negligent or inept parenting, it is less clear that the majority would find it shockingly or grossly so. However, putting Jason on a healthy diet, and requiring that both he and his parents consult with a nutritionist is arguably a justifiable course of action, given the threats of obesity to long-term health and well-being. On Schoeman's standard, such a course of action is likely not justifiable. I contend that this is a problem for Schoeman's standard.

Alternatively, Schoeman's standard is too low in other cases, due to his reliance on whatever prevalent social practices are in existence. He has at least left the door open in principle to the existence of justified state non-intervention in cases of morally objectionable practices. A useful example is the case of female genital mutilation. In certain cultures, the majority may see this as not only a morally permissible practice, but in fact one that is morally obligatory. However, it seems that the state does have a compelling interest to intervene and prevent practices such as this. Schoeman would likely agree that female genital mutilation is shockingly negligent and so merits the intervention of the state. However, a shortcoming of his argument is that he is not clear with respect to the level of negligence or ineptitude which must be reached in order for intervention to be justified. Social practices are of course important when considering this, but it is useful to point out that they must be limited by a concern for the long-term health and well-being of the child and, as Schoeman points out, her family. In the case of female genital mutilation, the adults that these children will become certainly have an interest in pursuing and enjoying meaningful sexual relationships, which this practice undermines. So, in a case like this, when the values of the family dictate a medical procedure that is clearly in conflict with the well-

56 See Schoeman, 'Rights of Children, Rights of Parents, and the Moral Basis of the Family'.

being of the child, the child's well-being should trump the desires of the family unit. In such cases, the parents are failing as stewards of their children.

But what of cases in which the religious beliefs of parents motivate them to deny medical treatment to their children, thereby placing them at risk for loss of health and/or life? In a recent case in Duval County, Florida, Deliah Floyd and Doward Carter were ordered to allow their premature baby to receive blood transfusions.[57] Floyd and Carter are both Jehovah's Witnesses, a religion that opposes blood transfusions. Medical staff testified that the baby, born three months early and weighing less than two pounds, would die or suffer a life-threatening injury without the transfusions. President of the American Civil Liberties Union of Greater Jacksonville Ken Hurley stated that: 'Parents don't have the right to make decisions that may cause significant harm, especially if the child doesn't have decision-making capabilities.'

Consistent with Hurley's statement, the stewardship view of parental rights allows for some parental discretion based on religious beliefs regarding the medical treatment of children, but not when the long-term health or life of a child is at stake. While I have argued that parents and children have fundamental interests that are best served by a *prima facie* freedom from intrusion by the state, I also maintain that the interests of continued life and long-term health are more fundamental than those employed by my argument, in the sense that one cannot pursue psychological well-being, intimate relationships, and a meaningful life if one is either seriously ill or dead.[58] Hence, in view of these interests of children, the state does have a compelling interest to intervene and offer its protection, even if the religiously-based choices of parents must be thwarted in order to accomplish this.[59] This will be difficult for many to accept, because of the tradition of religious tolerance and freedom that is central to the ideals of many. However, given that one of our most fundamental interests is continued existence, a child's interest in receiving lifesaving medical treatment trumps the religious interests of their parents.

Finally, the hope for a more precise standard designed to determine when state intervention in medical decision-making is justified, while desirable, may not be attainable. Perhaps our current method is in fact the best that is available to us: take into account the current and future well-being of the child, the interests of parents, and the principles of protection and individual welfare valued in the liberal state and apply these on a case by case basis. What is important for and counts in favor of the stewardship view of parental rights that I have argued for in this chapter is that it allows for all of these interests to be considered in cases of medical decision-making, so that the interests of neither parents, nor their children, nor the state automatically carry the most weight.

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57 From *The Florida Times-Union*, at http://www.jacksonville.com/tu-online/stories/051204/met_ 15584 099.shtml. Accessed 12 May 2004.

58 The structure of rights I employ here is similar to that employed by Henry Shue, *Basic Rights* (Princeton, NJ: Princeton University Press, 1996).

59 See Lynn Pasquerella, 'Protecting Faith Versus Protecting Futures: Religious Freedom and Parental Rights in Medical Decision Making for Children', in Uma Narayan and Julia J. Bartkowiak (eds), *Having and Raising Children* (University Park, PN: The Pennsylvania State University Press, 1999), pp. 177–191.

Conclusion

I have argued that certain fundamental interests of parents and children generate a limited set of *prima facie* parental rights, and that this argument reflects and supports a stewardship view of parental rights. This view of parental rights depends on the intimacy, meaning, and other goods that can be attained via the parent-child relationship. Since: (i) certain fundamental interests of both parents and children can be satisfied within the parent-child relationship; and (ii) a level of non-interference is required in order for the satisfaction of these interests to obtain, it follows that others have *prima facie* obligations to refrain from interfering in that relationship.

Finally, in this and the previous chapters, I have claimed that parental obligations are the more fundamental feature of the parent-child relationship, and that parental rights rest (in part) on the obligations parents possess. This is consistent with the claim that from a moral perspective, parental obligations are prior to parental rights.[60] This does not mean that parents cannot take their own interests into account when making decisions that will impact their children, but merely that in so doing parents must also engage in a satisfactory performance of their parental duties. Parents who are concerned with fulfilling their obligations to their children, though, will of course often place their children's interests above their own, out of love for their children. The nature of the obligations that parents possess will be the focus of the final chapter.

60 See Jeffrey Blustein, *Parents and Children* (New York: Oxford University Press, 1982), pp. 113–114.

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Chapter 5

Stewardship and Parental Obligations

What obligations do parents possess, as stewards of their children? In this chapter, I consider this question, and examine the nature and content of both the legal and moral obligations of parents. One objection that ought to be addressed prior to a consideration of the obligations of parents to their children is that a consideration of parental obligations is a misguided activity that fails to take into account what is primarily important in such relationships: affection, intimacy, and love. Perhaps to consider and analyze possible parental obligations is to moralize excessively regarding a realm of human existence better characterized in other ways.[1]

However, when we speak of parental obligations, we can do so within a framework of affection, intimacy, and love. We can conceive of fulfilling our obligations to our children as a natural expression of our love and affection for them. When obligations are conceived of in this way, affection, intimacy, and love are actually promoted, rather than denigrated. Moreover, when a parent proclaims affection for a child, that proclamation is empty apart from genuine attempts to fulfill certain obligations, to seek to do what seems to the parent to be good for the child. One can conceive of the creation of a relational environment of affection, intimacy, and love as an obligation parents possess. While it may seem problematic to conceive of love as an obligation, I think that this is plausible, at least in the parent-child relationship, because while loving another in the emotional sense may not be under our direct control, we can indirectly control whether or not we love someone in this way. Moreover, I conceive of love as not merely an emotional state, but as a selfless giving in our actions towards others. And this sort of love is under our direct control. Additionally, many everyday choices made by parents are moral choices. Should I read the newspaper when I get home from work, or talk to my child about what their day at school was like? Should I take a job that requires one week of traveling per month, or opt for one that pays less but allows me more time at home with my children? Should I spend hundreds of dollars on presents for my child during the holidays, or take some of that time and volunteer at a soup kitchen with them? To which school should I send my child? What are my obligations regarding the development of my child? A good parent wants to have an intimate and loving relationship with their child. However, in addition to this, a good parent also wants to do other things that are good for their child. If we want to have a positive impact on our children, then it is crucial that we consider the obligations we have as parents to our children.

It is a fact that parents will impact their kids. In response to the above objection, it is incumbent upon parents to seek to have a positive impact on their children. In

1 This objection is also considered by Jeffrey Blustein, *Parents and Children* (New York: Oxford University Press, 1982), pp. 103–104, who offers a different response.

order to do this, considering particular obligations parents have to their children is certainly a worthwhile undertaking. There is also a pragmatic reason for looking at parenthood through the lens of moral obligation. As children grow and mature, often they will ask themselves whether and to what extent their parents fulfilled their obligations. If a child believes that serious failures occurred, this can of course be a hindrance to intimacy, affection, and love. Children hold their parents to certain moral standards and evaluate them in light of those standards. Parents as well may reflect on their successes and failures in fulfilling their obligations to their children. The answers they come to can have a significant impact on the life-satisfaction of such parents, given the centrality of parenthood in the lives of so many people. For at least these reasons, considering the nature of parental obligations is a valuable exercise.

The Legal Obligations of Parents

In this section, I offer what I take to be a set of legal obligations that parents ought to be required to fulfill. These are also moral obligations, but what sets them apart is that they are the sorts of moral obligations that ought to be encoded into the law.

First, it will be useful to elaborate on the theoretical framework that I employ. The notion of fundamental interests is useful in determining what it is that parents owe their children. Just as particular fundamental interests of both parents and children generate parental rights, which in turn generate obligations for others to respect those rights, the fundamental interests that children possess serve to generate the obligations that parents have to their children. By employing the concept of a fundamental interest as something crucial to human well-being and examining what it is that is crucial to the well-being of children, we are able to determine the content of the obligations parents possess, as stewards, to their children.

The obligation of parents to provide certain material needs to their children is the least controversial type of parental obligation. Having these needs met is crucial to human well-being, and so receiving basic care is included among the fundamental interests of children. Certain things are required for human life, such as food, shelter, clothing, physical safety, and basic medical care. Of course, not all parents are able to provide these things for their children. This is sometimes the case due to a personal failing of the parent. Other influences more outside of the control of parents also hinder their ability to meet these obligations. There are sometimes political, social, and economic hindrances and even barriers that prevent some parents from providing for their children in this manner. So, on a case-by-case basis, the level of blameworthiness of a parent who is falling short in this area will certainly differ. Some may be unable to obtain or keep a job, and their immediate obligation might be to obtain the requisite professional training or psychological counseling so that they are in a position to be gainfully employed. A parent in such a situation who refuses to change is seriously failing in his or her obligations as a parent. A parent who is making a good faith effort to provide for their children but due to political, social, and economic hindrances is unable to do so is certainly much less blameworthy, and

possibly not blameworthy at all. Rather, those who are responsible for the presence of these hindrances bear the moral responsibility.

One objection to this first parental obligation has to do with whether or not the obligation to provide the material necessities of life is a distinctively parental obligation. That is, one might think that as human beings we have the obligation to help ensure that other human beings have the material necessities of life.[2] I share this belief, but I do not think that it must count against the claim that parents have these obligations. The idea is that it is, in the first instance, the obligation of a parent to provide for the safety and material needs of their child. When a parent either refuses or is unable to fulfill this obligation, then it is incumbent upon others to step in and provide the necessary aid. That we all possess the obligation to act to help meet the material needs of other humans does not count against the claim that parents possess such an obligation *qua* parents. In fact, I take the parental case to be a special case in which this obligation is stronger, by virtue of the relationship that exists between the parent and the child. So parents possess this obligation in the first instance, and to a greater degree, than others. Hence, this obligation can be construed as a special parental obligation.

