University of Southampton

Faculty of Arts and Humanities

Philosophy

Pregnancy, Procreation, and Moral Parenthood

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Thesis for the degree of Doctor of Philosophy

April 2020

University of Southampton

Abstract

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by Teresa Rachel Baron

This three-paper thesis critically assesses certain presuppositions about pregnancy, procreation, and moral parenthood. Novel reproductive practices and technologies have given rise to situations in which forms of parenthood that have historically been coextensional come apart. The papers in this body of work demonstrate that our views of biological parenthood and moral parenthood as individual concepts are influenced by our understanding of the relationships between these forms of parenthood. However, that perceived relationship also shapes our understanding of those individual concepts of parenthood. The meanings we attribute to procreative roles – in particular, the significance we ascribe to pregnancy and childbirth – are influenced not just by our individual experiences and priorities, but more widely shared views about parental rights and parental obligations. In this body of work, I interrogate predominant views of the maternal-foetal relationship in pregnancy, and common assumptions about the concomitance of parental rights and of parental obligations. I aim to show that there is not one straightforward sense in which one becomes a parent, and that parental rights and obligations do not come in neat packages.

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I declare that this thesis and the work presented in it is my own and has been generated by me as the result of my own original research. I confirm that:

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7. Parts of this work have been published as:
    a. Baron, T. (2019), Nobody Puts Baby in the Container: The Foetal Container Model at Work in Medicine and Commercial Surrogacy. J Appl Philos, 36: 491-505. doi:10.1111/japp.12336.
    b. Baron, T. A lost cause? Fundamental problems for causal theories of parenthood. Bioethics. 2020; 00: 1– 7. doi:10.1111/bioe.12719.

Signature: Date: 2 April 2020

Acknowledgements

The work represented in this thesis could not have been achieved without certain people, to whom I am incredibly indebted.

First and foremost, I would like to thank my parents, Jana and Michael Baron, for providing reassurance, inspiration, and wisdom throughout this PhD, for continuing to love me even when stress made me insufferable.

Many heartfelt thanks to my supervisor Dr Elselijn Kingma, and the members of the BUMP research group, whose expertise, advice, and encouragement have been invaluable in finding my path in this project. In particular, I am grateful to Dr Suki Finn for helping me to find my feet at Southampton, and being not only a great mentor but also a supportive and caring friend.

Finally, I would like to thank the friends who patiently listened to my ramblings as I worked on untangling various problems and arguments, and who (perhaps more importantly) provided much-needed happy distraction from this thesis. The last few weeks of my write-up took place under government-mandated quarantine due to the covid-19 pandemic, but I never felt isolated, thanks to the friends who supported me, reassured me, and kept me laughing. Thank you especially to Merel Veldhuizen – you have been my rock, and without you, I would have gone completely mad.

Introduction

In 1986, Baby M became the subject of a custody battle between her birth mother, Mary Beth Whitehead, and intending parents William and Elizabeth Stern, after the former decided to keep the child, reneging on her surrogacy agreement with the Sterns. Though the surrogacy contract was found to be invalid, custody was eventually awarded to the Sterns, and visitation rights granted to the birth mother (Rothman, 1991; Whitehead, 1989).

In 1995, Otakar Kirchner, the father of Baby Richard, finally won custody of his son. He had become embroiled in a custody battle with the child's adoptive parents after finding out that his former partner had arranged the adoption without his knowledge. By the time Kirchner finally won sole care of the child, Baby Richard had lived with his adoptive parents for nearly four years (Shanley, 1995).

In late 2000, Alan and Judith Kilshaw, a couple from Wales, made international headlines after adopting twin girls born in St. Louis, Missouri. The adoption itself might have been unremarkable were in not for the fact that the Kilshaws had found the girls on an online placement service called A Caring Heart, and paid $12,000 for them – but did so *after* another couple (Richard and Vickie Allen, of San Bernardino, California) had paid the same service $6,000 to adopt them (Kizza, 2017, p. 242). The Allens challenged the adoption and accused the Kilshaws of kidnap, and – following a media storm – a British court removed the twin girls from the Kilshaws' custody and had them placed in foster care, eventually to be brought back to St. Louis.

In 2019, a New York couple sued the fertility clinic where they had received IVF treatment, after embryos from a different couple were implanted and gestated by the female plaintiff (Bryant, 2019). The couple were forced to relinquish custody of the resulting twin boys after genetic tests confirmed that the children were matched to a different couple treated at the same clinic.

What do these cases have in common, besides the public outcry and fierce debate to which each gave rise? They centre on an issue at the heart of everyday life: parenthood. Although most people know exactly who their parents are, these contentious cases provide an important lens through which to interrogate notions we often take for granted, including the very concept of parenthood. Such cases force us to consider who has the right to raise a child, and how we ought to decide between competing candidate parents.

