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## Gamete Provision and Moral Responsibility

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Graduate Program in Philosophy

A thesis submitted in partial fulfillment of the requirements for the degree in Doctor of Philosophy

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GAMETE PROVISION AND MORAL RESPONSIBILITY

(Thesis format: Monograph)

by

Reuven Brandt

Graduate Program in Philosophy

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Doctor of Philosophy

The School of Graduate and Postdoctoral Studies  
The University of Western Ontario  
London, Ontario, Canada

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## **Abstract**

The use of third-party gametes in reproductive procedures has raised ethical questions about what responsibilities, if any, the providers of these gametes have towards the children they help to create. Much of this debate has focused on the conditions under which individuals acquire parental responsibilities, and the manner in which these responsibilities can be ethically discharged. Rather than taking parenthood as a starting point, however I focus on the conditions under which care-taking responsibilities arise more generally. I defend the thesis that gamete providers acquire substantial inalienable care-taking responsibilities towards their biological offspring, but that these responsibilities do not amount to parental responsibilities.

In the first chapter, I argue that because gamete providers freely and intentionally act to bring about the existence of children, they have care-taking responsibilities for the offspring that result from their gametes. In the second chapter I draw a distinction between the transfer and delegation of responsibilities, and argue that gamete providers can only delegate their care-taking responsibilities. In the third chapter I argue that the care-taking responsibilities gamete providers have do not amount to parental responsibilities, and that gamete providers are merely responsible for *ensuring* that their biological offspring have a reasonable chance at a desirable life. In the fourth chapter I apply the threshold established in the preceding chapter to highlight specific duties possessed by gamete providers. I argue that if gamete recipients cannot care for a gamete provider's biological offspring *and* no one else is able to, then gamete providers have a special responsibility to provide financial or parenting assistance, depending on what

would best serve the child's interests. A consequence of this view is that the state could reasonably require certain kinds of limited child-support from gamete providers.

**Keywords**

Reproductive Ethics, Gamete Donation, Parenthood, Reproductive Responsibility, Assisted Reproduction, Gamete Selling,

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## Introduction

### *Background*

Many modern infertility treatments rely on the use of gametes (sperm and ova) that are sourced from individuals different from those intending to parent the children that will eventually result from the use of those gametes. For instance, increasing numbers of individuals rely on gametes acquired from non-partners, either purchased or donated, for use in *in vitro* fertilization procedures. This development has complicated reproductive ethics by expanding the cleavage between progenitors and parents. Though the rise of these practices has generated debate in the ethics literature, this should not be taken to imply that the distinction between progenitor and parent is a novel creation of modern technology. Many societies have, by design, separated the social performance of parenting from the biological process of creating children<sup>1</sup>, and adoption in various forms has a long history in Western society. However, at least within the recent Western tradition, there is a strong presumption that, all things being equal, progenitors ought to parent their biological children. This presumption is manifest in the scorn levied against men in one-night-stand cases who ‘abandon’ their genetic offspring, and the legal norms governing custody and child support.<sup>2</sup> Though adoption stands as an exception to this general social attitude in that it permits progenitors to alienate their parental responsibilities, it is an example that highlights a tension in our intuitions about how responsibilities towards children are acquired and divested. Complicated by our intuitions in these other contexts involving the rearing of children, a question that remains

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<sup>1</sup> Consider communal child rearing on the early kibbutzim.

<sup>2</sup> Genetic relatedness being a grounds for both the imposition of child support and claims to some form of custody.

to be settled in the bioethics literature is what responsibilities, if any, gamete providers have towards the children they help create.

This question is pressing for two major reasons. First, there is no legal consensus yet on whether gamete providers are in any way legal parents. To date, many of the judicial decisions on this matter have been inconsistent<sup>3</sup>, and some have relied on *ad hoc* justifications for departing from previously established legal norms.<sup>4</sup> Though the law does not always strictly follow ethical findings, a thorough ethical analysis would help to provide a basis for crafting laws to deal with the complex issues raised by child custody and child support cases involving gamete providers. Second, involving oneself or others in the creation of new life is a morally weighty decision. Individuals deciding to provide gametes to others, along with the individuals making use of those gametes, arguably ought to consider the moral implications of this decision so that they can proceed in an ethical manner. In offering an account of gamete providers' responsibilities, this thesis will aid potential gamete providers in determining whether offering their gametes to others is an activity they wish to engage in, given what responsibilities they acquire as a result.

In this thesis I will argue that gamete providers acquire substantial responsibilities towards their biological offspring, and that these responsibilities cannot be transferred to others. Crucially, I argue that these responsibilities are not parental. Though my focus will be moral responsibility, in a few places (especially the final chapter) I will highlight

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<sup>3</sup> Boyd, Susan. "Gendering Legal Parenthood: Bio-Genetic Ties, Intentionality and Responsibility." *Windsor Yearbook of Access to Justice* 25 (2007): 63-94. p. 64.

<sup>4</sup> For examples, see these cases: *Susan L. Kesler v. Conrad E. Weniger*. No. 471 WDA 99. *The Superior Court of Pennsylvania*. 7 January 2000.; *Ivonne V. Ferguson v. Joel L. McKiernan*. No. 1940 A.2d 1236. *Supreme Court of Pennsylvania*. 27 December 2007.

what implications these responsibilities could have for law and policy governing reproduction aided by gamete providers.

*Thesis outline*

In the first chapter I argue that gamete providers acquire responsibilities towards their genetic offspring. This argument proceeds by first distinguishing between different kinds of responsibility, and second, establishing that in some circumstances individuals can acquire a certain class of responsibilities (care-taking responsibilities) non-voluntarily. I defend the claim that individuals acquire care-taking responsibilities when they freely and intentionally place innocent individuals in a state of extreme vulnerability, regardless of whether they voluntarily accept such responsibilities. I present this criterion as a sufficient condition for care-taking responsibility, but not a necessary one. Since gamete providers meet this condition, they acquire care-taking responsibilities when their gametes are used by other for reproductive purposes.

This argument is an important departure from other arguments that have been offered for similar conclusions. Other authors have used the similarities between one-night-stand cases and gamete provision as a basis for establishing that gamete providers have responsibilities towards their biological offspring. They conclude, based on the strong intuitions we have about responsibility in the former case, that similar responsibilities must exist in the latter case as well. However, on my view there is a *stronger* case for responsibility in gamete provision cases than in one-night-stand cases because gamete providers engage in a course of action where the creation of a child is the intended result. My view is not that individuals who create a child through carelessness or accident do not also have responsibilities. Rather, I contend that if we think

responsibilities arise when children are created unintentionally, then it would be odd to think that the opposite is true when the creation of a child is intentional.

In the second chapter I assess what Tim Bayne calls “the transfer principle”<sup>5</sup>, which is the view that moral responsibilities acquired by gamete providers can be transferred to the child’s intending parents. Various authors have taken this principle to show that even if gamete provision is the kind of activity that results in moral responsibilities, this fact is largely of little consequence for gamete providers because they transfer any responsibilities they have to the intending parents along with their gametes.

I argue that much of the support offered for the transfer principle rests on a failure to adequately distinguish between the delegation and transfer of responsibility. Upon closer inspection, examples used to demonstrate the common place nature of the transfer of parental responsibility are in fact examples of the delegation of responsibility. I further argue that there are strong reasons to doubt that gamete providers could ever transfer their responsibilities to others, though they can delegate them. As a consequence, gamete providers have inalienable responsibilities towards their genetic offspring.

In the third chapter, I outline what kinds of responsibilities gamete providers have towards their genetic offspring. I argue that though they have inalienable care-taking responsibilities, these do not amount to a moral requirement to parent their genetic offspring. In other words, the responsibilities are not parental. Instead, I argue that gamete providers are responsible for ensuring that their biological offspring have a

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<sup>5</sup> Bayne, Tim. "Gamete Donation and Parental Responsibility." *Journal of Applied Philosophy*. 20.1 (2003): 77-85. p. 82.

reasonable chance at a desirable life, and that this responsibility can be fulfilled without gamete providers parenting themselves, so long as someone competently parents their biological offspring. I argue that ‘a reasonable chance at a desirable existence’ is an appropriate middle ground between the very minimal responsibilities that some people might think are owed to children given certain conclusions that can be drawn from the non-identity problem<sup>6</sup>, and the extremely demanding requirements that might arise given arguments offered by Seana Shiffrin about harm and procreation. Briefly, someone might think that the non-identity problem leads to the conclusion that gamete providers have not harmed their biological offspring so long as they have a life worth living. By contrast, Shiffrin’s argument implies that gamete providers owe their biological offspring compensation for all of the minor harms that they encounter over the course of their life. The view I develop lies in between these two extremes. Though meeting the moral standard that I set for gamete providers requires that their biological offspring are properly parented by someone, nothing about this requires gamete providers to do the actual parenting themselves.

In the final chapter I look at what pragmatic consequences my view has for gamete providers, and the conditions that must be in place for gamete provision to be ethical. I argue that gamete providers must have reasonable grounds to think that the intending parents will be able to parent adequately. Given the general lack of parental screening that currently takes place with gamete provision<sup>7</sup>, this means that the majority of current gamete provision is unethical. I further argue that because gamete providers have an ongoing responsibility to ensure that their biological offspring have a reasonable

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<sup>6</sup> Parfit, Derek. *Reasons and Persons*. Oxford: Clarendon Press, 1984. Ch. 13.

<sup>7</sup> This true with other forms of assisted reproduction as well.

chance at a desirable life, some process must be in place for gamete providers to gain information about how their genetic offspring are faring. Furthermore, since intervention into the private family life of their genetic offspring could be very damaging, gamete provision is permissible only in societies where there is a reliable child welfare agency capable of determining when intervention into the private family life of gamete providers' genetic offspring is warranted. I also argue that gamete providers are responsible for providing material support to their genetic offspring if needed, but that this ought to take a different and likely less onerous form than current child support payments.

Taken together, the arguments in each of these chapters will establish the central thesis of this work, which is that gamete providers acquire substantial and inalienable care-taking responsibilities towards their genetic offspring.

### *Terminology*

Before turning to the argument, I want to first briefly discuss some of the terminology that I will be employing throughout this text, because some of it departs from the terminology predominantly used in the literature. First, I will be using the term '*gamete provider*' to refer to individuals who make their gametes available for the reproductive use of other people, and who therefore do not act with the intention of parenting the resultant children themselves. In most of the bioethics literature these individuals are referred to as "gamete donors", but this term is somewhat deceptive. Though many individuals do indeed donate their gametes, many also sell their gametes, even in jurisdictions where such transactions are prohibited by law.<sup>8</sup> Since the arguments

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<sup>8</sup> "Frozen Human Egg Buyers May Face Prosecution." *CBC News* 23 April 2012. Webpage. 5th November 2014. <<http://www.cbc.ca/news/health/frozen-human-egg-buyers-may-face-prosecution-1.1139563>>.

presented in this thesis apply to both gamete sellers and donors, the term gamete provider is more accurate. Second, throughout the thesis I will be using the terms '*intending parent(s)*' to refer to the individual(s) employing the provided gametes for reproductive purposes. In the literature these individuals are often referred to "commissioning parents", but this is suggestive of a commercial arrangement. Lastly, I will refer to the resulting children as "biological offspring" of the gamete provider or as the children of the intending parents. For instance, I might say, 'gamete providers have important responsibilities towards their biological offspring'. In some of the literature the term "biological children" is used instead, but this language can be confusing because use of the term "children" might be taken to imply that gamete providers are among the 'parents' of these children. In order to avoid this inference, I will use the phrase 'biological children' rather than 'their children'.

## Chapter 1: Gamete Provision and Care-Taking Responsibility

### *Introduction*

Much of the debate about whether gamete providers acquire responsibilities towards their biological offspring has focused on whether gamete providers are parents. For obvious ethical and legal/policy reasons, determining which individuals are the parents of which children is important, and so the concern with determining parenthood in gamete provision cases is well founded. However, the singular focus on parenthood in much of the literature on gamete provision obscures the more general question of whether gamete providers have *any* special responsibilities for the children that they help to create. Many non-parents—such as school teachers, nannies, and camp counselors—have substantial special obligations towards children. Focusing solely on whether gamete providers are parents ignores the possibility of non-parental forms of special obligations for gamete providers. In this chapter I will show that gamete providers do indeed have special responsibilities for their biological offspring. The exact content of these responsibilities will be addressed in subsequent chapters.

This chapter has two main sections. In the first section I discuss ambiguities in the use of the term “responsibility” that potentially obscure the discussion about gamete provider responsibility. Using Claudia Card’s taxonomy of responsibility, I argue that gamete providers can acquire care-taking responsibility for their biological offspring even if they exercise due diligence when providing their gametes. The thrust of this argument is that negligence is not a necessary condition for acquiring care-taking responsibility for children created using one’s provided gametes. In the second section I provide a positive argument for why most gamete providers do in fact acquire care-taking responsibility. I



then distinguish my view from similar views proposed by Giuliana Fuscaldo<sup>9</sup>, Rivka Weinberg<sup>10</sup> and James Nelson.<sup>11</sup>

One distinction I would like to draw at the outset is between pre-provision and post-provision responsibilities. I define pre-provision responsibilities as those that must be met for the act of gamete provision itself to be ethical. These might include taking reasonable steps to ensure that the intended recipients of the donated gametes are capable of parenting, and avoiding producing children with severe genetic diseases.<sup>12</sup> I define post-provision responsibilities as those that persevere after the gametes are donated, potentially until the child reaches maturity. Introducing this distinction is important because, as will be discussed in subsequent sections, some authors think that if post-provision responsibilities arise at all, they arise only when gamete providers fail in their pre-provision responsibilities. In other words, under this view post-provision responsibilities arise for gamete providers only when they donate their gametes in an unethical manner. In section two I will discuss this view more thoroughly under the sub-heading “restitution views”. A primary focus of this chapter is to show that gamete providers acquire care-taking responsibility for their biological offspring even when pre-provision responsibilities are fulfilled – that is to say, even if we think that the initial act of gamete provision was done in a morally unimpeachable fashion. I will discuss the content of pre-provision and post-provision responsibilities in subsequent chapters.

### ***1. Many Meanings of Responsibility***

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<sup>9</sup> Fuscaldo, G. “Genetic Ties: Are they Morally Binding?”. *Bioethics*. 20.2 (2006): 64-76.

<sup>10</sup> Weinberg, Rivka. “The Moral Complexity of Sperm Donation”. *Bioethics*. 22.2 (2008): 166-78.

<sup>11</sup> Nelson, James. “Parental Obligations and the Ethics of Surrogacy: A Causal Perspective”. *Public Affairs Quarterly* 5.1 (1991): 49-61.

<sup>12</sup> Bayne, T. “Gamete Donation and Parental Responsibility”. *Journal of Applied Philosophy*. 20.1(2003): 77-87. p. 85.

The word “responsibility” can be used in many different senses and so the question, “who is responsible for some outcome X” is often ambiguous. This point, made famous in H.L.A Hart’s postscript to *Essays in the Philosophy of Law*<sup>13</sup>, gave rise to a rich body of literature that distinguishes between different senses of the term ‘responsibility’.<sup>14</sup>

For instance, the way in which a principal is responsible for running a school is very different from the way in which a misbehaving student is responsible for disrupting a class. When we say the principal is responsible for running the school, we are primarily pointing to the principal’s contractual authority and obligation to manage the school. When we say the misbehaving child is responsible for disrupting the class, we are pointing to the source of the disruption. In addition to the responsibility to manage something, and the responsibility for bringing something about, other forms of responsibility can also be drawn from this example. For instance, the student could be responsible in the sense either that she is to blame for the disruption in addition to being simply responsible for causing it.

These different senses of responsibility can arise independently from each other. Though an incompetent and disinterested principal may still have the authority and obligation to manage a school, the school may actually be managed by self-organized teachers. In this latter case, the teachers are causally responsible for managing the school despite the principal’s contractual responsibility to do so. This means that when asked the question, “who is responsible for managing the school?”, two different answers are

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<sup>13</sup> Hart, H.L.A. *Punishment and Responsibility: Essays in the Philosophy of Law*. New York: Oxford University Press, 1968. p. 210.

<sup>14</sup> Zimmerman, Michael. *An Essay on Moral Responsibility*. Totowa: Roman & Littlefield, 1988. p. 1.

possible depending on what meaning of responsible is invoked. If the person asking is interested in who is actually doing the managing, then the teachers are responsible, while if the asker is interested in the person obligated to manage the school then the principal is responsible.

The taxonomy of responsibility developed by Claudia Card in her book *The Unnatural Lottery*<sup>15</sup> is particularly useful for the purposes of my argument, and for understanding the various different kinds of responsibility. Card distinguishes between four different senses of responsibility: (1) the administrative sense, (2) the accountability sense, (3) the care-taking sense, and (4) the credit-taking sense. I will use this taxonomy to help explain precisely in what sense I take gamete providers to be responsible for their biological offspring. The key point I make is that care-taking responsibility (the obligation to take care of another) need not always be linked to credit-taking responsibility (blameworthy action) or voluntary assent. I will do this by first explaining the different ways the term ‘responsibility’ can be used by drawing on the examples mentioned above, and then describing some of the different ways a particular subset of responsibilities, care-taking responsibilities, can arise.

The administrative sense of responsibility involves conceiving of possibilities and then determining which ones to realize. In the preceding example, the school principal is responsible in the administrative sense for organizing the school. The accountability sense involves deciding to account for something or realizing that one is to account for something and seeing it through. For instance, the teachers might see themselves as accountable for the education of their students and so organize themselves to make up for

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<sup>15</sup> Card, Claudia. *The Unnatural Lottery*. Philadelphia: Temple University Press. 1996. p 28.

the principal's deficiencies. The care-taking sense involves a commitment to stand behind something, support it and make it good, or make good on one's failure to do so. A camp counselor is responsible in the care-taking sense for the campers under her charge. The credit-taking sense involves being the appropriate object of praise or blame for a particular action or outcome. For instance, we might say that the principal is responsible for the school's disarray because she is to blame for failing to do her job.<sup>16</sup>

Another sense of responsibility that is important to mention is causal responsibility, which involves being a relevant cause of an event. Returning to a previous example, we might say that the misbehaving student caused the class disruption. However, determining the causes of an event is fraught with theoretical difficulty, most notably in delineating in a non-arbitrary fashion what actions and agents are relevantly causally responsible. For instance, should we include the person who drove the child to school as part of the cause of the disruption, or the genetic parents of the child, or the city administrator that drew up the school catchment areas? Without any of those particular individuals, that *particular* classroom disruption would not have occurred. Determining which individuals are causally responsible for a particular state of affairs in a morally relevant way, (i.e. that they have some-credit taking responsibility) is often determined contextually, and in everyday use we generally seem to have little trouble making this determination.<sup>17</sup> For example, if someone asked who was to blame for the classroom disruption, the answer 'the city administrator' would clearly be inappropriate, even if the city administrator was an essential part of the chain of events that led to the disruption.

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<sup>16</sup> It is worth noting that there is some overlap between the different kinds of responsibility. For instance, the accountability sense of responsibility might give rise to care-taking responsibility. See Card's discussion about overlap between kinds of responsibility on page 30.

<sup>17</sup> Nelson, *op. cit.* p. 54.

However, questions of causal responsibility are sometimes confused with questions of credit-taking responsibility. For instance, if the child's guardian knew that the child was apt to misbehave and could have made alternative plans, we might find the guardian responsible in the credit-taking sense, while not finding the same for the child, even though the child's behavior is what most directly caused the disruption.

Since I seek to establish that gamete providers acquire care-taking responsibility, it is important to look at the various ways in which care-taking responsibilities arise. I have divided the possibilities into four categories: restitution cases, voluntary cases, non-voluntary cases and quasi-voluntary cases.<sup>18</sup> I want to show that by focusing on restitution cases and to a limited extent voluntary cases, other authors who have examined gamete provider responsibility have overlooked the possibility of quasi-voluntary care-taking responsibility, and that gamete providers acquire this latter kind of responsibility. A key feature I will focus on in discussing these cases is the differing ways 'responsibility' is used in each. Next I will outline the different categories and discuss their relevance to gamete provision.

## ***2. Different Bases of Care-Taking Responsibility***

### *2.1 Restitution Cases*

In many circumstances, an individual might acquire care-taking responsibility because they have credit-taking responsibility (blame) for a particular state of affairs they have caused. For instance, consider an individual who, while distracted by texting, runs a stop sign and strikes a pedestrian. When determining who is responsible for the injury, we would find the driver responsible in three senses. This driver is responsible in the

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<sup>18</sup> This categorisation is likely non-exhaustive. The purpose is merely to show that care-taking responsibility is not reliant on voluntariness or blame.

credit-taking sense because the injury to the pedestrian was caused by a blameworthy action – texting while driving. The driver is causally responsible because of the essential role the driver played in causing the accident. Beyond the general moral duty to stay at the scene of the accident and assist the pedestrian which we might think attaches even to a non-blameworthy counterpart<sup>19</sup>, the driver must also compensate the pedestrian for medical costs, lost wages, and other encumbrances arising from the blameworthy action. The driver thus has a responsibility to take care of the pedestrian, at least to the point that the pedestrian is returned to his pre-injury state. This case highlights the intuition that care-taking responsibility generally arises when an individual harms another as a result of blameworthy actions, and that these responsibilities can be augmented beyond that which might attach to a non-blameworthy causal agent.

I will call cases in which individuals acquire care-taking responsibility as a result of their credit-taking responsibility “restitution cases”. There are two authors, David Benatar and Tim Bayne, who seem to suggest that if pre-provision responsibilities are not met, and hence the provision of gametes is negligent and thus blameworthy, gamete providers have some resultant care-taking responsibility towards their offspring. Their views also suggest that in the absence of blame, no care-taking responsibilities arise for gamete providers. I will now turn to outlining their views. Importantly, I will show that, contrary to their views, care-taking responsibilities can arise for gamete providers even in the absence of blame.

In “The Unbearable Lightness of Bringing into Being”, Benatar argues that most gamete provision is unethical because gamete providers generally fail to adequately take

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<sup>19</sup> Consider a diligent driver who encounters black ice and slides through a stop sign, striking a pedestrian. More will be said about this example in the *non-voluntary cases* subsection.

seriously their responsibility for their biological offspring.<sup>20</sup> According to Benatar, there is a presumptive obligation to parent the children that arise from one's gametes. This responsibility stems from the fact that individuals generally possess "reproductive autonomy", or control over how they use their gametes. Since individuals are generally responsible for the foreseeable consequences of their free actions, they are responsible for the biological offspring that result from the free choices they make with their gametes.<sup>21</sup> Furthermore, Benatar argues that the care-taking responsibilities individuals have for their biological offspring are weighty, but these responsibilities can be transferred under certain stringent conditions. According to Benatar, gamete providers can transfer the care of their biological offspring to intending parents if they ensure that the intending parents are capable of parenting competently. For instance, we would think it negligent for parents to hand over their children to the extended care of total strangers. Since gamete providers have a presumptive duty to care for their biological offspring, the current structure of gamete provision is similarly negligent according to Benatar. Gamete providers hand over children for whom they have substantial care-taking responsibilities to complete strangers with very little oversight. However, to reiterate, Benatar does think that if proper care is taken in selecting the recipients of one's gametes, gamete provision is done ethically.<sup>22</sup>

On Benatar's view, then, gamete providers possess substantial pre-provision responsibilities. Gamete providers must take extensive measures to screen gamete recipients as a means of ensuring that they are capable of parenting children in an

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<sup>20</sup> Benatar, David. "The Unbearable Lightness of Bringing into Being". *Journal of Applied Philosophy*. 16.2 (1999): 173-180.

<sup>21</sup> Ibid. 174.

<sup>22</sup> Ibid. 179.

acceptable manner. If this is achieved, however, Benatar thinks that gamete providers no longer have any substantial post-provision responsibilities. Benatar does not explicitly state what responsibilities gamete providers might retain if they fail to fulfill their extensive pre-provision responsibilities, but the implication of his view is that they retain their care-taking responsibilities.<sup>23</sup>

Though Bayne disagrees that there is a presumptive responsibility to parent the children that result from one's own gametes<sup>24</sup>, he does think that there are general pre-provision<sup>25</sup> responsibilities that accompany gamete provision. Bayne does not offer an exhaustive account of what these responsibilities include, but does mention taking reasonable steps to prevent providing gametes to known child-abusers and preventing the transmission of severe genetic diseases as examples. Under Bayne's account, the pre-provision responsibilities that must be met for gamete provision to be morally permissible are significantly less demanding than those required by Benatar; however, under Bayne's view, the negligent transfer of gametes is still possible. Like Benatar, Bayne does not say what is required of negligent gamete providers, but the implication is that some post-provision responsibilities may arise when procreative obligations are not met.

Bayne and Benatar have different views on what is required for gamete providers to avoid acting negligently, but both authors seem to suggest that if gamete providers fulfill their pre-provision responsibilities, then they are free from post-provision responsibilities, since neither author mentions the possibility of further responsibilities

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<sup>23</sup> On this issue Benatar's view could be understood in two ways: (1) Parenting responsibility *is* transferred, but in a way that is blameworthy for the donor or, (2) parenting responsibility is not transferred because the presumptive duty cannot be outweighed by simply handing over children to strangers. Given the strength Benatar attributes to the presumptive duty to parent, I think the second reading is the most plausible.

<sup>24</sup> Bayne, *op. cit.* p. 79.

<sup>25</sup> Bayne calls these "procreative responsibilities". *Ibid.*, p. 84.



once the pre-provision responsibilities are fulfilled. This is perhaps an omission on their part, or perhaps an issue that lies outside the scope of their projects. However, to the extent that someone might hold the above view, it seems to rest on the implicit assumption that in the absence of blame there is no basis for care-taking responsibility. Moreover, this assumption is not without some degree of intuitive plausibility.

Consider a pilot who dutifully completes the proper pre-flight check, including checking the various components for wear. Unbeknownst to the pilot, an evil trickster has replaced many of the bolts with heads that are glued in place and as a result the plane crashes on takeoff, injuring some of the passengers on board. Beyond helping at the scene of the crash, it seems likely that the pilot has no ongoing responsibility to ensure that the passengers are returned to their pre-injury state. If pressed to provide this kind of care, a reasonable response from the pilot would be that she is not responsible for the crash, and thus is not morally required to be responsible in the care-taking sense for the victims.

What Bayne and Benatar (or some hypothetical defenders of this position) assume is that a similar response is equally reasonable in the case of the cautious gamete provider. Analogous to the pilot, gamete providers who take the necessary precautions to ensure that their biological offspring will have good lives (which surely includes being parented well) are not responsible in the credit-taking sense if things go awry for reasons outside of their control. And hence, like the pilot, are therefore not responsible in the care-taking sense for their biological offspring.

This argument assumes that prior credit-taking responsibility is necessary for the imposition of care-taking responsibility. Here the thought is that care-taking

responsibilities can be involuntarily imposed on an individual only when that individual is to blame for the state of affairs that has rendered the wronged individuals in need of care. In response, what I will show in the following subsections is that there are multiple ways that individuals can become responsible in the care-taking sense, despite not being responsible in the credit-taking sense. I will discuss the relevance of each in the context of gamete provision, focusing primarily on what I call quasi-voluntary cases.

## *2.2 Voluntary Cases*

First, though not an imposition of care-taking responsibility, it is worth acknowledging that individuals can become responsible in the care-taking sense simply by voluntarily agreeing to take on that role. Consider a camp counsellor who finds that a camper has been injured in a tussle with a bunkmate. Assuming no negligence on the part of the counsellor, she is not responsible for the injury in the credit-taking sense since she is not the appropriate object of blame. However, the counselor is responsible for attending to the situation by providing care to the injured camper and taking the appropriate disciplinary measures. In this circumstance the counsellor's care-taking responsibility was acquired voluntarily when the camp counselor agreed to take on the job. Care-taking responsibility thus can arise out of the more general norm of promise keeping. Adoption, at least initially, likely falls into this category. Prior to the formation of a relationship with the child, what grounds the adoptive parent's parental responsibilities is their agreement to do so.<sup>26</sup> However, once a parent-child relationship

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<sup>26</sup> For a defence of voluntarist accounts of parenthood see: Brake, E. (2010). Willing Parents: A Voluntarist Account of Parental Role Obligations. In D. Archard, & D. Benatar (Eds.), *Procreation and Parenthood* (p. 151-177). Oxford: Oxford University Press.

has formed, the relationship itself is likely the overriding source of the parental responsibility, rather than the initial agreement to parent.<sup>27</sup>

Within the context of gamete provision, gamete providers whose agreement includes involvement in the lives of their biological offspring have some care-taking responsibility arising from the agreement. This need not be parental, and many times these relations are compared to that of an aunt, uncle, or close family friend.