Just as parents should be legally obligated to provide for the basic material needs of their children, they should also have the legal obligation to refrain from abusing and neglecting their children, both physically and emotionally. Children need a physically and emotionally secure environment in which to grow and develop. This is crucial for their well-being, and so parents should be under a legal obligation to provide this type of environment. Children desire and need this, and they need an intimate relationship with a loving adult. Parents who neglect to provide these goods should be held legally responsible, unless they undergo family counseling and monitoring in order to remedy the situation. This obligation is not only a moral obligation, but should be a legal one as well, given the consequences in the lives of children and society generally when there is a serious lack of security and meaningful intimacy within the family.

It is also plausible to think that providing an education for one's child should be a legal obligation of parents. Failure to do so can be conceived of as a particular form of neglect of one's child, given the crucial role that education plays in our life prospects and overall well-being.

Should parents be held legally responsible for the crimes of their children? In 2000, within six days of each other, Denise and Martin Kirkland and Mary Landin were arraigned in court, charged with failing to send their children to school, as required by law in Michigan. The Kirkland's three children (ages 12 to 15) and Landin's second-grader were absent from school on numerous occasions during 1999–2000. In the state of Michigan, the law requires that children between the ages of six and sixteen regularly attend school or be home-schooled. If this does not occur, parents can receive a sentence from two to ninety days in county jail. While a discussion of the problem with parents usually solves the problem, this is not always the case. When that fails, prosecutors have the option to bring charges against the

2 See Peter Singer, 'Famine, Affluence, and Morality', *Philosophy and Public Affairs* 1 (1972): 229–243.

parents of truant children. Ottawa County Assistant Prosecutor Kent Engle states that the goal is to get children in school, rather than punishing parents, 'We don't want to put people in jail, but it's obviously a problem and we need to get kids in school.'[3] However, if jailing parents is required to accomplish this goal, then many prosecutors are willing to do so. Is it morally permissible to punish parents for the truancy of their children, as occurs in Michigan and other states with similar laws?

First, it is important to point out that while it may be customary to blame parents for the delinquency and crimes of their children, this is not always justified.[4] Other factors are present which can contribute to this type of behavior by children, such as genetics, societal attitudes, and poverty. Genetics certainly contribute to one's behavior, personality, and psychological make-up, and both poverty and societal attitudes can have highly detrimental effects on children, leading to delinquent behavior in spite of good genes and good parents.

Additionally, a tension arises when we consider that we generally believe that parents are morally responsible to some extent for the behavior of their children, and yet we also believe that it is morally impermissible to punish the innocent. The belief that people should not be punished for the crimes of others is both widespread and quite plausible. Can we harmonize our beliefs about the responsibility of parents for their children and the moral impermissibility of punishing the innocent?

One possible response to this question in defense of punishing parents in truancy cases is that sometimes these parents are not, strictly speaking, innocent. Parents are sometimes culpable for the legal offenses of their children. In some cases, parents should arguably be held responsible in the way that a negligent business owner should be held morally and legally responsible for the harm they cause. For example, if a business owner knows that there is a good chance that the physical conditions of their store are unsafe, they have a moral and legal responsibility to bring those conditions up to an acceptable level. Perhaps they know that a certain stack of shelving is unstable, and a customer is injured when the shelves collapse. When this occurs, the storeowner can and should be punished for their negligent behavior. Similarly, a parent who fails to get their second-grader to school without good reason is arguably negligent, and therefore a fine or short imprisonment on the grounds of parental neglect is arguably morally permissible. Such a practice at least does not violate the principle that it is wrong to punish the innocent.[5]

Yet punishing parents for the truancy of their teenage children is another matter. If a teenager is missing school on a consistent basis, how can a parent stop this? A parent may employ reasoning, discipline, and psychological counseling, but ultimately teenagers have a developing autonomy and can do what they wish, despite a parent's best efforts. Recall that the stated goal of jailing the parents of

3 From http://www.hollandsentinel.com/stories/040500/new_truancy.html.

4 See Judith T. Younger, 'Responsible Parents and Good Children', *Law and Inequality* 14 (1996): 489–520.

5 David Archard also argues that we can reasonably attribute responsibility to parents for harms that their children cause, if those harms are a result of failings by the parents. Archard also points out that it need not follow that we should punish such parents, however. See his *Children, Family, and the State* (Burlington, VT: Ashgate, 2003), p. 102.

truant children is to get those children in school, rather than punishing parents. But prosecutors put parents in jail if that is what it takes to get their children to attend classes. This sort of practice violates the principle of the moral impermissibility of punishing the innocent, if the parents in question have not been negligent. Punishing non-negligent parents in order to force their children to go to school is morally impermissible, because it involves punishing an innocent person in order to deter another person from committing a crime. Legally punishing parents to deter their children from some act is unjust, and hence it should not be practiced.

The Moral Obligations of Parents

What do we owe our children, morally speaking? I believe that the central moral aim of parenthood should be the present and future well-being of children, and that the best way to capture the moral dimension of the parent-child relationship is to employ the concept of stewardship. I now turn to a discussion of why I favor well-being as the central goal of parenthood, and then locate that goal within the concept of stewardship.

The primary moral obligation of parents to their children is to raise them in such a way that they have sufficient opportunity to experience significant well-being over the course of their lives. It is not within the power of parents to guarantee well-being to their children, because so much that impacts the well-being of children and the adults they become is beyond parental control. However, parents should have the interests of their children in mind and weigh those interests heavily when they are making decisions that will impact the current and future well-being of those children. Moreover, parents have the power to give their children experiences, education, and relationships that tend to produce and enhance well-being, and they ought to do so. This is what it means to give one's child a sufficient opportunity to experience significant well-being over the course of their life.

There are of course many different theories of well-being.[6] Mental state theories claim that well-being is constituted by having the relevant mental states. Preference theories maintain that well-being consists in having one's preferences satisfied, or perhaps the preferences one would have if rational and fully informed. Lastly, objective theories of well-being claim that one's well-being can increase, even if one does not have the relevant mental states, or have a particular preference that is satisfied. An objectivist about well-being might argue that a life with more friendship (or knowledge, or wealth) has more well-being, regardless of an increase in the quantity or quality of one's pleasant mental states, and irrespective of one's particular preferences with respect to friendship (or knowledge, or wealth).

It is not my intent to defend a particular theory of well-being, in part because this is unnecessary for my present purposes. In what follows I offer and explain a set of the moral obligations of parents that can be seen as both means to and components

6 See Roger Crisp and Brad Hooker (eds), *Well-being and Morality* (New York: Oxford University Press, 2000); and Shelly Kagan, 'The Limits of Well-Being', in Ellen Paul, Fred Miller, and Jeffrey Paul (eds), *The Good Life and the Human Good* (New York: Cambridge University Press, 1992), pp. 169–189.

of well-being. Substantively, it seems to me that any plausible theory of human well-being would include the components I discuss below, regardless of the other implications or claims of the theory in question.

Before turning to a discussion of the concept of stewardship as it relates to parental obligations, some clarification is in order. The set of obligations I discuss are intended to be parental obligations, but they also can be seen as elements of and means to well-being. For example, I will argue below that there is a *prima facie* parental obligation to be honest with children, but it is also the case that a good life is generally an honest life. In fulfilling their obligations to their children, parents are not only giving their children the chance to live a good life, characterized by well-being, but they are also modeling what such a life might look like.

I favor well-being as the central aim of parenthood for several reasons. First, the moral status of children and the adults that they will become supports this claim. Given the worth of children and the adults they become, we should aim for our children to experience well-being over the course of their lives. We should want them to flourish. Most parents want this for their children. Second, I believe that well-being is a preferable goal to its primary competitor, namely, freedom. William Irvine argues that the (or at least a) criterion for judging the success of steward-parents is how free their children are upon reaching adulthood.[7] One reason Irvine alludes to in support of this view is that freedom is intrinsically valuable – it would be hard to fault parents who spend considerable time and effort at increasing the freedom their child will have at the age of majority. Freedom is also the primary goal of steward-parents because it transmits respect for persons. Moreover, it is value-neutral, insofar as people who hold quite different values can agree on the value of freedom. Lastly, in seeking to transmit values, parents must understand that there is a risk of brainwashing their children, and so undermining their freedom.

One objection to Irvine's view is that we do not and should not value freedom as the primary goal of parenthood, because freedom is too value-neutral. We do not want our children to make immoral, unwise, or irrational choices. Irvine is immune to this objection however, because he is only concerned with the fully rational person, and notes that the only time an individual would want less freedom is if she suffers from weakness of will. Weak-willed people, however, are not rational, according to Irvine. If a moral life is a rational life, then this objection does not succeed.

I agree with much of what Irvine argues, and yet I think that we ought to embrace well-being as the primary goal of parents who take themselves to be stewards of their children. Freedom is valuable, and parents should of course be cautious and seek to avoid undermining the freedom and autonomy of their children. However, I would argue that freedom is a constituent of human well-being. That is, part of what it is to experience well-being is to be free, in Irvine's sense of the term. Given this, a more directive approach to parenting is permissible, given the interests parents have in seeking to transmit their values to their children and the interests children have in receiving direction from their parents, tempered by a respect for the present and future autonomy of children.

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7 See William B. Irvine, *Doing Right by Children* (St. Paul, MN: Paragon House, 2001), pp. 259–286.

There is also significant intuitive plausibility to the claim that well-being should be the primary goal of parents. As a way of surfacing this plausibility, consider two different answers to the question of how the success of parents should be judged. First, there is Irvine's answer that parents are successful to the degree that their children are free upon reaching adulthood. Second, consider the answer that I advocate, namely, that parents are successful in proportion to the level of well-being that their children experience as adults. It seems that parents and others rightly evaluate the success of parents in the latter manner. In sum, the upshot is that I agree that freedom should be a central goal of parenthood, but I contend that its function is to act as a constraint on the pursuit of the primary goal of parents for their children, which is their present and future well-being.