Similarly fraught battles have been fought over responsibilities to children. The above cases all concern multiple people claiming rights to the same children, but what do we do when the converse happens, and all parties concerned refuse to accept child-rearing duties? In 2015

and 2016 respectively, Thailand and India passed legislation banning foreign nationals from engaging in transnational surrogacy arrangements in their territories, following large-scale (domestic and international) public outrage over cases in which foreign nationals reneged on their agreements, leaving no-longer wanted children with their birth mothers (Choudhury, 2016, sec. III.a). In one such case, a child (Baby Manji) was left temporarily stateless due to legally indeterminate maternity when the Japanese intending parents of the child divorced and refused to proceed with the arrangement. Further concerns about parenthood have nothing to do with the number of people who want a child, but with the number of children wanted, and the means by which people can acquire them. Prior to Thailand's ban on transnational surrogacy arrangements, a wealthy Japanese businessman acquired 13 children from Thai women – paying each between $9,300 and $12,500 – and won sole parental rights over those children, their birth mothers having signed away their rights as part of surrogacy contracts. If we suppose that surrogacy is a morally permissible means of becoming a parent (though this remains a contentious issue) then each of these arrangements, taken alone, was beyond criticism. However, commentators have criticised the existence of an industry which allows an individual to acquire a theoretically limitless number of children, as long as they have the financial resources to fund such surrogacy arrangements.

Who has the right to raise a child, and who has a responsibility to do so? What do we owe our offspring, and why? And when did this get so complicated?

1. Philosophy of parenthood

The philosophy of parenthood – a burgeoning field of study which spreads across bioethics, social philosophy, and legal philosophy – is concerned with different concepts of parenthood, how they are related to one another, and the means by which one becomes a parent according to these different concepts. If we understand these relations, we can – at least in theory – begin to answer the questions arising from cases like those described above. Philosophers working in this sphere have investigated the relationships between the purely biological aspects of procreation, the social role of 'parent', the activities typically characterised as *parenting*, and moral parental obligations and rights. The content and scope of these obligations and rights, and the means by which they are acquired, have also been fiercely debated. A common thread that runs through this literature is the drive to find universal rules or unifying frameworks that allow us to explain *who* parents are and *what* parenthood entails.

The search for a unifying framework has, especially in recent years (following the development and normalisation of more complex reproductive technologies), been motivated by the seeming contradictions which appear when we compare different reproductive practices and the different moral intuitions to which they give rise or legal treatment they receive. Why,

for example, should we believe that sperm donors have no parental obligation to their genetic offspring, but that the man who unintentionally impregnates his female partner during a one-night-stand does? Since their role as *biological* parents is identical, we need to identify the relevant difference that makes one morally responsible to the child and the other not; alternatively, we have to conclude that both have identical parental rights and responsibilities. Likewise, we may ask what philosophically significant difference, if any, there is between a surrogate mother who gestates an embryo made out of the gametes of the intending parents, and a single woman who gestates a donor embryo with the intention of keeping the child. Again the biology is the same – but does the difference in intention affect the distribution of parental rights and obligations? For both of these cases, the relevant question is one about the relationship between *biological* parenthood and *moral* parenthood. If people can indeed stand in the same biological relation to a child and yet have different moral parental rights and obligations, then what makes this difference?

Similar questions arise when we turn our attention to parenting as an activity or a type of relationship between an adult and a child. We may question who the parent of a child is in cases where parental labour (daily childcare, education, discipline, nurture, and so on) is passed back along what Hochschild (2006) describes as the 'nanny chain': does carrying out such labour in the care of a child make one a parent, or is such work only *parental* work when carried out by a parent otherwise defined?

To describe someone as the parent of a child can thus mean a variety of things. In some cases, we use 'parent' as a concept understood as picking out a natural property, 'thought to obtain through some kind of biological or natural process' (Ettinger, 2012, p. 245). To be the biological parent of *x* is to stand in a particular kind of biological relation to *x.* This relation is presumed to obtain independently of social reality, although (as I demonstrate below), the way in which we define and apply this concept is far from independent of social reality. In other cases, we appear to use the word 'parent' to denote a functional concept, referring to those who perform the (social) parenting role. In this sense, Ettinger suggests, it is completely reasonable to say that Tarzan's parents were apes (at least from the perspective of ape society) (p. 245). Parenthood according to this concept is a socially constructed role and status, dependent on recognition by others; it is not sufficient to perform the work generally considered *parental* work in order to be a social parent, since if that were the case 'then many nannies and baby-sitters would, counter-intuitively, be the social parents of the children they watch over' (p. 246). Rather, for someone to be the social parent of a child, it is necessary to stand in a certain relationship 'that reflects, in part, the values and expectations of their society' (ibid). Unlike biological parenthood, social parenthood may therefore have a different form in different historical or cultural contexts.