### *2.3 Non-voluntary Cases*

It also seems plausible that care-taking responsibility can arise without blame or voluntary agreement; familial obligation fits into this category. Many philosophers think that individuals have responsibilities towards parents, grandparents and siblings despite not voluntarily agreeing to these responsibilities or acquiring these responsibilities because of some blameworthy act. Common justifications given for the existence of these responsibilities include gratitude and friendship.<sup>28</sup> However, neither of these accounts seem to support responsibilities for gamete providers towards their biological offspring.

For instance, both the gratitude and friendship accounts of familial obligations have their basis in past sacrifice.<sup>29</sup> Roughly speaking, the argument is that obligations of either debt or gratitude (depending on the form of the argument) arise as a consequence of the sacrifices made by family members that promote the beneficiary's wellbeing. The case of children and parents is paradigmatic of this kind of obligation. Since parents make many sacrifices, like time and money, to promote their children's wellbeing, by

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<sup>27</sup> A more involved discussion about the basis of parenthood takes place in chapter three.

<sup>28</sup> Schinkel, Anders. "Filial Obligations: A Contextual, Pluralist Model." *The Journal of Ethics* 16.4 (2012): 395-420

<sup>29</sup> Ibid.

some principle of reciprocity children in turn have an obligation to help their parents. However, in case of gamete provision, there is no sacrifice made by biological offspring that gives rise to debt or gratitude.

Another account of familial obligations, offered by Diane Jeske, suggests that it is the intimate relationships that form amongst family members that gives rise to special obligations.<sup>30</sup> Under this view, even if the intimate relationships that develop are not entirely voluntary (e.g. children do not choose their parents or siblings), it is these relationships that ground special responsibilities to family members, and not mere genetic relatedness.<sup>31</sup> Since gamete providers generally do not have intimate relationships with their biological offspring, this account also fails to establish that gamete providers have special care-taking responsibilities towards their biological offspring.

Care-taking responsibilities also sometimes arise non-voluntarily as a consequence of the general duty of beneficence. Many have argued that beneficence creates a responsibility to help others in an emergency when doing so poses little or no threat one's own wellbeing.<sup>32</sup> Consider the survivor of an airplane accident who finds herself on a desert island alone with an infant survivor. Assuming that it would not put her wellbeing in peril, intuitively she has some care-taking responsibility towards the infant. There may be cases in which the duty of beneficence requires gamete providers to care for their biological offspring. However, in so far as this duty arises from general beneficence, it applies only accidentally to gamete providers. For instance, if the crash

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<sup>30</sup>Jeske, Diane. "Families, Friends, and Special Obligations ." *The Canadian Journal of Philosophy* 28.4 (1998): 527-556.

<sup>31</sup> Ibid, p. 549-550. It is worth noting that Jeske thinks genetic connection might be a reason for forming intimate relationships, but it is the relationships themselves that give rise to the special obligations.

<sup>32</sup> Feinberg, J. "The Moral and Legal Responsibility of the Bad Samaritan". *Freedom and Fulfillment*. Princeton: Princeton University Press, 1992: 175-196; Weinrib, Ernest J. "The case for a duty to rescue." *Yale Law Journal* 1980: 247-293.; Singer, P. "Famine, Affluence, and Morality". *Philosophy and Public Affairs*, 1.1 (1972): 229-243.

survivor happened to be the infant's progenitor by means of gamete provision, then the gamete provider would have some care-taking responsibility, but only accidentally.

There is nothing in virtue of being the infant's progenitor that explains this responsibility.

Alternatively, we could imagine a scenario in which, along with the infant, there are two adult survivors: the gamete provider and an unrelated party. If gamete providers have a special obligation to care for their biological offspring, then the provider would, all other things being equal, have a stronger obligation to care for the child than the stranger; it is this kind of special obligation that I believe exists.

In sum, though familial obligations give rise to non-voluntary care-taking responsibilities, none of the major accounts I have considered (gratitude, friendship, and intimate relationships) support the conclusion that gamete providers have special responsibilities towards their biological offspring. Additionally, though the general duty of beneficence sometimes give rise to a non-voluntary responsibility to care for others, it does not give rise to a special responsibilities for gamete providers to care for their biological offspring.

#### *2.4 Quasi-voluntary cases*

However, there is another kind of case in which individuals can acquire care-taking responsibility despite not taking on this responsibility voluntarily or acting in a blameworthy manner. Consider a person who agrees to look after a friend's child until six in the afternoon, but instead of returning to pick up the child, the friend goes out to a movie that ends at midnight. Though the babysitter promised to take care of the child only for the afternoon, intuitively it would seem wrong for the babysitter to put the child out or stop watching the child after the friend fails to return at the agreed upon time. In

this case it seems that the babysitter has a responsibility to care for the child despite not acting wrongly or explicitly entering into an agreement to take care of the child until midnight. This case is different from the non-voluntary cases because, unlike in those cases, some voluntary action is required on the part of the agent for the responsibility to exist. Part of what gives force to the friend's responsibility to continue to safeguard the child's wellbeing is that he voluntarily agreed to babysit.<sup>33</sup>

Someone may object, saying that the babysitter has no *special* obligation towards the child because any able person would be obliged to temporarily care for an abandoned child. After the time has elapsed, the babysitter has the same care-taking responsibility as any individual who comes across the abandoned child. What is at work here is not a special obligation, but some manifestation of the general duty of beneficence, as highlighted in the desert island case.

I am inclined to agree that individuals to whom it would pose no extreme hardship have a general responsibility to temporarily care for abandoned children (again, as in the desert island case) but in this case it seems that the babysitter has a stronger obligation than a mere stranger would to care for the child. It seems worse to abandon a child one is babysitting because her parent failed to show up than to fail to help just any abandoned child. To make this special responsibility more apparent, consider more closely the difference in responsibility involved in a case involving a stranger. Imagine that at a shopping centre person A spots a distressed child who appears lost. Person A starts walking towards the child, but soon notices another shopper stop, speak to the child, and then lead the child towards a shopping centre employee. At this point it seems perfectly

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<sup>33</sup> This need not require the babysitter to continue babysitting, but the babysitter cannot suddenly neglect the child once the clock strikes six. The babysitter could, for instance, have a trustworthy family member take care of the child.

reasonable for person A to continue on with their day, without having to press further to ensure the wellbeing of the lost child. In this circumstance it seems that the intervention of an unknown stranger relieves person A of her care-taking responsibility towards the lost child. However, in the babysitting case, the intervention of a stranger does not seem sufficient. If the babysitter were to place the child in the care of a complete stranger after the child's parent failed to return, we would find this behavior negligent. We expect the babysitter to exercise some diligence by placing the child in the care of someone he has reason to believe will be trustworthy if he is not able to care for the child until the parent returns. This higher burden of diligence demonstrates that if the parent fails to return on time, the babysitter's responsibility is not equivalent to that merely arising from the general duty of beneficence.

The babysitting example shows that individuals can acquire *special* care-taking responsibilities even when they do not consent to these responsibilities or act in a blameworthy manner. This means that care-taking responsibilities are not constrained to restitution cases, and so the satisfaction of pre-provision responsibilities need not preclude post-provision responsibilities. If gamete provision is relevantly similar to the babysitting case, then it is possible for gamete providers to have care-taking responsibilities even when they have taken great care in choosing the recipients of their gametes. Next I will discuss why quasi-voluntary care-taking responsibilities arise in gamete provision cases.

### ***3. Gamete Provision and Quasi-Voluntary Care-Taking Responsibilities***

Quasi-voluntary care-taking responsibilities arise whenever individuals have care-taking responsibilities as a result of a freely chosen action, despite not agreeing to take on

care-taking responsibility or acting in a blameworthy manner. As discussed above, continuing to babysit a child after the agreed upon pickup time has elapsed is one example, but there are others. For instance, a person may become responsible for getting an inebriated friend home safely after a night of drinking simply by virtue of agreeing to go out with the friend. After repeated instances of excessive drinking, an individual may decline to go out with the friend because she “doesn’t want to be the responsible one at the end of the night”. Similarly, people sometimes avoid going on outings with people known to cause trouble because they “don’t want to get roped in” if things go awry, even if they do not actively participate in the troublemaking themselves. Though there may not be guilt by association, these intuitive responses support the claim that there can be care-taking “responsibilities by association”. These arise in circumstances where that activity itself is not blameworthy (like going for a drink after class) and no agreement was made beforehand to be responsible.

In this section, I argue that gamete provision for reproductive purposes is the kind of activity that gives rise to quasi-voluntary responsibilities. My objective is not to provide a complete list of necessary and sufficient conditions for this kind of responsibility, but merely to show that gamete provision is an activity in which surely responsibilities arise. In this vein, my strategy is to provide a set of strong sufficient conditions for quasi-voluntary responsibilities while remaining agnostic as to whether any subset of these conditions is itself necessary or sufficient. The position I defend is similar to views put forward by Archard, Fuscaldo, Nelson, Porter, and Weinberg. The key feature that differentiates my view from theirs is that the strong sufficient criteria I



propose for quasi-voluntary responsibilities better resolve certain theoretical challenges about causal responsibility put forward by Bayne, or so I argue.

This section proceeds in three main parts. First, in order to establish its plausibility, I show that the concept of quasi-voluntary responsibility is consistent with our general intuitions about care-taking responsibility in less technologically involved cases of reproduction than gamete provision. I then discuss the objections Bayne raises to extending similar kinds of responsibility to the gamete provision case. Finally, I demonstrate why attempts made by other authors to overcome this objection do not succeed, and why my view offers a more promising solution.

### *3.1 Quasi-Voluntary responsibility and reproduction*

The idea that procreators acquire non-voluntary obligations as a result of their blameless reproductive activities is by no means a novel position. There is near universal acceptance<sup>34</sup> that unintending fathers in one-night-stand cases have an obligation to help support their biological offspring regardless of the measures taken to prevent a pregnancy from occurring. For instance, the extremely unlikely possibility that multiple methods of birth control will fail (including sometimes even vasectomies and tubal ligation) seems to have little impact on the responsibility acquired by the male progenitor. Since consensual sexual activity is not blameworthy, and use of highly reliable birth control seems far from negligent, it seems that neither negligence nor blame are necessary for responsibility in reproduction cases. If anything it seems that our general intuitions are that merely being

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<sup>34</sup> One notable exception is Elizabeth Brake. See Brake, E. "Fatherhood and Child Support: Do Men Have a Right to Choose?". *Journal of Applied Philosophy*, 22.1 (2005): 55–73.

a willing<sup>35</sup> participant in sexual activity is sufficient for care-taking responsibility in these kinds of cases.

As noted by various authors, intuitions about the impermissibility of child abandonment by one or both genetic parents in cases where pregnancies arise unintentionally is the major counter-example to intentionalist<sup>36</sup> and voluntarist<sup>37</sup> accounts of parenthood, which downplay or deny the moral significance of engaging in consensual sexual activity.<sup>38</sup> For instance, Fuscaldo states, “if parental obligations are determined according to intent then why do we pursue and label ‘recalcitrant’ men who never intended to be fathers and who refuse to pay child support?”<sup>39</sup> Similarly, Weinberg’s argument that gamete providers have parental responsibilities rests largely on the analogy she draws between procreation via gamete provision and procreation that occurs unintentionally as a result of one-night-stands.<sup>40</sup> Nelson also draws on an analogy to one-night-stands when defending his causal account of parenthood in gestational surrogacy.<sup>41</sup> Underlying all these arguments is the view that individuals can have care-taking responsibility (in this case of the parental variety) despite not acting wrongly, nor intending or volunteering to take on that responsibility. Furthermore, a feature shared by all of these authors is that individuals acquire parental responsibility only when they act

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<sup>35</sup> Most philosophers agree that if responsibilities arise at all in these cases, voluntary sexual activity is a necessary precondition, however the legal literature is less clear. Male victims of sexual assault have been ordered to pay child support to their female abusers in cases where pregnancy arose as a consequence of the assault. For a discussion of these cases see: Benatar, David. *The Second Sexism: Discrimination Against Men and Boys*. Chichester: John Wiley & Sons, 2012. Chapter 3.

<sup>36</sup> Intentionalists claim that parental responsibilities arise only when individuals act with the intention of becoming a parent. For a defence of an intentionalist account see: Hill, John Lawrence. "What Does it Mean to be a Parent-The Claims of Biology as the Basis for Parental Rights." *NYUL Rev.* 66 (1991): 353.

<sup>37</sup> Voluntarists claim that parental responsibilities arise only when they are voluntarily accepted. For a defence of a voluntarist account see: Brake (2010), op. cit.

<sup>38</sup> Archard, D. (2010). The Obligations and Responsibilities of Parenthood. In D. Archard, & Benatar, David, *Procreation and Parenthood* (pp. 103-127). Oxford: Oxford University Press. p. 110.

<sup>39</sup> Fuscaldo, op. cit. p.69.

<sup>40</sup> Weinberg, op. cit. p. 167.

<sup>41</sup> Nelson, op. cit. p. 54.

freely, and thus no care-taking responsibility arises for individuals who have their gametes stolen for example.<sup>42</sup> These arguments then fit into what I have categorized as quasi-voluntary caretaking responsibility because the relevant responsibilities occur despite the absence of wrongdoing or voluntary commitment and as a consequence of a freely chosen action.

Despite the requirement for voluntary action, the above accounts are often called “causal accounts”<sup>43</sup> of (care-taking) responsibility because what grounds individuals’ special responsibility is the kind of causal role they play in bringing about a certain state of affairs (the existence of a child), regardless of their intentions or the blameworthiness of their actions. As Archard puts it, “the central idea motivating the causal account is that it is reasonable to hold liable for the provision of care those who have brought it about that there is a child in need of such care.”<sup>44</sup> However, because of the need for voluntary action, these views are better described as ‘quasi-voluntary’ accounts of responsibility than simply ‘causal’ accounts of responsibility, because the latter term implies that simply being part of the causal chain is sufficient for care-taking responsibility.

Though on the face of it, the central motivating idea espoused by Archard might seem straightforward, an important question it raises is what activities constitute ‘bringing about a child’ in the manner in which care-taking responsibilities arise. Upon reflection, individuals are not responsible for all the consequences of their voluntary actions. On this point, Bayne argues that there is no non-arbitrary way to differentiate between causally involved individuals who acquire responsibility and those who do not. Though Bayne’s arguments are about difficulties with causal accounts of parenthood,

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<sup>42</sup> Weinberg, *op. cit.* p. 171; Nelson, *op. cit.* p. 50; Fuscaldo, *op. cit.* p.70

<sup>43</sup> This is what Nelson, Archard and Porter call these views.

<sup>44</sup> Archard (2010), *op. cit.*, p. 111.

they equally apply to care-taking responsibility in general. In the following sub-section I will outline Bayne's arguments and explain why I do not think they are as devastating as he takes them to be for the view defended by Archard and others. However, I do think his arguments demonstrate the need for a more refined view than has yet been provided, and the account of quasi-voluntary responsibility I provide is intended to fill that gap.

### *3.2 Bayne's Criticism of Causal Views*

Bayne divides causal<sup>45</sup> accounts into two broad categories: "but-for" causation and "cause-who" causation. The concept of "but-for" causation is that "X causes Y if Y wouldn't have happened but for X". Bayne's criticism of but-for causation is that it is overly broad for determining parenthood. For instance, an individual's parents, and great grandparents, the medical team and many other individuals could all be but-for causes for a particular child yet we not think any of them are parents. The second way to interpret causation is the "cause-who" sense. Under this view, gamete providers have parental responsibilities because they are the cause that establishes the identity of the child. For instance, imagine X has a child using gametes provided from Y. Though it may be true that X would have still had a child from other provided gametes if Y had not provided her gametes, it would not have been the same child. The particular identity of the child is thus in part determined by Y, and so the causal theorist might attribute Y care-taking responsibilities on this basis. However, Bayne also rejects this view because it is still overly broad.<sup>46</sup> A gamete provider's genetic ancestors all are cause-who causes, yet we

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<sup>45</sup> In fact, Bayne distinguishes action causation from genetic causation. The former derives responsibility from the consequences caused by an agent's actions, the latter from the consequences arising from an agent's genetic material. Genetic causation is not a commonly held view, so I will leave aside Bayne's dismissal of it.

<sup>46</sup> Bayne also thinks that "cause-who" causality collapses into geneticism, but since neither my view nor that of the authors I discuss rest on geneticism I am putting aside that objection.

do not consider them parents. In fact, any individual whose actions influence the specific gametes that come together to form a zygote satisfies the definition of a “cause-who”.

This includes individuals who seem to be only tangentially involved in a particular act of reproduction, and who may not even be aware that they are exercising any influence over the creation of a future person. For instance, a construction worker controlling the flow of traffic on the route travelled by a sperm provider to the sperm bank will influence the exact time the provider arrives at the clinic (say five minutes late for an appointment that he would have otherwise been on time for), which influences the exact time the provider makes his deposit, which in turn determines the set of possible gametes available to form a zygote. In this circumstance the construction worker may well be essential in determining the specific identity of the future child; however, it seems absurd to attribute any special care-taking responsibilities to the worker on this basis.

From this analysis Bayne concludes that care-taking responsibility cannot be attributed to gamete providers on the basis of causation because both of its plausible interpretations are over-inclusive. Without some additional principle, excluding individuals such as grandparents and traffic controllers while including gamete providers seems arbitrary.

However, though Bayne’s criticism of causal accounts of parenthood highlights an important theoretical difficulty with the view, by attributing the problem of over-inclusiveness to authors who defend the causal view, he straw-mans their position. For instance, though Bayne attributes the problem of over-inclusiveness arising from “but-for” causation to Nelson, Nelson himself notes that this account of causation is “clearly

too weak”<sup>47</sup> and agrees that some other principle that has eluded articulation and/or general acceptance must be at work. Lacking a strong principled account, Nelson instead relies on our everyday intuitions about causal responsibility and extends them to gamete provision.<sup>48</sup> As a more concrete suggestion, Nelson points to causal proximity and joint sufficiency as a combination of features that support including gamete providers amongst the causal actors who acquire responsibilities.<sup>49</sup>

As a brief aside, it is worth noting that this attempt to provide criteria in addition to “but-for” causation is not strong enough to establish responsibility in gamete provision cases. Nelson is unclear about what he means by ‘proximity’, though he seems to suggest that an agent is a morally relevant proximate cause if his free action occurred close to the terminus of the causal chain, and were part of a set of jointly sufficient conditions for the outcome in question.<sup>50</sup> This, however, leads to a problem of vagueness: it is unclear what degree of proximity is necessary for responsibility to arise. Causal proximity is a concept that has garnered much discussion in the legal literature as a means of delineating mere “but-for” causal actors from those with legal responsibility, but it is fraught with theoretical challenges.<sup>51</sup> Since there is no settled account of proximate causality, Nelson is offering an explanation of the obscure by means of the more obscure. Furthermore, procedures like IVF and the ‘gate-keeper’ role played by fertility clinics involve many intervening agents that are necessary for the creation of a new life, but operate outside of the direct influence of gamete providers. This fact

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<sup>47</sup> Nelson, op. cit. p. 53.

<sup>48</sup> Here Nelson appeals to our intuition about the responsibility a blameless driver has to a pedestrian that she accidentally strikes. For a discussion of this kind of case see: Williams, Bernard. "Moral Luck." Statman. *Moral Luck*. New York: SUNY Press, 1993. 35-55.

<sup>49</sup> Nelson, Op. Cit. 54

<sup>50</sup> Ibid.

<sup>51</sup> See chapter five in: Lucy, William. *Philosophy of Private Law*. Oxford: Oxford University Press, 2007.

challenges the causal proximity of gamete providers because most accounts of causal proximity treat the presence of necessary and independently acting interveners as exclusionary or mitigating factors for antecedently occurring causes.<sup>52</sup> Though a provider who gives sperm directly to a friend who then impregnates herself with it unaided might be a proximate cause, most gamete provision<sup>53</sup> involves a third party that exercises control over the gametes and decides whether to create a new life.<sup>54</sup> Views similar to Nelson have more recently been defended by Lindsey Porter and David Archard, though they are equally vague in providing clear principles for distinguishing mere causes from morally relevant causes.<sup>55</sup>

Given that the view Bayne attacks is not held by the individuals who defend causal views of responsibility<sup>56</sup>, he does not show that they rely on a theory that is overly broad. However, Bayne does demonstrate that developing principles to distinguish mere causal actors from causal actors who also acquire care-taking responsibility is important for causal views to be taken seriously. My view, endorsing quasi-voluntary responsibilities, is a variation on what have been called causal views, and for it to plausible it must also provide a means for appropriately delineating morally relevant causal actors.

Part of why additional principles are necessary is that, though we have strong intuitions about care-taking responsibilities in one-night-stand cases, there are important disanalogies between that case and gamete provisions that make it unclear whether the

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<sup>52</sup> For a discussion see: Hart, H.L.A., and Honoré, T. *Causation in the Law*, 2nd ed., Oxford: Clarendon, 1985. Ch. 2, "Causation and Common Sense".

<sup>53</sup> This is especially true in the case of ova provision,

<sup>54</sup> Consider the number of individuals involved in the screening processes at gamete clinics, the individuals who combine the gametes prior to implantation etc.

<sup>55</sup> Archard (2010), Op. Cit.; Porter, L. "How and Why to Prefer a Causal Account of Parenthood". *Journal of Social Philosophy*. 45.2 (2014): 82-202.

<sup>56</sup> Ibid.

intuitions about the former equally apply to the latter. For instance, with gamete provision, the process is driven by an individual or individuals who wish to parent a child, and so someone might think that responsibility to care for any children who result from this process lies solely with the intending parent(s). Without clearer criteria for responsibility, there is plenty of room for disagreement about whether gamete providers are the kind of causal actors who acquire responsibilities.

In the literature there have been two main attempts at developing refined principles for showing more conclusively that gamete providers acquire care-taking responsibility for their biological offspring. Giuliana Fuscaldo defends a view that she calls “Candidate Parenthood”, while Rivka Weinberg defends the “Hazmat” approach to reproductive responsibility. In the next two subsections, I will examine both these views and show that neither is strong enough to establish that gamete providers acquire care-taking responsibility. In particular, I will argue that the “Candidate Parenthood” view suffers from the problem of over-inclusiveness highlighted by Bayne, and that the “Hazmat” view either fails to include gamete providers or suffers from the problem of over-inclusiveness. Following this discussion, I will then present my own account of how quasi-voluntary responsibilities arise.

### *3.3 Fuscaldo’s View*

Fuscaldo’s account, called “Candidate Parenthood”, relies on the addition of two limiting conditions, freedom and foreseeability, that when present together differentiate mere members of a causal chain that results in a new life from people who acquire care-taking responsibility. Her account stems from a discussion of what she calls ‘the standard account’ of moral responsibility, which she argues employs these two criteria.



First, according to the standard account of moral responsibility, as described by Fuscaldo, for an individual to have moral responsibility for the outcome of an action, the action itself must have been freely chosen. Granting that the concept of freedom itself requires a lengthy treatment, Fuscaldo stipulates that for the purpose of her discussion a free act is one in which either the actor could have acted differently or, in the case where a certain action is unavoidable, the actor owns and reflectively endorses the action taken. In the case of gamete provision, Fuscaldo specifies that “in the absence of force, begetting or donating gametes are usually actions free enough to generate moral accountability”.<sup>57</sup> Second, Fuscaldo states that the standard account of moral responsibility requires that the outcome of the action be reasonably foreseeable. She takes reasonably foreseeable consequences to mean that “a reasonable person would have reason to expect that they might occur”.<sup>58</sup> Fuscaldo then stipulates that, in the context of procreation, when individuals meet these two criteria, they acquire parental responsibilities<sup>59</sup> for the children that result from their actions.<sup>60</sup>

One advantage of Fuscaldo’s criteria is that they avoid including as morally responsible individuals who haphazardly become part of a causal chain, while still holding individuals who freely partake in actions with foreseeable injurious consequences morally responsible for the outcome of their actions. For instance, a person who accidentally triggers a bomb in a classroom by flicking a sabotaged light switch avoids responsibility while the person who set the trap does not. This is because under normal

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<sup>57</sup> Fuscaldo, *op. cit.* p. 70.

<sup>58</sup> *Ibid.*

<sup>59</sup> I take parental responsibilities to be a particular kind of care-taking responsibility.

<sup>60</sup> An important thing to note, however, is that in making this claim Fuscaldo slips from providing necessary conditions for the acquisition of responsibility to providing a set of jointly sufficient conditions. Though this move itself is somewhat problematic, I will continue my analysis of her view treating these criteria as jointly sufficient conditions. I owe this point to Andrew Botterell.

circumstances, it is not reasonable to expect light switches in classrooms to trigger bombs. Despite the fact that the bomber did not flick the switch herself, the bomber is correctly held responsible on this account because it is reasonable under normal circumstances to expect someone to flick a classroom light switch. Note that the intentions of the bomber are irrelevant. Even if the bomber did not intend anyone to get hurt, since a reasonable person would foresee injury as a potential consequence, she would be responsible for any injury that arises.

In the case of gamete provision, the criteria offered by Fuscaldo are clearly met. In general, gamete provision is done without coercion or force and the creation of a new person in need of care is a foreseeable consequence of the provision. On Fuscaldo's account then, gamete providers have care-taking responsibilities towards the vulnerable beings they help bring into existence.

However, there are still reasons why someone might reject Fuscaldo's argument. First, it is clearly foreseeable that one's biological offspring may themselves procreate. Since an individual's children's progeny are a foreseeable consequence of procreation, we end up with the same problem of overbreadth that Bayne highlights. Fuscaldo's criteria give us no more reason to hold gamete providers responsible for their biological offspring than to hold the gamete providers' parents, grandparents, etc. responsible. Since Fuscaldo's "foresight" criterion cannot draw the line in the causal chain at gamete providers, it seems arbitrary on her view to exclude gamete providers' ancestors. Secondly, there are many circumstances in which we do not want to hold individuals who meet Fuscaldo's criteria responsible for the outcomes of their actions. For instance, being mugged is a foreseeable consequence of walking home alone late at night, yet it

seems perverse to attribute to victims of a mugging responsibilities arising from being robbed.<sup>61</sup>

Thus, though Fuscaldo's criteria exclude individuals who haphazardly become part of a causal chain, her view is still overly inclusive, giving room for skepticism about whether gamete providers should be included as individuals with care-taking responsibilities towards their biological offspring. I think it is likely that a full picture of causal care-taking responsibility would include both of Fuscaldo's criteria, but as it stands the account needs further refinement. Next let me consider Weinberg's view.

### *3.4 Weinberg's View*

Weinberg offers what she calls the "hazmat theory" of why gamete providers acquire parental responsibilities. On this view, individuals who exercise control over hazardous material are liable for the harms caused by that hazardous material regardless of the precautions they take. Her view relies on something similar to the legal concept of "strict liability", meaning liability without fault<sup>62</sup>, or to use Card's terminology, care-taking responsibility without credit-taking responsibility. Since the consequences of improper gamete use can result in great harms, Weinberg thinks it is appropriate to consider them hazardous materials. Weinberg motivates the hazmat approach to gametes by arguing that it best explains why we think men in one-night-stand situations acquire care-taking responsibility.<sup>63</sup> Though these men might take precautions and do not want

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<sup>61</sup> Judith Jarvis Thomson makes a similar point. See: Thomson, Judith Jarvis. "A Defense of Abortion." *Philosophy & Public Affairs* 1.1 (1971): 47-66.

<sup>62</sup> It is worth noting that strict liability is a contested concept, and some have argued that it is justified only on pragmatic grounds rather than on a defensible account of liability and responsibility. For a discussion, see Weinrib, *The Idea of Private Law*. Cambridge : Harvard University Press, 1995. Ch. 7.

<sup>63</sup> Weinberg, *op. cit.* p. 171.

to procreate, since they freely exercise control over hazardous material (sperm) they are responsible even if we do not consider their actions blameworthy.