In view of the claim that well-being is the central goal of parenthood, the obligations of parents to their children can best be captured by the concept of stewardship. Recall that a steward is someone who has been entrusted with something of great value that does not, strictly speaking, belong to the steward. Stewardship is a helpful concept with respect to parental obligations, then, because there are many ways in which parents, in fulfilling those obligations, are acting as stewards of their children. First, a parent can see themself as caring for the body and mind of their child, and acts as if the adult human person whom the child will become is away on a trip, a trip they will return from in approximately twenty years.[8] At that time, the parent's stewardship is finally and fully transferred over to the child, and the child who is now able to govern their own life is free to exercise control over that life. Ideally, this transfer will be a gradual process, such that as the child matures, the parent will grant more and more autonomy to that child, appropriate to their abilities and stage of development. A parent holds a child's life in trust, and ultimately transfers the care of that life to the adult that the child becomes.

A parent is also a steward of their child because society has entrusted the raising of that child to them. Socially, we expect parents to raise their children, and to do an at least adequate job. The quality of child-rearing will have a deep impact on who a child will become, and who a child becomes impacts society as the child enters fully into that society. Given this, parents are social stewards of the children they raise.

I have already argued that stewards need not disregard their own interests when carrying out their stewardship responsibilities. However, parents who act as stewards of their children will make many sacrifices in part because of the value of children and of the adults they will become. Parents as stewards tend not to focus on asserting their rights in the parent-child relationship, but rather they generally place a higher priority on the interests of the children in their care. In what follows, I examine both the negative and positive moral obligations that parents have, as stewards, to their children.

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8 See Ibid. See also Samantha Brennan and Robert Noggle, 'The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice', *Social Theory and Practice* 23 (1997): 1–26; John Bigelow, et al., 'Parental Autonomy', *Journal of Applied Philosophy* 5 (1988): 183–196; and Barbara Hall, 'The Origin of Parental Rights', *Public Affairs Quarterly* 13 (1999): 73–82.

Negative obligations

A negative obligation is a moral obligation to refrain from performing a particular action. For instance, employees have a negative obligation to refrain from stealing from their employers. In the familial context, the negative obligations possessed by parents are to neither abuse nor neglect their children, nor to indoctrinate them with respect to particular beliefs or ways of life.

It is clearly true that parents are morally obligated to refrain from physical and emotional abuse and neglect with respect to their children. This obligation is so important that it is one that ought to be encoded into law, as previously discussed. The vulnerability of children and the deep and lasting negative impacts on them as well as on society that exist due to a failure of obligation in this area make such failures seriously wrong. Parents who abuse or neglect their children are failing as stewards of those children.

Parents can engage in indoctrinating behavior regarding career choices, religion, politics, and morality, among other things. Parents are obligated to avoid indoctrinating their children into a particular way of life, or into believing particular things. Parents who are acting as stewards will not indoctrinate their children, because this fails to respect the child and the adult that the child will become. Indoctrination does not take into account the interests, inclinations, and peculiar constitution of a child. Indoctrination fails to respect the developing autonomy of the child, and given the value of autonomy for well-being, indoctrination involves a failure of stewardship to the child and the adult that the child will become. Indoctrination also constitutes a failure of stewardship obligations to society, because indoctrinated children often become narrow-minded or irrational adults. Society has an interest in these traits not obtaining in the lives of citizens.

Positive obligations

In exploring the positive obligations that parents have to their children, we want to determine what it is that parents must do for their children. It is not avoidance of a particular act that is at issue, but rather what is at issue here are the actions that parents are obligated to perform, and the attitudes that they are obligated to adopt.

One of the most important moral obligations that parents possess is to help their children become autonomous.[9] What does it mean to help one's child develop her capacity for autonomy? Concretely, it means that a parent will engage in behaviors towards and with her child that will enable that child to mature and so do away with the deficiencies that undermine autonomy. These deficiencies include ignorance of factors relevant to a particular choice, a lack of understanding of the act's future consequences, and emotional instability.[10] Given this, the parental duty to help a

9 See John Bigelow, et al., 'Parental Autonomy', which includes a discussion of the importance of autonomy as a goal of childrearing.

10 See Hugh LaFollette, 'Circumscribed Autonomy: Children, Care, and Custody', in Uma Narayan and Julia J. Bartkowiak (eds), *Having and Raising Children* (University Park, PN: The Pennsylvania State University Press, 1999), pp. 137–151.

child become autonomous entails that parents are morally obligated to provide both formal and informal education to their children, so that their children are not susceptible to ignorance or a lack of understanding of the future consequences of their actions. Parents are also obligated to provide an emotionally stable environment, and to relate to the child in ways that foster emotional stability. This entails that parents pursue intimate and loving relationships with their children.

Autonomy is a vital component of a good life. Human beings value autonomy, we value being in control of our lives, making self-determining choices according to our wants, needs, and values. The obligation to help one's child become autonomous is a stewardship obligation in two ways. First, autonomy is a crucial element of well-being, and so when we finally transfer our stewardship of a child over to the adult that the child has become, it is essential that they be able to exercise control over their life in a rational manner. Helping our children become autonomous adults is also related to the sense in which parents are stewards of their children on behalf of society, because autonomous citizens are generally better citizens, because they are more able to pursue and achieve good things for themselves and others. My concern here is not with the conflict of rights that may occur with respect to children's developing autonomy and the autonomy of parents, but rather the obligations parents have to foster and respect the autonomy of their children. The important question is this: to what extent are parents obligated to promote and protect the present and future autonomy of their children?

Joel Feinberg's answer to this question includes the claim that children have a right to an open future.[11] Parents violate this right when their behavior towards the child now ensures that certain key options will be closed when that child becomes an autonomous adult. Children possess the right to have their options kept open until they are autonomous and so able to decide among those options for themselves. Feinberg believes that when parents violate this right, they are violating the autonomy rights of the adult the child will become with respect to significant decisions such as those regarding lifestyle, career, and religion. In order for a child to have as many open options in the future as possible, parents must offer the child as much education as he can absorb, so that he is able to choose from a maximal range of possible life options as an adult. Feinberg concludes with the claim that a 'discerning parent … insofar as he steers the child at all, it will be in the child's own preferred directions. At the very least he will not try to turn him upstream and make him struggle against his own deepest currents.'[12] This parental behavior respects autonomy and lets the child become an adult who achieves some self-fulfillment as a result of his own autonomous decisions and from his own natural preferences.

Feinberg's view possesses some attractive features. It is true that good parents take into account the natural constitution and preferences of their children as they offer guidance to them. Overly directive parenting is problematic because it fails to respect children, and the adults that they will become. An autonomously chosen

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11 See Joel Feinberg, 'The Child's Right to an Open Future', in William Aiken and Hugh LaFollette (eds), *Whose Child?: Children's Rights, Parental Authority, and State Power* (Totowa, NJ: Littlefield, Adams, and Co., 1980), pp. 124–153.

12 Ibid., p. 151.

lifestyle, career, and religion can be elements of a good life. However, there are difficulties present in Feinberg's position. Consider the following from Jeffrey Blustein:

> Autonomy does not magically develop *ex nihilo*. Children need to learn to be autonomous, and this can only happen if they are not autonomous to begin with. Some principles, and in particular the commitment to autonomy itself, must be implanted in children if they are to grow in the proper direction. Moreover, children must already possess at least a tentative character, at least a tentative motivational structure, if they are to be able to autonomously *choose* a different character and different beliefs, desires, and traits. Autonomy, the ability to critically reflect on oneself and the freedom to shape one's life in accordance with changing desires and aspirations, cannot exist in a vacuum; it presupposes some relatively settled beliefs, desires, etc., in short a self, to reason from and with.[13]

Blustein rightly points out that in order to become and to be autonomous, we must already possess and affirm certain values, character traits, desires, and preferences. And parental influence over the substance of the initial self with and from which a child reasons is unavoidable.

In her critique of Feinberg, Claudia Mills points out that parents must steer their children toward particular options as they raise them, and asks whether we should seek to provide children with: (i) a maximally open future; (ii) a future that we approve of and direct them towards; or (iii) something in between?[14] Mills rightly points out that whether or not we consider a particular set of options to be a variety of options is connected to our particular perspective. Hence, whether or not we consider a child to have an open future is also closely connected to our particular perspective. For example, an individual outside of the Amish community might argue that Amish children do not possess a maximally open future, because their parents direct them towards a particular lifestyle that rules out a career in science, medicine, law, or sports. However, from the perspective of Amish parents, their children have numerous options: they can be farmers, blacksmiths, leatherworkers, or woodworkers.

Mills also points out that it is unclear what counts as an open option. Amish children can leave the Amish community and live quite different lives from their parents, and many do. She argues that it is better to speak of options as more or less encouraged or discouraged, fostered or inhibited. In order to encourage a child toward a particular option, or away from that option, a parent must close down some other options. This is an unavoidable fact of life. Moreover, if we expose children to as many different activities and experiences as we possibly can, even if this is done in order to see what they prefer, we trivialize the activities because we do not allow the depth of experience that is required to become fully acquainted with those activities. A child cannot really understand and appreciate the richness of experience and growth available via musical performance, art, or athletics, if she only has a surface knowledge of several different forms of these activities. To jump

13 Blustein, p. 136.

14 See Claudia Mills, 'The Child's Right to an Open Future?' *Journal of Social Philosophy* 34 (2003): 499–509.

from one activity to the next also creates a frantic and exhausting pace of life that prevents children from having any free time and experiencing a genuine childhood. The upshot is that a degree of directive parenting is both desirable and unavoidable, such that some of a child's options are unavoidably and unobjectionably closed by the choices their parents make in raising them.

However, the above points do not justify overly directive parenting, in which there is a lack of love and acceptance of the child, for who that child is. It is because the parent is committed to and loves their child that they both direct the child at particular times, and refrain from doing so at other times. Regardless of the child's choices, the ideal parent loves and is committed to that child. Lastly, Mills argues that providing a child with many options should be motivated by how the child's life can be enriched now. Feinberg's open-options view places more value on the future than the present, whereas parents should instead focus on giving the child a rich life now.

The foregoing points raised by Mills are consistent with what I have argued. I have claimed that certain fundamental interests of parents and children generate parental rights, and that those same fundamental interests generate parental obligations. Children need unconditional love and commitment from their parents. When parents offer too little direction and guidance, children are often left confused and unsure as to what is truly valuable in life and worth pursuing. On the other hand, overly directive parenting sacrifices the intimacy present in the parent-child relationship from which parental rights and obligations (partially) arise. It also harms the child, insofar as this type of parenting does not respect their present and future interests and preferences.