We may also distinguish individuals recognised as having a certain legal status with regard to a child. Usually this status is defined in terms of certain rights and responsibilities, enshrined in law, governing the relationship between those individuals and specific children. For example, an individual's legal (or 'legitimate') child will, depending on the jurisdiction, have certain inheritance rights regarding their estate, and citizenship rights depending on the citizenship of the parent. Other legal rights and responsibilities that make up this notion of parenthood include those associated with the care of the child, and govern not only the parent-child relationship but the relationship between the parent and others who may contribute to the care of the child. For example, a legal parent has the right (and responsibility) to make certain decisions on behalf of the child, corresponding to the child's right to be cared for appropriately. Those in an institutional role (such as teachers) sometimes act *in loco parentis* when they make these decisions on the child's behalf – that is, they have a legal responsibility to take on some of the functions and duties of a parent. The legal concept of parenthood is sometimes difficult to tease apart from the social notion of *parent* described above, since those who are recognised by the law as the parents of a child are generally those recognised by the relevant society (or at least that portion with the power to shape the law) as the parents. However, these two ideas of parenthood may (and frequently do) still come apart: imagine that Adam and Beatrice move in together when her son Connor is only a few months old. Two more children follow; Adam is the social parent of all three, and few people know that Adam is not Connor's biological father, or that Connor's siblings are biologically half-siblings. However, Adam and Beatrice never had the relevant paperwork updated, and so (even decades later), Adam will not be Connor's legal father.

Finally, some philosophers have posited a parenthood concept defined in moral terms, under which useage 'being a parent' means that one stands in a certain *moral* relation to a child, and that one is the bearer of specific moral rights and responsibilities regarding that child (see for example Brandt, 2016; Fuscaldo, 2006; Kolers and Bayne, 2003; Millum, 2010). As I will demonstrate in greater detail below, this concept of parenthood cannot be cleanly separated from the others outlined here; those moral rights and responsibilities characterised as *parental* are so characterised partly because we commonly ascribe them to those paradigmatically recognised as parents on one or more senses of the word. For example, philosophers may consider a moral right or duty to be a specifically *parental* right or duty because either the social role of parent, or the biological parenthood relation, gives rise to that right or duty. At the same time, because moral parenthood picks out the bearers of (moral) parental rights and obligations directly, it is at least possible in principle to be a biological, a legal or a social parent without being a moral parent – and vice versa.

We therefore have four different senses of parenthood to work with: social, biological, moral, and legal parenthood. The ways in which we understand and define these concepts are highly interrelated. In many cases, they coincide, and the biological parents of a child will also have and fulfil moral parental obligations to their children, and have their parental moral rights met, as they are both legally and socially recognised as parents, and perform (and are allowed to perform) the social role of parent in raising that child. However, it is also often the case that they do not coincide. For example, the legal status of adoptive parents, and their recognition as social parents, is not generally undermined by the absence of a biological relationship. Likewise, the legal and social status of parents who procreate by means of assisted reproductive technologies and/or donor gametes is rarely questioned – though, as I show in this thesis, things can get complicated. One may also be the social parent of a child without being a biological or legal parent (as in the case described above) or be both the biological and legal parent of a child without being a social parent (as in the case of 'dead-beat' parents) or indeed be the biological parent without being either a legal or social parent (as in the case of 'one-night-stand' fathers, or birth parents who give up their offspring for adoption). We might explain the varying discordance of kinds of parenthood in these situations by appeal to the operation of laws or social norms regulating family structures. However, many philosophers have made the stronger claim that moral notions of parenthood (sometimes referred to as 'rightful' or 'natural' parenthood) can also come apart from biological, social, and/or legal parenthood in certain circumstances.

The three papers presented in this thesis explore, in different ways, the moral significance of modes of reproduction for biological and moral parenthood. In the rest of this introduction, I discuss the ways in which the relations between social, moral, biological, and legal parenthood have been understood and investigated in the academic sphere and in the public imagination. I then assay the approaches taken by philosophers in identifying those with moral parental rights and obligations towards children, and explaining the grounds of those rights and obligations. I will also discuss some intersections between philosophy of parenthood and reproductive ethics. These fields of research overlap and interact to a significant extent, though neither is a direct sub-set of the other. Reproductive ethics is (broadly) concerned with the permissibility of various reproductive practices – both those currently available and those which might become possible in the future. These include surrogacy, adoption, gamete donation, ectogestation (the use of artificial wombs – which is not to be confused with ectogenesis, a term which also covers the use of IVF and neonatal incubators), and gametogenesis (the production of artificial gametes). Philosophers working in this sphere have also addressed ethical issues pertaining to practices that allow us to avoid reproduction, such as abortion and the withdrawal of consent for use of frozen embryos. The ethical questions

prompted by consideration of these practices frequently involve questions about the distribution, content, and moral weight of rights and obligations, some of which are widely characterised as parental.