The analogy Weinberg uses to support her argument is the case of an individual who keeps a caged pet lion. Even if the owner takes great precautions to keep the lion restrained, the owner still acquires care-taking responsibility if the lion escapes and harms someone. Furthermore, if the lion were to escape and the owner was able, the owner would have the responsibility to prevent the harm before it arose. Since gamete usage can result in great harm, gamete providers have care-taking responsibilities towards their biological offspring to ensure that these harms do not arise. According to Weinberg then, gamete providers are required to care for their biological offspring in order to minimize the harms they might otherwise suffer as a consequence. It is this potential for harm that gives rise to gamete providers' parental responsibilities.<sup>64</sup>

Weinberg's argument is attractive for a few reasons. First, the argument distinguishes (using different terminology) care-taking responsibility from credit-taking responsibility. Though the lion owner takes the appropriate precautions and so is blameless, she still has care-taking responsibilities. This is in keeping with the previous discussion of how non-voluntary care-taking responsibilities can arise in circumstances other than resitution cases. Also, the hazmat theory points to vulnerability and potential harm to innocents as important factors that generate care-taking responsibility.

Despite its attractive features, a problem that looms large for the Hazmat account is whether it is plausible to consider gametes hazardous material. Weinberg does not provide specific criteria for what makes a material hazardous, but here I will consider what I take to be two plausible accounts, and will show that on neither would gametes

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<sup>64</sup> Weinberg, *op. cit.* p. 174.

count as hazardous. First, we could think that what makes material hazardous is that slight carelessness poses a high likelihood of severe harm to others. Call this the volatility view. Radioactive materials would be an example of this kind of hazardous material since failing to keep these substances properly contained poses a risk to others that is high and difficult to avoid. Gametes certainly do not fit into this category. Literally billions upon billions of gametes are regularly released with relatively low incidents of harm innocent people. Gametes become potentially hazardous to innocents in the manner described by Weinberg only when used in very specific and intentional ways – i.e. when they are brought into contact with other gametes. Furthermore, if gametes meet the ‘volatility’ threshold, then it is unclear why things like knives do not, since they also have the potential to cause severe harm when used in particular ways. However, ascribing strict liability to individuals who exercise control of things like knives seems implausibly over-inclusive, at least in normal circumstances. For instance, we do not hold the owner of a knife store liable if a criminal steals a knife and harms someone with it.

Alternatively, it might be that what makes something a hazardous material is that it poses a highly unusual or novel risk of severe harm, even if the risk itself is not terribly high. Here an example would be an undocumented and rare side-effect of a prescription drug. However, since the vast majority of people possess gametes and are fully aware of the potential consequences of their use, there is nothing unusual about the risk they pose.

Another way to understand Weinberg’s argument might be that it is certain activities done with gametes that meets the hazard threshold rather than the gametes themselves. Without some further constraints however, this seems to collapse into a causal view similar to Fuscaldo’s. What is doing the work in this reading of ‘hazardous’

is not some special feature of gametes, but the freely chosen activity that has foreseeably weighty consequences. In the absence of further constraints, this ‘hazardous action’ view will suffer from the same over-inclusion problems as Fuscaldo’s account.

Though both Weinberg and Fuscaldo highlight important features in addition to mere causation that are helpful in delineating individuals who are merely part of the causal chain from individuals who also acquire care-taking responsibilities, neither argument is strong enough to show conclusively that a conscientious gamete provider has care-taking responsibilities towards her biological offspring. In Fuscaldo’s case, since the net is cast too wide, picking out gamete providers as individuals with responsibilities seems arbitrary, while including everyone who satisfies her criteria seems too counter-intuitive to be plausible. In Weinberg’s case, the concept of hazardous material is ill-defined so that even if we accept strict liability in some cases, it seems unclear why we should accept it in the gamete provider case. Furthermore, even after providing plausible criteria for identifying hazardous materials, it still seems that there are good reasons to exclude gametes and therefore reject Weinberg’s view as a basis for ascribing care-taking responsibilities to gamete providers.

So far I have shown that there are strong reasons to reject previous accounts of care-taking responsibilities for gamete providers. In the next section I will attempt to overcome the shortcomings of these accounts by providing a positive argument for why gamete providers have quasi-voluntary credit-taking obligations. I this this the “danger to innocents” account.

### *3.5 Danger To Innocents Account*

As has been shown, one of the major problems that causal accounts of care-taking responsibility face is the charge of arbitrariness. This is because causal theories tend to be over-broad. This over-breadth results in an absence of principled ways for delineating responsible members of the causal chain from non-responsible ones, and hence the skeptic can always just disagree with where the line is drawn. In order to skirt this Sorities-like paradox, my goal is intentionally to develop an account of quasi-voluntary responsibilities that is too narrow to capture all cases where we think these responsibilities arise, but broad enough to show that all gamete providers do in fact have care-taking responsibilities towards their biological offspring. The idea is that if an overly restrictive set of criteria shows that gamete providers have care-taking responsibilities, then any reasonably restrictive account of must as well. The account provided here will therefore exclude many individuals whom we might think have quasi-voluntary care-taking responsibilities, but this is not a defect since the criteria are overly narrow by design. The basis of my narrow account is that making innocent individuals vulnerable to great harm gives rise to care-taking responsibilities.

I think that part of the appeal of Weinberg's hazmat theory lies in the intuition that imposing risk on others carries with it responsibilities. Indeed, the fact that reproduction renders a person vulnerable to harm is one of the justifications traditionally offered in defence of the legal obligation procreators have in common-law to care for their offspring. Roughly speaking, the idea is that since the act of procreation puts an individual who did not consent to being put in harm's way (the resultant child) at risk of tremendous suffering, those individuals whose actions place the child in that precarious position have an obligation to support the child through the period of their vulnerability.

Invoking the 17<sup>th</sup>-century jurist Samuel von Pufendorf, Sir William Blackstone, in the *Commentaries on the Laws of England*, says:

“The [legal] duty of parents to provide for the maintenance of their children is a principle of natural law; an obligation, says Pufendorf, laid on them not only by nature herself, but by their own proper act, in bringing them into the world : for they would be in the highest manner injurious to their issue, if they only gave the children life, that they might afterwards see them perish. By begetting them therefore they have entered into a voluntary obligation, to endeavour, as far as in them lies, that the life which they have bestowed shall be supported and preserved. And thus the children will have a perfect [legal] right of receiving maintenance from their parents[.]”<sup>65</sup>

Since Blackstone’s *Commentaries*, reproduction has become much more complex and the properties that define a child’s begetters and parents are likely not as clear now as they would have been in the minds of 18<sup>th</sup>-century legal theorists. However, the general view that placing non-consenting individuals in harm’s way gives rise to special obligations to reduce that harm still carries much weight. As stated earlier, since causation simpliciter is insufficient for settling precisely who acquires these responsibilities, the question of which individuals are the morally relevant causes that have this care-taking responsibility is not clear. The overly-narrow criterion I propose is that *individuals acquire care-taking responsibilities when they freely and intentionally*<sup>66</sup>

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<sup>65</sup>Blackstone, William. *Commentaries on the Laws of England*. Book I, p. 435.

<sup>66</sup> The term ‘intentional’ is itself somewhat vague. (See: Shaw, Joseph. "Intentions in Ethics." *Canadian Journal of Philosophy* 36.2 (2006): 187-223.) What I mean to capture by ‘intention’ here is that gamete providers consent to participating in an activity that has reproduction as its end, and in doing so choose to support that end, even if their primary end is something different (like profit, helping a friend etc.). This is different from an outcome merely being foreseeable. For instance, the person who foresees the possibility of being mugged does not support the end of being a victim of a mugging, and we rightfully think of them



*place or help others place non-consenting innocents at risk of great harm.* While there are likely many cases in which quasi-voluntary care-taking responsibilities arise in the absence of this criterion being met, it seems implausible that an individual could meet this criterion and not have any care-taking responsibilities.

This principle makes sense of the babysitting example. Though the friend only agreed to babysit up until a certain time, ignoring the child or kicking the child out would place that child, through no fault of her own, at risk of great harm. This would require the babysitter to mitigate this new harm by taking care of the child again, making simply ignoring her or kicking her out impermissible. Note that while the babysitter cannot place the child in harm's way, he does not need to care for the child himself. The babysitter could for example, take the child to a trusted family member, or place the child in the care of the state (in an extreme case). The point is that the responsibility to ensure the child is cared for does not simply end once the contract with the parent ends if the parent has not returned at the agreed-upon time.

Admittedly, it is difficult to come up with non-reproductive cases where this narrow criterion is met, and where blame, and hence restitution, does not arise. This is because in most cases it is morally impermissible to place unconsenting innocent people at risk of harm. Despite the dearth of examples, I think my criterion is reasonable since it seems highly counterintuitive that individuals should be able to place others at risk without any moral consequences. In the gamete provision case, the provider is generally aware that gamete recipients seek the gametes for the creation of a person and that this nascent person is in an extreme state of need. It seems reasonable then that the gamete

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as a victim. By contrast, a willing gamete provider whose genetic material is used to create a child is not a 'victim' in any meaningful sense.

provider bears some care-taking responsibility because of the state of need that the gamete provider knowingly helps create.

As a possible objection to this modified argument, one could imagine a gamete agency stating that provided gametes would be used for either research or reproductive purposes. In this circumstance, because the gamete provider does not know the intention of the gamete bank with respect to a particular provision of gametes, if the probability that the gametes will be used for reproduction falls below some threshold of foreseeability then it appears as though the gamete provider escapes responsibility. This conclusion seems to follow because in this circumstance the criteria for the acquisition of moral responsibility presented above are not satisfied: we might think that the gamete provider only intended his gamete to be used for research purposes. However, this counterexample rests on an ambiguity in the use of disjunctions. Upon reflection it seems that the gamete provider actually agrees to support both possible intentions the gamete bank might have and therefore acquires responsibility if the gametes are used to produce a child.

Consider a logician parent who gives a child fifteen dollars with the condition that the money must be used either for groceries or for a movie. The child goes to a movie instead of buying groceries and, upon returning home, is punished for wasting the money on entertainment. The child protests, claiming that the parent had granted permission to spend the money on a movie. The logician parent explains that permission was actually given to spend the money on groceries and, by the rule of disjunction introduction (if A is true, so is  $A \vee B$  regardless of the content of B), stating that the money could be spent either on groceries or a movie was therefore true. However, this is not what is normally

meant when permission is given for multiple uses of an item. As this example demonstrates, normally when permission is given in the form of a disjunction, the permission-granter assents to all potential options presented. In the gamete provider transaction above, the bank is asking ‘can we use the gametes for research?’ *and* ‘can we use the gametes for reproduction?’ and by providing gametes, the gamete provider is agreeing to support whichever intended use is adopted by the gamete bank. Though it may be true that neither the bank nor the gamete provider knows what the intended use of the sperm will be at the time of deposit, by giving advanced permission for both, the gamete provider is stating a willingness to freely support whichever intended use the bank adopts, including the production of children, and thus is responsible for any reproductive consequences.

Another possible criticism of this argument for gamete provider responsibility is that it casts the net too wide and includes the members of the medical team involved in the procedure as agents who acquire moral responsibility for the resulting children. The medical team acts freely, and a child is the intended consequence of the procedure. The medical professionals thus clearly meet the criteria presented above. Though the inclusion of medical practitioners as individuals who inherit responsibilities might be considered a criticism, I am willing to accept this consequence because it appears to be consistent with the general principles of moral responsibility developed so far. Thus, according to the criteria I have presented, members of the medical team do have care-taking responsibilities towards the children they help conceive. I would also like to note that this consequence arises for Fuscaldo’s position as well because the two criteria she develops are also satisfied by health care professionals. In her paper Fuscaldo responds

to this possibility by claiming that “no one is suggesting that IVF scientists or clinicians have duties for all the children they help to bring about”.<sup>67</sup> This may be an accurate representation of Fuscaldo’s view, but it does not explain why these individuals are to be excepted from responsibility, especially give the criteria the she herself endorses. Though it may be unsettling, accepting that reproductive professionals acquire duties for the children they help bring about is consistent both with the criteria for moral responsibility that Fuscaldo takes as uncontroversial, and the account I have presented above. I think that the resistance to this conclusion arises in part because people may think that the responsibilities acquired would be parental. In a later chapter, I will develop an account of what these responsibilities amount that shows they are not parental. Hopefully, this will at least partially alleviate some of the concerns that individuals may have with an account that ascribes care-taking responsibilities to both gamete providers and the medical team.

### ***Conclusion***

In this chapter I have shown that gamete providers acquire quasi-voluntary care-taking responsibility for any children that result from their voluntary and intentional actions. First, I demonstrated that care-taking responsibility can arise independently of credit-taking responsibility. This means that even where gamete provision is not negligent, one could still have care-taking responsibilities. I then showed that indeed, even in the absence of negligence, individuals do acquire care-taking responsibilities. Though my justification for care-taking responsibility is similar to accounts that have been put forward by other authors, it avoids the problem of over-breadth, and thus avoids the charge of arbitrariness implied by Bayne in his criticism of causal views. So far I

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<sup>67</sup> Fuscaldo, op. cit. p. 72.

have said little about what the content of these care-taking responsibilities is, except that they are not necessarily parental responsibilities. In chapter three, I argue that their content is decidedly not parental. However, before turning to that issue, in the following chapter I will look at whether gamete providers can transfer their responsibilities to others.

## Chapter 2: Transfer and Delegation

### *Introduction*

In the preceding chapter I argued that gamete providers acquire care-taking responsibilities towards their biological offspring. This conclusion alone does not establish that gamete providers are bound to fulfill these responsibilities themselves, for as many authors have suggested<sup>68</sup>, any care-taking responsibilities that might arise could be transferred to others. According to this view, gamete provision can be treated like adoption, whereby the responsibility to care for a child is transferred to other willing individuals. In this chapter, I argue that despite its seeming plausibility, gamete providers cannot transfer their care-taking responsibility to others. In making this argument I accept that gamete provision and adoption can be relevantly similar, and argue that in cases where the relevant similarities obtain, neither adoptive parents nor gamete providers can completely alienate their responsibilities. However, I will show that not all cases of adoption are like this. In order to assuage any early concerns, I want to emphasise that although in my view care-taking responsibilities in gamete provision cases are inalienable, these do not amount to parental responsibilities, as I will show in the following chapter.

The conclusion I reach about the impermissibility of transferring responsibility is similar to that argued for by Archard<sup>69</sup> and Porter<sup>70</sup>, but I augment their account in two important ways. First, I show why the specific arguments made by other authors in favour of the transferability of responsibility in gamete provision cases fail. Second, I

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<sup>68</sup> Bayne op. cit. p. 83; Fuscaldo op. cit. p. 73; Benatar op. cit. p. 178.

<sup>69</sup> Archard (2010), op. cit.

<sup>70</sup> Porter (2014), op. cit.

provide a more complete account of the structure of the responsibilities that exist amongst the involved parties.

Despite the importance of the transferability of responsibility to a whole host of questions in applied ethics, the bioethics literature currently suffers from a lack of discussion about how we ought to think about this concept in general terms. I will focus on the arguments presented in the literature on gamete provision, but will supplement them with concepts borrowed from contract law and what I take to be common-sense intuitions about forward-looking responsibility.<sup>71</sup> In the first section, I will defend what I consider to be a plain language distinction between the transfer of responsibilities and the delegation of responsibilities. In the second section, I will analyze the current debate in the gamete provision literature, and argue that distinctions drawn by Fuscaldo and Weinberg do not track this plain language distinction appropriately. I will further argue, in part by appeal to related legal concepts, that gamete providers' care-taking responsibilities can only be delegated, but not transferred. In the third section I will address possible counter-examples to the schema I develop in the second section. Most importantly, I will address the analogy to adoption that many authors appeal to when arguing that gamete providers can transfer their responsibilities to others. I will argue that in some cases, adoptions are not as similar to gamete provision as many authors seem to assume. I will further contend that in the cases that *are* suitably analogous, individuals who relinquish their biological offspring for adoption only delegate their responsibilities and do not transfer them.

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<sup>71</sup> Forward-looking responsibilities refers to the responsibility to ensure that a certain state of affairs obtains at a future time. For instance, on Sunday night a parent has a forward-looking responsibility to ensure that his child has a lunch for school the next day. Backward-looking responsibility refers to the moral assessment of a previous action, and is synonymous with credit-taking responsibility.

### *1. Plain Language Delegation and Transfer*

Delegating and transferring are two ways of assigning responsibilities to an individual that were, at least initially, possessed by another individual. To illustrate what I take to be the common-sense distinction between the two, consider the following example. Peter and Mary are both executive members of a student government; Peter is in charge of internal academic affairs and Mary is in charge of communication. The student government meets in order to review the different portfolios, and everyone agrees that it would be better for the internal academic officer (Peter) to take over production of the weekly newsletter to members, allowing the communications officer (Mary) to focus on external communication. Peter then solicits a volunteer, Charlie, to produce the page layout for the October newsletter.

In this example, both a transfer and a delegation of responsibility have occurred. Using a plain-language description, we would say that the responsibility for producing the weekly newsletter was *transferred* from Mary to Peter, and the job of creating the page layout for the October issue was *delegated* to Charlie. This is not just a semantic difference, for it reveals important underlying features of the structure of the responsibility in each case. Following the reconfiguration of the responsibilities attached to each portfolio, we do not think that Mary has *any* responsibility to ensure that the weekly newsletter gets produced. For instance, if Peter shirks his responsibility and fails to produce the newsletter, we do not think that Mary should be blamed, nor do we think that she has any obligation to ensure that the newsletter gets produced. By contrast, we think that Peter *might* be to blame if Charlie fails to produce the page layout – for example, if there was good reason to distrust Charlie’s commitment to the task and more



competent volunteers were available. However, regardless of whether Peter is to blame, if Charlie does not complete the task, then we do think that Peter has a responsibility to either complete the page layout himself or find someone else to do it on his behalf. Furthermore, Peter seems responsible to ‘make right’ any negative consequences that arise from Charlie’s poor performance. For instance, Peter might have to apologize to a company whose advertisement gets cut, or an author whose submission gets postponed to another issue.

When transferred, the person initially bound by the responsibility no longer has any trace of it; when the responsibility gets transferred from Mary to Peter it is as if Mary never had the responsibility in the first place. By contrast, when a responsibility is delegated, the individual initially bound by the responsibility still has the obligation to ensure that the responsibility gets fulfilled. Note that in the case of delegation, we might think that so long as the delegator had good reason to think the delegatee will complete the assigned task, she is not responsible in the credit-taking sense if things go awry (which might occur, say, if Charlie could not complete the task due to an illness). However, the delegator still retains some forward-looking responsibility to ensure that the task gets completed, and/or to make up for whatever negative consequences arise due to the delegatee’s failure.

## ***2. Transfer of responsibility in parenting***

For the moral consequences of gamete provision, much hangs on whether gamete providers can transfer all of their responsibilities for the children that result from their actions. If those responsibilities are transferable, then gamete providers can completely divest themselves of their care-taking responsibilities. This would make gamete

provision far less weighty, morally speaking, than it might otherwise seem, given the argument made in chapter 1. In an attempt to demonstrate that transfers of responsibility are morally unproblematic in the context of procreation and parenthood, many authors point to examples that they claim show that transfers of responsibility are in fact commonplace. However, these arguments often fail to adequately distinguish between transfer and delegation, and on closer analysis the examples provided suggest that it is the *delegation* of responsibility that is commonplace rather than the transfer of responsibility.

As evidence that authors often fail to properly distinguish between transfer and delegation, consider Fuscaldo's assessment of the transferability of care-taking responsibilities following gamete provision. She states, "in support of the claim that parental duties are transferable, we already recognize and accept the **transfer** of at least some of our parental duties, for example to nannies, tennis coaches, doctors and teachers. In fact we regard as negligent in many cases a parent who *fails* to **delegate** some of their parental duties to someone who could do a better job." (emphasis in bold added).<sup>72</sup> This passage employs transfer and delegation interchangeably; Fuscaldo seems to suggest that putting a child in the temporary care of others can equally be described as either the transfer or delegation of responsibility. In a discussion of "begetters" responsibilities more generally, Onora O'Neill similarly fails to clearly differentiate delegation from transfer. O'Neill states, "Begetters and bearers have at various times **delegated** or **transferred** some or all of their tasks to wet nurses, relations, tutors, servants, foster homes, and schools including boarding schools. Provided that they take reasonable steps to ensure that their children will be adequately reared, they do not breach but **transfer**

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<sup>72</sup> Fuscaldo, op. cit. p. 73.

their parental obligations or some part of those obligations”<sup>73</sup> (emphasis in bold added). Here O’Neill is unclear about which of the examples are examples of delegations, and which are examples of transfers. Additionally, since the conclusion that O’Neill draws from these examples refers only to transfer, it is unclear whether she thinks the distinction is important for determining what responsibilities begetters maintain when they rely on others to perform care-taking duties for their children.

### *2.1 Fuscaldo on the Permissibility of Transfer*

Since Fuscaldo argues that the care-taking responsibilities acquired by gamete providers are completely alienable<sup>74</sup>, what she must have in mind is that these responsibilities can be transferred rather than merely delegated.<sup>75</sup> However, the examples she provides in support of her claim that transferring responsibilities is commonplace and unproblematic do not in fact support this conclusion at all. Upon closer analysis, these examples suggest that what is commonplace is delegation, not transfer. Consider the following example.

A parent hires a babysitter for an evening. A few hours before the parent had arranged to return, the babysitter calls to say that she has decided to leave early and go to a party instead. In this circumstance, it is quite clear that the parent cannot simply stay out and leave her child unattended. If the parent did stay out and the child suffered some misfortune, it would be no defence to claim that care-taking responsibilities had been transferred to the babysitter for the period of time when the harm occurred. Even while the child is under the care of the babysitter, the parent remains responsible for ensuring

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<sup>73</sup> O’Neill, O. (1979). “Begetting, Bearing and Rearing.” In O. O’neil, & W. Ruddick (Eds.), *Having Children*. New York: Oxford University Press. p. 28.

<sup>74</sup> Fuscaldo, op. cit. p. 74.

<sup>75</sup> That providers’ responsibilities can be alienated is also endorsed by Bayne, op. cit. p. 83.

that the child is properly cared for, and so when it becomes apparent that the babysitter is no longer looking after the child the parent must return to take care of her child or make arrangements for another person to watch the child. Since responsibility, even for the duration of the babysitting agreement, is never completely alienated, the situation is better described as one of delegation rather than transfer. This is in keeping with the plain language distinction discussed previously. The parent is more like Peter, who must ensure that the newsletter gets published, than Mary who has no such obligation.

The same holds true for the other specific examples offered by Fuscaldo, including putting a child in the care of teachers and doctors. If it becomes clear that a doctor or a teacher is incompetently providing for the child, the child's parent(s) have a responsibility to find other people to fulfill the child's needs, or fulfill them themselves if possible. These examples show that the complete transfer of responsibility that is said to be possible for gamete providers cannot be justified on the grounds that it is commonplace for parents to transfer their responsibilities to others. In the case of parenting, responsibility is normally delegated, not transferred. It is worth emphasizing here that the focus of the preceding discussion is on *care-taking* responsibilities. So long as parents take reasonable steps to ensure that those to whom they delegate responsibilities are likely to fulfill them, they are not responsible in *the credit-taking* sense if things do not go as intended. Nevertheless, they remain responsible in the care-taking sense.

That Fuscaldo is wrong to claim that transferring responsibilities is commonplace in parenting does not show that transferring responsibilities, including parental responsibilities, is not possible at all. The above arguments merely show that the

permissibility of transferring responsibility cannot be established by pointing to the examples Fuscaldo provides. I will turn now to another account in the literature, offered by Weinberg, which purports to show that gamete providers cannot transfer their responsibilities. Her argument rests on a particular framework for determining when responsibilities can be transferred, and when they can be delegated. Though I agree with her conclusion, in the following subsection I will show why her framework does not correctly capture our intuitions about when care-taking responsibility is retained. I will then propose my own account.

## *2.2 Weinberg on Transfer and Delegation*

According to Weinberg, what determines whether a responsibility is delegated or transferred is whether the identity of the person who is to fulfill that responsibility makes a meaningful difference to the manner in which it will be fulfilled. In cases where responsibility holder's identity matters, responsibility is transferred; in cases where the responsibility holder's identity does not matter, responsibility is delegated. To illustrate the difference between delegation and transfer, Weinberg asks us to contrast having the responsibility to teach a class with having the responsibility to bring cups to a party. In the case of the cups, it makes very little difference who brings them to the party. Because almost anyone could discharge this responsibility in an equivalent fashion, it is plausible for one person to ask another to fulfill this responsibility on their behalf. According to Weinberg, this makes it an example of delegation. By contrast, the way two people would teach a class differs greatly, even if both are competent. This is quite easy to imagine. For instance, one person might employ a more traditional lecture style while another might employ teaching techniques that involve lots of student interaction, such as

small group discussions. Weinberg argues that in these kinds of cases, responsibility is transferred rather than delegated.<sup>76</sup> Presumably, this is because the substitute teacher is not merely standing in for the initial teacher, but is completely taking over the task of teaching by doing it in her own unique way.

Weinberg's argument against the transferability of responsibility in the case of gamete providers rests on her claim that the identity of a particular person can be essential to a responsibility being properly fulfilled. Otherwise put, sometimes no one else but the original bearer of the responsibility is capable of fulfilling it. Weinberg takes the responsibility to love one's children as a paradigmatic case of a non-transferable responsibility<sup>77</sup> – a person cannot discharge of this obligation by hiring someone else to do it on their behalf. Since Weinberg thinks that gamete providers have parental responsibilities, which include the responsibility to love their biological offspring<sup>78</sup>, the transfer of responsibility is not possible for gamete providers. In the following chapter, I will argue that gamete providers do not in fact have parental responsibility, but for now it is worth mentioning that Weinberg's argument about transfer has an air of plausibility to it. For instance, if I hire a famous musician to play a concert, it does not seem like the musician could permissibly transfer her responsibility to perform to another musician. The audience is not simply interested in *a musician*, but bought tickets to see that *particular* musician. This can be contrasted with the teacher case. Though perhaps the substitute teacher might have a different style, and so responsibility is transferred rather than delegated, what is important is that the students learn the material. So long as the

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<sup>76</sup> Weinberg, op. cit. p.176.

<sup>77</sup> Ibid.

<sup>78</sup> Weinberg, op. cit. p. 173.

substitute teacher is equally effective, we might think that transferring responsibility in this circumstance is not morally problematic.

Weinberg's proposal for distinguishing transfers from delegations fails, however, because it does not track our intuitions about when responsibility is retained by the person initially bound by it. There are many cases that fit into the category of transfer on Weinberg's view, but where responsibility is not alienated in the way expected given the normal understanding of transfers of responsibility. Almost any example where a parent relies on the expertise of others to fulfill certain parental responsibilities satisfies Weinberg's criteria for transferring responsibility, yet it seems clear that the parent retains some care-taking responsibility. For instance, a parent might choose a public school over homeschooling for his child because he thinks the public school teachers will do a much better job of teaching than he would. However, if the parent discovers that the school is failing in its responsibility to educate his child, there is a strong intuition that the parent has a responsibility to find another school or to take on the task of teaching himself. The parent cannot simply claim that he had transferred the responsibility of educating his child to the school, so no further intervention is required on his part. This intuition shows that, in some cases, even when the performance of a task meets Weinberg's criteria for transfer, some forward-looking responsibility is retained. Given that the retention of forward-looking responsibility is characteristic of delegation, Weinberg's distinction is not consistent with our common-sense notions of delegation and transfer.

More plausibly, examples like the famous musician show that in certain circumstances neither delegation nor transfer are permissible. This conclusion follows

neatly from the same conditions Weinberg lays out for when transferring responsibilities is impermissible. If a task cannot be fulfilled by another person because the identity of the person performing the task in question is necessary for the responsibility's fulfillment, then it is simply not possible to have another person 'stand in' and complete it on behalf of the initial bearer of the responsibility. This makes both delegation and transfer impermissible.

So far I have shown that Fuscaldo's claim, that it is possible for gamete providers to transfer their responsibilities to others, rests on a failure to properly distinguish delegation from transfer. Fuscaldo's argument supports the permissibility, in some situations, of delegation, and not transfer. I have also shown that Weinberg's argument against the transferability of responsibilities by gamete providers rests on criteria that do not capture basic intuitions about when responsibilities are transferred and when they are delegated. In the following section, I will provide a positive argument for why gamete providers cannot transfer, but can only delegate, their responsibilities. I will also outline the implications this has for the structure of responsibility between gamete providers and intending parents.