A parent can teach and model their view of the good life, but, as time passes, allow a child the room to choose a different path, even if this path is slightly or even radically different from what the parent wants. This is where acceptance becomes difficult but remains important. A parent may deeply disagree with the life choices of their child, but they should still seek to maintain an acceptance of that child in attitude, word, and deed. Moreover, for the parent who strongly desires that their child adopt a particular moral and/or religious outlook, for example, it is the case that the child has not truly adopted that outlook unless she has done so autonomously. Only upon rationally and self-consciously adopting the values in question are those values really the *child's*. A parent who wants their child to adopt their values, but is unconcerned about whether or not they autonomously do so, is failing to fulfill their obligations to their child. Such a parent is also being irrational, because if a child does not rationally, self-consciously, and autonomously adopt the values in question, then in a certain sense the values are not really the child's. Given this, it is more likely that the parent's values will either fail to influence the child in the way that the parent desires, or that the child will reject those values somewhere down the line.

An important distinction to note here is that I am advocating unconditional parental acceptance and love, rather than unconditional parental approval. A parent must accept and not reject their child, regardless of that child's choices in life. This brings a sense of security that seems to be a vital component of emotional well-being for children. However, I take approval to be another matter. If a parent has a child who is developing racist attitudes, or is consistently dishonest, that parent can

still love and accept the child while expressing disapproval for these characteristics. The potential benefits here are that a child can engage in accurate self-assessment and learn to accept legitimate criticism, both of which are arguably vital for human flourishing. Moreover, this helps parents fulfill some of the social obligations they possess, because a burden is placed upon others if racist attitudes and dishonest practices go unchecked and are unleashed on society.

Lastly, it is important to note that helping one's child develop their capacity to be autonomous is a way that a parent can express their love for that child:

> From Kierkegaard, I think, I learned about the selflessness of true love. We love another best, he says, when it would be true to say, 'He stands alone – by my help.' And then, commenting on the significance of the dash in that sentence, he adds, 'In this little sentence the infinity of thought is contained in the most profound way, the greatest contradiction overcome. He stands alone – this is the highest; he stands alone – nothing else do you see. You see no aid or assistance, no awkward bungler's hand holding on to him any more than it occurs to the person himself that someone else has helped him. No, he stands alone–by another's help. But this help is hidden … it is hidden by a dash.'[15]

A discussion of autonomy, then, leads into the next two obligations that parents possess: aiding in the moral development of their children, and pursuing an intimate and loving parent-child relationship.

As we encourage and help our children develop their capacities for autonomous agency, we should also aid them in employing those capacities to live a moral life. The parental obligation to aid in the moral development of one's child is constrained by the obligation to help that child become autonomous. Given this, a parent must not indoctrinate their child into a particular moral perspective. Still, parents ought to help their children see the value of living a moral life. As a steward of the child for the adult that the child will become, it is important to provide the child with a moral framework from which to make choices in life, and this will almost certainly be the moral framework from which the parent seeks to live. Encouraging and facilitating moral development in children is also an important aspect of the social stewardship obligations that parents possess. This is because parents ultimately release their children into society, and if those children do not affirm and seek to live by the moral values required for the common good, the results will be quite negative for other members of society.

Parents are obligated to provide some sort of moral education to their children. It is important to note that it is impossible not to do this. A parent's refraining from doing so communicates, in deep ways, particular views about morality. If morality is not important enough to talk about, it is likely that it will not – from the child's perspective – be seen as a vital consideration regarding how to live. If, out of a parental neglect of discussing, teaching, and modeling morality, a child grows up to be somehow immoral, then the parent is partially morally responsible for that child's state and negative impact on society. So, not only does the parent fail to fulfill an obligation to their child, but to society as well.

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15 Søren Kierkegaard, cited in Gilbert Meilaender, *The Limits of Love* (University Park, PN: The Pennsylvania State University Press, 1987), p. 17.

A parent who does hold to a particular moral view of the world might, out of considerations of personal moral integrity and concern for society as whole, be obligated to raise a child within that view. The obligation is not that the parent must have some systematic moral theory that they communicate to their child. Rather, it could be nothing more than modeling and informally teaching particular moral principles or virtues such as respect for persons, beneficence, honesty, charity, and the like. A parent who does not have respect for morality and for attempting to live out some of these fairly uncontentious moral principles and virtues is somehow dysfunctional as a human being. Such a person ought to direct themself to activities that will contribute to their own moral development, which will then enable them to fulfill their parental stewardship obligations in this area to their child and to society.

Parents are also obligated to pursue intimate and loving relationships with their children, and to develop in their children the capacities required for such relationships. This obligation fits nicely within the concept of stewardship. Being able to engage in intimate loving relationships with others is a crucial aspect of human well-being. We are social creatures who flourish when we engage in such relationships. A failure to prepare one's child for such relationships, and to foster such a relationship with one's child, is a serious failure on the part of a parent. This obligation is also related to the stewardship that parents exercise on behalf of society. Adults who are able to love others and have deep personal relationships with others are thereby enabled to make numerous positive contributions to society. If parents send children who are unable to relate to others in deep and loving ways out into society, negative social consequences often ensue.

Honesty is an essential component of deep personal relationships, and it is an essential capacity of those involved in such relationships. Given that I discussed in detail the value of intimacy in my argument for parental rights in Chapter 4, I will now turn to questions related to honesty and parenthood.

How honest should parents be with their children? This is a crucial question, given the importance that honesty plays in any significant personal relationship. Many parents fear being honest about their past decisions and actions with their children, especially when they are urging their children to not make those same decisions or engage in those same actions. This parental fear seems to be that if a parent admits doing x, and is encouraging his child not to do x, it makes the parent appear hypocritical and undermines the parent's claim that doing x could irreparably damage the child's life, if doing x did not have such consequences in the life of that parent.

One useful example is experimentation with illegal drugs. Should a parent be honest with his child about his own past use of some illegal drug? Of course, at certain stages of development, this will not be appropriate. But what if somehow a parent of a teenage child is made aware of the fact that his child is considering experimenting with illegal drugs? In considering how to approach this subject with his child, the parent may go through the thought processes described in the previous paragraph. There may be cases where honesty is not called for, if the parent has very good reason to believe that this could influence the child to engage in dangerous behavior. However, the parent must be sure that the real reason for the dishonesty is not to present a dishonest picture of his past actions or character, or some other

purely self-interested reason. But even if this sort of justification for dishonesty obtains, a sort of meta-honesty is required. That is, a parent should be honest about his efforts at being honest.[16] Specifically, if the parent believes that present honesty about his past drug use will strongly influence his child to make unwise choices, the parent may justifiably withhold or lie about that information. However, given the central importance of honesty in any intimate relationship, and the role intimacy plays in the satisfaction of some of our fundamental interests within the parent-child relationship, a parent in these particular circumstances has a duty to share about his dishonesty with the child at some future point in time, including the reasons that the parent felt were in play that justified the temporary dishonesty. In this way, honesty is maintained, and is only temporarily suspended when something of greater importance is at stake. Being honest, however, does not entail sharing every thought, word, and deed with our children, or anyone else for that matter.[17] This sort of sharing can in fact be a barrier to intimacy, which is the ultimate good that honesty in personal relationships serves. Selective sharing, if done correctly, is more likely to give others an adequate picture of who we are.

It is also important to point out that the belief that if a parent admits doing x, and is encouraging his child not to do x, the parent either appears hypocritical or his claim that doing x could irreparably damage the child's life is undermined is often held more strongly than the evidence warrants. We often underestimate the ability of children to reason and work through such issues, and fear to an unwarranted level that being honest about our past could lead to our children engaging in dangerous or immoral behaviors. The upshot is that a deep level of honesty on the part of parents with their children is to be preferred. Given that honesty is generally required for intimacy, and that intimacy is one of our fundamental interests that can be satisfied within the parent-child relationship, it follows that parents should generally opt for honesty with their children. To be a good steward of their child, a parent should have a general policy of honesty with that child.

A cluster of interesting issues arises when we consider what moral obligations parents have, *qua* parents, with respect to work. First, what obligations do parents have regarding the tensions that arise between work commitments and family commitments? Also, what should parents teach their children with respect to the role of work in living a good life? Before addressing these issues, we must first address the more fundamental question, namely, is there a moral obligation to work?

Lawrence Becker argues that there is.[18] For Becker, work need not be income producing, but it must be socially beneficial. Becker bases his argument for the claim that we have a social obligation to work on the concept of reciprocity: our reception of a good obligates us to make a proportional return of good. Given this, Becker argues that we can establish a presumption favoring the existence of an obligation to work. First, we observe the fact that others benefit us through their work, that

16 See George Graham and Hugh LaFollette, 'Honesty and Intimacy', in George Graham and Hugh LaFollette (eds), *Person to Person* (Philadelphia: Temple University Press, 1989), pp. 167–181.

17 See Ibid.

18 See Lawrence Becker, 'The Obligation to Work', *Ethics* 91 (1980): 35–49.

their work makes our happiness possible. Then, given that reciprocity requires a proportional and fitting return of the goods we have received, work may sometimes only be reciprocated by work. Another way to see how the obligation to work may arise is to first consider the fact that each person is a burden on others, given that we consume natural resources, require the time and energy of other people, and pollute the environment. Unless we make a contribution to the welfare of others, we are a net burden on them, and this is counter to the principle of reciprocity. Finally, work is a social obligation, and not one that is directed merely towards our actual benefactors, primarily because 'reciprocity may require compliance with the demands of one's benefactors, demands institutionalized as membership obligations designed by one's benefactors to benefit all members.'[19] Becker concludes that in our current circumstances – in developed societies where so much work is required for society to function and we all profit from the work of others – the burden of proof is on those who claim they have no work obligation. Those who are able to work, and do not, are parasites who are failing to fulfill an important social obligation.

What implications does Becker's argument have in the parent-child context? First, parents are obligated to do socially beneficial work. This means that parents model for their children the value of doing socially beneficial work, and teach them about its importance. While Becker is uncertain about whether or not being a full-time parent satisfies the obligation to work, I would argue that it does. When done (at least) adequately, childrearing is socially beneficial. Recalling the role of a parent as a steward for society in the care of his child, a stewardship view of parental obligations takes child-rearing to be socially beneficial and socially significant work. As such, it is one way in which an individual can fulfill his social obligation to work.

How should parents prioritize their work responsibilities and family responsibilities? Should parents feel guilty about leaving their children for work? Lynn Sharp Paine considers this question, and begins by noting that many parents feel guilty, because they believe that they are failing to give their children the time and attention that they require.[20] Paine argues that parental guilt that is felt because the parent is absent from the child can be a morally fitting response. Such feelings have a moral foundation because they are generated in part by some sort of moral self-criticism. Studies cited by Paine show that children who are cared for by someone other than their parents (for example daycare, relatives) do not suffer cognitively, physically, socially, or emotionally when compared to those whose primary caregiver is a parent. However, Paine rightly points out that for many parents, these sorts of developmental outcomes are not the most important criteria, morally speaking. Rather, the moral ideal of such parents is one that requires a high level of personal involvement with their children. On this ideal, Paine argues, parents should feel guilty when they spend little time with their children.