One example of the intersection of reproductive ethics and philosophy of parenthood is the treatment of pregnant and birthing women, which I discuss in Paper #1. Widespread views about the nature of the maternal-foetal relationship, together with normative ideals of motherhood, underpin certain attitudes towards pregnant women. In particular, they go some way to explaining the ways in which maternal welfare is consistently devalued for the sake of foetal outcomes. I argue that, where gestation is seen as generating parental obligations (as in the case of most pregnancies), extreme restrictions and impositions on pregnant and birthing women are justified by appeal to their parental obligations in combination with a normative ideal (and expectation) of near limitless maternal self-sacrifice. However, where gestation is *not* seen as generating parental obligations, but is understood instead as a service rendered (in the sphere of commercial surrogacy), pregnant and birthing women's rights are nonetheless often likewise restricted. Certain approaches to accounting for parental rights and obligations are incompatible with certain reproductive practices, in the sense that (for example) the concept of surrogacy requires us to reject the principles underlying gestationalist accounts of parental rights.

Conclusions about the grounds, distribution, content, and scope of parental rights and/or duties may therefore inform and direct inquiries in reproductive ethics, and vice versa. When applied philosophers and ethicists question the legitimacy and moral permissibility of practices such as surrogacy, abortion, gamete donation, and adoption, relevant considerations often include the parental rights and obligations of actors and stakeholders involved, and the means by which these rights and obligations are acquired. Some objections to gamete donation, for example, are based on the view that those who donate sperm or eggs are shirking parental obligations to their genetic offspring (Brandt, 2017; Velleman, 2008; Weinberg, 2008). At the same time, philosophers constructing accounts of parenthood frequently appeal to positions in reproductive ethics as providing reasons for or against certain accounts. For example, those who begin from the assumption that practices such as gamete donation and adoption *are* permissible may argue that accounts of parenthood according to which all progenitors have parental obligations to their offspring should be rejected, since they produce undesirable conclusions in light of that presupposition (Brake, 2010; Porter, 2014).

2. What is a parent?

Accounts of moral parenthood – that is, of the content, scope, and acquisition of parental rights and parental obligations – constitute the bulk of the literature in the philosophy of parenthood.

Most of the problem cases that have motivated work in this area of study are fundamentally about rights and obligations to children. However, as noted above, we cannot understand or evaluate these accounts of moral parenthood independently of other concepts of parenthood. Those problem cases are, by and large, situations in which these four concepts of parenthood come apart from one another. As the below demonstrates, these concepts can only be fully understood in each other's company. Before we consider moral parenthood in section 2.4, I will therefore explore in greater detail the other three concepts of parenthood. Although we may grasp the general target concepts for each, delving into the relationships between these three (and of course, considering each alone to the extent that this is possible) reveals philosophically interesting ambiguities.

2.1. Biological parenthood

Let us begin with biological parenthood. In theory, this concept can be applied equally to other species, but we tend not to describe animals as 'parents' or 'children' (these words carrying social connotations that make them more appropriate to discussion of humans) using instead words such as 'sires', 'dams', and 'young' (which likewise carry connotations making them inappropriate for use in describing humans, except perhaps for humorous effect).[1] So what is it to be a biological parent, and how much is our understanding of this concept tied up with our views of (a) reproductive biology, and (b) parenthood more generally? The answers to these questions vary to a noteworthy degree, within and across different academic and non-academic contexts. In Western society (and in many others) presumed biological parenthood tends to come with social, legal, and moral weight; inconsistency in our use of the term is therefore likely to cause trouble. Below, I attempt to tease out the various uses and connotations of 'biological parent', and suggest some reasons for the disparity. I do not argue that any one understanding of the concept is 'correct' – on the contrary, I suggest that the wise scholar will avoid the term entirely if at all possible.

As stated in the introduction, biological parenthood is generally understood as a natural property or relationship, obtaining independently of social reality. As an initial observation, we can note that the concept of biological parenthood is used almost universally to refer (only) to initial reproducers. We routinely distinguish 'biological parents' from adoptive/foster parents, wet nurses, and others who rear children but who did not procreate them, despite the fact that

[1] The rich variety of rearing practices in the animal kingdom – for example, birds unwittingly raising the offspring of cunning cuckoo neighbours, extended 'parenting' among pack animals such as hyenas, etc. – may give rise to questions about social parenthood in animals. However, given the distinction between the practice of parenting offspring and social parenthood (the latter involving a certain kind of recognition by others in one's community and participation in specific social norms) it is probably reasonable to assume that most of the discussion of social parenthood in this thesis applies only to humans.

many of the processes and relationships involved in childrearing – particularly of very young children – are shaped by biology, such that a clear line cannot be drawn between the social and biological. Classic examples of this include breastfeeding, imprinting of infants on their early carers, the response of a newborn to the gestational mother's heartbeat and voice, and the intimate dependence of newborns on carers for warmth, shelter, etc. as a result of the stage of development at which human infants are born (in comparison with newborn offspring in other mammalian species). These are neither straightforwardly social nor biological processes. However, not all reproducers will rear their children in *any* way; some disappear from the picture well before their child is born, or shortly afterwards. The concept of biological parenthood may thus perform a function in allowing us to identify people as biological parents *whether or not* they rear their children.[2]