### ***3. Permissibility of Transfer and Delegation***

As outlined in the first section of this chapter, the key difference between transferring responsibilities and delegating responsibilities concerns whether the initial person bound by the responsibility retains any obligations. In the case of delegation, the delegator is ultimately responsible for ensuring that the responsibility is fulfilled, while in the case of transfer, all responsibility is alienated by the transferor, and the person to whom the responsibility was transferred is solely responsible for its fulfillment. In this



section I will argue that in gamete provision and analogous cases, care-taking responsibilities can only be delegated. This view entails that intending parents have their care-taking responsibilities delegated to them, at least in part, by the gamete provider(s). This view might initially seem problematic because it could be interpreted as implying that the responsibilities of intending parents are derivative of those of gamete providers. For instance, it would be troubling to think that intending parents have parental responsibilities only because these have been delegated to them by some gamete provider that has had no contact with the child. I will address this worry by arguing that there are multiple sources of parental responsibilities, and that intending parents also acquire care-taking responsibilities, including parental responsibilities, through means other than delegation.

### *3.1 Responsibilities and Third Parties*

Often when an individual has responsibility to or for another person, this responsibility cannot easily be transferred to a third party. Consider the following example. Sam has a library book that is due in an hour at a nearby library. As she is about to leave to return it, her brother James asks her for a favour. Sam agrees on the condition that James return her library book, which James consents to do. Though James is normally very reliable, this time he drops the book in the mud. He nevertheless returns it to the library, which determines that it is unsalvageable and charges Sam's account the cost of replacing the book.

It seems implausible that Sam could protest the charges on the basis that she had transferred responsibility for the book to James. Since Sam entered into an agreement with the library to be responsible for the book, the library can rightfully seek

compensation from her. The fact that she engaged other people to help her fulfill this responsibility seems to have no effect on the obligation she has to the library.

Additionally, since the library entered into the agreement with Sam, it seems wrong that they now be required to seek compensation from James. To permit this kind of transfer would amount to permitting the unilateral alteration of a promise, and this seems deeply problematic. In this example, Sam can only delegate to James the responsibility of returning the library book, not transfer it.

The preceding example demonstrates that transferring responsibilities we have to a particular person is not always simple. However, there are various disanalogies between this case and gamete provision that might bring into doubt whether the intuitions from the library example apply to gamete provision. For instance, gamete providers generally provide gametes only on the condition that someone else will be responsible for the needs of any resulting children; in the library example, Sam took out the book independently of any prior agreement with James to return it. Also, in the case of the library, there was a pre-existing agreement that made Sam responsible for the book; while in gamete provision there is no such agreement. Even when we create a case that shares these features of gamete provision, however, it still does not seem like responsibility can be transferred. Consider the following example.

My friend Bob wants to play a prank on our colleague Michelle by deflating the tires on her bicycle. Bob does not know which bicycle is Michelle's, nor does he know how to deflate a bicycle tire, so he asks me for assistance. At first I protest, arguing that this might cause Michelle a great inconvenience, and refuse to participate. To assuage my worries, Bob promises to take care of any harms that befall Michelle as a

consequence of the prank. Since I know Bob is trustworthy, I agree. I deflate the front tire while Bob deflates the back tire. Unbeknownst to us, Michelle has a very important meeting to get to, and she does not have a bicycle pump with her. The only way for her to get to her meeting on time is to take a cab, but she does not have her wallet with her. Instead of helping Michelle as promised, Bob uncharacteristically runs off leaving me behind. Though I have money on me, I tell Michelle that I transferred the responsibility to take care of any harm that arose from the prank to Bob, and so I do not have to help. Instead, I encourage her to run after Bob.

Intuitively, this response seems very morally problematic. It is implausible to suppose that an agreement I enter into with a third party (Bob) can absolve me of my responsibility to help my colleague out of the state that I have helped put her in. The case against the transfer of responsibilities in such cases is strong. But notice that the case against transfer in the reproductive context is even stronger. In the reproduction case, the gamete provider knows that the intention of the other parties is to create a dependent being in need of care. If we adjust this example involving the bike to reflect this prior knowledge, it seems to only enhance my responsibility to assist Michelle. Consider how we would feel about my response following the prank if Bob had stated at the onset that his intention was to disable Michelle's bicycle on the same day that she has an important meeting immediately after work.

One might object to this analogy on the grounds that the gamete provider does not create the dependent child in the same manner that I inconvenience Michelle. The gamete provider merely provides the material while the physicians and intending parents create the child. However, even if we tweak the example to make the analogy even

closer it still seems that I cannot transfer my responsibility to help Michelle. Imagine that Bob tells me his plan, then merely asks me to describe Michelle's bicycle to him and explain to him how to deflate a bicycle tire. Even with this less direct contribution to the prank, it still seems that I have a responsibility to alleviate the ill effects that Michelle would otherwise suffer.

The library and the bicycle examples are not intended to show that the transfer of responsibility is never possible. A key factor that drives the intuition in the bicycle case is that I create a new vulnerability, the risk of being late, that Michelle did not consent to. My argument is that in these kinds of cases responsibility cannot be transferred. However, in cases where responsibilities arise in different ways, transfer of responsibility might be possible. For instance, recall the example of the lost child in the shopping centre discussed in the previous chapter. It seems that if no one else intervenes and so I am required to assist the lost child, then I can transfer the responsibility to try to locate the child's parents to the shopping centre's security personnel. Once the child has been transferred to their care, nothing more can reasonably be required of me; it seems implausible that I could be expected to take care of the child if the security personnel cannot locate the parents, or that I would be required to assist in the effort to find the child's parents. Thus, I can completely transfer my responsibility for the child. The important difference in this case is that my intervention is an attempt to reduce the child's current state of vulnerability, not create new vulnerabilities. The bicycle example thus does not show that the transferability of responsibility is never permissible, but only that it is not transferable in cases where individuals act to intentionally place a non-consenting individual at risk of harm.

Though it does not seem possible in the library and bicycle cases for an individual to alienate her moral responsibility, it is possible for her to delegate it. For instance, if instead of refusing to help Michelle, I instead have another reliable friend (other than Bob) agree to pay for Michelle's cab ride on my behalf, I do not seem to behave immorally in any way. Furthermore, if the friend fulfills the responsibility she has been delegated, I have no further responsibility to Michelle. Michelle does not seem to be wronged in anyway by having a third person do all the 'work' to ensure that she is not left harmed by my joint actions with Bob. This conclusion about the permissibility of delegation in the bicycle case has important consequences for individuals who provide gametes for assisted reproduction. Since, like pranksters, gamete providers can delegate their responsibilities, they are responsible for providing assistance to their biological offspring only in the event that those who agreed to take on care-taking responsibilities fail to do so.

A question that has so far been left somewhat open is whether the care-taking responsibilities that arise through gamete provision are the kind of responsibilities that can be delegated at all. Various authors, including Weinberg and Nelson, are of the opinion that these responsibilities cannot be delegated. Their arguments rest on the correct claim that certain kinds of responsibilities that depend on an emotional bond between individuals cannot be delegated to others. For instance, I cannot delegate to my friend the responsibility of having dinner with my partner on her birthday. In subsequent chapters, I will address this issue and argue that gamete providers do not in fact have a responsibility to form the kinds of emotional bonds with their biological offspring that would make the delegation of certain responsibilities impossible.

The argument up to this point demonstrates that gamete providers cannot completely alienate the care-taking responsibilities they acquire towards their biological offspring; however, they can delegate them. This argument rests on looking at circumstances where responsibilities cannot be transferred, but can only be delegated. As highlighted by the bicycle case, when individuals place non-consenting people at risk of harm, they acquire a non-transferable responsibility to mitigate those harms. In the following section I will look at some possible counter-arguments to this analysis of transfer and delegation.

#### ***4. Objections to My Account of Delegation and Responsibility***

A possible worry arising from the bicycle case, especially the later version in which the parties know that Michelle has a meeting, is that it might appear that Bob escapes responsibility for his actions because I am left to fulfill all of the responsibilities that we jointly have towards Michelle. Even though Bob also participated in the prank, I am still responsible for ensuring that Michelle gets to her meeting after he flees, despite having delegated to Bob the responsibility to ensure Michelle's wellbeing. However, once I have paid for the cab, there is nothing left for Bob to do. It thus appears that by fulfilling the responsibility I delegated to Bob, I necessarily relieve Bob of his responsibility. This raises a potential problem of fairness. It might seem unfair that I am on the hook for Michelle's damages even though Bob was also an active participant and even though Bob promised to be responsible for any harms that arose.

However, my view does not entail that Bob has no care-taking responsibility for the harms suffered by Michelle, but only that both Bob and I are both responsible for ensuring that she is not left suffering from ill effects from our prank. Though it is true

that if I pay for Michelle's transportation costs, Bob will no longer owe her anything, this does not mean that both of us were not initially fully responsible for ensuring Michelle's welfare. To give a different example, in a two-parent home, the fact that one parent feeds their child dinner does not mean that both were not equally responsible for ensuring the child did not go to bed hungry. It is perfectly possible for multiple individuals to be fully responsible for ensuring that the same responsibility is fulfilled.<sup>79</sup>

Furthermore, the fact that I cannot transfer my responsibility to Bob does not mean that the promise Bob made is of no consequence. Bob's promise to take care of any harm that befell Michelle requires that he compensate me for any costs that I incur while fulfilling my obligation to her, even though the promise does not diminish my responsibility to the Michelle. Consider the library book example again. Though James' promise to return the book cannot free Sam of her responsibility to the library, it does require him to compensate her for any costs accrued as a result of his carelessness with the book.

My analysis of the bicycle case reveals three different moral responsibilities that arise in these kinds of cases. Both Bob and I independently have responsibilities to ensure that Michelle is restored back to her pre-prank state. These responsibilities arise as a consequence of our actions. In addition, as a result of his promise, Bob has an obligation to me to ensure that Michelle's needs that arise as a consequence of the prank

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<sup>79</sup> Michael Zimmerman makes the point that individuals often see moral responsibility as a pie, with only so many 'pieces' to go around. Under this view, if more than one person is responsible for some outcome, then none could be fully responsible. However, Zimmerman argues that this view is, upon reflection, false. Two people who conspire to murder someone are both fully murderers. If the pie model were true, simply involving more individuals in a serious crime would be a method of reducing any individual's culpability, and this seems like a problematic conclusion. Zimmerman, Michael. "Sharing Responsibility." *American Philosophical Quarterly* 22.2 (1985): 115-122.

are fulfilled. Bob's responsibility to me does not alter my responsibility to Michelle, but might give me recourse against Bob if he fails and I am required to step in. For instance, I could reasonably ask Bob to compensate me for the cost of the taxi. This shows that Bob has not been completely freed of responsibility even if I provide for Michelle's needs.

This structure of delegation that I am proposing, where both Bob and I retain responsibility, has a close parallel in one in tort law. In tort law, in circumstances where multiple individuals are differentially responsible for damages, a plaintiff can recover complete damages from any one of them, leaving it up to the group to sort out more fine-grained damages amongst themselves.<sup>80</sup> Consider a case where two people jointly break into a house. Criminal A steals a laptop and criminal B steals a very valuable piece of art. Under the principle of joint and several liability, the victim can recuperate damages for both the laptop and the painting from criminal A, even though A only stole the laptop. However, A can recuperate from B the portion of the damages paid to the victim as restitution for the loss of the artwork. The important similarity here is that the affected person (the victim of the theft) can recuperate damages from either offending party, but the other offender is nevertheless not absolved of responsibility.

When delegating responsibility in gamete provision, there is a strong case for adopting something similar to joint and several liability because the gamete provider is, along with others, responsible for the state of vulnerability the child finds itself in. Nothing from my account of gamete provider responsibility diminishes the fact that the intending parents who use the gametes to create a child are also responsible for the

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<sup>80</sup> Osborne, Philip. *The Law of Torts: Essentials of Canadian Law*. Toronto: Irwin Law Inc, 2003. e-book. <<http://lib.myilibrary.com.proxy1.lib.uwo.ca/Open.aspx?id=93987#>>. p. 58



vulnerable state of the child because they also act with the intention of creating a vulnerable child. However, as a condition of receiving the gametes, the intending parents have also agreed to provide for the future child's needs. This means that if the gamete recipients promise to take care of the child and fail, they have failed in their responsibility to both the child and gamete provider. Furthermore, like in the bicycle case, gamete providers would have grounds for complaint against those to whom they delegated responsibility, if those individuals fail to fulfill their responsibilities.

This structure of responsibility preserves the idea that it is the intending parents who have primary care-taking responsibility for the children created using provided gametes. Though gamete providers retain their responsibilities towards their biological offspring – on my view, they only delegate these responsibilities – they are required to act on their responsibility only when the child's parents fail in their care-taking responsibilities. Gamete providers are thus second actors who are required to step in only when the parents cannot or do not fulfill their responsibilities.<sup>81</sup>

This way of thinking about delegation may seem odd, given how the term 'delegation' is often used. For instance, when a supervisor delegates a task to a subordinate, the subordinate becomes responsible for the task on the basis that it was assigned to her by her supervisor. A natural way to describe this situation is that the supervisor is primarily responsible for completing the task and only because of the supervisor's choice to delegate does the subordinate also become responsible for completing the task. However, what makes the case of gamete provision different is that the provider enters into the reproductive arrangement only on the condition that the intending parents will fulfill the child's needs. It is this antecedent promise that

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<sup>81</sup> This will be discussed in more detail in chapter 4.

differentiates gamete provision from the supervisor-employee case, and explains why the intending parent has primary responsibility. Normally, in a supervisor-supervisee relationship, the supervisor does not take on a responsibility on the condition that the supervisee has given his assurance that he will fulfill the responsibility in question.

My use of “delegation”, therefore, does not commit me to describing the parent’s responsibility as subordinate to that of the gamete providers. The individuals who commission the gametes have independent bases for responsibility aside from being delegated responsibilities: first because they also meet the criteria established in chapter one, and so have quasi-voluntary care-taking responsibility themselves; second, because they have promised to raise their child; and third, because of the intimate relationship that develops between them and their child as they parent.<sup>82</sup> My use of “delegation” describes the way in which gamete providers remain bound to their biological offspring, but does not describe the sole manner in which intending parents become responsible for their children. An analogy that better captures the kind of relationship I have in mind between gamete providers and the intending parents is the division of labour in a partnership.

Imagine that a friend and I jointly decide to babysit a child for a day. After jointly entering this agreement with the child’s parent, we decide to divide the day into shifts: I will look after the child for the morning shift and my friend will look after the child for the afternoon shift. In this circumstance, since we jointly entered into an agreement with the parent, we are both responsible for ensuring the child is looked after for the entire day. Each of us also delegates to the other the responsibility of looking after the child for one shift. In this example, it is not the delegation that gives rise to my friend’s responsibility to look after the child in the morning, since my friend promises the child’s

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<sup>82</sup> This will be discussed in more detail in chapter 3.

parent that he would ensure the child is cared for all day. Delegation in this case allows me to rely on my friend to look after the child for a period of time, but does not create a new responsibility for my friend. Similarly, in the case of gamete provision, the intending parents are not responsible for the care of the child merely because the gamete provider delegated to them this responsibility. Delegation explains why it is not wrong for the gamete provider to rely on others to care for the child, but since responsibility is over-determined for the intending parents, delegation does not fully explain the source of their responsibility.

In summary, my view is that there are three important 'arrows' of responsibility in cases of gamete provision. The intending parents have responsibilities towards their child arising from their use of provided gametes with the intention of creating a child. The gamete provider has responsibilities towards her biological offspring arising from her decision to participate in the project of helping the intending parent(s) create a child. Lastly, the intending parents have a responsibility to the gamete provider to provide for the needs of her biological offspring, since that was a precondition of entering into the reproductive arrangement. Furthermore, since it is the intending parents who induce gamete providers into the arrangement with the promise of providing for the resultant children, it makes sense to consider them primarily responsible. The purpose of this discussion has been, in part, to show that the intending parents do not merely have secondary care-taking responsibilities for their children. Given that they act to create a vulnerable child, they have a basis for care-taking responsibilities that is independent from the gamete provider's delegation of responsibilities. Furthermore, as they engage in raising their child, the intimate relationship that forms provides an additional basis for

their care-taking responsibilities that is also independent from the gamete provider's delegation of responsibility.

A possible counterexample to this argument is adoption, where it seems that the biological parents retain no post-adoption responsibilities for their offspring. In the next subsection section I will discuss what implication my view has for adoption.

#### *4.1 Delegation and Adoption*

There are two possible criticisms of my view that are raised by adoption. The first is that it seems problematic that individuals who put their children up for adoption retain care-taking responsibilities for them. One reason individuals put children up for adoption is to relieve themselves of responsibilities they do not want or cannot fulfill. Making it impossible for individuals to relieve themselves of the burden of caring for children, even after they have found competent individuals willing to parent their children, might seem like an implausibly heavy burden to place on individuals. The second criticism raised by adoption is that, since adoptive parents are not causally involved in the creation of the children they adopt in the same manner as individuals who employ provided gametes, the responsibility the former have for their adopted children is entirely derivative, like with the supervisor-subordinate case discussed above. Since adoption cannot be described in terms of a partnership, this leaves open the possibility that the responsibility adoptive parents have exists entirely because it has been delegated to them by the child's progenitors or legal guardians. As mentioned previously, this view seems inappropriate for describing parental responsibilities.

Turning to the first criticism, my response is that not all parents who put their children up for adoption will meet the criteria that I have argued give rise to quasi-

voluntary care-taking responsibilities in the first place. As discussed in chapter one, my account is restricted to individuals who freely and intentionally place innocent individuals in circumstances of extreme vulnerability. Individuals who become pregnant unintentionally do not necessarily not fit in this category. For instance, individuals who become pregnant accidentally because of failed contraception, and who are unable to terminate their pregnancy do not meet the criteria for quasi-voluntary responsibilities set out in chapter one. Furthermore, as will become clear in the following chapter, the responsibilities these individuals possess are not parental and if the adoption process functions properly little will likely be required of these individuals. So while I accept that a subset of individuals who seek to put their biological offspring up for adoption might retain some moral responsibilities towards them, I do not think this conclusion undermines the plausibility of my view. Only those who intentionally sought to create a child cannot completely alienate themselves of their care-taking responsibilities, and the care-taking responsibilities retained are much less onerous than the responsibilities associated with parenthood.

It is worth mentioning that I am not alone in thinking that individuals who put up children for adoption retain some moral responsibility for their welfare. For instance, Lindsey Porter argues on the basis of a causal account of parenthood that individuals who put their children up for adoption retain care-taking moral responsibilities towards them<sup>83</sup>, as does Daniel Callahan.<sup>84</sup> Also, the fact that many individuals who give up their children for adoption choose open adoption arrangements might be evidence that these individuals feel some ongoing responsibility towards their biological offspring.

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<sup>83</sup> Porter, Lindsay. "Adoption is Not Abortion-Lite". *Journal of Applied Philosophy*. 29.1 (2012): p. 63-78.

<sup>84</sup> Callahan, Daniel. "Bioethics and Fatherhood." *Utah Law Review* 3 (1992): p. 735-46.

The second criticism, that my account of delegation trivializes adoptive parents by making their responsibility derivative, falsely treats delegation and causation as the sole source of possible parental responsibility for a child. Though unlike those who use provided gametes, adoptive parents do acquire parental responsibilities in ways other than delegation. For example, the voluntary agreement to care for a child is also a source of responsibility. Furthermore, the close intimate ties that develop through the process of parenting are also independent sources of care-taking responsibility. As in the case of provided gametes, delegation is but one source of responsibility. Hence, adoptive parents' responsibility is not derived solely from the fact that they have been delegated responsibility from their children's biological parents.

### ***Conclusion***

In this chapter I have argued that authors who have looked at whether gamete providers can transfer their responsibilities to others have often failed to properly capture the common-sense distinction between the transfer and delegation of responsibilities. In the case of delegation, some responsibility is retained by the delegee, while in the case of transfer, responsibility is completely alienated by the transferor. Using this distinction, I have shown that the examples other authors use to demonstrate that care-taking responsibility can be transferred are actually instances where only delegation is possible. This shows that the alienation of responsibility is not as commonplace as some authors suggest. I have further argued that the same conditions which give rise to quasi-voluntary care-taking responsibility in gamete provision – intentionally placing an innocent individual in a vulnerable state – make those responsibilities inalienable. As a

consequence, this shows that though gamete providers may delegate their care-taking responsibilities to others, they cannot transfer them.

## **Chapter 3: Gamete provider Responsibilities**

### *Introduction*

In the preceding two chapters, I argued that gamete providers acquire substantial care-taking responsibilities for their biological offspring, and that these responsibilities cannot be transferred to others. In this chapter, I will propose a general framework for determining the content of these responsibilities. I will argue that gamete providers have a responsibility to ensure that their biological offspring have a reasonable chance at a desirable life. This argument will proceed in three stages. First, I will argue that gamete providers do not have a responsibility to parent their biological offspring. Second, I will propose a modified Millian approach for determining the minimum welfare that children are owed, and will argue that this level of welfare informs the content of gamete providers' responsibilities. Lastly, I will show why other competing accounts fail to show that gamete providers owe substantially less or substantially more than they do according to the view I propose.

### *1. Gamete providers and Parenthood*

Before delving into the general framework for gamete provider responsibilities, a question that requires some comment is why, on my view, gamete providers are not parents, with all the associated responsibilities. Given the conclusions drawn in the first two chapters, viewing gamete providers as parents might appear to be natural; after all non-transferable care-taking responsibilities for children seem to be the stuff of parenthood. In order to address this issue, I will first show that 'parenthood' can be used to signify many different kinds of relationships, and argue that the relevant conception at play in gamete provision is what I call "moral parenthood". I will then argue that no



existing theory of parental responsibilities adequately establishes that gamete providers are moral parents. Though it is possible that some defensible view of moral parenthood will include gamete providers, I think this is unlikely. Additionally, to conclusively show that gamete providers are not moral parents would require that I develop a comprehensive account of moral parenthood that clearly excludes gamete providers and this project lies outside the scope of this work. Instead, I take it to be reasonable to proceed under the assumption that gamete providers are not moral parents given that no current theory successfully shows that they are indeed moral parents.

### *1.1 Moral Parenthood*

In this section, I argue that there are good reasons to be skeptical of the claim that gamete providers have *parental* responsibilities, in the sense that generally comes to mind when we think of parenthood in its colloquial use. These responsibilities are generally thought to be quite extensive, and include nurturing, preserving, and socializing one's children.<sup>85</sup> Though these responsibilities are perhaps what comes to mind when we initially think about parenthood, the designation "parent" itself is somewhat ambiguous. As Margaret Little points out, the term "parent" can refer to different kinds of adult-child relationship, most notably legal, biological, and social relationships<sup>86</sup>. Legal parents are the individuals whom the state recognizes as having special rights and/or responsibilities towards specific children. Biological parents are the individuals whose biological material is used to create a child. This includes the individuals from whom the child's

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<sup>85</sup> Ruddick, William. "Parents and Life Prospects". *Having Children*. Ed. Onora O'neil and William Ruddick. New York: Oxford University Press, 1979. 124-137.

<sup>86</sup> Little, Margaret Olivia. "Abortion, intimacy, and the duty to gestate." *Ethical theory and moral practice* 2.3: 295-312. p. 306. <sup>86</sup> See also: Archard, David. "What's blood got to do with it? The significance of natural parenthood." *Res Publica* 1.1: 91-106.

genetic material is derived, as well as the individual who gestates the child. Gamete providers fit into this second category. Lastly, social parents are the individuals who care for, and develop deep relationships with, the children in their charge. Importantly, these different kinds of parenthood can arise independently. For instance, legal rights and responsibilities might arise regardless of any direct social or biological connection to a child. In many jurisdictions, the partner of a woman who gives birth is considered by default to be the legal parent of that child regardless of whether the partner is biologically related to the child<sup>87</sup>, and despite the absence of any direct social relationship with that child. Similarly, an adoptive parent can become a legal parents of a child without being a biological parent or without having any prior social relationship with a child.<sup>88</sup> Being a biological parent also does not necessarily make an individual a legal parent, or reflect an existing social relationship with a child. For instance, currently in many jurisdictions gamete providers are not legal parents, and have no social relationship with their biological offspring. Lastly, individuals can become social parents without being a legal or biological parent. For instance, consider a person who enters into a serious relationship with a parent who has custody over the children from a previous relationship. If the new partner develops close ties with the children through care-taking activities, the new partner can become a social parent, merely through building the appropriate kind of relationship. Often courts use the existence of a new social parenthood relationship as justification for shifting legal parenthood from a biological parent that was also a legal

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<sup>87</sup> This is sometimes called “the presumption of legitimacy”. For a discussion see: Harris-Short, Sonia and Joanna Miles. *Family Law: Text, Cases, and Materials. 2. Oxford: Oxford University Press, 2011.* p. 589-611.

<sup>88</sup> However, adoptive parents become social parents after adoption. Also, some adoptions take place after social parenthood has already been established (eg. intra-family adoptions, adoptions after foster parenthood), and in cases where legal parenthood status is challenged, social parenthood is often grounds for reassigning legal parenthood. See: Harris-Short, Sonia and Joanna Miles. *Family Law: Text, Cases, and Materials. 2. Oxford: Oxford University Press, 2011.* p. 640-650.

parent, but was not a social parent, to a non-biologically related individual who has developed social parental ties.<sup>89</sup>

To these established categories of parenthood I wish to add a fourth: moral parenthood.<sup>90</sup> I take moral parents to be the individuals who have a moral obligation to form and/or maintain a social parenthood relationship with particular children. Moral parenthood is importantly different from the other kinds of parenthood discussed, in part, because the latter describe existing relationships between adults and children. For example, the term ‘social parent’ is normally used descriptively<sup>91</sup> – it describes an actual relationship – and does not specify which individuals are under a moral obligation to enter into this kind of relationship. For instance, fathers in one-night-stand cases who fail to initiate a deep relationship with their biological offspring are not social parents; however, this descriptive statement says nothing about whether they *ought* to be social parents. If we think that this failure warrants sanction, then the presumption is that fathers in these circumstances have a moral responsibility to become social parents, and that the failure is blameworthy because they have not fulfilled this responsibility. Under my account, such a view would amount to including fathers in one-night-stand cases amongst a child’s moral parents.

Though someone might object to the term ‘moral *parent*’ because it can apply to individuals who do not already have an established relationship with a child, it does capture the way ‘parenthood’ is used in the one-night-stand case. When we criticize

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<sup>89</sup> Part of this has to do with a bias towards having no more than two recognized legal parents. This practice however has been criticized – if certain kinds of social ties are sufficient for parenthood it is unclear why the number of existing social parents matter. See: Narayan, Uma. “Family Ties: Rethinking Parental Claims in the Light of Surrogacy and Custody” in *Having and Raising Children: Unconventional Families, Hard Choices, and the Social Good*. University Park: Pennsylvania State University Press, 1999. p. 83; Harris-Shortt & Miles, op. cit., ch. 9.

<sup>90</sup> Brake adopts a similar taxonomy. Brake (2010) op. cit.

<sup>91</sup> Archard (2010) op. cit.; Little op. cit.; Nelson op. cit.

recalcitrant biological fathers in one-night-stand cases by calling them ‘bad parents’ we are not criticizing their biological relationship with the child, or their failure to behave appropriately within an existing intimate social relationship. Rather, we are commenting on their failure to *establish* a relationship, which we think they are obligated to do. This view about fathers in one-night-stands might rest on a presumed connection between biological parenthood and social parenthood – someone might think that all biological parents are also moral parents – but the two are conceptually separable. In the second section of this chapter, I will argue that biological accounts of moral parenthood do not succeed.

Whether gamete providers are moral parents is a pressing question, because if they are, the practice of gamete provision in its current form would be brought into question. For instance, when Nelson faults gamete providers for failing to fulfill their *parental* responsibilities, it is presumably because he thinks that gamete providers are moral parents.<sup>92</sup> In response to this concern, my goal in the next section will be to defend the claim that gamete providers are not moral parents, and thus do not have parental responsibilities in virtue of their biological contribution to the existence of a child. The strategy of focusing on moral parenthood in order to show that gamete providers do not have parental responsibilities may be thought to be problematic, since legal parenthood might also be thought to give rise to parental responsibilities. Though I think that an analysis of legal parenthood and its derivative legal responsibilities is a worthwhile project<sup>93</sup>, the focus of this thesis is the moral responsibility. Given these considerations, I

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<sup>92</sup>Nelson, *op. cit.*

<sup>93</sup> In the conclusion I will discuss the relevance of this project to resolving certain questions in family law pertaining to assisted reproduction.

think that rejecting moral parenthood and putting aside the question of legal parenthood is sufficient for the purposes of this thesis.