But how plausible is this ideal? For Paine, it rests on the judgment that intimate, deep, loving, and committed personal relationships have intrinsic moral value. Given

19 Ibid., p. 42.

20 See Lynn Sharp Paine, 'Work and Family: Should Parents Feel Guilty?' *Public Affairs Quarterly* 5 (1991): 81–99.

this, a child's developmental outcomes are not all that parents should value, but rather, they should also value and pursue relationships with their children characterized by intimacy, commitment, and love. Parenthood is also instrumentally valuable, insofar as it can cause parents to develop morally, which in turn enables them to do a better job at guiding and directing their children. In order to accomplish these aims, a substantial amount of parental interaction is necessary.

Much of what Paine argues is consistent with the position I have argued for in this book, highlighting the value of the parent-child relationship for parents, children, and society. If we accept Paine's argument, what follows from this, practically speaking? First, she points out that quality daycare that is both affordable and accessible is important, but will not in and of itself resolve the issue of parental guilt. She points to opportunities to work part-time, job-sharing, and career breaks as good ways to resolve this guilt. I agree. Childcare that is high in quality, accessible, and affordable is important, especially for families in which both parents work and for single-parent families. Additionally, if parents had the opportunity to split a job with each other, or if other types of job-sharing became more widespread, mothers and fathers would be given the opportunity and the freedom to be at home with their children, investing the requisite time and energy in them and in the parent-child relationship such that many goods could be obtained.

A possible problem here is that two parents may each be paid the equivalent of a half-time salary, and so perhaps job-sharing would be economically prohibitive. However, when the costs of daycare are taken into account, the income loss could be at least partially counterbalanced by the decrease in child-care expenses. If two parents could schedule their work time such that one parent is always or usually at home taking care of the children, then daycare expenses would be greatly reduced or even eliminated. Such a situation allows both mothers and fathers to pursue the goods available via working outside of the home, while also pursuing and enjoying the goods available when investing significant time in the parent-child relationship. This sort of arrangement is consistent with the stewardship conception of parenthood, because it allows parents to care for their children while also modeling for them the value of work both in and out of the home. Moreover, modeling a commitment to work and to family relationships is a way parents can fulfill their stewardship obligations, because embracing these values can enhance the personal well-being of children, and also enables them to make important contributions to social well-being.

Are parents obligated to bring their children up within a particular religious framework? I contend that the answer, sometimes, is yes. It might seem strange to claim that a parent is *obligated* to bring her child up within a particular religious framework. However, I think that such an obligation *can* exist. First, it is important to note that, just as in the case of morality, it is impossible not to influence the religious outlook (or lack thereof) of one's child. A parent's refraining from any sort of religious training or education communicates particular views about religion. This raises no problems of personal integrity if the parent does not subscribe to a particular religion or has a non-religious view of reality. However, the parent who does hold to a particular religious view might, out of considerations of personal integrity, be obligated to raise a child within that religion.

Presumably, if a parent adheres to a particular religion, they believe that religion to be true, or at the very least, to contribute to personal and social well-being. Hence, if a parent fails to expose their child to their own beliefs and share their religion with the child, it seems to count against the integrity of that parent, insofar as they are not teaching their child what they take to be true and an important part of a good and fulfilling life. However, it is important to recall that a parent who has this obligation does not have the right to indoctrinate their child, or to withdraw love and affection from the child if the child chooses a different path. Parents and children have a fundamental interest in experiencing intimacy in the parent-child relationship, and parents have a duty to respect the autonomy of their children and of the adults their children will become. People do not genuinely adhere to a particular religious faith unless they do so autonomously. Our view of the obligations of parents in the area of the religious upbringing of children must take this fact into account, and so protect the fundamental interests of parents and children with respect to the role of religion in childrearing.

William Irvine argues against the existence of such an obligation, and in favor of a more neutral parental stance with respect to the religious training of children.[21] Irvine holds that it is best for parents to refrain from raising their children within a particular religious framework. In what follows, I consider and respond to the reasons Irvine gives for holding this view.

First, Irvine claims that parents who insist that their children follow their religion are being hypocritical. To see how this is so, he asks us to consider the Smiths, who are insisting that their child adopt their Lutheranism. This is hypocritical because Mr and Mrs Smith themselves would not be Lutherans, but for the fact that their ancestors rejected the Catholicism of their parents in favor of Lutheranism. In response, it should first be pointed out that I agree with Irvine that parents should not insist that their children adopt their religion. But is it still hypocritical of the Smiths to encourage their children to be Lutherans, while respecting the autonomy of those children? It need not be, if the Smiths believe that there is something true and valuable present in their religious belief and practice. Presumably, the ancestors in question rejected Catholicism because they believed it was false or somehow inaccurate, and believed that the Lutheran version of Christianity was correct, or at least better than the Catholic one. The veracity of this belief is irrelevant for my present purposes. What is relevant is that if the motivation of the ancestors in question was the pursuit of truth in the realm of religion, and if this is also the motivation of the Smiths in encouraging a similar faith in their children, then no inconsistency or hypocrisy obtains. Moreover, if the Smiths believe their religious faith to be true, they have an obligation to encourage that faith in their children, as I have previously argued.

The second reason that Irvine gives for adopting a laissez-faire approach to the religious upbringing of children is that moral principles can be taught outside of a religious framework. Parents can appeal to the child's reason alone to encourage belief in the moral principles at issue. Moreover, in a secular framework, parents can encourage their children to do the right thing because it is right, rather than being motivated to do the right thing out of fear of divine punishment. For these

21 See Irvine, pp. 292–297.

reasons then, Irvine concludes that it is preferable to teach morals to children from a non-religious framework. One problem that many parents would have with Irvine's argument here is that different religions often have different moral codes, such that what religion A takes to be central to a moral life, religion B does not value. Hence, for many parents, the obvious point is that morality and religion are inextricably intertwined, such that they feel unable to teach one apart from the other. And whether or not moral principles can be taught on the basis of reason apart from locating those principles within a particular religious faith is irrelevant to many parents, and understandably so. For parents like the Smiths, morality and religion are tightly connected, and it seems entirely permissible for them to share their entire worldview with their children, as long as indoctrination does not occur. Moreover, parents who are religious need not seek to motivate their children to be moral out of fear of divine punishment. Irvine fails to recognize that such parents may appeal to other factors in seeking to create moral motivation in their children. For example, a parent can point out that their religion teaches that living morally is a way to express love to other people and to God. Treating others morally also expresses that we value them. A parent may also, when appropriate, share a belief shaped by their religious faith that living morally is a necessary condition for human flourishing. These sorts of motivations for being moral are present in many religions, and do not possess the problems associated with doing the right thing merely to avoid punishment. Irvine problematically fails to take into account these other sorts of moral motivations, informed by religion, in his argument for the religious neutrality of parents.

Irvine does allow that it is permissible for parents to introduce their religious values and faith to the child, because that child might find them beneficial as his parents do. However, such parents should also ensure that the child knows that other religious beliefs are possible, and that thoughtful and intelligent people have religious disagreements. Moreover, parents should inform their children that although their religion suits their own spiritual needs, an alternative faith may be best-suited to the child. For Irvine, religious values are like clothing: the fit is different for different people. Parents should take this into account and adopt a hands-off stance with respect to religion, so that the child can choose a religion with their own free will. This sort of view of the nature of religious faith is problematic. There is a sense in which it is true, insofar as different people are more suited to a particular religion. However, this should not serve as the sole criterion for the religion that any given individual adopts. The claim that one's choice of religion is like one's choice of clothing entails that a choice between Hinduism and Judaism is like a choice between a green sweater and a red one – it is purely a matter of personal preference. While relying only on personal preference is generally acceptable in the realm of clothing, this is not so in the case of religion. Religion is not merely a matter of personal fit. To treat it as such is to treat it too lightly. Other considerations are crucial when considering whether or not to adopt a particular religion as one's own.[22] For example, what evidence exists that this religion might be true? Is it conducive to human flourishing? What personal

22 In her 'The Child's Right to an Open Future?' Mills offers a criticism of this approach to religion.

and social implications does it have? These are important questions that Irvine's proposed approach to religious training fails to address.

In sum, parents may have an obligation to encourage their children to adopt their own religious values, out of reasons of personal integrity. Parents should take neither the hands-off approach advocated by Irvine, nor an overly-directive approach which fails to respect the present and future autonomy of their children, for the reasons given above.

Parents are morally obligated to provide their children with a level of education sufficient to enable them to function in society and support themselves financially. Included in this is teaching our children certain life-skills, and teaching them how to live and function within the specific social context in which they find themselves. A partial list of such life-skills would include such things as learning to provide oneself with the material necessities of life, money management, relationship skills, and sex education. Where available, it is important to provide a more formal education, which prepares the child to become a working and contributing member of society. A child's fundamental interests are in play here, and so parents are obligated to provide children with a sufficient level of education such that those interests can be satisfied. For example, forming a view of the good life and pursuing it requires certain analytical and critical skills as well as a level of background knowledge about such issues, which education can provide. Education is also conducive to the autonomous and rational pursuit of a meaningful life, because it increases our awareness of the available options, thereby enabling us to consider which has the most appeal. A level of self-knowledge is required here as well, so that the child is able to ascertain what will likely bring him the most happiness. Parents must provide for their children an education that is adequate to further their relevant interests.

Greater levels of formal education give one more options, and because of this, one of the obligations that a parent has as a steward of the adult that their child becomes is to provide that child with enough education such that they have a significant range of options open to them when they take control of their life as an adult. This obligation also relates to the role of a parent as a steward on behalf of society, because helping a child develop their skills and talents through education can have very beneficial consequences for that society.

These educational obligations fit nicely within a stewardship conception of parenthood. Parental stewardship includes educating one's child in the above ways, because such an education is important for the physical and mental well-being of the child and the adult that the child will become. Recalling that a parent is also a steward of her child because society has entrusted the raising of that child to her, children who are adequately educated are, all else being equal, better able to function in and contribute to society.

In the context of parental obligations and education, difficult and controversial issues can arise. Consider a family living in Boulder, Colorado in 2005. Homer and Marge are trying to decide where to send their daughter Lisa for kindergarten. Homer and Marge cannot afford private school, and so their options are to send Lisa to their neighborhood public school, or to a public charter school near their home. In Boulder, there is a system of open enrollment in which parents can attempt to enroll their children in any public school in the district. In this situation, Homer and Marge

are then faced with many options for Lisa's education. What moral considerations are in play in this decision?