Until relatively recently, all mammalian biological parents produced genetically related offspring, using their own gametes and, in the case of female parents, their own gestating body.[3] However, the introduction of reproductive technologies enabling ova (eggs) to be removed, fertilized outside the body, and implanted artificially, has allowed the disaggregation of the genetic and gestational aspects of the female reproductive role in mammals. This has in turn resulted in the advent of new reproductive practices: egg donation, *in vitro* fertilisation (IVF), and so-called 'surrogate pregnancy'. Hereafter I refer to those individuals who provide gametes (eggs/sperm in humans) to produce genetically related offspring as *progenitors*, and those individuals who gestate and give birth to offspring as *gestators*. In delving into the concept of biological parenthood, and its relevance for this area of study, we find significant disagreement over which of the disaggregated female roles is the relevant one for being a biological parent, or whether both count. If the latter, then the division of the maternal reproductive role between two women results in (at a minimum) three biological parents.

Consideration of philosophical work, legal scholarship, and public discourses indicates a widespread understanding of the concept of biological parenthood that distinguishes progenitors (of both sexes) as biological parents, to the exclusion of (non-genetically related) gestators. Many philosophers use 'genetic parents' and 'biological parents' interchangeably, use the latter term only to refer to progenitors, or explicitly distinguish between 'biological parents' and 'gestational mothers' (see for example Botterell, 2016, p. 749; Brandt, 2017, p. 665;

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[2] Of course, the presupposition that breastfeeding falls more clearly into the category of rearing than reproducing may well be rooted in social norms and expectations – for example, historical acceptance of the outsourcing of breastfeeding to wet nurses, contemporary norms allowing an infant to be adopted before it has been weaned, widespread use of formula milk in place of breastfeeding, and so on.

[3] Asexual reproduction (for example, cell replication through mitosis) may produce cells identified as 'parent' and 'daughter' cells, but very little of the debate with which I am concerned in this thesis applies to parenthood so construed.

Mathison and Davis, 2017, p. 314; Silver, 2001, p. 654; Velleman, 2008, p. 253; Weinberg, 2008, p. 169) suggesting that the former refers to progenitors alone. The presupposition that only progenitors are biological parents (and the additional presumption that they therefore have the greatest (or even sole) claim to the rights and status generally associated with biological parenthood) also manifests in public discourse. In reporting a lawsuit by a couple whose frozen embryos were mixed up with those belonging to other couples, *The Guardian* wrote 'New York couple is suing a Los Angeles fertility clinic after woman gives birth to other couples' babies' (Bryant, 2019). A BBC article with the title 'The girl with three biological parents' describes the situation of a child born through mitochondrial DNA (mtDNA) donation and cytoplasmic transfer, and 'biological parents' and 'genetic parents' are used interchangeably in the article (Pritchard, 2014). No mention is made of the children born of gestational surrogacy or ovum donation, in which there are indisputably three people involved in the biological process of reproduction.

We may therefore add to our initial observation (that the concept 'biological parent' is used to refer to initial reproducers) the further observation that there is a widespread tendency to understand the concept 'biological parent' as referring only to *genetic* reproducers. However, this tendency is not universal. A handful of scholars (notably Feldman, 1992; Gheaus, 2012; Mulligan, 2020) explicitly recognise gestators as biological parents even in the absence of gamete contribution; Silver also suggests in passing that there are now at least three possible types of biological parents: alongside biological fathers, we have 'gene-moms' and 'birth-moms' (1998, p. 156).

At a basic level, there are two possible explanations for the discrepancy in use of the concept 'biological parent'. The first is that some people understand this concept as applying exclusively to progenitors, whilst others believe that gestation shares (to a sufficient degree) whatever features of gamete contribution characterise biological parenthood. Let us call this the *Scope* reason for divergence in use. The second possible explanation is that people treat the concept flexibly, or (perhaps because of the specific issue they are concerned with) do not consider the implications of using 'biological parent' one way or another. Let us call this the *Ambiguity* reason. *Ambiguity* may well explain the use of 'biological parent' interchangeably with 'genetic parent' in some contexts; if we assume that the function of the concept 'biological parenthood' is indeed to pick out reproducers, then perhaps one reason it is most often used to pick out progenitors exclusively is that gamete contribution is the lowest common denominator for reproducers. As noted above, for most of the history of the human race, all reproducers were progenitors; gestation in the absence of gamete contribution is a relatively recent development. Now that the maternal reproductive role can be (and is, increasingly often) divided, widespread use of 'biological parent' to refer to progenitors might be put down to a general impulse

towards homogeneity in use of the concept.[4] Where the basic explanation is *Ambiguity*, we might well find that those who use and understand the concept as interchangeable with 'genetic parent' will happily alter their use when confronted with the question 'isn't gestation a kind of biological parenthood too?' The journalist marvelling at mtDNA transfer enabling a child to be born with genetic material from three different individuals will (understandably) be chiefly concerned with the genetic elements of reproduction, and of course with using terminology that can be understood by a non-expert public audience – the wording of the BBC title mentioned above does not necessarily signify a belief that gestational mothers are *not* biological parents in the absence of gamete contribution.