### *1.2 Moral Parenthood and Parental Claims*

Before delving into an examination of whether gamete providers are moral parents, I first want to clarify the relationship between an individual's status as a moral parent and their ability to make a claim to become a social parent. An initial thought may be that a person who is not a moral parent has no claim to become a social parent. However, the question of whether gamete providers are moral parents can be distinguished from the similar question of whether gamete providers have a claim to become the social parent of a child. The former question asks whether gamete providers do wrong by not parenting their biological offspring, while the latter asks whether gamete providers are wronged by being denied the ability to become social parents. Upon reflection, it seems quite plausible that someone could have the right to make a parental claim without having the responsibility to do so. Consider the following scenario from the surrogacy literature. Two people contract with a woman to gestate a child derived from their gametes. At the end of the pregnancy, the woman who was contracted to gestate the child decides she would like to parent the child she has gestated, but is unsure how to proceed ethically. In assessing this scenario, we could ask whether surrogates are moral parents, and thus whether respecting the contract would violate the surrogate's responsibilities. We could also ask whether the surrogate has a claim to become the child's social parent that ought to be respected through sole or shared legal custody,

despite the terms of the contract agreed to at the outset of the pregnancy.<sup>94</sup> The second question is independent from the first in that we could think that the surrogate has a claim to become the child's social parent even if we think the surrogate does nothing wrong if she instead decides to give up the child to the contracting parents. Many scholars in the legal literature hold the view that surrogates have the right to bow out of surrogacy contracts and keep the child if they so choose, yet do no wrong if they choose to give up the child as initially agreed upon.<sup>95</sup>

This same distinction is relevant in the case of gamete provision. We can similarly distinguish the right to socially parent a child from the responsibility to do so. There very well may be reasons to think that gamete providers have some claim to parent the children that are the products of their gametes. For instance, in their paper, "Towards a Pluralistic View of Parenthood", Tim Bayne and Avery Kolers argue that there are multiple sources for valid claims to becoming a child's social parent and they include being a gamete provider as one.<sup>96</sup> Though determining the strength of gamete providers' claim to have the opportunity to become a social parent is an important problem deserving of philosophical attention, I am interested in what responsibilities gamete providers have towards the children they help to create by virtue of their involvement in the reproductive process, not which responsibilities they ought to be able to acquire given their contribution to procreation. This restricts the scope of my discussion to the question of moral parenthood. It is worth emphasizing that people who

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<sup>94</sup> There is a large degree of philosophical and legal support for prioritizing parental claims from the woman who gestates. Much of this stems from discussions about the Baby M case. See Allen, Anita L. "The Black Surrogate Mother" *Harvard Blackletter Journal*. 8 (1991): 17-31.

<sup>95</sup> There is a growing legal consensus that gestation ought to be given special consideration when adjudicating competing parental claims. For a discussion see chapter 9 in *Family Law: Text Cases and Materials*.

<sup>96</sup> Bayne, Tim, and Avery Kolers. "Toward a pluralist account of parenthood." *Bioethics*. 17:3. 221-242. p. 240. Importantly, Bayne and Kolers do not think that all parental claims have equal weight.

are not a child's moral parents might still have strong claims to be that child's social parent. Though I think that individuals whose sole contribution to a child's existence is the provision of gametes have only a very weak claim to become that child's social parent<sup>97</sup>, this conclusion is not supported in the argument made in this thesis.

### *1.3 Gamete providers and Moral Parenthood*

Now I will look at whether there is a strong case for including gamete providers in the category of 'moral parent'. Establishing that gamete providers are moral parents would require showing that this kind of responsibility generally<sup>98</sup> arises as a consequence of gamete provision. In question here is whether moral parenthood can be derived from some combination of genetic relatedness, voluntariness, and intention to participate in the creation of child. One strategy for determining whether gamete providers are moral parents is to look to analogous circumstances outside of gamete provision, where we have intuitions that moral parenthood arises. However, doing so reveals that social attitudes about when moral parenthood arises in situations comparable to gamete provision are divided. For instance, as remarked by various authors<sup>99</sup>, biological fathers in one-night-stand cases are often criticized if they fail to establish strong emotional ties and/or remain largely uninvolved in the lives of their biological offspring. This suggests that biological ties are often thought to establish moral parenthood, barring circumstances in which biological relatedness arises in extreme and troubling circumstances like rape.<sup>100</sup> By parity of reasoning, gamete providers ought to also be moral parents, and therefore do

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<sup>97</sup> By 'weak', I mean that many other individuals have stronger claims that would take precedence.

<sup>98</sup> This does not mean that the responsibility is not defeasible under certain circumstances.

<sup>99</sup> Archard (2010) op. cit.; Porter op. cit.; Nelson op. cit.

<sup>100</sup> People generally do not think that rapists are moral parents. See: Archard (2010) op. cit. p. 107; Austin, Michael. *Conceptions of Parenthood: Ethics and the Family*. Hampshire: Ashcroft. 2007. p. 53.

wrong by failing to form parental relationships with their biological offspring.<sup>101</sup> In fact, in a recent interview with the Irish times, David Velleman stated, “I think a sperm donor is a kind of deadbeat dad who creates children and then doesn't care for them.”<sup>102</sup>

However, there are also circumstances where biological ties are not thought to establish moral parenthood. For instance, putting one's biological child up for adoption is permissible, and perhaps even laudable, if the circumstances suggest that adoption is firmly in the best interest of the child. Permission to alienate parental responsibility exists even when pregnancies arise due to recklessness, or are intentional but due to changes in circumstances, the progenitors no longer wish to parent the child. This shows that even when features that normally augment moral responsibility, like voluntariness and intentionality, are present, moral parenthood does not necessarily follow from biological parenthood. Attitudes towards adoption thus run contrary to attitudes towards disinterested biological fathers in one-night-stand cases, and suggest that biological parenthood does not necessarily result in moral parenthood. Given that we have contradicting intuitions about the importance of biological ties in establishing moral parenthood, a mere extension of our intuitions from cases similar to gamete provision will not resolve the question of whether gamete providers are moral parents.

Instead of appealing to intuitions alone for determining whether gamete providers are moral parents, another option is to look to theoretical accounts of parenthood. Four accounts dominate the literature: gestational, intentional<sup>103</sup>, genetic and causal.<sup>104</sup> These

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<sup>101</sup> As argued in chapter one, the case for care-taking responsibility in gamete provision cases is stronger than the one-night-stand cases because gamete providers intentionally act to create a child.

<sup>102</sup> Humphreys, J. “What Duty do You Have to Future Beings?” *Irish Times*. April 14<sup>th</sup>. Features. p. 14.

<sup>103</sup> Intentionalist accounts are also sometimes referred to as voluntarist accounts. See: Brake (2010) op. cit.

<sup>104</sup> Archard (2010) op. cit. p. 110; Bayne, Tim and Avery Kolers. "Towards a Pluralistic Account of Parenthood." *Bioethics* 17.3 (2003): 221-242.



accounts are often used for determining which individuals fit into the various categories of parenthood (legal, biological, social, and moral) discussed previously, since these categories are largely descriptive rather than normative. My focus will be to determine whether any of these accounts successfully show that gamete providers are moral parents. Authors often fail to explicitly state whether they take these theoretical accounts to ground claims to become moral parents, moral parenthood, or some other understanding of parental rights and responsibilities; however each of these accounts has been offered to support moral parenthood at least tacitly. For instance, Brake<sup>105</sup> argues that the intention to become a parent is what grounds an individual's obligation to become the social parent of a child, while Nelson suggests that causing a child to come into existence brings about this responsibility.

Gestational accounts place moral parenthood primarily with the person who gestates the child, with other people deriving moral parental status from either their social relationship with the gestational mother or a social relationship with the child that develops after birth.<sup>106</sup> Since the focus of this thesis is gamete providers (and not surrogacy arrangements<sup>107</sup>), gestational accounts of parenthood are not relevant. Though some gamete providers may become moral parents on a gestational account of parenthood, in these cases gamete provision is *accidental* to acquiring parental status. For example, consider a woman who provides an ovum to her lesbian partner who then gestates a child. In this example, if the gamete provider acquires parental status on a

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<sup>105</sup> Brake (2010) op. cit.

<sup>106</sup> Not all gestational accounts discuss partners of surrogates, but many do. For an account that includes partners, see: Gheaus, Anca. "The Right to Parent One's Biological Baby." *Journal of Political Philosophy* 20.4 (2012): 432-455. p. 447.

<sup>107</sup> Some surrogates also use their own eggs, so they could be considered gamete providers as well. My discussion is limited to individuals whose biological contribution is only gamete provision.

gestational account of parenthood, it is because of her relationship to the gestational mother and not because she provided gametes. If the gametes had come from a third party, then she would still be a parent according to gestational accounts that accommodate non-gestational partner(s).

Intentionalists hold that moral parents are those who intended to parent children, but as with gestational accounts of parenthood, such accounts also fail to establish that gamete providers are necessarily moral parents. Most gamete providers do not intend to become parents, and for those who do, like in the lesbian partnership example above, gamete provision is accidental to parenthood on the intentionalist account. The woman who provides an ovum to her lesbian partner with the intention of becoming a parent would be a parent under the intentional account if she had instead intended to parent a child resulting from a third party's gametes. Gestational and intentional accounts of parenthood therefore do not establish that gamete providers are moral parents.

This then leaves causal and genetic accounts of parenthood. Causal accounts ascribe moral parenthood to individuals who play a certain kind of causal role in creating a child, whereas genetic accounts ascribe moral parenthood on the basis of genetic relatedness.<sup>108</sup> Causal and genetic accounts both suffer from one or both of two kinds of problems that makes them implausible for attributing moral parenthood to gamete providers. The first (as discussed in chapter 1) is that they have difficulty differentiating in a principled manner between individuals along the causal chain who have parental responsibility from those who do not. The second is that causal theories have difficulty explaining why mere causation or genetic relatedness results in the rich and intimate

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<sup>108</sup> These accounts of parenthood were discussed in chapter one, with respect to care-taking responsibility in general.

responsibilities normally thought to be associated with parenthood.<sup>109</sup> Given the arguments made in chapter one, one might think that causation and/or genetic connection along with intentionality and voluntariness might suffice for moral parenthood; however I will show in the following paragraphs that, even when these features, which generally improve the case for responsibility are present, causal and genetic accounts fail to establish that gamete providers are moral parents.

Consider individuals who favour geneticism, and who argue that individuals become moral parents of their biological offspring because they are derived from their genetic material. If successful, this theory would imply that gamete providers are the moral parents of their biological offspring. In one prominent account, Barbra Hall defends a form of geneticism on Lockean grounds.<sup>110</sup> Hall argues that since gametes are owned by the individuals from whom they are sourced, those individuals also have claims to the products of their gametes.<sup>111</sup> One problem with this view, as highlighted by Archard, is that it is predicated on individuals' inherent self-ownership; but if self-ownership is inherent to all people, then children must have it as well. Since children inherently own themselves, it is unclear how parents could own their children, given Hall's Lockean starting point that takes self-ownership as basic.<sup>112</sup> Another problem with this view is that it is unclear whether Hill's Lockean labour view of parenthood would consider the genetic parents to be the owners at all. Though the genetic code provides the organizational plans of development, the work of actually creating a child is done by the

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<sup>109</sup> Little, Margaret. "Abortion, Intimacy and the Duty to Gestate." *Ethical Theory and Moral Practice* 2.3 (1999): 295-312.

<sup>110</sup> Hall's view is Lockean because his argument is based on the idea that individuals have a claim to the products of their bodily labour.

<sup>111</sup> Hall, Barbara. "The origin of parental rights," *Public Affairs Quarterly*, 13.1 (1999): 73-82.

<sup>112</sup> Archard, David, "Child Abuse: Parental Rights and the Interests of the Child," *Journal of Applied Philosophy* 7.2 (1990): 183-194. p. 186.

individual who gestates him or her.<sup>113</sup> It seems that a Lockean labour account provides a stronger case for gestationalism than it does for geneticism.

Although Hill's view identifies which individuals acquire moral parent status, it suffers from the further problem of failing to explain why parental duties arise. If children are relevantly similar to property, it is unclear why genetic parents would have any extensive duties towards them, since property rights are generally taken to grant the holder broad authority and exclusion of interference from others in the use of their property. This means that though a property rights account might ground parental authority and exclusive control over children, it fails to explain the source of the responsibilities that constitute moral parenthood.

Perhaps this takes the analogy to property too literally, or construes property too narrowly. For instance, pets are considered to be property in many respects but this does not mean that owners have unlimited authority in how they treat their pets or that they do not have specific positive duties towards them. However, recognizing that owners do not always have unlimited authority over their property and that ownership is sometimes accompanied by positive duties does not fully vindicate the Lockean approach, because it still does not show why children are a special case of property that come with responsibilities. It also does not explain why moral parenthood arises rather than a simple claim to become a social parent.

To illustrate this point, consider the following example. Under a Lockean account, a woman hired to gestate a child might have a claim to parent the child grounded

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<sup>113</sup> Silver, Lee. "Confused Meanings of Life, Genes, and Parents," *Studies in History and Philosophy of Science Part C: Studies in History and Philosophy of Biological and Biomedical Sciences*, 34.4 (2001): 647–661.

in her gestational labor, but it is unclear why a Lockean account would require her to exercise that claim. For instance, I might have an exclusive property right to the silverware I made, but this does not require me to retake my silverware if it is stolen, nor does it prevent me from giving it away. In order to establish that moral parenthood arises from genetic ties, the proponents of the property view would have to explain why genetic parents do wrong if they alienate their bundle of rights and responsibilities to others. Furthermore, though we could take a broader view of property that includes responsibilities as in the pet case, the Lockean view provides no reason why responsibilities would arise in the case of biological offspring and not in other property contexts. Since the inability to abandon one's children to others, and the duty to care for them are the weightiest elements of moral parenthood, the property view of geneticism is explanatorily inadequate.

Another way to put this point is that an account that *requires* an individual to exercise property rights over an object, and includes extensive responsibilities packaged in with those rights, ceases to be an account grounded in property theory, since the framework of rights and responsibilities differs greatly from those normally associated with property. If anything, this analysis shows that parental rights and responsibilities cannot appropriately be described in terms of property.

Geneticism has also been defended on the basis that the chromosomal makeup that is determined by the contributions of the genetic parents determines the identity of their biological offspring.<sup>114</sup> Since gamete providers provide the biological material that sets the identity of their biological offspring, on this view they would be moral parents.

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<sup>114</sup> For a discussion of this view, see: Bayne op. cit. p. 79.

Empirically however, this view is contestable. Though it is likely that if a person had a different genetic code, their personal identity would be importantly different<sup>115</sup>, it is less clear whether genetic determinism is true because it assumes that an embryo's genetic code is capable of producing only a single personal identity. Developments in epigenetics continue to demonstrate the importance of environmental factors in gene expression. Though a particular genetic inheritance might limit the range of possibilities available, interaction with the environment plays an important role in determining the being that actually develops.<sup>116</sup> The importance of epigenetics to biological development extends beyond gestation. Hence social parents and the environment they create for their children may also be determining features of personal identity, even at the level of gene expression. This means that to the extent that geneticism rests on genetic determinism, it likely is empirically false. Social parents likely play an important role in determining the personal identity of the children they rear even at the level of gene expression, and so if the establishment of an identity continues to take place after birth, social parents might be better candidates for parenthood on this view.

Putting empirical questions aside, this form of geneticism suffers from both theoretical problems mentioned at the onset of this section: over-breadth and an explanatory gap. Even if we take genetic determinism to be true with respect to personal identity, this view seems to suffer from a problem of over-inclusion. Anything that would impact the timing of sexual intercourse or the timing of gamete provision would alter the particular gametes employed in conception, thus impacting the particular genetic

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<sup>115</sup> See Parfit's discussion of the non-identity problem. Parfit, Derek. *Reasons and Persons*. Oxford: Clarendon Press, 1984. Ch. 16.

<sup>116</sup> Boniolo, Giovanni and Giuseppe Testa. "The Identity of Living Beings, Epigenetics, and the Modesty of Philosophy." *Erkenntnis* 76.2 (2011): 279-298.

code of the resulting child, which in turn fixes the child's identity on the above account. This means that the work crew controlling traffic in a construction zone travelled through by a sperm provider on the way to a clinic to donate sperm plays a role in determining the identity of the child by affecting the precise timing of the sperm deposit. One could argue that the construction crew simply alters the distribution of possible zygotes produced, but does not in fact set the precise sperm that will form the zygote. Though this may be true, it is unclear how this is any different from 'setting the identity' in ordinary sexual intercourse or in sperm provision where gametes are not specifically selected by any individual. In either case fertilization is accomplished via the shot-gun approach, without the sexual partners intentionally selecting one particular gamete over another. All they do is establish the set of possible zygotes and then let circumstance determine which particular one is realized. This problem of over-inclusiveness makes the theory untenable and suggests that merely playing a role in setting the identity of a child is insufficient for being a moral parent.

The second problem faced by this theory is that it fails to explain why establishing a child's identity makes someone a moral parent. There seems to be an explanatory gap between setting the identity of a child and having the responsibility to socially parent a child. To give an example, it seems unlikely that an individual who provides a child with a transformative experience gains the responsibility to be that child's social parent because the child has now become a different person in some important sense. Also, as discussed earlier, in many circumstances, adoption seems unproblematic even though adopted children are generally not parented by their genetic parents. Given the over-inclusiveness of the theory and its inability to explain why moral parenthood arises, this

form of geneticism fails to convincingly demonstrate why gamete providers are moral parents.

The final family of views I will consider here are causation arguments, which claim that individuals who cause children to come into being are responsible for parenting them. As discussed in chapter one, most of these views suffer from problems of over-breadth and the associated lack of principled ways for distinguishing relevant causal actors who have responsibilities from those who do not. For instance, if we think a father in a one-night-stand case is a moral parent to his biological offspring because he plays a necessary causal role in creating her, it is unclear why the child's grandparents are not moral parents as well, since their role is equally essential. However, as I argued previously, the difficulty in drawing the line does not mean that no one acquires responsibility on causal grounds. Given the principle I outline in chapter one, that intentionally and willingly helping someone put another in a vulnerable state gives rise to care-taking responsibilities, it seems plausible that gamete providers acquire some responsibility for the children that result from their gametes. I have argued that gamete providers have such responsibilities. However, the question that remains is whether these responsibilities amount to moral parenthood. As in the cases discussed above, it does not seem that moral parenthood follows from the causal framework used to identify the responsible agents.

As discussed in chapter one, the justification for parental responsibilities in causal accounts of parenthood is generally the vulnerability of the individuals brought into existence by the actions of their progenitors, and the harms they will likely face if they are not parented. The general principle invoked is something like: "when individuals are



made vulnerable or are put in a position where they will suffer harms if there is no intervention, those who helped put them in that position have a duty to mitigate those harms". However, this principle does not seem to require those causally responsible to parent the child. Harms and vulnerability can be mitigated, perhaps even better mitigated, by third parties in many circumstances. If protecting the vulnerable and/or mitigating the harms one has caused is what motivates responsibilities in these cases, then it seems implausible that the individuals who cause the vulnerability and/or harm are necessarily responsible to do the 'nitty-gritty' of care-taking themselves. Consider the car accident example discussed in chapter one, where a distracted driver causes an injury to a pedestrian. Having a responsibility to ensure that the pedestrian is taken care of does not mean that the driver must provide the medical treatment personally, even if she were able to do it. For instance, if the driver happened to be an orthopedic surgeon on her day off, she would have no responsibility to sacrifice her holiday to set the pedestrian's broken bone, assuming there was another capable person willing and able to do so, and she ensured that the pedestrian would in fact be treated properly. Theories that attempt to derive moral parenthood from the requirement to mitigate harm confuse having to ensure that harms are taken care of with having to perform the tasks that directly mitigate the harm.<sup>117</sup> Given this distinction, though it seems that some causal agents do acquire responsibility towards the children they create, it does not seem that this responsibility amounts to moral parenthood.

I have shown that our intuitions about when moral parenthood arises are inconsistent, and that none of the current theories of parenthood seem able to include gamete providers as moral parents. Therefore, it seems plausible, at least provisionally,

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<sup>117</sup> Archard and Porter make similar claims that will be discussed in the following chapter.

to exclude gamete providers from the category of moral parents. Much of this argument rests on the distinction between having a claim to become a moral parent and being required to become a moral parent. Though many of the theories I have discussed provide reasons for thinking that certain individuals have claims to become moral parents, none of them show that gamete providers do wrong by failing to become social parents. This does not mean, however, that gamete providers have *no* responsibilities towards the children they have helped create. In the following section, I will develop a general framework for determining the content of these non-parental responsibilities.

## **2. Reducing Vulnerability**

As I have argued, it seems likely that gamete providers do not have a responsibility to become the social parents of their biological offspring, and so are not moral parents. All the same, however, they do seem to be responsible for reducing the potential harms their biological offspring face as a result of the vulnerable state they find themselves in. Two authors, Porter and Archard, similarly imply that gamete providers have some responsibilities towards their children, but that these responsibilities do not amount to moral parenthood. In this vein Archard states, “if I cause a child to exist then I am under an obligation to ensure that this child is cared for but the obligation is discharged if the care is provided by someone who is willing to care for the child”.<sup>118</sup> On Porter’s closely related view, gamete providers have an obligation to “make it the case that the child is cared for (or more broadly, to make the child content with her condition, in so far as one is able), and this will imply a *pro tanto* duty to do the caring oneself.” Porter continues by arguing that this *pro tanto* responsibility will normally be

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<sup>118</sup> Archard (2010), op. cit.

“outdone”<sup>119</sup> by the intending social parents whose rights and commitments shift the parenting responsibility to them. Porter also endorses the view that in the event that a gamete provider’s offspring is not being adequately cared for, the gamete provider is responsible for intervening. For instance, if the intending parents became unable to be a social parent due to some tragic accident and no one else was able to fulfill this role, the responsibility would fall to the gamete provider.

I am in agreement with this general conclusion; however I believe it lacks much detail. Neither Porter nor Archard develop in detail the circumstances in which gamete providers are required to intervene, the kinds of interventions they must make, or what social structures gamete providers ought to ensure are in place to enable them to fulfill their responsibilities. Though they acknowledge that other responsibilities in addition to having to parent their biological offspring extreme circumstance, might arise, their discussion of specific post-provision responsibilities is largely limited to the responsibility to parent if no one else is able to. I will not be able to offer a comprehensive list of all of the responsibilities that might arise for gamete providers, however, I will advance the discussion in two important ways. In the following section I will outline a general framework for determining gamete providers’ responsibilities and in the following chapter I will apply this framework to outline various pre and post provision responsibilities that gamete providers have towards their biological offspring.

### *2.1 Framework for Responsibility*

To begin with, it is clear that procreation places children in a very vulnerable state, and that without sufficient care, nurturing, and material support they will suffer

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<sup>119</sup> Porter’s expression. Porter (2014), op. cit. p. 195.

greatly, not just during childhood but into their adult years as well. As argued previously, by placing their offspring in this state of vulnerability, gamete providers acquire responsibilities for their biological offspring. However, determining just what is required to adequately reduce the harms arising from a child's vulnerability is much less clear. For instance, it seems implausible that even parents are required to make great sacrifices of their well-being to make minor advancements to the well-being of their children. Though parents have a duty to educate their children, depleting their retirement savings and re-mortgaging their home in order to pay for expensive private schools and tutors so that their children receive the best possible education is beyond what is required of competent care-givers. This seems true even if the increased education would lessen that child's vulnerability by helping her develop more refined skills. This example shows that using "the best interest of the child" as the sole guiding principle for determining the extent of responsibilities parents and others<sup>120</sup> have towards children is overly onerous.<sup>121</sup> At the same time, merely providing basic literacy and numeracy seems insufficient, especially given the higher intellectual demands of our society. Determining the adequate level of material and non-material support children are entitled to requires balancing the interests of caretakers<sup>122</sup>, the broader demands of justice<sup>123</sup>, along with the interests of the children themselves. On these matters, there is no firm consensus in the literature.

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<sup>120</sup> Like gamete providers for instance.

<sup>121</sup> For a criticism of best interest arguments see: Herring, Jonathan. "The Welfare Principle and the Rights of Parents." *What is a Parent? A Socio-Legal Analysis*. Ed. A. Bainham, S. Day Sclater and M. Richards. Oxford: Hart Publishing, 1999. 89-106.

<sup>122</sup> Ibid.

<sup>123</sup> For example, see: Macleod, Colin. "Parental Responsibilities in an Unjust World." *Procreation and Parenthood*. Ed. David Archard and David Benatar. Oxford: Oxford University Press, 2010. 128-150.

As a way to make inroads into this question, I will adopt a suggestion from John Stuart Mill for determining what is owed to children. In *On Liberty*, Mill offers a somewhat vague suggestion for balancing the liberty of adults with the needs of the children they create. He argues that children are entitled to “an ordinary chance of a desirable existence”.<sup>124</sup> More recently, this principle has been endorsed by Michael Parker in response to arguments for perfectionism put forward by Julien Savulescu and others.<sup>125</sup> The principle seems to designate an appropriate middle ground between demanding too much or too little of individuals with care-taking responsibilities, and given the state of the unsettled state of the literature on this issue, is a reasonable place to start in outlining a view about what is minimally owed to children.

Though Mill’s principle has intuitive appeal, it suffers from a possible defect arising from ambiguity in the claim that children have the right to “an *ordinary chance* of a desirable existence”. If the term “ordinary chance” refers to the chance a hypothetical average child would have at a desirable life in a given society, and that chance was abysmally low, then according to Mill’s principle, children would be entitled to very little. Taken to its extreme, this means that according to Mill’s principle, it would be permissible to unnecessarily maintain a child at a standard where she would likely have a life so terrible that it could be considered not worth living, so long as that child’s chance of a decent life were on par with that society’s norm. For instance, we could imagine a society where the majority of children born suffer from some debilitating illness, and so the average chance at a desirable life is very low. Despite the generally poor prospects

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<sup>124</sup> Mill, John Stuart. *Utilitarianism, On Liberty, Considerations of a Representative Government*. London: Everyman, 1993. p. 177.

<sup>125</sup>Parker, Michael. "An Ordinary Chance of a Desirable Existence." *Procreation and Parenthood*. Ed. David Archard and David Benatar. Oxford: Oxford University Press, 2010. 57-77. p.57.

children have in this society, a small number of lucky children are born free of the illness. Given how common the illness is, it may be that if a parent were to neglect a healthy child, this child would still have an *ordinary* chance at a desirable life, since the general prospects are very low. However, permitting neglect seems problematic – surely neglect does not become acceptable just because most children in a particular society are likely to have a very low standard of life.<sup>126</sup> Alternatively, by “ordinary chance” Mill could have been referring to a child’s prospect of a desirable life in Mill’s own society, one in which children had much better prospects than in my dismal hypothetical example. However, taken as referring to some rigidly defined probability of having a decent life based on Mill’s own society, this interpretation suffers from the charge of arbitrariness.

Though perhaps not exactly what Mill had in mind, I think the more plausible way of understanding “an ordinary chance at a desirable existence” is that it involves an absolute standard as well as a societally relative standard for determining the kind of life that individuals ought to ensure for their offspring. The purpose of the absolute standard is to set out the standard that must be met, regardless of how poor the prospects are for the hypothetical ‘average child’ in a particular society. The societally relative standard captures the intuition that children ought to be entitled to a share of the benefits of society that are currently widely available to others. Consider the following example. A child’s primary care-giver decides that taking her sick children to see the freely-available doctor is too much of a hassle and decides instead to take care of her children’s needs herself at home using a 19<sup>th</sup>-century medical textbook. Her son falls ill with a painful disease, so

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<sup>126</sup> An additional problem for this view is that it seems to permit reproduction in societies where children are likely to have a life not worth living, so long the child being created does not have worse chances at a decent life than anyone else. For why this might be a problem, see Benatar’s discussion about the limits of reproductive freedom. Benatar, David. “The Limits of Reproductive Freedom.” *Procreation and Parenthood*. Ed. David Archard and David Benatar. Oxford: Oxford University Press, 2010. 78-102.

the care-giver dutifully and correctly diagnoses and treats the disease in accordance with the information in the antique textbook. Unfortunately, the concoction of herbs, heavy metals, and noxious liquids only makes matters worse, and the child succumbs to his illness. In the face of mounting criticism for her medical decision, the care-taker responds that the child had the same prospect of dying from his disease as a child born in the 19<sup>th</sup> century, and since exposing children to the prospect of that disease did not make that level of caretaking unethical then, exposing them to the same risk now should not either.