The moral conflict in this case, raised by the school choices available to people in the Boulder Valley School District, involves the obligations that Homer and Marge have to Lisa, as well as the general social obligations they possess to others in their community. If diversity and quality of education are on the decline in the Boulder Valley School District, then an important dilemma surfaces for parents who face such decisions. The interests of Lisa are in play, and her interests are adequately taken into account as long as she is receiving an education that is satisfactorily preparing her for the future, enabling her to discover and develop her talents and abilities. Homer and Marge's interests are in play as well, given the relationship they have with Lisa. Additionally, it is plausible to think that the interests of others in the Boulder community are relevant, given the possible social effects of parental choice in education.

In making this decision, Homer and Marge come to believe that the charter school near their home is more suitable for Lisa, and will challenge her academically in a way that the neighborhood school will not. This is in fact what many parents in the district believe. (Whether or not the charter school is better is irrelevant here, given that Homer and Marge justifiably believe this. However, the often overstated relationship between standardized test scores and school quality should be incorporated into making any such judgment.) In a recent study of the school choice situation in Boulder, it was found that parents often base such decisions upon the standardized test score results for each school.[23] Kenneth Howe, Margaret Eisenhart, and Damian Betebenner (HEB), in surveys of parents and educators, focus groups, and a statistical analysis of enrollment, test scores, demographics, funding, and fund-raising, found several results that are relevant to Homer and Marge's decision. In HEB's study, there was strong agreement that inequities are present in the school choice system. Stratification is present, as the aggregate choices of parents within the district increased stratification along income, racial, and special needs lines. Standardized test scores are a significant factor in the choices parents make regarding their children's education. However, HEB point out that while it is true that charter schools have quite impressive test scores, it is possible that test score outcomes are a zero-sum game. That is, perhaps some schools perform very well on standardized tests at the expense of the overall decrease in test scores in other schools. There was also a strong consensus that social and citizenship skills are important and that it is desirable for these skills to be taught in schools. HEB rightly point out that if one of the outcomes of school choice is less diversity, then teaching these skills is more difficult. Given the fact that such skills include the ability to appreciate and relate to diverse kinds of people, if such diversity is not present, it is difficult to teach these skills.

How should Homer and Marge approach their choice? Homer and Marge should avoid using standardized test scores as the sole or even the primary criterion of the quality of a school. Second, they must weigh the suitability of the specific school

23 See Kenneth Howe, Margaret Eisenhart, and Damian Betebenner, 'School Choice Crucible: A Case Study of Boulder Valley', *Phi Delta Kappan* 83 (2001): 137–146.

environment for Lisa, with respect to her unique individual makeup. Third, they should consider the broader social ramifications of their decision. While it is true that the specific choice that Homer and Marge make will not have much impact on diversity or contribute to the various kinds of stratification present in the school district, their role in a larger trend is morally relevant. Diversity and stratification are relevant to the education Lisa herself receives, because if she is enrolled in the charter school, she will be placed in a more homogeneous environment that will present challenges for her in learning to appreciate and relate to people that are in various ways different from her.

Given that whatever choice Homer and Marge make involves some sort of moral tradeoff, I would argue that either choice is morally permissible. One can certainly understand parents wanting to send their children to a school that they believe will better serve their academic interests. Other factors carry weight in this decision as well. Also morally relevant is what Homer and Marge do after their choice is made. For example, if they decide to send Lisa to the charter school, it is morally desirable for them to work towards ensuring that diversity issues are discussed and dealt with in Lisa's education. Additionally, they might be intentional about exposing Lisa to people of different backgrounds in other contexts, such as after-school activities. Moreover, Homer and Marge could work towards removing the barriers that prevent diversity from obtaining at the school. They could help raise funds for free transportation, so that the school is more easily accessible to students who otherwise could not attend. Homer and Marge could also work at helping to disseminate information about the school in various languages, ensuring that all parents have the information needed to make a genuine choice. If Homer and Marge decide to send Lisa to their neighborhood school, and if they believe it is necessary, then perhaps they could take it upon themselves to spend some extra time with Lisa to ensure that she is being academically challenged to a sufficient degree. They might also seek to raise funds for the school or provide assistance to other students in the school, helping them achieve their full potential, if such a need exists.

Finally, parents can get themselves into an irrational hysteria when making educational choices for their children. Given that the vast majority of schools do a more than adequate job of educating our children, it is arguably the case that these sorts of choices take on a seeming importance for the present and future well-being of our children that is overblown.

Parental obligations regarding medical decisions have generated much controversy. In order to examine the obligations of parents with respect to medical decision-making, the concept of a fundamental interest as something crucial to human well-being is again useful. Physical health and well-being are crucial to all human beings, including children. Parents then, because of the moral relationship in which they stand to their children, are obligated as stewards to make medical decisions with the physical health and well-being of their children in mind. When children have the developed capacity to make such decisions, then parents should respect those decisions.

I argued in Chapter 4 that in certain medical decision-making contexts, the interests of children outweigh those of parents, such that state intervention with respect to medical care is warranted when the life or long-term physical well-being of a child is

at stake. Here, my argument is that given the significance of physical life and health, parents are obligated to make decisions on behalf of their children that serve their physical health and well-being. On the face of it, this is fairly uncontroversial.

Controversy can arise, however, when parents feel torn regarding their obligations in the context of medical decision-making. For example, parents who are practicing Jehovah's Witnesses sometimes make decisions which endanger the life and health of their children, because they believe that receiving a blood transfusion is forbidden by God. Such parents feel obligated to obey the teachings of their religion, and may believe that by not allowing blood transfusions when they are medically indicated they are in fact fulfilling their moral obligations to their children. One way to approach this issue is to claim that the parent's relationship to their child should come first, before all other commitments.[24] It follows from this that a parent who unconditionally loves their child will not withhold a lifesaving blood transfusion from that child, even if their religion teaches them that they ought to do so. The problem, however, is that in the case of the Jehovah's Witnesses, the parent likely believes that their religious commitment and their commitment to their child are not in conflict. Rather, their child's long-term well-being is thought to be better served by not involving them in disobeying what the parent takes to be a divine command. Given this, the claim that the parent-child relationship should be first and foremost in the parent's mind does not easily solve the problem at issue.

Even if they believe otherwise, such a parent is failing to fulfill their obligations to their child, because the interests children have in their own physical health and well-being are among the strongest interests they possess, making possible the pursuit of other goods. It is irrational and immoral to deny health care that has a good chance of treating or curing a disease or injury, or saving the child's very life, because of the particular values held by the parent. If anything constitutes a failure to respect the child's present and future autonomy, it is this sort of decision. If it is wrong to disregard the present and future autonomy of one's child by indoctrinating that child into one's religion, then surely it is wrong to sacrifice the health or life of that child because of one's religious beliefs. If the child autonomously agrees with the parent's belief that blood transfusions are prohibited by God, and autonomously chooses to refuse such a transfusion, then that is another issue. However, when parents make such decisions on behalf of their children, decisions that have such momentous consequences for their children, a failure of stewardship is occurring. Such a parent is failing to adequately care for the child on behalf of the adult that the child would become by preventing that child from becoming an adult.

As a brief concluding coda to this issue, I would also offer the claim that a religion that teaches parents to sacrifice the health and well-being of children in this manner is (at least) *prima facie* immoral. If we condemn religious rites that include child sacrifice and female genital mutilation, then we should also condemn religious teachings that withhold life-saving medical treatment from children.[25]

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24 See Mills, p. 505. Mills makes this claim in the context of the religious upbringing of children, and not medical decision-making.

25 There may be exceptions to this, such as the use of a sibling's organ to save a child, due to the problem of informed consent.

The final obligation parents possess is to attempt to inculcate anti-materialist values in their children. The pressures of consumerism ought to be resisted. I hold this to be a parental obligation (at least) for families in affluent societies who receive a middle-class level of income or better.

It is good for parents to teach their children about the pitfalls and problems of consumerism and the overvaluing of material wealth. We should discourage views of what it is that constitutes a good life that put too much emphasis on material wealth and possessions. Parents should model for their children a life that is concerned with the welfare of others and is less concerned with the accumulation of wealth and the acquisition of material goods. It may be morally permissible to use money to buy toys for one's children that they do not, strictly speaking, need, when that same money could be used to feed another child. However, parents ideally will use their resources (financial and perhaps other types) to reduce the amount of suffering in the world due to a lack of food, shelter, and medical care, with the hope that their children will do the same.

For example, one might give a certain percentage of income to help provide material necessities to those in need, and then discuss why this is done with one's children. Alternatively, a family could spend all or part of Thanksgiving day at a shelter for the homeless, helping to feed those in the community, and then discuss their own view of wealth as well as the difference between material needs and material wants. These sorts of conceptual lessons embodied in practical activities can help a child to see that having the latest toy or driving an expensive car are not as important as our consumer-driven society would have us believe. Parents can cause the child to have a greater appreciation for that which they do have, and give them a better perspective on the relative importance of material wants regarding what constitutes a good and satisfying life. Doing so can be beneficial to both the child and to others, and so can easily be seen as a way in which parents can fulfill their stewardship obligations.

Conclusion

The foregoing examination of the many conceptions of parenthood has raised several issues of philosophical interest, including the nature and justification of moral rights, the role of the state in protecting the interests of its citizens, the sources of moral obligations, the importance of autonomy, and the moral dimensions present in interpersonal relationships. I have examined a number of these issues related to the rights and obligations of parents, and have found a plausible middle ground that exists between some of the more extreme views.

It is also the case that much of what I have argued for in the preceding pages is consistent with commonsense morality. However, I have not merely restated commonsense morality in philosophical terms. Rather, I have provided philosophical arguments in support of many of our commonsense moral beliefs about the ethics of the parent-child relationship, and defended these positions against philosophical objections. The preceding philosophical statement and defense of many of our commonsense beliefs about the moral dimensions of the family is valuable, then,

because it shows that many of the deliverances of commonsense in this area of human life stand on firm philosophical ground.

Finally, the parent-child relationship is a significant feature of the lives of many people. By analyzing the moral dimensions of this relationship as it relates to parents, children, and society, one of my primary aims has been to show that it possesses great potential for the satisfaction of important fundamental interests that we all share. In order for the satisfaction of these interests to obtain in the lives of parents and children, we must appreciate and respect the rights of both parents and children, and parents must appreciate and fulfill the responsibilities they possess as stewards of the children who are in their care.

Bibliography

Aiken, William, and Hugh LaFollette (eds), *Whose Child?: Children's Rights, Parental Authority, and State Power* (Totowa, NJ: Littlefield, Adams, and Co., 1980).