This is not to say that the use of 'biological parent' to refer specifically to progenitors, or to differentiate progenitors from gestators, is unproblematic where due to *Ambiguity.* As expounded below, the social and legal implications of being recognised as a biological parent are significant enough that disparity in our understanding of the concept is a problem, even if the reason for a particular useage is simply uncritical conformity to widespread trends. These trends still reveal pervasive presuppositions; in this area, Rothman argues that 'The language we use and the assumptions it embodies are the perspectives of men' (1991, p. 1604). That the default understanding of 'biological parent' is tied to progenitors, rather than to gestation and childbirth, tells us something significant: potentially (as discussed further below) that our understanding of biological parenthood is strongly weighted to a male perspective, with regard to both (a) what matters about reproductive biology, and (b) what matters about parenthood.[5] Use of the term 'biological parent' when what the speaker means is 'progenitor' or 'genetic parent' is therefore rightly subject to critique even when explained by *Ambiguity*. On the other hand, there are instances in which the disparity in use of 'biological parent' is clearly explained by *Scope*, and these are perhaps more philosophically interesting.

What does this kind of disparity look like? The biological parenthood of male progenitors is never explicitly defended, or indeed ever called into question – the genetic father of a child is considered indisputably a biological parent. Where the biological parenthood of female progenitors is presented as potentially questionable, scholars have generally been quick to state that (on a principle of basic parity) female progenitors who do not gestate their offspring must still logically be on a par with male progenitors (see for example Austin, 2004; Hall, 1999; Kolers and Bayne, 2003). The clearest disagreement concerns the biological

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[4] Albeit homogeneity from the male perspective – I discuss this point later in this section.

[5] Analogously, it has been pointed out that the use of 'surrogate' to refer to the woman who gives birth to a child – rather than the individual who raises the child – makes clear presuppositions about the nature of parenthood that underpin the practice of surrogacy. Ekman argues 'words mirror power: the 'real' mother is the one with economic resources, while the 'false' mother has only her own body' (2013, p. 154).

parenthood status of non-genetically related gestational mothers. Some scholars make clear their belief that gestation is not a form of biological parenthood in the absence of gamete contribution, for example by means of analogies between gestational surrogacy and baby-sitting, nursing, or foster-parenting (see for example Abegg, 1984, p. 139; Krimmel, 1983, p. 35). Similar comparisons appear in legal contexts – in one custody battle between parties to a surrogacy agreement, precisely this kind of language served to dismiss the gestational mother's claim to parental rights: '[the gestational surrogate]'s relationship to the child is analogous to that of a foster parent providing care, protection, and nurture during the period of time that *the natural mother*, Crispina Calvert, was unable to care for the child' (*Johnson v. Calvert*, 1990, emphasis added).

So what underpins *Scope* differences in our understanding of biological parenthood? In some instances, the motivating reasons seem to be more about reproductive biology than about (broader concepts of) parenthood. Abegg, for instance, claims that there is 'continuity of organic material' between progenitors and offspring as a result of their contribution of genetic material, producing the fertilised egg (p. 139). He adds: 'This type of continuity of material must be distinguished from that of the wet nurse or from that of the surrogate mother, who grows in her womb an embryo not derived from her egg' (ibid). However, gestation involves the transfer of a vastly greater quantity of bodily materials from the gestator to the foetal body than it receives from the male progenitor (or indeed the female progenitor, where this is a distinct individual from the gestator). As Lewens notes, the gametes the progenitors provide will constitute 'only a very small fraction' of the material composition of the later person (2015, p. 83). For example, a key element of foetal immune system development is the movement of maternal cells across the placenta to foetal lymph nodes; these maternal cells cause the production of regulatory T cells by the foetus, preventing immune responses which would attack the maternal cells (Mold et al., 2008).

Some philosophers have also described the fertilised gametes as not only the material but *causal* origin of the child or as a 'blueprint' for the child's development (see for example Abegg, 1984, p. 138; Nelson, 1991, pp. 53–54; Wertheimer, 1971, p. 79). However, given the complex interaction between embryo and uterus necessary for successful implantation (Matsumoto, 2017), it seems unreasonable to characterise the fertilised gametes as the singular causal origin of the child. So what about the blueprint view – do genes alone direct development? Although some genes, such as the gene for Huntingdon's, have 'flat norms of reaction across known environments' – that is, they have the relatively similar effects regardless of environment – such genes are now understood to be the exception (Lewens 2015, p. 105). Moreover, we can say the same of certain environmental factors, which have invariant effects (for example, thalidomide). In reality, the child's physical characteristics will be determined by a

combination of their genes and the environment provided by the gestator, including the behaviours, diet, sleep pattern, and so on of the gestational mother. These will be further influenced post-birth by factors such as breast-feeding, home environment, and so on.