The care-giver's response is clearly inadequate, and there is a very strong intuition that by depriving the child of access to healthcare, she has failed in her responsibility towards him even if behaving this way at a time when no effective cure was available would have been permissible. This example shows that what one must do to ensure that a child's prospects for a desirable life are good enough is determined in part by the society in which the care-giver and child find themselves. A minor and friendly reformulation of Mill's principle that I propose is that children must be ensured a '*reasonable chance at a desirable life*', where reasonable includes both an objective and societally relative standard. Given that gamete providers are likely not moral parents, but must ensure that the possible harms their biological offspring might face that arise from their vulnerable state are adequately minimized, in general terms they are responsible for ensuring that this combined standard is met.

There may be a worry that my view suffers from a pernicious form of social relativism because the extent of a gamete provider's responsibilities rests to a certain degree on the society in which the provision occurs. This means that a wealthy gamete

provider creating a child in society A, in which most children have access to a rich array of resources, has a heavier burden than if she had provided gametes to a person in more impoverished society B. This is true even if providing what is required in society A to the child created in society B would not be a great imposition on the gamete provider. Though the diachronic medical case discussed above seems to suggest a relative standard, this synchronic case results in the seemingly repugnant conclusion that the gamete provider owes more to a child who is created in rich society than in a poor society.

To this problem I can only offer some remarks, and acknowledge that it remains a challenge for my view. First, it is unclear whether arguing the converse, that the gamete provider owes children in both society A and B the same level of support, is any more just. If we think that the entitlement comes from the fact that the gamete provider can provide the resources to her biological offspring with little burden to herself, then this creates a kind of hereditary entitlement to wealth that itself seems problematic. Consider a billionaire who provides gametes to a friend whose wealth is in the millions. In this case, it seems absurd to claim that the child is somehow not getting what she is entitled to because she does not have access to the billions of her progenitor.<sup>127</sup> If, on the other hand, we argue that children in both society A and B are entitled to the level of resources necessary for “a reasonable chance at a desirable existence”, determined by appealing to the standard of society A regardless of who their genetic/social parents are, we are faced with another problem. Appealing to the welfare standard of society A places an enormous burden on the average procreator in society B for whom meeting this standard might not be possible even if great personal sacrifices are made. This risks condemning

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<sup>127</sup> This view has ramifications for the way I suggest material support ought to work in gamete provision cases, and will be discussed in more detail in the final chapter.



parents in poor societies for not adequately providing for their children on the basis that more is available to children in richer societies, and this too seems unjust (assuming that children's prospects in society B are not terrible). These considerations seem to force us back towards some single non-relative standard which, as discussed above in the illness case, also seems problematic.

Another consequence of my dual-standard view that might also seem problematic is that it raises concerns about the permissibility of the global gamete market. Due to lack of availability, high costs, or legal prohibition, an increasing number of individuals are turning to less developed nations as a source of gametes (especially ova) for reproductive purposes. This creates a different problem from the billionaire example: a gamete provider might be able to meet both the absolute and societally relative standards in their own society, but would lack the resources to maintain her biological offspring to the level required in the society where she will be raised by her social parents. As will become clear in the following chapter, depending on the policies in place in the society where her biological offspring resides, providing gametes might still be permissible. However, the gamete provider likely runs the risk of putting herself in a position where she will have responsibilities that she will not be able to fulfil. As a consequence, the global gamete market might be unethical not just because of concerns about commodification and exploitation<sup>128</sup>, but because the gamete providers are themselves acting irresponsibly. Individuals in the global south who provide gametes to individuals in the global north may be putting themselves in a position where they would be unable to fulfill their responsibilities towards their biological offspring.

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<sup>128</sup> Donna Dickenson raises concerns that the international gamete market will likely result in the exploitation of women in the global south. See: Dickenson, Donna. "Commodification of Human Tissue: Implications for Feminist and Development Ethics." *Developing World Bioethics* 2002: 55-63. p. 62.

Despite these difficulties, I think there are good reasons to take the societally relative standard seriously. For one, there is strong empirical evidence that individuals' wellbeing is impacted greatly by how they see themselves relative to their peers and their ability to fulfill the social expectations placed on them.<sup>129</sup> What might be pure luxury on an absolute poverty scale might be essential for a desirable life in a particular society when social and psychological factors are taken into account. Adam Smith expresses this point well:

By necessaries I understand not only the commodities which are indispensably necessary for the support of life, but whatever the custom of the country renders it indecent for creditable people, even of the lowest order, to be without. A linen shirt, for example, is, strictly speaking, not a necessary of life. The Greeks and Romans lived, I suppose, very comfortably though they had no linen. But in the present times, through the greater part of Europe, a creditable day-labourer would be ashamed to appear in public without a linen shirt, the want of which would be supposed to denote that disgraceful degree of poverty which, it is presumed, nobody can well fall into without extreme bad conduct.<sup>130</sup>

A similar point is also made by Rawls when he defends the primacy of equality of opportunity over social efficiency. Rawls states that equality of opportunity is not important solely because of the external rewards that accompany certain social positions, but also because people who are denied equal opportunity are wronged by being “debarred from experiencing the realization of self which comes from a skillful and

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<sup>129</sup> Murali, Vijaya and Femi Oyebode. "Poverty, Social Inequality and Mental Health." *Advances in Psychiatric Treatment* 10 (2004): 216-224.

<sup>130</sup> Smith, Adam. *An Inquiry Into the Nature and Causes of the Wealth of Nations*. London: T. Nelson and Sons, 1887. p. 368.

devoted exercise of social duties.”<sup>131</sup> In this quotation Rawls highlights the importance of the ability to perform social duties to one’s sense of wellbeing. Clearly, the external goods required to fulfill social duties will vary from society to society. For instance, though internet access is clearly not a necessity of life, in North America it has become almost impossible to engage in many expected or required social activities (paying bills, applying to schools, staying in contact with friends and family) without at least some limited access to the internet. Undoubtedly, someone completely lacking internet access would have greatly reduced opportunities, and would not be able to function well given the norms and expectations of North American society. It seems plausible that internet access might be a necessity in societies that assume its ubiquity and rely on it heavily as a means of communication, while not at the same time being a necessity in less technologically dependant societies.

As I have shown, large disparities in wealth between societies create serious problems for how to think about the basic level of goods children are entitled to. While a solution to this problem lies outside the domain of this thesis, nevertheless, I still think that the modified Millian approach I have developed provides a reasonable way to move the discussion forward. In the next section, I will look at alternate views that suggest different models for what children are minimally owed, and will show why these views do not succeed.

### ***3. Competing accounts of responsibility***

There are two other views that might be interpreted as offering more compelling accounts of what procreators owe their children. Derek Parfit’s “non-identity problem”

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<sup>131</sup> Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971. p. 84.

might be thought to support the conclusion that gamete providers need only ensure that their biological offspring have a life that is minimally worth living. By contrast, Seana Shiffrin's argument in favor of extending the bounds of "wrongful life" cases suggests that gamete providers might have much more extensive responsibilities towards their biological offspring than the ones I have suggested. In the following subsections, I will first discuss Parfit's view and argue that the non-identity problem is in fact orthogonal to the question of care-taking responsibility. I will then discuss Shiffrin's view and argue that it rests on a slippery distinction between her account of harm and what she calls 'pure benefit'. I will also argue that Shiffrin's view fails to adequately distinguish between harms and wrongs.

### *3.1 Responsibility and the non-identity problem*

The non-identity problem<sup>132</sup> has been taken to show that an individual cannot be harmed when brought into existence in non-ideal circumstances, if the individual's very existence necessarily depends on those non-ideal circumstances.<sup>133</sup> Consider Parfit's example.<sup>134</sup> A fourteen year old girl chooses to have a child, but because of her age, lacks the resources she would otherwise have had if she had delayed her pregnancy. However, if the girl would have waited before having a child, a different child would exist because different gametes would have given rise to the pregnancy. Given that the child would not have existed at all if his mother had not chosen become pregnant when she did, Parfit concludes that the child has no grounds to claim that he has been harmed by his mother's

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<sup>132</sup> Parfit, op. cit.

<sup>133</sup> A commonly accepted amendment to Parfit's argument is that no harm arises in these circumstances only when the individual brought into existence has a life minimally worth living. I find this amendment plausible, but the details of this debate are not essential to the argument I make. For a discussion of the amended view, see: Feinberg, Joel. "Wrongful Life and the Counterfactual Element in Harming." Feinberg, Joel. *Freedom and Fulfillment*. Princeton: Princeton University Press, 1992. 3-36.

<sup>134</sup> Parfit, Ibid. p. 358.

decision. For Parfit, this conclusion holds even if the mother's lack of resources results in considerable hardship for the child.

Someone might rely on an analogous example involving a gamete provider to try to show that gamete providers owe very little to their biological offspring. For instance, we could imagine a sperm donor who decides to provide gametes in conditions that make him unable to provide any support to his biological offspring. This inability to provide support might arise due to the gamete provider's lack of resources, or because he provided gametes in a way that render him unable to have any knowledge about the identity and circumstances of his biological offspring. Furthermore, we could imagine that the gamete provider's biological offspring suffers from a severe lack of resources that could have been avoided if the gamete provider would have been diligent when making his gametes available to others. In this case, if we accept the conclusion of the non-identity problem, we cannot say that the gamete provider has harmed the child since the child would not have existed if the gamete provider would have acted differently. This result might be taken to imply that if a gamete provider helps create a child under conditions that make it impossible for him to ensure his biological offspring has reasonable chance at a desirable life, he does not harm the child. This seems to provide a way out of the more onerous responsibilities required by the modified Millian account I outlined previously.

However, this argument gets the relationship between harm and care-taking responsibilities for gamete providers backwards. In chapter one I argued that because gamete providers freely and intentionally help to create vulnerable individuals, they are responsible for taking certain steps to ensure that harms do not befall their biological

offspring. Determining whether coming into existence under certain conditions is itself a harm is not the relevant question. Rather, what is important is whether gamete providers have a responsibility to prevent certain harms from coming about. Consider the camp counselor example from chapter one. The responsibility to intervene in a fight between campers does not arise because the counselor has *herself* brought harm about, but because she stands in a certain kind of care-taking relationship to the campers under her care. Similarly, it is perfectly consistent to think that gamete providers have care-taking responsibilities for their biological offspring even if we do not think these responsibilities derive from some harm they themselves have wrongly caused.

By providing gametes under conditions that make it impossible to provide resources to their biological offspring, the gamete providers put themselves in a position that renders them unable to fulfill their responsibilities, and this itself is morally problematic. Though a gamete provider could claim that he did not intervene to help his biological offspring when appropriate because he did not know that intervention was needed, clearly certain forms of ignorance are themselves blameworthy and do not mitigate the wrongfulness of one's actions, but may in some circumstances even augment it.<sup>135</sup>

Considerations arising from the non-identity problem might provide reasons for doubting that gamete providers harm their biological offspring if they provide gametes in circumstances that make it impossible to provide future support if the need arises. However, my argument demonstrating that gamete providers have responsibilities does not rest on the claim that they owe restitution for harm. Because my argument does not

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<sup>135</sup> A famous example is Aristotle's discussion of ignorance and its relationship to culpability. See *Nicomachean Ethics*, Book III Ch. 5.

rely on the claim that gamete providers harm their biological offspring, the theoretical issues raised by the non-identity problem have no bearing on my claim about gamete providers' responsibilities.

### *3.2 Shiffrin's Wrongful Life Argument*

The preceding argument demonstrated that even if gamete providers do not harm their biological offspring by placing themselves in a position where they cannot provide future care to them, they still have care-taking responsibilities. However, if it could be shown that bringing human beings into existence in fact causes them great harm then gamete providers might in fact owe their biological offspring more than what I have suggested they owe. This is because causing harm is also a basis for acquiring care-taking responsibilities, as in the restitution cases discussed in chapter one. These responsibilities grounded in restitution might be more extensive than the quasi-voluntary responsibilities I have discussed so far. In her paper, "Wrongful Life, Procreative Responsibility, and the Significance of Harm", Shiffrin argues that procreators in general (including gamete providers) do harm their offspring by bringing them into existence, and thus have very extensive responsibilities to compensate them.<sup>136</sup> If Shiffrin is right, then the approach to gamete provider responsibility I have provided might be inadequate. In this subsection I will outline Shiffrin's view, and show why her account fails to establish that gamete providers have extensive responsibilities towards their biological offspring stemming from the harm caused by being brought into existence.

Shiffrin begins by considering the comparative view of harms and benefits, which takes these two states to be different regions on a continuous metric. Under this view,

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<sup>136</sup> Shiffrin, Seana. "Wrongful Life, Procreative Responsibility, and the Significance of Harm." *Legal Theory* 5 (1999): 117-148.

harms and benefits can be modeled by positive and negative integers along the number line where benefits are “positive” and harms are “negative”. As with numbers, harms and benefits can simply be summed together to determine the net effect of a certain event. This model is endorsed by Feinberg, because he thinks it best explains our overall intuition about harm and benefit in situations where both desirable and undesirable outcomes arise. The example used by Feinberg is the case of a rescue<sup>137</sup>. Imagine a person pinned down under a fallen beam in a burning building. The attending firefighter decides that there is insufficient time to move the beam, and that the only way to save the trapped person is to free them by breaking their arm. Here the firefighter both inflicts an undesirable state on the person she saves—the pain of a broken arm—while also providing the trapped person with a large benefit, safety from the fire. Feinberg argues that even though the rescued person suffered an injury, it would be wrong to say that the firefighter harmed the trapped person, or that the firefighter owes the person she saves compensation for the broken arm. The reason, suggests Feinberg, is that the benefit provided by the firefighter greatly outweighed the harm done, and so the result is a net benefit. Similarly, so long as a life is worth living, coming into existence is a net benefit and therefore parents do not owe their children compensation.

Shiffrin’s response is to deny that harms and benefits can be compared in this way, and to provide an alternative explanation for our intuition in the rescue case. Shiffrin asks us to consider the example of Wealthy, who decides to share his fortune with people on a nearby island. Lacking the ability to set foot on the island due to governmental squabbles, he decides to fly over the island in his plane and drop cubes of gold, each worth millions of dollars, for the benefit of the people on the island. Though

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<sup>137</sup> Feinberg (1992). *op. cit.*, p. 10.



the people of the island have a decent standard of living, Wealthy is confident the cubes of gold will make their lives better. While the plan generally goes well, one of the blocks of gold strikes Unlucky, breaking his arm. Though Unlucky can have his arm treated for much less than the value of the gold he receives, and admits that his life has improved from the remaining gold, he is unsure whether he would have consented to having his arm broken in exchange for the monetary benefit he gained and is even less sure whether he would have consented to the risk of severe injury that the block of gold might have caused. Shiffrin claims that under these circumstances Unlucky is owed an apology from Wealthy and is entitled to compensation for the broken arm, despite having on balance gained from the episode. For Shiffrin, what grounds this intuition is that “dropping bullion at all was morally wrong, all-things-considered, because it risked and inflicted serious harm on nonconsenting individuals but was not in the service of a suitably important end.”<sup>138</sup>

In so far as our intuitions align with Shiffrin’s, this example shows that harm and benefit are not comparable in the additive manner suggested by Feinberg. We do want to say that Unlucky was harmed by Wealthy’s actions and is deserving of compensation even if the incident resulted in Unlucky’s net gain. Contrary to Feinberg, Shiffrin argues that harm is categorically different from benefit. Shiffrin describes harm as “the imposition of conditions from which a person undergoing them is reasonably alienated or which are strongly at odds with the conditions she would rationally will”.<sup>139</sup> Harms make an individual’s “lived experience like that of an endurer as opposed to that of an active agent” and “forcibly impose experiential conditions that are affirmatively contrary to

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<sup>138</sup> Shiffrin, *op. cit.* p. 129.

<sup>139</sup> *Ibid.* p. 124.

one's will".<sup>140</sup> Additionally, Shiffrin introduces the concept of 'pure benefit', which connotes an improvement in a person's condition without the removal a state of harm, as exemplified by the intentions of Wealthy. Wealthy's goal was not to remove a state of harm, but to enhance the lives of the islanders.

In order to make sense of the rescue case, Shiffrin argues that what grounds our intuition about the rescuer is not the net benefit provided to the pinned person, but the reduction in harm. This follows since having a broken arm makes one less of an 'endurer'<sup>141</sup> than being burned alive. The core conclusion Shiffrin reaches from this discussion is that harms should be inflicted non-consensually only when they are inflicted in order to decrease overall harm, and not when they merely produce pure benefit. This principle makes sense of our seemingly inconsistent intuitions in the rescue case and in the Wealthy case. Since Wealthy harmed someone for the purpose of pure benefit, he owes the injured party compensation whereas the firefighter acted to reduce harm so she does not owe compensation.

Shiffrin argues that this analysis has stark consequences for procreators, since bringing individuals into existence causes them to experience (and be at risk for) many harms without their consent and, unlike in the rescue case, this action is not done in order to prevent greater harms. This means that even if individuals created judge their lives to be worth living, procreation is like the Wealthy case and so compensation is owed. According to Shiffrin, procreators are therefore liable for all the foreseeable harms of coming into existence. And she takes these harms to be quite extensive:

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<sup>140</sup> Ibid. p. 123.

<sup>141</sup> Shiffrin uses this term to denote someone whose experience is at odds with what they would choose for themselves.

By being caused to exist as persons, children are forced to assume moral agency, to face various demanding and sometimes wrenching moral questions, and to discharge taxing moral duties. They must endure the fairly substantial amount of pain, suffering, difficulty, significant disappointment, distress, and significant loss that occur within the typical life. They must face and undergo the fear and harm of death. Finally, they must bear the results of imposed risks that their lives may go terribly wrong in a variety of ways.<sup>142</sup>

Notice that if Shiffrin is right about the extent of the harms caused by procreating, then the modified Millian approach I have suggested is inadequate. Even if the life of a gamete provider's biological offspring goes well, then on Shiffrin view, the offspring would still be entitled to compensation for the normally expected harms of existence. However, I think there are a few reasons to question the strength of Shiffrin's argument.

First, Shiffrin's non-comparative model rests on a sharp distinction between pure benefit and the lessening of harm, and this distinction is at best slippery (though I think that more likely it collapses entirely). This is because it seems possible to describe what Shiffrin would ostensibly want to call pure benefit in terms of the lessening of harm. Consider again the Wealthy case. Presumably the reason why Wealthy thinks that providing the islanders with gold will be a benefit is because it will enable them to fulfill desires that would otherwise go unsatisfied; if the islanders were completely fulfilled in their current situation it is unclear how gold would be of any use to them. The fact that

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<sup>142</sup> Ibid. p. 127.

gold will be of benefit to the islanders indicates that they are experiencing some degree of dissonance from their current situation (though perhaps of a very minor sort). Given that disappointments and frustrations count as harms on Shiffrin's view, it seems reasonable to include unfulfilled desires as a kind of harm. This means that Wealthy's philanthropy could be described as an attempt to relieve the harm of having unfulfilled desires, rather than an attempt to provide pure benefit. Though perhaps some cases of pure benefit might exist, upon reflection it seems that many of the types of cases Shiffrin wants to consider pure benefit can easily be recast as efforts to reduce harm.

But this criticism might rely on an uncharitable interpretation of Shiffrin's account of harm, since at various points Shiffrin seems to indicate that harm arises when there is a *substantial* discord between the will and one's experience (as in the quote used in the previous paragraph). Though Shiffrin does not provide a clear threshold, we might think that the discontent arising from unsatisfied desires for non-essential things is not severe enough to qualify as harm on this account, and so providing money to people who are relatively well off could not be construed as alleviating harm. Although this is a plausible way of interpreting Shiffrin's view, understanding harm in this manner creates substantial conflict with what we normally take to be harms. For instance, imagine that wealthy faculty member Joan has her lunch stolen from the common room fridge by her equally wealthy colleague Martha. Though Joan can quite easily acquire food elsewhere on campus at a cost that will have only a trivial impact on her finances, it still seems perfectly sensible to say that Joan has harmed Martha. The harm might be very small and not even worth creating a fuss about, but it still seems like a harm. This is true even if we apply Shiffrin's criteria for determining if a harm has occurred; in her discussion of the

Wealthy case, Shiffrin suggests that if we have strong intuitions that an apology and compensation are due then there is reason to think that harm has occurred.<sup>143</sup> In the case of the stolen lunch, it is quite clear that Martha owes Joan both. The analysis of the stolen lunch suggests that for Shiffrin's account to be compatible with our commonsense judgments about harm (and her own criteria), the threshold for the degree of discord between one's will and experience that constitutes harm must in fact be quite low.

Unfulfilled desires for inessential things can cause as much distress as having one's lunch stolen by a colleague (which I take to be quite little), and in many cases may be even more distressing. Consider the distress of a child who has access to good food, shelter and education but whose parents cannot afford to send her on the class ski trip, or that of a university student who spends her summers working a menial job to afford tuition and so cannot join her classmates on a backpacking tour of Europe. In both these cases the unfulfilled desire causes non-negligible amounts of psychological distress. Given that most people on the island have some unfulfilled desire that is causing them some degree of mental anguish that money could help alleviate (paying off a mortgage, getting time off of work to pursue personal projects etc.), Wealthy's actions can be described as an attempt to reduce harm.

Shiffrin's account of harm and pure benefits therefore faces a dilemma: either the distinction between the two fails, or the account of harm is overly narrow. Neither bodes well for her argument. If the distinction fails, then Shiffrin cannot adequately explain our different intuitions in the rescue case and the Wealthy case. On the other hand, if the

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<sup>143</sup> Ibid. p. 128.

distinction is preserved by use of an overly narrow definition of harm, then we have reason to reject the argument outright since it fails to accord with our basic intuitions.

A less problematic issue with Shiffrin's account concerns the relationship she relies on among unconsented harm, wrongdoing, and the obligation to compensate. In her discussion of *Wealthy*, Shiffrin argues that he has behaved wrongly by physically harming *Unlucky* (and putting him at risk of even greater physical harm than he actually suffered) without his consent, and the wrongness of his actions provides the basis for the compensation he owes. This example relies heavily on the intuition that harming someone without consent constitutes a wrong. Though in the case of physical harm this seems rather uncontroversial, there are many other cases where we harm people without their consent yet do not think we have acted wrongly or owe any compensation. For instance, say I develop a way of transporting people great distances in half the time of conventional flights, using half the people required in the airline industry. This discovery, though perhaps good for a large number of people, will undoubtedly cause many people working in the airline industry to lose their jobs. It is reasonable to assume that loss of employment will cause non-trivial amounts of harm to a significant subset of the affected people. Despite the harm caused to unconsenting people, I do not seem to have acted wrongly, nor do I have a responsibility to compensate the unemployed workers. This example demonstrates that: (1) I can harm people nonconsensually without acting wrongly, and (2) I can harm people nonconsensually without acquiring a duty to compensate them. This potentially weakens the analogy between our assessment of *Wealthy's* actions, which relied on an intuition about wrongness, and procreation. Even if procreation is harmful, this alone is insufficient to show that it is wrong, or that

compensation is owed. This conclusion is problematic for Shiffrin because she is hesitant to consider procreation wrong<sup>144</sup>, and so needs to say something more to show that compensation is owed. However, for anti-natalists who are inclined to think that procreation always results in a moral wrong<sup>145</sup>, no problem arises and the analogy between Wealthy and reproduction holds.

I do not think that the lack of clarity with respect to the relationship between harms, wrongs and compensation is necessarily devastating for Shiffrin's view, but it does show that there is a challenging and central theoretical question about her argument that needs to be resolved for such an extreme position to be fully convincing. Shiffrin's argument also does have a fair bit of intuitive appeal; given the extent of the burdens individuals face over a lifetime, Shiffrin seems quite right in pointing out that procreation "is in tension with the foundational liberal, anti-paternalist principle that forbids the imposition of significant burdens and risks upon a person without the person's consent".<sup>146</sup> In many circumstances impacting a person in this way is grounds for owing them some form of compensation. I also am inclined to agree that procreation is a "special case"<sup>147</sup> that might not fit well with our usual framework for determining wrongfulness and when restitution is owed, but I think this should lead us to reject the extensive liability proposed by Shiffrin. Though I am skeptical that a liability approach is appropriate in all cases of reproduction, it is worth noting that adopting Shiffrin's conclusion about what procreators owe their offspring does not require us to accept that procreation is wrong – for although wrongness is sufficient for restitution it is not

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<sup>144</sup> Ibid. p. 139.

<sup>145</sup> Benatar (2006), op. cit.

<sup>146</sup> Shiffrin, op. cit. p. 137.

<sup>147</sup> Shiffrin. op. cit. p. 139.

necessary. One clear example from tort law is liability in cases where the defense of necessity succeeds.<sup>148</sup> Consider a couple trapped in the countryside during a severe snowstorm, and their only means of survival is to seek shelter in an empty cabin.<sup>149</sup> Unfortunately, the only way to gain entry into the cabin is to break a window. In this circumstance the risk faced by the couple is greater than the harm done to the property by breaking a window, so the defense of necessity is applicable. However, even though the law (and our intuitions) dictate that the couple does not act wrongly by breaking the window and entering the cabin, they are still liable to pay for the damage done to the window. This is not to suggest that the doctrine of necessity is applicable in gamete provision, but to show that tort law does sometimes recognize liability in the absence of wrongdoing. This means there is space within current the theoretical framework for the conclusion Shiffrin wants to draw.

Shiffrin provides a very thorough analysis of the concept of harm, and teases out conflicting intuitions we have about its relationship to restitution. However, I do not think the conclusion she draws with respect to what procreators owe their biological offspring is adequately supported by the arguments she provides. Her explanation of our differing intuitions in the *Wealthy* case and the rescue case rests on a distinction between harm and ‘pure benefit’ that either is inconsistent with more fundamental intuitions or collapses. Shiffrin’s argument also lacks principles that distinguish the kinds of harms that bring about a duty of restitution from the kinds of harms that do not. Shiffrin’s conclusion, which requires procreators to compensate their offspring for *all* the harms they suffer over a lifetime, thus on a problematic distinction between harm and benefit,

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<sup>148</sup> The leading case is *Vincent v. Lake Erie Transp. Co.*, 109 Minn. 456, 124 N.W. 221 (1910).

<sup>149</sup> Example from Klimchuk



and an incomplete account of when restitution is owed. Because of these weaknesses in her argument, and the unintuitiveness of her conclusions, we should reject Shiffrin's very extreme view in favor of the more moderate view that I propose.

### ***Conclusion***

Over the course of this chapter I have argued for two primary conclusions. First, I showed that though gamete providers have care-taking responsibilities for their biological offspring, these responsibilities do not require them to perform the 'nitty-gritty' of parenting themselves. This is because no current theory of parenthood *requires* gamete providers to become social parents. Secondly, I argued that gamete providers have the responsibility to ensure that their biological offspring have a reasonable chance at a desirable life. This framework contains both an absolute and societally relative standard of care, and I think best captures what is minimally owed to children. I also defended this view against two possible competing views: (1) that gamete providers owe nothing because providing gametes under circumstances where continued support is not possible does not harm children<sup>150</sup>, and (2) that procreators have a duty to compensate their offspring for the harms they suffer over the course of their life. The view I have defended, that gamete providers must ensure that their biological offspring have reasonable chance at a desirable existence, is a more plausible middle position between these two extremes.

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<sup>150</sup> In the more plausible version of the argument, gamete providers owe nothing so long as their biological offspring have lives worth living. See note 137.

## Chapter 4 Applications to Specific Duties

In the preceding chapters, I argued that gamete providers have a special responsibility to ensure that their genetic offspring have a reasonable chance at a desirable life. In this chapter, I discuss specific responsibilities that are implied by this general principle. First, I discuss gamete providers' pre-provision responsibilities. I take these responsibilities to include screening commissioning parents, and ensuring that there exists a reliable state system for monitoring whether the welfare needs of their biological offspring are being met. Second, I cover post-provision responsibilities, that is, responsibilities gamete providers have once their gametes have been used to produce a child. Here I argue that in some cases, gamete providers may have a responsibility to play an active role, either through financial support or personal intervention, in the lives of their biological offspring.