Alaima, Kathleen, and Brian Klug (eds), *Children as Equals: Exploring the Rights of the Child* (University Press of America, 2002).

Almond, Barbara, 'Family Relationships and Reproductive Technology', in Uma Narayan and Julia J. Bartkowiak (eds), *Having and Raising Children* (University Park, PN: The Pennsylvania State University Press, 1999).

Alpern, Kenneth D., 'Genetic Puzzles and Stork Stories: On the Meaning and Significance of Having Children', in Kenneth D. Alpern (ed.), *The Ethics of Reproductive Technology* (New York: Oxford University Press, 1992).

Archard, David, 'Child Abuse: Parental Rights and the Interests of the Child', *Journal of Applied Philosophy* 7 (1990): 183–194.

Archard, David, *Children: Rights and Childhood* (New York: Routledge, 1993).

Archard, David, 'What's Blood Got to Do With It?: The Significance of Natural Parenthood', *Res Publica* 1 (1995): 91–106.

Archard, David, and Colin Macleod (eds), *The Moral and Political Status of Children* (New York: Oxford University Press, 2002).

Archard, David, *Children, Family, and the State* (Burlington, VT: Ashgate, 2003).

Aristotle, *Nicomachean Ethics*, translated by Christopher Rowe (New York: Oxford University Press, 2002).

Austin, Michael W., 'On the Alleged Irrationality of Ethical Intuitionism: Are Ethical Intuitions Epistemically Suspect?' *Southwest Philosophy Review* 19 (2003): 205–213.

Austin, Michael W., 'The Failure of Biological Accounts of Parenthood', *The Journal of Value Inquiry* 38 (2004): 499–510.

Austin, Michael W., 'Parental Rights and Obligations', in Jack Rabin (ed.), *Encyclopedia of Public Administration and Public Policy* (New York: Marcel Dekker, online edition, 2005).

Austin, Michael W., 'Parenting', in John K. Roth (ed.), *Ethics*, revised edition (Pasadena, CA: Salem Press, 2005).

Austin, Michael W., 'Fundamental Interests and Parental Rights', *International Philosophical Quarterly* (2007): 221–235.

Barry, John, *Rethinking Green Politics: Nature, Virtue, and Progress* (Thousand Oaks, CA: Sage Publications, 1999).

Bayne, Tim, 'Gamete Donation and Parental Responsibility', *Journal of Applied Philosophy* 20 (2003): 77–87.

Bayne, Timothy, and Avery Kolers, 'Toward a Pluralist Account of Parenthood', *Bioethics* 17 (2003): 221–242.

Becker, Lawrence, 'The Obligation to Work', *Ethics* 91 (1980): 35–49. Beckwith, Francis J., 'Personal Body Rights, Abortion, and Unplugging the Violinist', *International Philosophical Quarterly* 32 (1992): 105–118.

Belliotti, Raymond A., 'Blood is Thicker than Water: Don't Forsake the Family Jewels', *Philosophical Papers* 18 (1989): 265–280.

Bellon, Christina M., 'The Promise of Rights for Children: Best Interests and Evolving Capacities', in Kathleen Alaima and Brian Klug (eds), *Children as Equals: Exploring the Rights of the Child* (Lanham, MD: University Press of America, 2002).

Benatar, David, 'The Unbearable Lightness of Bringing into Being', *Journal of Applied Philosophy* 16 (1999): 173–180.

Bigelow, John, et al., 'Parental Autonomy', *Journal of Applied Philosophy* 5 (1988): 183–196.

Blustein, Jeffrey, 'Child Rearing and Family Interests', in Onora O'Neill and William Ruddick (eds), *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979).

Blustein, Jeffrey, *Parents and Children* (New York: Oxford University Press, 1982).

Blustein, Jeffrey, 'Procreation and Parental Responsibility', *Journal of Social Philosophy* 28 (1997): 79–86.

Bodin, Jean, *Six Books of the Commonwealth*, abridged and translated by M.J. Tooley (New York: Barnes and Noble, 1967).

Boonin, David, *A Defense of Abortion* (New York: Cambridge University Press, 2003).

Brake, Elizabeth, 'Fatherhood and Child Support: Do Men Have a Right to Choose?', *Journal of Applied Philosophy* 22 (2005): 55–73.

Brennan, Samantha and Robert Noggle, 'The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice', *Social Theory and Practice* 23 (1997): 1–26.

Chasteen, Edgar R., *The Case for Compulsory Birth Control* (Englewood Cliffs, NJ: Prentice Hall, 1971).

Covell, Katherine, and R. Brian Howell, 'A Policy of Parent Licensing', in Peg Tittle (ed.), *Should Parents Be Licensed?* (Amherst, NY: Prometheus Books, 2004).

Crisp, Roger, and Brad Hooker (eds), *Well-being and Morality* (New York: Oxford University Press, 2000).

Farson, Richard, *Birthrights* (New York: Macmillan, 1974).

Farson, Richard, 'Birthrights', in Beatrice Gross and Ronald Gross (eds), *The Children's Rights Movement* (Garden City, NY: Anchor Press, 1977).

Feinberg, Joel. 'The Child's Right to an Open Future', in William Aiken and Hugh LaFollette (eds), *Whose Child?: Children's Rights, Parental Authority, and State Power* (Totowa, NJ: Littlefield, Adams, and Co., 1980).

Feldman, Susan, 'Multiple Biological Mothers: The Case for Gestation', *Journal of Social Philosophy* 23 (1992): 98–104.

Fenwick, Linda Beck, *Private Choices, Public Consequences* (New York: Penguin Putnam, 1998).

Ferguson, Ann, 'Androgyny as an Ideal for Human Development', in Mary Vetterling-Braggin, Frederick Elliston, and Jane English (eds), *Feminism and Philosophy* (Totowa, NJ: Rowman and Littlefield, 1977).

Firestone, Shulamith, *The Dialectic of Sex* (New York: William Morrow and Company, 1970).

Forman, Edwin N., and Rosalind Ekman Ladd, 'Making Decisions – Whose Choice?' in Rosalind Ekman Ladd (ed.), *Children's Rights Re-Visioned* (Belmont, CA: Wadsworth, 1996).

Frisch, Lawrence E., 'On Licentious Licensing: A Reply to Hugh LaFollette', *Philosophy and Public Affairs* 11 (1982): 173–180.

Gaylin, Willard, and Ruth Macklin (eds), *Who Speaks for the Child: The Problems of Proxy Consent* (New York: Plenum Press, 1982).

Goldstein, Joseph, 'Medical Care for the Child at Risk: On State Supervention of Parental Autonomy', in Willard Gaylin and Ruth Macklin (eds), *Who Speaks for the Child: The Problems of Proxy Consent* (New York: Plenum Press, 1982).

Gould, Carol C., *Beyond Domination* (Totowa, NJ: Rowman and Allanheld, 1983).

Gould, Carol C., 'Private Rights and Public Virtues: Women, the Family, and Democracy', in Carol C. Gould (ed.), *Beyond Domination* (Totowa, NJ: Rowman and Allanheld, 1983).

Graham, George and Hugh LaFollette, 'Honesty and Intimacy', in George Graham and Hugh LaFollette (eds), *Person to Person* (Philadelphia: Temple University Press, 1989).

Graham, George, and Hugh LaFollette (eds), *Person to Person* (Philadelphia: Temple University Press, 1989).

Grisez, Germain, and Joseph Boyle, Jr., *Life and Death with Liberty and Justice* (Notre Dame, IN: University of Notre Dame Press, 1979).

Gross, Beatrice, and Ronald Gross (eds), *The Children's Rights Movement* (Garden City, NY: Anchor Press, 1977).

Hall, Barbara, 'The Origin of Parental Rights', *Public Affairs Quarterly* 13 (1999): 73–82.

Harris, John, 'The Right to Found a Family', in Geoffrey Scarre (ed.), *Children, Parents, and Politics* (New York: Cambridge University Press, 1989).

Harris, John, 'Harris' Reply', in Michael Leahy and Dan Cohn-Sherbok (eds), *The Liberation Debate: Rights at Issue* (New York: Routledge, 1996).

Harris, John, 'Liberating Children', in Michael Leahy and Dan Cohn-Sherbok (eds), *The Liberation Debate: Rights at Issue* (New York: Routledge, 1996).

Held, Virginia, 'The Equal Obligations of Mothers and Fathers', in Onora O'Neill and William Ruddick (eds), *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979).

Henley, Kenneth, 'The Authority to Educate', in Onora O'Neill and William Ruddick (eds), *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979).

Hobbes, Thomas, *Leviathan*, edited by Edwin Curley (Indianapolis, IN: Hackett, 1994).

Hobson, Peter, 'Some Reflections on Parents' Rights in the Upbringing of their Children', *Journal of Philosophy of Education* 18 (1984): 63–74.

Holt, John, 'Why Not a Bill of Rights for Children?' in Beatrice Gross and Ronald Gross (eds), *The Children's Rights Movement* (Garden City, NY: Anchor Press, 1977).

Houlgate, Laurence, 'What is Legal Intervention in the Family? Family Law and Family Privacy', *Law and Philosophy* 17 (1998): 141–158.

Houlgate, Laurence (ed.), *Morals, Marriage, and Parenthood: An Introduction to Family Ethics* (Belmont, CA: Wadsworth, 1999).

Houlgate, Laurence, *Children's Rights, State Intervention, Custody and Divorce: Contradictions in Ethics and Family Law* (Lewiston, NY: Edwin Mellen Press, 2005).

Howe, Kenneth, Margaret Eisenhart, and Damian Betebenner, 'School Choice Crucible: A Case Study of Boulder Valley', *Phi Delta Kappan* 83 (2001): 137–146. Retrieved from http://www.pdkintl.org/kappan/k0110how.htm on 4 November 2002.

Huemer, Michael, *Ethical Intuitionism* (New York: Palgrave Macmillan, 2005).

Irvine, William B., *Doing Right by Children* (St. Paul, MN: Paragon House, 2001).

Irvine, William B., *The Politics of Parenting* (St. Paul, MN: Paragon House, 2003).

Kagan, Shelly, 'The Limits of Well-Being', in Ellen Paul, Fred Miller, and Jeffrey Paul (eds), *The Good Life and the Human Good* (New York: Cambridge University Press, 1992).

Kant, Immanuel, *Grounding for the Metaphysics of Morals*, translated by J. Ellington (Indianapolis, IN: Hackett, 1993).

Kant, Immanuel, *The Metaphysics of Morals*, in *Practical Philosophy*, edited by Mary J. Gregor, The Cambridge Edition of the Works of Immanuel Kant (New York: Cambridge University Press, 1996).