A genetic parent may identify themselves as the reason for a child's having brown eyes, but characteristics such as height, intelligence, propensity to allergies, etc. have no single cause, and are influenced by both the gestational contribution and the genome (and, in the case of many phenotypic characteristics, by environment influences following birth). An infant's genome certainly cannot be reverse-engineered from a study of their physical characteristic as a building's blueprint can be reverse-engineered from observation of the building. In light of our acknowledgement of genes, epigenetic factors, and environmental factors as mutually interacting, the consensus position of biologists and developmental systems theorists is that gestation does not merely constitute the incubation of a child whose developmental pathway is already determined, but rather a shaping of that development. Genes express themselves relative to the uterine environment during gestation (Feldman, 1992, p. 98). But it is now widely understood that every trait is a product of both gene and environment, and that both can be seen as information carriers: we might as well say that the gestational contribution expresses itself relative to the foetus' genes.

In explaining some *Scope* disparities in our views of biological parenthood, we might therefore point to misunderstandings about the physical processes involved in reproduction in explaining the perceived hierarchy between the genetic and gestational elements of reproduction. As described above, in some literature on philosophy of parenthood, fertilised gametes are described as the material/causal origin of the child and/or the blueprint for its development; in the same literature, gestation is often understood as (merely) providing a 'container' for that development to take place.[6] I suggested above that this kind of *Scope* disparity may seem to be more about reproductive biology than about (broader concepts of) parenthood. However, recalling the point made by Rothman, I suggest *Scope* disparities would arise even if we found universal agreement concerning the facts of reproduction, and the causal relationships, material intertwinement, dependence etc. involved in gestation. An understanding of biological parenthood as defined by genetic connection may indicate a particular view of the broader concept of *parent*, shaping the user's understanding of *biological parenthood*. Rothman describes this view as 'the dismissal of the significance of nurturance' – in patriarchal thinking, it is a child's origin, framed in terms of gametes ('seeds') that defines their parenthood and personhood. Under such a system of thought, the essence of a person 'is there

[6] For a detailed discussion of the foetal container model of pregnancy, see *Nobody Puts Baby in the Container: The foetal container model at work in medicine and commercial surrogacy* (hereafter Paper #1).

when the seed is planted… [but] the place in which the seed grows does not really matter' (1996, p. 1245). She argues further that Western society is 'a modified patriarchy' insofar as 'to the extent that women have seed like men, then they can be parents like men' (1991, p. 1602).

Rothman is not alone in her critique of the language we use to discuss reproduction and parenthood. Other feminist scholars have likewise argued that the primacy of genetic connection in some public and academic discourses on parenthood has deep roots in patriarchal thinking, disparaging the significance of gestation and childbirth, and frequently mischaracterising these processes. Ekman claims (2013, p. 159) that the primacy given to genetic parenthood is a long-established patriarchal trend, giving an example from the classics: in Aeschylus' *Oresteia,* the god Apollo is depicted arguing that the woman who bears a child is 'not the true parent' (Aeschylus, 1996, p. 136). Rather 'the male is parent; [the woman] for him, as stranger for a stranger, hoards the germ of life' (p. 137).

Scope disparities in our understanding of biological parenthood might thus be explained, at least partly, by differences in views of parenthood (more broadly), as well as by differences in our knowledge and valuing of various reproductive roles. We need not make the claim that these differences reflect patriarchal thinking *per se* – we can appeal to the more minimal claim that people's understanding of these concepts is shaped by their own experience and interests (including the reproductive roles available to them). Compared with female partners considering use of donor eggs, male partners faced with the use of donor sperm are described by a family therapist as 'much more attached to these ideas of ownership and [the child being] '*mine*', and much more tied to the genetic connection in terms of what it means psychologically or what it means emotionally' (Fetters, 2018). One reason for this difference 'may be that it's the female partner who has a biological connection to the child, through pregnancy' (ibid). An extensive literature documents and justifies the desire for genetically related offspring, as well as expounding the rights and responsibilities of progenitors. For example, Rulli gives no fewer than eight separate reasons why people might desire a genetically related child, including physical resemblance, psychological similarity, and as a symbol of immortality – 'as a way of transcending their own finite lives' (2016, p. 688). Mertes also suggests that 'the idea that a couple's genomes are mixed together into one new individual is a romantic thought' (2014, p. 746). There is a widespread presumption in Western society that couples who want children should want genetically related children, and therefore that those who experience fertility problems should *first* attempt to reproduce through IVF or other medical interventions, or by means of surrogacy, and only consider fostering or adoption as a last resort (Fleischer, 1990;