When assessing the implications of my view about pre- and post-provision responsibilities, it is important to keep a few key things in mind. First, the minimum welfare standard defended in chapter three – a reasonable chance at a desirable life – is an account of what gamete providers must ensure for offspring that they do not intend to parent. It is compatible with my view, and it is likely true, that social and moral parents have weightier responsibilities towards their children. Second, this argument establishes the minimum that gamete providers owe to their biological offspring in order to satisfy their care-taking responsibilities. However, gamete providers who merely meet their minimum care-taking responsibilities could still be faulted for failing to do more in certain circumstances, depending on one's background moral framework. For instance, one might think on Kantian grounds that gamete providers who are in a position to

provide additional benefits to their biological offspring at little cost to themselves, but do not, have failed to be appropriately beneficent. Similarly, one might think on utilitarian grounds that gamete providers act wrongly when failing to provide more for their biological offspring if doing so would increase the overall happiness of these children. In both of these cases, although gamete providers might fail to fulfill other moral responsibilities, they have not necessarily failed to fulfill their specific care-taking responsibilities.

This claim that gamete providers could fulfill their care-taking responsibilities but at the same time fail in their general responsibilities *to the same child* might seem odd; we might think that having care-taking responsibility for a child also intensifies the other responsibilities we might have to act in that child's interests. For instance, we might think that an individual who fails in her duty of beneficence by ignoring a school's plea for much-needed resources also fails in her care-taking responsibilities if her child attends the school that has made the plea for much-needed resources. However, it is possible that one's care-taking responsibilities do not amount to be partial generally to certain individuals, but rather require only the fulfillment of certain well-defined responsibilities. Consider the following example. A physician might have a special responsibility to prioritize the healthcare needs of her existing patients over new patients with whom she has no established relationship. However, this does not mean that the physician has a responsibility to prioritize all of the interests of her existing patients over the interests of strangers. A miserly physician who fails to be appropriately beneficent does not also fail in her special obligations to her patient by ignoring the patient's very deserving pet charity. Similarly, the special responsibilities gamete providers have towards their

biological offspring that I outline here are restricted in scope to the care-taking responsibilities they acquire qua gamete provider. Someone could nevertheless argue that gamete providers have a duty to be partial towards their biological offspring more broadly because of their genetic relatedness, and thus think that the responsibilities I outline are inadequate.<sup>151</sup> However, given the weaknesses of genetic accounts of responsibility discussed in chapters one and three, I think it is unlikely that genetic relatedness alone would ground any substantial duties of partiality. Thus, the focus of this chapter is the care-taking responsibilities that gamete providers have towards their genetic offspring.

The view I outline in this chapter is different from others who have similar views about responsibility following gamete provision. Though Archard accepts that gamete providers have inalienable responsibilities towards their biological offspring, he thinks that these are fully discharged when gametes are provided in circumstances where it is reasonable to think that the resulting children will be well cared for. Archard states that, in the context of a system that has consistently proven to place children with competent parents, “[a] gamete provider does not alienate the obligation incurred by causing a child to exist. Rather he has discharged it by ensuring that the willing others will take on the responsibilities of acting as the children’s parents”.<sup>152</sup> This view implies that responsibilities do not continue once certain pre-provision responsibilities are fulfilled. Conversely, Porter thinks that post-provision responsibilities do arise, but does not give a detailed account of what these responsibilities might look like, or what implications post-

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<sup>151</sup> Kolodny discusses the possibility of genetic relatedness grounding partiality. See Kolodny, N. “Which Relationships Justify partiality?” *The Case of Parents and Children*. *Philosophy and Public Affairs*. 38.1 (2010) Especially p. 61 – 75.

<sup>152</sup> Archard (2010) op. cit. p. 121.

provision responsibilities have for pre-provision responsibilities, and vice versa.<sup>153</sup> In contrast to Archard, I think that even when pre-provision responsibilities are satisfied, gamete providers still have post-provision responsibilities. And, unlike Porter, I give a detailed account of both pre-provision and post-provision responsibilities. First, I will turn to pre-provision responsibilities.

### *1. Pre-provision Responsibilities*

As noted in chapter one, pre-provision responsibilities are much less controversial than post-provision responsibilities, since the former are accepted even by authors who deny that gamete providers have post-donation responsibilities. For instance, though Bayne finds post-provision responsibilities highly implausible, he thinks that gamete providers are ethically required to take certain precautions prior to engaging in gamete provision in order to prevent harm to their biological offspring.<sup>154</sup> Similarly, Fuscaldo thinks that post-provision responsibilities can be alienated, but only if pre-provision responsibilities are fulfilled first.<sup>155</sup> The general consensus regarding pre-provision responsibilities is that gamete providers must take steps to ensure that intending parents can reasonably be expected to adequately care for the children they plan to parent. I accept this view, and argue that pre-provision responsibilities require gamete providers to ensure that the proper screening of intending parents has taken place. I further the discussion on parental screening, however, by arguing that this requirement does not give rise to the problem of discrimination that others have identified with the current practice of screening some parents (most notably adoptive parents), but not other parents. Briefly, some have argued that the status quo, which requires parental screening for individuals

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<sup>153</sup> Porter (2014) op. cit. p. 195.

<sup>154</sup> Bayne 2003, op. cit. p. 86.

<sup>155</sup> Fuscaldo, op. cit. p. 74.

who wish to become parents through adoption but not individuals who wish to become parents through other means, is problematically discriminatory.<sup>156</sup> I argue that a screening requirement for gamete recipients does not succumb to this problem, even in the absence of universal parental screening.

I additionally argue that for gamete provision to be ethical, it must occur within a jurisdiction that has a trustworthy child welfare system in place. The child welfare system must have the power to intervene into the private life of families in order to protect children, and must have the authority to adjudicate disputes between individuals regarding whether a child's welfare needs are being appropriately satisfied. I argue that this system is required for two principal reasons: (1) given that multiple individuals have a responsibility to ensure that a child's welfare needs are met, some method of resolving disputes amongst these individuals needs to be in place, and (2) in many circumstances gamete providers will not be able to directly check up on their genetic offspring and so they will need to rely on a trustworthy third party to ensure that their genetic offspring are faring well.

### *1.1 Theoretical Concerns about Pre-Provision Responsibilities*

Before discussing the specific pre-provision responsibilities that gamete providers have, I first want to address a worry about the possibility of pre-provision responsibilities. Since no children yet exist when gametes are initially provided, someone might think that gamete providers could not have pre-provision care-taking responsibilities towards their biological offspring. There are however two ways that I can

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<sup>156</sup> McLeod, Carolyn and Andrew Botterell. " 'Not for the Faint of Heart': Assessing the Status Quo on Adoption and Parental Licensing." *Family-Making*. Ed. Francoise Baylis and Carolyn McLeod. Oxford: Oxford University Press, 2014. p. 151-167; McLeod, Carolyn and Andrew Botterell. "Can a Right to Reproduce Justify the Status Quo on Parental Licensing?" *Permissible Progeny*. Ed. R. Vernon, S. Hannan and S. Brennan. New York: Oxford University Press, Forthcoming.

address this problem, at least for the purposes of the argument I am presenting in this thesis. First, Feinberg provides an example that suggests quite convincingly that we can have responsibilities in the present towards future persons.<sup>157</sup> He asks us to consider a person who hides a bomb in a kindergarten class that is timed to go off in ten years. At the time that the bomb is set, no one that is endangered by it exists and hence, the bomber's actions do not put at risk any presently identifiable people. Despite the fact that no person's rights are violated at the time that the bomb is planted, we still think the bomber has done something wrong in the present by endangering the lives of future persons. This suggests that individuals have a duty to avoid harming future persons, and quite plausibly a similar responsibility could extend to gamete providers. This analogy is not perfect however, since the bomber's duty is negative, but care-taking responsibilities are positive. Even if we think that some positive responsibilities towards future persons exist, which itself is a contested idea, it remains unclear whether these are strong enough to support the kind of care-taking responsibilities I outlined in the previous chapter.

If, for reasons of this disanalogy or otherwise, Feinberg's example is not convincing, a second possible way to ground pre-provision responsibilities is to note that it is generally wrong to willingly put oneself in a position where one will likely be unable to fulfill future responsibilities. For instance, suppose that I wager my bicycle on the outcome of a Toronto Maple Leafs game, betting that they will lose to the Vancouver Canucks. In the third period, with seconds to go, the Toronto Maple Leafs shockingly have a solid 5-0 lead. Out of spite for the person I am betting against, I immediately give my bicycle to the bartender, making it impossible for me to fulfill my end of the wager.

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<sup>157</sup> Feinberg, Joel. *Harm to Others: The Moral Limits of the Criminal Law*. New York: Oxford University Press. 1984. p. 97.

Even though at the time I gave the bicycle away, I was not failing to fulfill my responsibility, it seems that I still acted wrongly. Given that (as will be shown) certain conditions likely must be in place early on for gamete providers to fulfill their care-taking responsibilities, we could similarly argue that by failing to ensure that these conditions are indeed in place prior to the existence of child, gamete providers act wrongly.<sup>158</sup>

### *1.2 Parental Screening*

The clearest pre-provision responsibility of gamete providers is to ensure that the individuals intending to become parents by use of the provisioned gametes are able to provide enough emotional and material support to their biological children so that these children will have a reasonable chance at a desirable life. As mentioned in earlier chapters, many authors have accepted that gamete providers have this kind of pre-provision responsibility; however, relatively little has been said about what this means for current gamete provision practices. My view is that given the crucial role that intending parents will play in determining the quality of the lives of the children that they will parent, gamete providers must ensure that these prospective parents go through a rigorous screening process. This marks a stark change from the status quo where much provision is done in the absence of extensive screening of would-be parents.<sup>159</sup> Given my argument that gamete providers are responsible for ensuring a reasonable chance at a desirable life

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<sup>158</sup> It might be contested that in this case, these are not care-taking responsibilities per se, but are responsibilities to ensure that future-caretaking responsibilities will be satisfied. Granting this point only requires a minor adjustment, however, to my view in this chapter. Instead of limiting the scope of the chapter to care-taking responsibilities, I could limit it to ‘care-taking responsibilities and the responsibility to ensure that one is reasonably positioned to fulfill these care-taking responsibilities’. But this would be an overly cumbersome way of making the point. Hence, in the following sections, I will simply refer to gamete provider’s pre-provision responsibilities, while remaining agnostic as to whether one could defensibly consider them to be a variety of care-taking responsibilities.

<sup>159</sup> Benatar (1999). op. cit. p. 179.



for their biological offspring, I am inclined to agree with Benatar that, in its current form, gamete provision is predominantly done unethically.<sup>160</sup>

Importantly, requiring parental screening does not necessarily mean condemning all anonymous gamete provision. Gamete providers could be given anonymized background information about prospective parents and be given an active role in determining which person or people will have access to their gametes. Alternatively, clinics that provide gametes could do the screening themselves, make available the standards they use and provide audits to prove that they meet this standard. In either case, screening procedures might include home visits and parenting classes. A proposal of this sort is not unprecedented for certain prospective parents. Similar requirements exist for individuals wishing to adopt children to whom they are not related.<sup>161</sup>

A possible criticism of this view might be that it is discriminatory to single out individuals making use of provided gametes for parental screening. This worry has been raised with respect to mandatory screening for adoptive parents.<sup>162</sup> By reasons of parity, someone may argue that if individuals who seek to become parents through gamete provision (or adoption for that matter) should be screened, then so should individuals who seek to become parents using the more traditional method of sexual intercourse. After all, what is at stake in both cases is the wellbeing of children. To treat the two cases differently amounts to either an unjustified skepticism about people who use

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<sup>160</sup> Ibid.

<sup>161</sup> Many jurisdictions make exceptions to these requirements when adopting a relative. For example, Ontario has relaxed procedures for relative adoptions, and does not require involvement of a licensed social worker. See: section 141 of the Ontario Child and Family Services Act; McLeod and Botterell (2014) p. 154. Similar exceptions for adopting relatives exist in British Columbia as well.

<sup>162</sup> For instance, LaFollette states, "if we think it is so important to protect adopted children, even though people who want to adopt are less likely than biological parents to maltreat their children, then we should likewise afford the same protection to children reared by their biological parents." LaFollette, Hugh. "Licensing Parents." *Philosophy and Public Affairs* (1980): 182-197. p. 194.

provided gametes to become parents, or the neglect of children created through sexual intercourse by failing to adequately ensure their parents' ability to care for them. Since I approve of parental screening in the case of gamete provision, it might seem that the demands of fairness towards both parents and children require that I also approve of parental screening in all (or at least many other) reproductive contexts.<sup>163</sup>

Though compelling, there is an important disanalogy between the parity arguments made on behalf of adoptive parents (if there is screening for them, there should be screening for everyone) and the case for parental screening that I am making here. The parity concerns raised on behalf of adoptive parents arise when *the state* requires parental screening for only one subset of intending parents but not others. Since state-enforced mandatory screening is generally defended on the basis of the state's *parens patriae*<sup>164</sup> obligations, and these obligations apply equally to all children within the state's mandate<sup>165</sup>, then it is problematic if screening occurs only for certain classes of parents. If the state has an equal obligation to ensure that child A and child B are parented properly, then barring any empirical justification to screen in one case and not the other, it seems wrong only to screen A's parent(s). Given that there is no evidence to

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<sup>163</sup> For instance, McLeod and Botterell argue that there is no justification for requiring screening for adoptive parents, but not for other classes of parents. All arguments that justify screening in the case of adoptive parents justify screening in the case of all or some subset of non-adoptive parents as well. McLeod and Botterell, op, cit. p. 166.

<sup>164</sup> For a good overview of *parens patriae* powers and responsibilities see: Blustein, Jeffery. "On the Doctrine of *Parens Patriae*: Fiduciary Obligations and State Power." *Criminal Justice Ethics* 2.2 (1983): 39-47.

<sup>165</sup> Originally the *parens patriae* powers of the state gave it the power to act as custodian for the protection of mentally incompetent persons, however this power was later extended to children. For a summary of the evolution of *parens patriae* powers see *E. (Mrs.) v. Eve. No. 16654*. Supreme Court of Canada. 23 October 1986. at 31-43.

suggest that parents who use provisioned gametes (or adopt) are less capable than other parents<sup>166</sup>, the disparity in screening requirements is unjust.

Although I am inclined to accept this argument – that it is unjust for the state to require parental screening for individuals who use provided gametes (or adoption) but not require screening for individuals who reproduce through sexual intercourse or forms of assisted reproduction that do not involve provided gametes<sup>167</sup> – my argument does not succumb to the same criticism. My argument is not that *the state* has a special duty to ensure that parents who use provided gametes are screened, but that only those who provide the gametes have this responsibility. The important difference in the gamete provider case is that the responsibility to screen does not arise from some general duty to ensure that all children are well taken care of, but instead arises from a special duty on the part of gamete providers to ensure that the children they help create have a reasonable chance at a desirable life. The parity problem arises only at the level of state intervention, where there is no special responsibility or special risk that would justify screening in gamete provision cases but not in procreation more broadly. However, as I have argued, gamete providers do have a special responsibility towards *their* progeny, and this both demands and justifies that gamete providers ensure some screening of those who wish to parent the children created using their gametes.

In order to clarify the difference in permissibility between state-mandated screening and screening initiated by an individual with care-taking responsibilities,

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<sup>166</sup> The evidence in fact suggests that families who formed via adoption and provided gametes score better on some parenting measures than 'natural' families. See: Golombok, S., et al. "Families with Children Conceived by Donor Insemination: A Follow-Up at Age Twelve." *Journal of Child Psychology and Psychiatry* 73.3 (2002): 952-968.; Golombok, S., et al. "Social versus Biological Parenting: Family Functioning and the Socioemotional Development of Children Conceived by Egg or Sperm Donation." *Journal of Child Psychology and Psychiatry* 44.4 (1999): 519-527.

<sup>167</sup> Or who use of advanced reproductive technologies that involve their own gametes.

consider the following example. Imagine two recent childhood friends, Sally and Jane. Sally is going on a four-week camping trip with her family to a provincial park that is very remote, making reliable communication back home impossible. Sally invites Jane to go along on the trip, and so Jane asks her parents for permission. Since Sally and Jane have only recently become friends, their parents hardly know each other. Jane's parents think a camping trip would be a great experience for their child, but since they do not know Sally's family very well, they are concerned about sending Jane off to a remote and potentially dangerous environment with people who are essentially strangers. In order to properly determine whether the trip is a good idea, they decide to 'screen' Sally's parents by meeting with them to discuss their experience with camping, find out what preparations they have made for the trip, etc. After learning that Sally's parents are both professional guides and have made ample preparations, Jane's parents decide that the trip is a great idea.

In this example, Jane's parents behaved completely appropriately. Furthermore, if they had decided at the outset that there were too many unknowns and that they did not want to find out all of the details, they could have justifiably prevented Jane from going on the camping trip, without conducting any kind of screening. Notice that if Jane's parents had chosen the second option and not looked into the details of the trip, then barring any reasonable grounds to suspect Sally's parents were seriously putting Sally in harm's way, they would not have had a responsibility to press Sally's parents for details in order to ensure *Sally's* safety on the trip. The reason why this particular disparity is justifiable is that Jane's parents have a special responsibility to ensure Jane's safety, but not Sally's. Given that gamete providers have a special responsibility to ensure the

wellbeing of their biological offspring, they similarly act justly when they take steps to ensure that the individuals who will be parenting them are up to the task, even where screening is not the norm for all potential parents.

It is worth noting that the argument made here, defending the appropriateness of parental screening done at the request of gamete providers, is different from another similar argument sometimes given in defense of asymmetries in parental screening. Some people argue that though the state has no business screening people who become parents through sexual intercourse, transferring (delegating according to the argument made in chapter 2) parental responsibility from one person to another ought to be treated differently. The reason given is that handing to someone the responsibility to raise a child that one would otherwise have a duty to raise is a morally weighty decision that must be taken seriously. The only way for this kind of transaction to be ethical is if the individuals handing over this responsibility have reasonable assurances that the individual(s) who will raise the child will be able to provide the child with an acceptable future. Given what is at stake, the state has an interest in regulating these kinds of transactions.<sup>168</sup> However, as McLeod and Botterell argue, there seems to be little justification for why *the state* should treat transfers (delegations on my account) of parental responsibilities differently than acquisitions of parental responsibilities.<sup>169</sup> It is unclear why the state ought to scrutinize the delegation of parental responsibilities, any more than the original acquisition of these responsibilities. Presumably, the state ought

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<sup>168</sup> McLeod and Botterell refer to this argument as “the transfer of responsibility argument”. McLeod and Botterell, *op. cit.* p. 160.; See also: Engster, Daniel. “The Place of Parenting within a Liberal Theory of Justice: The Private Parenting Model, Parental Licenses, or Public Parenting Support?” *Social Theory and Practice* 36.2 (2010): 233-262. p. 253.

<sup>169</sup> McLeod and Botterell. *op. cit.* p. 161.

to have equal concern for the wellbeing of children, regardless of how their parents acquired their parental responsibilities.

I accept the preceding argument against state-mandated asymmetrical parental screening, but it does not show that the screening I advocate for rests on a similar inequitable intrusion into the lives of some parents. Returning to the camping example, though we do not think that the screening done by Jane's parents is wrong, we would be skeptical of a regulatory policy that permitted Sally's parents to take their child camping without any state interference, but required Jane's parents to seek state approval if they wanted her to join Sally's family on the trip. It is the *state's* requirement that screening take place in one case but not the other that makes the asymmetry problematic.

Similarly, in the case of reproduction, it is that the state only forces adoptive parents alone to prove their suitability that makes screening problematic. This is because, as stated above, the state has the same *parens patriae* responsibility to all children under its jurisdiction; it invokes it in an unjustifiably discriminatory fashion when screening only adoptive parents.

It is important to note that I have neither endorsed nor opposed state-mandated universal parental screening. I agree that the current regulatory framework that imposes screening on adoptive parents but not others is unjust, but have argued that the private responsibility of gamete providers to ensure the parental competency of intending parents does not result in a similar injustice. The argument that gamete providers have a responsibility to screen (either directly or indirectly) the individuals who will be using their gametes to create a child is neutral as to whether universal screening ought to be mandated and/or regulated by the state. Screening procedures are possible without state

intervention; pre-provision responsibilities can thus be fulfilled by gamete providers themselves or through the use of third-party agencies. However, following McLeod and Botterell<sup>170</sup>, I think that if *the state* were to require mandatory screening for individuals making use of others' gametes, then the state would also have to require screening for other parents as well; to do otherwise would be unjust.

One possible objection to my view, that gamete providers ought to ensure intending parents are screened, is the discriminatory effect it might have on single people wishing to become parents, as well as on gay and lesbian couples. Since these individuals cannot reproduce without the use of third-party gametes, screening may disproportionately impact them. Also, since these individuals are already stigmatized with respect to parenting, the additional burden of screening might add to the social perception that they are not fit to be parents. Though this might be an unintended consequence of my view, I do not think that these secondary effects make it defensible for gamete providers to ignore the responsibilities they incur when choosing to allow others to create another human being using their gametes. The current reality – that reproduction requires two individuals of different sexes – is not ideal, but this fact does not alter any individual's personal responsibility for the free actions that they undertake. The stigma associated with being a single or homosexual parent is better resolved by addressing the underlying social attitudes that perpetuate these ideas than by ignoring the weighty responsibilities individuals acquire when they help to bring a new life into the world.

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<sup>170</sup> McLeod and Botterell, op. cit. p. 166.

What I have shown up to this point is that the responsibility to screen intending parents follows from gamete providers' responsibility to ensure that their biological offspring will have a reasonable chance at a desirable life. I have also shown that this responsibility does not require us to accept universal parental screening. Next I will outline why gamete providers must also ensure that there is a reliable child-welfare system in place.

### *1.3 Requirement for a Trustworthy Child-Welfare System*

The second pre-provision responsibility that I argue exists for gamete providers is to provide gametes only when there is a trustworthy child-welfare system in place that can reliably monitor the wellbeing of gamete providers' offspring, and can make support and custody decisions. There are two main reasons why I think that this kind of child welfare system is required. The first reason is that, in cases where there is little or no contact between gamete providers and their offspring or their offspring's family, gamete providers will not be able fulfill their post-provision responsibilities without the presences of a child welfare system to alert them that their intervention is required. The second reason is that even in circumstances where gamete providers have the requisite knowledge to intervene on their own accord, there will likely be disagreements between the different individuals who have caretaking responsibilities for the child in question – most importantly the child's social parent(s) – about whether intervention is warranted, and the extent of the intervention that is appropriate. A well-functioning child welfare system will be able to resolve these conflicts by dictating what kind of intervention is required or is permissible.



I will now turn to the first reason for why gamete providers need to ensure there is a trustworthy child welfare system in place. In many cases of gamete provision, there is little or no relationship between gamete providers and their offspring, or their offspring's parents. Consequently, many gamete providers will not be in a position to determine whether their biological offspring are being adequately raised by their social parents, or be in a position to provide any required assistance to their biological offspring. In these cases, without having some trustworthy third party they can rely on to inform them when their intervention is required, gamete providers put themselves in a position where they are ignorant of their responsibilities. As argued at the beginning of this chapter, putting oneself in a position where it will not be possible to fulfill one's future responsibilities is morally problematic. In order to avoid this morally problematic outcome, some agency must keep records about the identity of gamete providers and their biological offspring, and contact gamete providers when their offspring need support.

Though this argument implies that state agencies keep records identifying gamete providers and their biological offspring, this does not mean that gamete provision cannot be done in a manner that preserves anonymity, at least in many cases, between the intending parents and their children, and gamete providers. The identifying information would only need to be accessed if the welfare agency determined that intervention by a gamete provider was potentially warranted. Furthermore, anonymity would only need to be breached in cases where the required intervention could not be performed without revealing the identities of the relevant parties.

Someone might disagree that a child welfare system that tracks connections between gamete providers and their biological offspring would always be required in

order for gamete providers to ensure that their responsibilities are being fulfilled. For instance, we could imagine a child welfare agency so competent that that it would be reasonable for gamete providers to trust it with ensuring that their biological offspring have a reasonable chance at a desirable life, without ever needing to rely on them for any intervention. Perhaps the child welfare agency would itself take care of any needs not properly fulfilled by the child's social parents. If this were the case, one might think that it would be permissible to provide gametes in the absence of a system that tracks the identities of individuals involved in reproduction by use of provided gametes. However, I think that even in this case, a system that keeps records of gamete providers and their biological offspring is necessary for gamete provision to be ethical. Consider the following analogy.

A parent is called away overseas for a project of great importance, and must put her child in boarding school for two years. The parent has a choice between two schools both with equally good track records at providing their boarders with excellent care. School A has a rule stipulating that as a condition of accepting the boarder, the parent cannot contact the school to see how things are going, nor will the school contact the parent if problems arise, preferring instead to handle any problems that arise on its own. School B has no such rule and allows for open communication between the parent, the child, and the school. Without an overriding reason to put the child in school A, it seems that doing so would be irresponsible, given school B is equally available. We would rightfully think, in other words, that a parent who chooses school A does not take her responsibility to ensure her child's welfare seriously enough. This case shows that even if there are good reasons to think that a child will be well cared for by others, individuals

with persisting care-taking responsibilities cannot permissibly place themselves in a position where they remain ignorant of their potential responsibilities, if another option is available. In the case of gamete provision, providers have the option of declining to provide their gametes if no agency exists that is willing to keep track of their biological offspring's welfare.

A possible counter-example might arise in the context of adoption. We could imagine a distressed parent<sup>171</sup> who is certain that he will be unable to adequately provide for his child and so opts to put her child up for adoption. The only adoption agency available has an excellent track record at placing children in good homes, but only arranges closed adoptions and does not keep records about the identity of children's biological parents. In this case it seems permissible for the father to put his child up for adoption, and it seems that it would be wrong to blame the father if, due to some misfortune, the adoptive family ended up unable to provide adequately for the adopted child. There is however an important difference between this case and that of the gamete provider. The parent is placed in the unfortunate position of choosing between being unable to adequately provide for the well-being of his child, and giving the child a better prospect of a desirable life, but losing contact with the child. In this circumstance, if the interests of the child are likely best served through adoption, then this choice is a permissible. In the gamete provision case, however, since the provider does not jeopardize the well-being of a child by refraining from entering into an agreement for anonymous gamete provision, there is no pressing harm that justifies entering into an

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<sup>171</sup> I assume that the parent meets the criteria in chapter one for care-taking responsibilities, and thus has inalienable care-taking responsibilities according to my argument account. In cases where this criterion is not met (eg. in cases where the parent did not intentionally act to create a child) the parent might be able to transfer care-taking responsibilities – my argument is agnostic with respect to this question.

agreement that would make it impossible for him ensure that his child's needs are adequately provided for.

Turning now to the second argument, we can imagine circumstances where a gamete provider has a meaningful but non-parental relationship with his biological offspring that gives him knowledge about the parental decisions made for his offspring. We could think of this relationship like that of an involved uncle or a close family friend. Furthermore, we could imagine that the gamete provider believes that a decision made by his offspring's parents puts his offspring at risk of significant harm. For example, imagine that the child suffers from a serious but non-acute health condition that requires a blood transfusion as part of the treatment. The parents believe, on religious grounds, that a blood transfusion would consign their child to an eternity of suffering and so refuse to permit the child to receive treatment on the grounds that the treatment is not in the child's best interest. However, the gamete provider does not share these religious beliefs. Despite his best efforts, the gamete provider cannot convince the parents of his offspring to permit the child to undergo the necessary treatment.

This case highlights the possibility of conflicts arising between individuals who each have a responsibility to ensure the child's welfare needs are met, and raises the problem of how these conflicts are to be resolved. A natural inclination might be that the final decision in these kinds of conflicts ought to always reside with the child's parents. However, if this were the case, then it would raise moral problems for gamete providers because it would provide them with no means of fulfilling their responsibility to ensure the wellbeing of their offspring. Furthermore, as has been noted by other authors, some authority to fulfill one's responsibilities seems to follow naturally from having those

responsibilities in the first place.<sup>172</sup> If gamete providers have the care-taking responsibilities I have outlined, then they need to be able to fulfill them.