Kolers, Avery, and Tim Bayne, '"Are You My Mommy?": On the Genetic Basis of Parenthood', *Journal of Applied Philosophy* 18 (2001): 273–285.

LaFollette, Hugh, 'Licensing Parents', *Philosophy and Public Affairs* 9 (1980): 182–197.

LaFollette, Hugh, 'A Reply to Frisch', *Philosophy and Public Affairs* 11 (1982): 181–183.

LaFollette, Hugh, 'Freedom of Religion and Children', in Rosalind Ekman Ladd (ed.), *Children's Rights Re-Visioned* (Belmont, CA: Wadsworth, 1996).

LaFollette, Hugh, 'Circumscribed Autonomy: Children, Care, and Custody', in Uma Narayan and Julia J. Bartkowiak (eds), *Having and Raising Children* (University Park, PN: The Pennsylvania State University Press, 1999).

Ladd, Rosalind Ekman (ed.), *Children's Rights Re-Visioned* (Belmont, CA: Wadsworth, 1996).

Ladd, Rosalind Ekman, 'Rights of the Child: A Philosophical Approach', in Kathleen Alaima and Brian Klug (eds), *Children as Equals: Exploring the Rights of the Child* (Lanham, MD: University Press of America, 2002).

Lauritzen, Paul, *Pursuing Parenthood* (Bloomington and Indianapolis, IN: Indiana University Press, 1993).

Leahy, Michael, and Daniel Cohn-Sherbok (eds), *The Liberation Debate: Rights at Issue* (New York: Routledge, 1996).

Lee, Patrick, *Abortion and Unborn Human Life* (Washington, DC: The Catholic University of America Press, 1996).

Locke, John, *Two Treatises of Government*, edited by Peter Laslett (New York: Cambridge University Press, 1988).

Marchese, Marc, Gregory Bassham, and Jack Ryan, 'Work-Family Conflict: A Virtue Ethics Analysis', *Journal of Business Ethics* 40 (2002): 145–154.

McLaughlin, T.H., 'Parental Rights and the Religious Upbringing of Children', *Journal of Philosophy of Education* 18 (1984): 75–84.

Meilaender, Gilbert, *The Limits of Love* (University Park, PN: The Pennsylvania State University Press, 1987).

Mills, Claudia, 'The Child's Right to an Open Future?' *Journal of Social Philosophy* 34 (2003): 499–509.

Minow, Martha, 'Rights for the Next Generation: A Feminist Approach to Children's Rights', in Rosalind Ekman Ladd (ed.), *Children's Rights Re-Visioned* (Belmont, CA: Wadsworth, 1996).

Montague, Phillip, 'Liberties and *Prima Facie* Rights', *Pacific Philosophical Quarterly* 68 (1987): 79–93.

Montague, Phillip, 'The Myth of Parental Rights', *Social Theory and Practice* 26 (2000): 47–68.

Narayan, Uma, and Julia J. Bartkowiak (eds), *Having and Raising Children* (University Park, PN: The Pennsylvania State University Press, 1999).

Narayan, Uma, 'Family Ties: Rethinking Parental Claims in the Light of Surrogacy and Custody', in Uma Narayan and Julia J. Bartkowiak (eds), *Having and Raising Children* (University Park, PN: The Pennsylvania State University Press, 1999).

Narveson, Jan, *The Libertarian Idea* (Philadelphia, PN: Temple University Press, 1988).

Narveson, Jan, *Respecting Persons in Theory and Practice* (Lanham, MD: Rowman and Littlefield, 2002).

Nelson, James Lindemann, 'Parental Obligations and the Ethics of Surrogacy: A Causal Perspective', *Public Affairs Quarterly* 5 (1991): 49–61.

Nickel, James W., *Making Sense of Human Rights* (Berkeley, CA: University of California Press, 1987).

Okin, Susan Moller, 'Liberty and Welfare: Some Issues in Human Rights Theory', in J. Roland Pennock and John Chapman (eds), *Human Rights: Nomos XXIII* (New York: New York University Press, 1981).

O'Neill, Onora, 'Begetting, Bearing, and Rearing', in Onora O'Neill and William Ruddick (eds), *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979).

O'Neill, Onora and William Ruddick (eds), *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979).

Page, Edgar, 'Parental Rights', *Journal of Applied Philosophy* 1 (1984): 187–203.

Page, Edgar, 'Donation, Surrogacy, and Adoption', *Journal of Applied Philosophy* 2 (1985): 161–172.

Paine, Lynn Sharp, 'Work and Family: Should Parents Feel Guilty?' *Public Affairs Quarterly* 5 (1991): 81–99.

Paltrow, Lynn M., 'Punishment and Prejudice: Judging Drug-Using Pregnant Women', in Julia Hanigsberg and Sara Ruddick (eds), *Mother Troubles* (Boston, MA: Beacon Press, 1999).

Parfit, Derek, *Reasons and Persons* (Oxford: Clarendon Press, 1984).

Parfit, Derek, 'Comments', *Ethics* 96 (1986): 832–872.

Pasquerella, Lynn, 'Protecting Faith Versus Protecting Futures: Religious Freedom and Parental Rights in Medical Decision Making for Children', in Uma Narayan and Julia J. Bartkowiak (eds), *Having and Raising Children* (University Park, PN: The Pennsylvania State University Press, 1999).

Pennock, J. Roland, and John Chapman (eds), *Human Rights: Nomos XXIII* (New York: New York University Press, 1981).

Plato, *Republic* (Indianapolis, IN: Hackett, 1992).

Purdy, Laura M., *In Their Best Interest?: The Case Against Equal Rights for Children* (Ithaca, NY: Cornell University Press, 1992).

Purdy, Laura M., 'Divorce, 90s Style', *The World and I* (September 1994): 364–375.

Purdy, Laura M., 'Children's Liberation: A Blueprint for Disaster', in Michael Leahy and Dan Cohn-Sherbok (eds), *The Liberation Debate: Rights at Issue* (New York: Routledge, 1996).

Rachels, James, 'Why Privacy is Important', *Philosophy and Public Affairs* 4 (1975): 323–333.

Rawls, John, *A Theory of Justice*, revised edition (Cambridge, MA: Harvard University Press, 1999).

Raz, J., 'On the Nature of Rights', *Mind* 93 (1984): 194–214.

Roberts, Melinda A., 'Good Intentions and a Great Divide: Having Babies by Intending Them', *Law and Philosophy* 12 (1993): 287–313.

Ross, W. D., *The Right and the Good* (Cambridge: Oxford University Press, 1930; reprint, Indianapolis, IN: Hackett).

Rothman, Barbara Katz, *Recreating Motherhood* (New York: W.M. Norton and Company, 1989).

Scales, Stephen, 'Intergenerational Justice and Care in Parenting', *Social Theory and Practice* 4 (2002): 667–677.

Scarre, Geoffrey (ed.), *Children, Parents, and Politics* (New York: Cambridge University Press, 1989).

Schoeman, Ferdinand, 'Rights of Children, Rights of Parents, and the Moral Basis of the Family', *Ethics* 91 (1980): 6–19.

Schoeman, Ferdinand, 'Parental Discretion and Children's Rights: Background and Implications for Medical Decision-Making', in Rosalind Ekman Ladd (ed.), *Children's Rights Re-Visioned* (Belmont, CA: Wadsworth, 1996).

Schrag, Francis, 'Children: Their Rights and Needs', in William Aiken and Hugh LaFollette (eds), *Whose Child?: Children's Rights, Parental Authority, and State Power* (Totowa, NJ: Littlefield, Adams, and Co., 1980).

Shue, Henry, *Basic Rights* (Princeton, NJ: Princeton University Press, 1996).

Sidgwick, Henry, *The Methods of Ethics*, 7th ed. (Chicago: University of Chicago Press, 1907).

Singer, Peter, 'Famine, Affluence, and Morality', *Philosophy and Public Affairs* 1 (1972): 229–243.

Sommers, Christina Hoff, 'Filial Morality', *The Journal of Philosophy* 83 (1986): 439–456.

Sommers, Christina Hoff, 'Philosophers Against the Family', in George Graham and Hugh LaFollette (eds), *Person to Person* (Philadelphia: Temple University Press, 1989).

Steinbock, Bonnie, *Life Before Birth: The Moral and Legal Status of Embryos and Fetuses* (New York: Oxford University Press, 1992).

Steinfels, Margaret O'Brien, 'Children's Rights, Parental Rights, Family Privacy, and Family Autonomy', in Willard Gaylin and Ruth Macklin (eds), *Who Speaks for the Child: The Problems of Proxy Consent* (New York: Plenum Press, 1982).

Sumner, L.W., *The Moral Foundation of Rights* (New York: Oxford University Press, 1987).

Sutton, Agneta, 'Revisiting Reproductive Technology's Slippery Slope in the Light of the Concepts of *Imago Dei*, Co-creation, and Stewardship', *Ethics and Medicine* 18 (2002): 145–154.

Thomson, Judith Jarvis, 'A Defense of Abortion', *Philosophy and Public Affairs* 1 (1971): 47–66.

Tittle, Peg (ed.), *Should Parents Be Licensed?* (Amherst, NY: Prometheus Books, 2004).

Tooley, Michael, 'Abortion and Infanticide', *Philosophy and Public Affairs* 2 (1972): 37–65.

Vallentyne, Peter, 'Equality and the Duties of Procreators', in David Archard and Colin Macleod (eds), *The Moral and Political Status of Children* (New York: Oxford University Press, 2002).

Vallentyne, Peter, 'The Rights and Duties of Childrearing', *William and Mary Bill of Rights Journal* 11 (2003): 991–1010.

Vetterling-Braggin, Mary, Frederick Elliston, and Jane English (eds), *Feminism and Philosophy* (Totowa, NJ: Rowman and Littlefield, 1977).

Vopat, Mark, 'Contractarianism and Children', *Public Affairs Quarterly* 17 (2003): 49–63.

Warren, Mary Anne, *Moral Status: Obligations to Persons and Other Living Things* (New York: Oxford University Press, 1997).

Weinberg, Rivka M., 'Procreative Justice: A Contractualist Account', *Public Affairs Quarterly* 16 (2002): 405–425.

Westman, Jack, *Licensing Parents* (Cambridge, MA: Perseus Publishing, 1994).

Wood, Carl, and Ann Westmore, *Test-Tube Conception* (London: George Allen and Unwin, 1984).

Young, Iris Marion, 'Rights to Intimacy in a Complex Society', *Journal of Social Philosophy* 14 (1983): 47–52.

Younger, Judith T., 'Responsible Parents and Good Children', *Law and Inequality* 14 (1996): 489–520.

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