One possibility is that they do so by simply intervening in the lives of their biological offspring whenever they deem that their offspring's parents are not adequately discharging their care-taking responsibilities. However, this suggestion is problematic for two important reasons. First, many of the duties and privileges of parenthood simply are not capable of being fulfilled by others, since they depend on a pre-existing intimate relationship. For instance, consider a hospitalized child who is distressed and wants her social parents to comfort her. A gamete provider with no social relationship with the child is simply incapable of stepping in and fulfilling this role, because the child is seeking the attention not of just any adult, but of his parent. Attention, support and nurturing clearly have a different meaning and importance when they come from different people. Additionally, some authors have justified the special authority that parents have for making choices for their children by appealing to the special knowledge and trusting bonds that arise from the intimate nature of the parent-child relationship.<sup>173</sup> Since gamete providers will in general lack this kind of intimate relationship, many kinds of intervention will simply not be possible for gamete providers because they lack the special knowledge and special bonds that ground parental duties and authority. Permitting gamete providers to intervene in these cases would presumably cause more harm than good.

Secondly, the intimacy of the parent-child relationship is important for the wellbeing of children, and this relationship requires a certain degree of privacy and

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<sup>172</sup> Kant 6:282; Blustein *op. cit.* p. 43.

<sup>173</sup> See Austin's stewardship account of parental right. Austin, *op. cit.*, p. 82.

autonomy.<sup>174</sup> Interference from outside parties thus poses a risk of harm to children by jeopardizing this relationship; it threatens both the privacy and autonomy that are essential to it. This means that in cases where intervention by a gamete provider into the private life of her biological offspring might otherwise be justified – that is even in light the constraints mentioned in the preceding paragraph – the potential benefits in doing so must outweigh the potential harms. Determining where this threshold lies is not straightforward.

Given that (1) it is foreseeable for disagreements to arise between gamete providers and the parent(s) of their offspring about what is required for ensuring the wellbeing of the child in question, and that (2) determining when intervention by gamete providers is warranted is fraught with difficulty, some system that both gamete providers and parents have confidence in must be in place to resolve conflicts. The purpose of such a system is to ensure that gamete providers are able to fulfill their responsibilities by intervening when appropriate, but also protect the welfare interests of children by only allowing such interventions when they are warranted by the circumstances. I propose that a well-functioning state-run child welfare system is most appropriate to perform this task because it would have the ability to make legally binding custody and support decisions. On my view, gamete providers would have to seek authorization from the state prior to intervening in the private life of their biological offspring, without the consent of the child's parent(s). Importantly, the need for a third party to adjudicate disputes need not rest on anticipating that either gamete providers or parents will sometimes act maliciously, but can instead rest on the recognition that parents and

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<sup>174</sup>Schoeman, Ferdinand. "Rights of Children, Rights of Parents and the Moral Basis of the Family." *Ethics* 91 (1980): 6-19. p. 10.; Brighouse, Harry and Adam Swift. "Parents' Rights and the Value of the Family." *Ethics* 117.1 (2007): 80-108. Austin op. cit. p. 82.

gamete providers may have different views about where the minimum welfare standard lies, and when intervention is warranted.<sup>175</sup>

So far I have argued that gamete providers need some avenue for fulfilling their post-provision responsibilities, but because of the possibility of disagreements between gamete providers and parents over the need for intervention, and the potential for harm caused by over-zealous intrusion into the parent-child relationship, any such action ought to be vetted through a state-run child-welfare agency. I take this conclusion to ground the need for prospective gamete providers to ensure that a trustworthy child-welfare agency is in place prior to engaging in gamete provision. In cases of open gamete provision, there would be no reliable way for gamete providers and parents, who both have care-taking responsibilities for the same child, to resolve the aforementioned conflicts, unless some child welfare system was in place.

I have thus argued that gamete providers have the two following pre-provision responsibilities. Gamete providers ought to only make their gametes available after (1) ensuring that intending parents are properly screened, and (2) ensuring that a reliable child welfare agency is in place. I have provided two arguments for why gamete provision is only permissible when there is a reliable child-welfare system in place. In cases where there is a relationship between gamete providers and their biological offspring, disagreements might arise between the gamete provider(s) and the child's parents about whether intervention is warranted. Without some third party to adjudicate disputes between individuals who each have care-taking responsibilities, there is a risk of individuals failing to fulfill their responsibilities, or intervening obtrusively.

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<sup>175</sup> This argument is similar to Locke's argument for why individuals ought to enter civil society. According to Locke, even if individuals intend to follow the natural law, people are not competent judges in their own cases, and thus need to rely on neutral judges. (Second Treatise on Government, Ch.2 Sec. 13)

Additionally, in cases where gamete providers do not have direct contact with their biological offspring, they will have to rely on a trustworthy child welfare system to alert them to when their intervention may be required. In the absence of some body that is tasked to fulfill this role, gamete providers would put themselves in a situation where they are unable to fulfill their moral responsibilities, and this is problematic.

## ***2 Post-Provision Responsibilities***

Ideally, the screening procedure used for evaluating the suitability of intending parents would ensure that the children created using provided gametes would be properly cared for by their intending parents. However, in practice there is always the possibility of screening errors that might result in the placement of children with unfit parents.

Additionally, unpredictable changes in the circumstances of parents caused by sudden illness, accident, economic depressions, etc. might make individuals who were initially ideal parents no longer able to fulfill their responsibilities unaided, or at all. Since gamete providers retain care-taking responsibilities, they have a duty to ensure that the welfare needs of their biological offspring continue to be met. In this section, I will discuss two kinds of interventions that might be required of gamete providers, depending on the particular circumstances: material support and personal intervention.<sup>176</sup> I will also discuss how the required kinds of interventions differ depending on the relationship that exists between gamete providers and their offspring's families.

### ***2.1 Material Support***

As noted previously in this chapter, interventions that interfere with the autonomy and privacy of the parent-child relationship risk disrupting the intimacy that is important

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<sup>176</sup> By personal intervention, I mean involving oneself in parenting decisions and/or performing care-taking duties that involve personal contact with the child.



for the wellbeing of both children and their parents. Given this potential harm, it seems prudent to prefer less intrusive interventions over more intrusive ones when the circumstances only require the former. One avenue of minimally-intrusive intervention that gamete providers could employ is providing material support to assist their biological offspring if they risk no longer having a reasonable chance at a desirable life. Though this support could potentially take the form of monthly payments if the circumstances were dire, it could also involve paying for uninsured medical costs, extra tutoring, or other specific goods that the gamete providers' biological offspring require.

Consider the following example. The social parents of a child created through gamete provision are emotionally competent caregivers who love and support their child. However, due to an unforeseen economic crisis, the parents' income becomes reduced and they are no longer able to afford an expensive medication that is not covered by their insurance. Though the family has to make do with less, this is the only area where their lack of resources places their child at risk of no longer having a reasonable chance at a desirable life. In this case, there is no need to interfere in the relationship between the social parents and their children since merely providing the resources that are lacking would suffice. Assuming the gamete provider was able, in this case he would have a responsibility to pay for the medicine or otherwise provide it.<sup>177</sup>

Depending on the relationship between the gamete provider and his offspring's family, there are different ways that he could fulfill this responsibility. If the gamete provider is involved in the family's life and is aware of need for the medication, he would have a responsibility to offer to pay for the medications, and make the arrangements to do

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<sup>177</sup> Porter similarly thinks this kind of responsibility can arise for gamete providers. Porter (2012), *op. cit.* p. 72.

so. In cases where the gamete provider does not provide for the child's need, either because he was no relationship with the family and thus is unaware of the need, or simply refuses to voluntarily fulfill his responsibilities, the child welfare system would be required to make an order for payment and enforce it.

Importantly, the responsibility to provide the material support outlined here is substantially different from the child support model imposed by the legal system. Currently, child support obligations are not determined by whether the child's needs would be unsatisfied without financial support, but are determined by the financial means of the individuals who have the obligation to provide support.<sup>178</sup> On my view however, gamete providers are only required to provide material support if their offspring risk no longer having a reasonable chance at a desirable life in the absence of such support.<sup>179</sup> This means that if the social parents can get sufficient support from other sources, such as the state, gamete providers would not have to provide the material support themselves. In societies with robust social safety nets, providers might never be required to provide material support, because the state would adequately provide for the care of all children in need.

The second problem that someone might have with this argument is that it imposes on gamete providers the requirement to provide material support to their offspring, but does not provide them with any decision making authority over the child they are obliged to help support. Returning to the previous example, under my view the

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<sup>178</sup> For instance, see the child support calculation formulas of the various provinces available here: <http://www.justice.gc.ca/eng/fl-df/child-enfant/fcsg-lfpae/2011/index.html>. Though special need may increase the amount owed, lack of need does not reduce what is owed.

<sup>179</sup> This is similar to the traditional English common law approach to child support, in which the child is entitled to reasonable support, but not a share of her parents' wealth. See: Wikeley, Nick. *Child Support: Law and Policy*. Portland: Hart Publishing, 2006. p.13.

requirement to subsidize the costs of medication alone does not empower the gamete provider to have his offspring undergo a second medical examination to ensure that the medication is necessary, or otherwise challenge the parents' decision to use that particular medication. Someone might think that this state of affairs is unjust, and argue that the responsibility to help support a child should always come with some authority in parenting decisions. Archard calls this view the 'parental package view', and dismisses it because, on reflection, it seems that there are many circumstances where individuals can have responsibilities without rights.<sup>180</sup> First, consider a person who is injured due to the negligence of another. In this case, the negligent party has a responsibility to cover the injured party's medical expenses, but this does not entail that the negligent party has a right to determine which physician the injured party uses or which treatment plan the injured party must follow. In the reproductive context, there are also circumstances in which individuals have responsibilities to support children but have no parental rights. For instance, as Archard highlights, we do not think that people should be able to gain authority in parental decision making if they create a child through sexual assault; however we still think that these individuals have an obligation to help support the child that they participated in creating. This shows that the features that ground the responsibility to provide certain kinds of support to children need not also ground authority in decision making. If one thinks that the social parenthood relationship is what grounds parental authority<sup>181</sup>, which I take to be a plausible view, then it seems perfectly sensible that gamete providers could have the responsibilities to provide material support to their biological offspring without having any authority to make parenting decisions.

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<sup>180</sup> Archard (2010) *op. cit.* 107-109.

<sup>181</sup> See Ausin, *op. cit.*

So far I have argued that gamete providers have the responsibility to provide material support to their biological offspring if, in the absence of that support, their offspring risk no longer having a reasonable chance at a desirable existence. This responsibility is importantly different from the current legal child support framework, since the gamete provider's responsibility to provide support is determined entirely by needs of their offspring, and not their financial means. Next I will look at what kinds of personal interventions gamete providers might be required to make into the family life of their offspring.

## *2.2 Personal Support*

In addition to circumstances where material support would suffice, we can imagine circumstances where personal intervention in the family life of a child is required in order to ensure that a child has a reasonable chance at a desirable existence. For instance, consider again the case where a parent decides that certain biblical passages prohibit the consumption of blood, and on this basis refuses to permit his child to receive treatment that involves a blood transfusion.<sup>182</sup> In this case, there is no way to intervene to protect the child from harm without interfering in the private parent-child relationship. Insisting on providing the blood transfusion would necessarily interfere with the parent's ability to involve his child in a life lived together in accordance with the religious beliefs the parent holds sacred. At least according to some authors, the ability of parents to involve their children in their religious beliefs is an important part of the intimate parent-

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<sup>182</sup> This situation has arisen several times with Jehovah's Witnesses, who believe that blood transfusions are impermissible. The courts have ruled that in these cases, the state is authorized to take temporary custody of the child, so that the procedure can be performed. See *B(R) v. Children's Aid Society of Metropolitan Toronto*.

child relationship (though this does not mean that the right to do so is absolute and indefeasible).<sup>183</sup>

Like in the case of material support discussed previously, we can distinguish between cases where the gamete provider has an involved ongoing relationship with his biological offspring through which he becomes aware of the pressing need, and cases where there is minimal or no contact whatsoever. First consider cases where the gamete provider has an ongoing relationship with his offspring and has first-hand knowledge that the child is at risk. Here the gamete provider would have a responsibility to try and persuade the parent to reconsider his decision about the medical treatment. If this form of intervention proves unsuccessful, the gamete provider would then have a responsibility to challenge the parenting decision formally by contacting the child welfare agency and raising concerns about the appropriateness of the parent's medical decision. The responsibility to seek state intervention rather than act unilaterally arises for the reasons discussed in the section on pre-provision responsibility: most importantly the need for an agreed-upon method for resolving conflicts between individuals who each have a responsibility to ensure that the child's welfare needs are met. However, in cases where the harm is imminent, for instance the parent was about to attempt an extremely dangerous and unscientific 'alternative' therapy, the gamete provider would have the responsibility to remove the child from the dangerous circumstances (if able), and then contact the appropriate authorities to determine how to proceed.

Note that gamete providers of course do not have the authority to make unilateral determinations about the overall suitability of their biological offspring's parents. Even

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<sup>183</sup> Mills, Claudia. "The Child's Right to an Open Future?" *Journal of Social Philosophy*. 34.4 (2003): 499-509.

in cases where temporary removal of their biological offspring is warranted, or when the child welfare agency agrees that a particular parental decision ought to be challenged, it might be appropriate overall for parental responsibility and authority to remain with the child's existing parent(s). For instance, in the case of the blood transfusion, the state might decide to temporarily remove the child from the custody of his parent in order to perform the medical procedure, then return the child back to the care of his parent.<sup>184</sup>

In extreme cases, the child welfare authority might determine that the child should not be returned to the custody of his parent. However, since gamete providers are not under an obligation to necessarily parent their biological offspring themselves (as discussed in chapter 3), so long as a competent person can be found to do so, there is no need for gamete providers to parent themselves. However, in cases where gamete providers are able to parent competently, and no other competent person can be found, then gamete providers would have a responsibility to parent their biological offspring.<sup>185</sup> I further think that in cases where there is a meaningful relationship between a gamete provider and his biological offspring, and the child's parent(s) are deemed no longer fit, parental claims made by the gamete provider ought to be given preferred status. However, giving a complete account of how to respond to such claims is beyond the scope of this work.

It is worth noting that cases where it seems appropriate for involved gamete providers to become their offspring's parents are not distant theoretical possibilities. In a recent case in California, *In Re M.C.*, the court lamented that because there was no special legal recognition of non-parental progenitors, a young child would have to be

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<sup>184</sup> This is in fact what has been done in cases involving Jehovah's Witnesses. *op. cit.*

<sup>185</sup> This conclusion is also endorsed by Lindsay Porter. Porter (2014). p. 194.

placed in foster care rather than with a genetic progenitor who had displayed interest in helping raise her.<sup>186</sup> This case involved a lesbian couple who, due to a series of unpleasant and unfortunate events, became unable to care for *M.C.*. *M.C.* was conceived during a previous relationship between *M.C.*'s mother, Melissa, and her then partner, Jesus. Jesus had helped care for Melissa while she was pregnant, and had voluntarily provided child support to Melissa and *M.C.* at various times. However, since Jesus was not a legal parent<sup>187</sup>, he had no standing to request custody when *M.C.*'s parents were no longer able to care for her. Consequently, *M.C.* was placed in the far-from-ideal foster-care system. In response to this case, California passed legislation permitting the recognition of more than two legal parents, so that situations like this could be avoided in the future.<sup>188</sup> Though not a gamete provision case, it is not a significant departure from the relevant facts to imagine Jesus as a willing gamete provider who had limited involvement in the life of his genetic offspring.

According to my view then, gamete providers who have some meaningful involvement in the lives of their biological offspring have a responsibility to try and convince their offspring's parents to reconsider parenting decisions that they think are deeply problematic. In cases where this intervention is not successful, gamete providers have a responsibility to contact child welfare authorities and formally challenge the parenting decisions that they deem problematic. In extreme cases where parents pose an immediate danger to the child, gamete providers have the responsibility to remove their offspring from these situations, but then must contact the child welfare authorities about

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<sup>186</sup> *In Re M.C.*

<sup>187</sup> Jesus had no legal standing because, at the time, the law only permitted a child to have two legal parents, and *MC* already had two legal parents: Melissa and her partner.

<sup>188</sup> California Bill 274 – it specifically cites this case as a motivating factor behind the law.

how to proceed. Furthermore, in cases where their offspring's parents are deemed no longer competent to parent, and no other competent person can be found, gamete providers have the responsibility to parent their biological offspring. Let me now briefly turn to cases where there is little or no contact between gamete providers and their offspring.

In cases where there is no meaningful relationship between gamete providers and their offspring, gamete providers will generally not have first-hand information about the well-being of their biological offspring. This is especially true in cases where anonymity is maintained between gamete providers and intending parents. In these kinds of cases, gamete providers' responsibility would be limited to responding to requests from the state to care for their biological offspring, either temporarily or permanently. In the event that no other person was willing and capable to provide this care, on my view gamete providers would have the responsibility to do so.

### ***3. Effect on Gamete Provision***

A possible criticism of my view is that the weighty pre and post-provision responsibilities I defend will make individuals less inclined to provide gametes for other people's reproductive use. For instance, my view requires a competent child welfare system in order for gamete provision to be morally permissible. Given the flaws in the current Canadian system<sup>189</sup>, it is not even certain whether our current system meets the threshold necessary for gamete provision to be morally permissible. Furthermore, the

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<sup>189</sup> For instance, see Alaggia, Ramona, et al. "In Whose Best Interest? A Canadian Case Study of the Impact of Child Welfare Policies in Cases of Domestic Violence." *Brief Treatment and Crisis Intervention* Vol. 7 No. 275 -290.



possibility of potentially significant post-provision responsibilities might people from providing gametes, resulting in a shortage of gametes. However, I do not think that this unintended side effect suffices to undermine the plausibility that gamete providers do in fact have these responsibilities. It seems wrong to suggest that A does not acquire responsibilities as a result of engaging in a morally weighty activity X, because the possibility of acquiring this responsibility might prevent A from doing X, which then might negatively impact B. Furthermore, if encouraging gamete provision is deemed an important enough social good, there are steps the state could take to minimize the potential costs to gamete providers. For instance, the state could simply decline to enforce gamete providers' post-provision responsibilities and fulfill them itself, or insist that clinics take out insurance policies sufficient to cover costs that might arise as a result of the responsibilities I have outlined here. Though none of these measures would impact the moral responsibilities gamete providers have towards their biological offspring, they would reduce the actual burdens they might face.

### ***Conclusion***

In this chapter I have outlined gamete providers' pre and post provision responsibilities. According to my view, prior to engaging in gamete provision, gamete providers must ensure two things: (1) that the individuals who wish to parent the children resulting from those gametes have been adequately screened, and (2) that there is a competent child-welfare agency in place that is able to monitor their biological offspring and act if the children are at risk of no longer having a reasonable chance at a desirable existence. Following the provision of gametes, providers have the responsibility to provide material support in cases where such support is necessary for meeting the welfare

needs of their biological offspring. However, in circumstances where their offspring's material needs can be met by others, they do not need to provide any monetary support. Hence, this post-provision responsibility is different from child support, as it manifests itself. Lastly, in certain rare cases gamete providers might have the responsibility to parent their offspring, though this would only occur in circumstances where no other competent person was willing and available to perform this role.

## Conclusion

Over the course of this thesis I have shown that gamete provision is an activity that carries with it very weighty responsibilities. I have argued that because gamete providers willfully and knowingly engage in an activity where the desired outcome is a vulnerable child, they acquire care-taking responsibilities towards whatever children they help to create. Importantly, the presence of foreknowledge about the intended use of the gametes makes responsibility clearer in the case of gamete provision than in one-night-stand cases. This conclusion distinguishes my view from that of other authors who have argued for a similar conclusion by relying heavily on analogies to accidental pregnancy. My view also avoids the pitfalls that plague the accounts offered by Nelson, Archard and Porter. Their accounts rely on overly broad principles for determining which causally implicated individuals acquire care-taking responsibilities.

I have further shown that discussions about the transfer of responsibility in the literature on gamete provision have frequently failed to properly distinguish between the transfer and delegation of responsibility. Once this distinction is examined and taken into account, it becomes clear that the examples other authors offer in support of the permissibility of transfer are in fact examples of delegation. In addition, it becomes clear that transfer of responsibility is not possible in the context of gamete provision. Thus, I have shown that although gamete providers can delegate their responsibilities, they cannot transfer them. Consequently, gamete providers acquire inalienable responsibilities towards their biological offspring.

In addition to arguing that gamete providers have inalienable responsibilities towards their biological offspring, I have also shown that these responsibilities are not

parental. In other words, gamete providers do not have a responsibility to parent their biological offspring themselves. Instead, I have argued that gamete providers have a responsibility to ensure that their biological offspring have a reasonable chance at a desirable existence. This entails that gamete providers must ensure that some competent individual does parent their offspring, and continues to provide them with both the emotional and material resources necessary to have a reasonable chance at a desirable existence.

Gamete provider responsibilities, though not parental, are far from trivial. I have argued that gamete providers have a responsibility to screen intending parents, or ensure that they are screened. Furthermore, gamete providers ought to ensure that some state agency capable of adequately monitoring the welfare of children is in place. Even after these pre-provision responsibilities are fulfilled, gamete providers might be responsible for providing material support or other kinds of care to their biological offspring, should their welfare be at stake. For gamete providers to be able to fulfill these later responsibilities if the appropriate circumstances arise, some system must be in place for gamete providers to be made aware that their intervention is required. Consequently, on my view, records must be kept identifying which gamete providers have responsibilities for which children. This conclusion does not entail that anonymous gamete provision is impermissible; in most cases, anonymity could still be preserved between gamete providers, and their biological offspring and parents. However, some intermediary would have to be able to locate the appropriate gamete providers and seek support from them on behalf of the provider's biological offspring.

The conclusions from my thesis do not show that gamete provision is itself morally problematic, but that in its *current form* much of it is morally problematic. This is because gamete providers often show little concern for who will end up parenting their biological offspring<sup>190</sup>, and also do not provide gametes within a system that will contact them if their biological offspring are in need of their assistance. The former is a kind of recklessness, while the latter is kind of wilful blindness to one's responsibilities.

The conclusions drawn from this thesis have some important consequences for policy and law governing gamete provision. For gamete providers to be able to ensure that their pre-provision responsibilities the following are required. First, either gamete providers must be given the ability to screen the intending parents who will be making use of their gametes, or clinics must adopt rigorous screening procedures that are acceptable to gamete providers. Second, records needs to be kept that identify which gamete providers are connected with which children, and courts must have access to these records. Without such a system in place, gamete providers act irresponsibly by putting themselves in a position where they will be unlikely to fulfill their post-provision responsibilities, if their biological offspring end up needing assistance.

Finally, some work must be done to update the legal framework pertaining to procreation so that progenitors who have non-parental responsibilities can be given some form of legal standing. As it stands, the only way for the law to recognize gamete providers' responsibilities is to broaden the category of 'parent' to include gamete providers, as was done in California in response to *In Re M.C.*<sup>191</sup> and in a case in

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<sup>190</sup> Benatar (1999). op. cit. p. 179.; Lui, S.C, et al. "A Survey of Semen Donor Attitudes ." *Human Reproduction* 10.1 (1995): 234-238. p. 236.

<sup>191</sup> op. cit.

Ontario.<sup>192</sup> However, this solution is far from ideal because, as I have argued, gamete providers ought not to have the same rights to intervene in the rearing of their offspring, or the same responsibility to provide support, as the child's parent(s). The practice of including gamete providers as legal parents leaves open the possibility that gamete providers could be found liable for standard child support payments, which, on my view, would be inappropriate. I further speculate that developing a legal framework for non-parental progenitors would be helpful in resolving questions about custody and support that arise in other reproductive scenarios. For instance, responsibilities arising from pregnancies in one-night-stand cases might be more appropriately treated like gamete provision cases than parenthood cases. Developing a detailed account of these legal responsibilities is a project I hope to take on in the future.

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<sup>192</sup> A.A. v. B.B. et. al. No. (3d) 561. Court of Appeal for Ontario. 2 January 2007.

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## Curriculum Vitae

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#### EDUCATION:

PhD Student, Philosophy, University of Western Ontario (UWO), Supervisor: Carolyn McLeod, Entered Sep. 2010

MA, Philosophy, UWO, 2010, Project Supervisor: Carolyn McLeod, Project Title: "Gamete Donors' Responsibilities to the Products of their Gametes"

BA Honours with Distinction, Philosophy, University of Victoria, 2009

#### AWARDS AND SCHOLARSHIPS

Graduate Research Scholarship, UWO 2014

Graduate Research Scholarship, UWO 2013

Graduate Research Scholarship, UWO, 2012

Graduate Research Scholarship, UWO, 2011

Graduate Research Scholarship, UWO, 2010

Graduate Research Scholarship, UWO, 2009

The Mordechai and Hana Wosk Leadership Award, 2009

Dean's List, University of Victoria, 2005

Dean's Entrance Scholarship, University of Victoria, 2003

#### PUBLICATIONS:

Brandt, R. "Why Disclosure of Genetic Ancestry in Misattributed Paternity Cases Should Be Treated Differently From Disclosure in Adoption and Gamete Donation" *American Journal of Bioethics*, 13 (5):58-60 (2013)

#### PRESENTATIONS:

Brandt, R. Commentary on “Weinberg on Parental Responsibility and Hazardous Gametes” by Andrew Botterell. Canadian Philosophical Association annual meeting, Victoria, 2013

Brandt, R. “Conscientious Refusals and the Arbitrary Exercise of Authority”, International Association of Bioethics biannual meeting, Rotterdam, 2012 (poster)

Brandt, R. “Gamete Donation and Moral Obligation”, Canadian Philosophical Association annual meeting, University of New Brunswick, 2011, Refereed

Brandt, R. “Gamete Donors and Responsibility”, UWO Philosophy Graduate Student Speaker Series, 2011

## **GRADUATE COURSES**

Advanced Topics in Reproductive Ethics, UWO

Newton’s Universal Gravitation, UWO

Introduction to Philosophy of Physics, UWO

20<sup>th</sup> Century Philosophy of Science, UWO

Politics in 17<sup>th</sup> Century England, UWO

Philosophy of Applied Mathematics, UWO

Political Theory (Toleration), UWO

Darwin’s *On the Origin of Species*, UWO

Empiricism in the Philosophy of Science, UWO

Evolutionary Perspectives on Epistemology and Ethics, UWO

Ancient Ethics, UWO

The Problem of Historicity in Biology and Economics, UWO

Gender and Race, UWO

Environmental Philosophy, UWO

Rawls: Old and New, UWO

Game Theory, UWO (audit)

## **ACADEMIC WORK EXPERIENCE**

Researcher, “Let Conscience be Their Guide?” (CIHR funded project, various contracts) 2011-2014

Instructor, “Ethics and Society” UWO, 2012-2013

Research assistant for Dr. Carolyn McLeod, 2012

TA, “Advanced introduction to Philosophy”, UWO, 2011-2012

TA, “Introduction to Philosophy”, UWO, 2010-2011

Grader, “Critical Thinking” UWO, 2009-2010

## **SERVICE**

Editor, Rotman Institute Blog and Social Media Committee (2012-2014)

Rotman Institute Outreach Committee (2012-2013)

Reviewer for The Canadian Journal of Jurisprudence (2013)

Rotman Institute Steering Committee (2012-2013)

Orientation and Welcome Committee of the Philosophy Graduate Students Association (2012-2013)

Ombudsperson, for GTA Union, (2011-2012)

Webmaster for the Philosophy Graduate Students Association (2011-2012)

## **NON-PEER REVIEWED PUBLICATIONS**

Brandt, R. “The Logical Slippery Slope is Neither Logical Nor Slippery.” *Impact Ethics Blog*. Feb. 19 2014. Available at: <http://impactethics.ca/2014/02/19/the-logical-slippery-slope-is-neither-slippery-nor-logical/>

Brandt, R. “The Rasouli Decision: A Response to Arthur Shaffer” *Rotman Institute of Philosophy Blog*. Oct. 23 2013. Available at: <http://www.rotman.uwo.ca/2013/the-rasouli-decision-a-response-to-arthur-schafer/>

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Brandt, R. “Levant’s Veil Reasoning Called into Question”. *London Free Press*. Dec. 30, 2011. Available at: <http://www.lfpress.com/comment/2011/12/30/19182156.html>

## **ACADEMIC AFFILIATIONS**

Resident member of the Rotman Institute of Philosophy

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