Sandelowski, 1991).[7] However, according to a study of women having children by means of surrogacy, the perceived importance of genetic connection for would-be mothers varies significantly depending on whether they are *able* to contribute their own gametes (van den Akker, 2000). A widespread concern with genetic parenthood, coupled with a general wont to interpret concepts like 'biological parent' in accordance with personal interests and experiences, might therefore go some way to explaining *Scope* disparities in understandings of biological parenthood.[8]

In light of this, it is unsurprising that the concept of biological parenthood is used differently in literature on (for example) surrogacy, compared with literature on (for example) gamete donation. Our view of reproductive practices, and parenthood in relation to those practices, is not formed in a vacuum, but in light of their stated purpose. As noted above (and as discussed in more detail in Paper #1) academic and non-academic discourses in support of surrogacy tend to avoid characterising gestation as a form of biological parenthood – or indeed, any type of parenthood at all – presenting the practice instead as a means by which *others* can become biological parents. This is often done through the use of language which describes the surrogate mother as a container for someone else's offspring – for example, an 'incubator', 'oven', 'hatchery', or 'plumbing' (Anderson, 1990, p. 83; Teman, 2010, p. 33). Given the associations between biological parenthood and social, moral, and legal concepts of parenthood, it is not surprising that work supportive of commercial surrogacy demonstrates this understanding of biological parenthood. However, this understanding comes into conflict with that of individuals who hold a different perspective; Rothman tells us that 'From a woman's perspective, every woman has her own child. We do not bear the children of other people. We do not bear our husband's children. We do not bear a purchaser's children' (1992, p. 1607).

The problem, then, is not just discrepancy in our understanding of this crucial concept, but the fact that this discrepancy has significant social and legal consequences. Surrogacy is an issue regarding which the predominance of certain understandings of biological parenthood has played a significant role in shaping policy and legal rulings. Here, the parental rights of progenitors are typically privileged on the basis that (a) they are (perceived to be) the child's biological parents and (b) biological parenthood is associated with some kind of natural or privileged claim to legal/social parenthood. An oft-quoted example is the judgement carried in

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[7] It is worth noting here that the bureaucratic obstacle course that would-be adoptive parents are often forced to run, at least in the UK, is almost certainly a contributing factor where this expectation is concerned.

[8] Differences in personal interests and experience may also explain the gender distribution of philosophers who defend gestationalist accounts of moral parenthood and/or who explicitly characterise gestation as a form of biological parenthood, and philosophers who defend geneticist accounts and/or who use 'biological parents' to refer only to progenitors.

the custody case *Smith & Smith v. Jones & Jones*, in which the court ruled against the claims of the gestational surrogate mother, on the grounds that 'The donor of the ovum, the biological mother, is to be deemed, in fact, the natural mother of this infant, as is the biological father to be deemed the natural father of his child' (see Macklin, 1991, p. 9). The gestational mother is not considered a biological mother, and so the legal and social significance of biological parenthood – in this case, to be considered the 'natural' mother of the child on a par with the genetic father – is denied her. What is at stake is not just the way in which the concept 'biological parent' is understood, but how we understand the relationship between this and other concepts of parenthood, and the way in which 'words mirror power' (Ekman 2013, p. 154).

So are gestators and progenitors all biological parents, or does this concept only apply to the latter (where gestation is separated from gamete contribution)? There is no straightforward answer to this question. Certainly the question of who is a biological parent is not simply a question of correctly understanding scientific terminology – our current knowledge of reproductive biology cannot give us a definitive answer. If we were concerned with primitive forms of life, biological parenthood would be a simple matter: all biological parents would be progenitors, and there would be little else to procreation (though, as mentioned above, we would then be unlikely to speak of 'parents'). However, the question of who is a biological parent becomes incredibly complex when we introduce forms of assisted reproduction and when we consider the undeniably basic biological input of nurturing, feeding, and bonding for reproduction. Whilst 'biological parenthood' is presumed to refer to a relationship that obtains independently of social reality, the matter of *which* relationship (or relationships) we use this concept to pick out is very much dependent on our views of both reproductive biology and parenthood more broadly. Whether an individual is recognised as the biological parent of a child carries significant social, legal, and moral weight, and this weight often directs the way in which the concept is used and understood. Nevertheless, as I will demonstrate in more detail in sections 2.2 and 2.4, those characteristics of reproduction taken to be morally/socially significant are neither exclusively present in reproduction, nor universally morally/socially significant.

It may be that some work in bioethics and applied philosophy benefits from the use of a concept of biological parenthood. However, when considering moral parenthood, especially with regard to practices such as surrogacy (where any difference in the moral significance of gestation and gamete contribution is particularly relevant), the above considerations prompt the use of more specific language. Whilst the terminology I have used here ('progenitor' and 'gestator') may seem awkwardly clinical, there are likely to be fewer moral/social connotations attached to this language than to the language of biological parenthood. It may also be more appropriate to refer to 'genetic parents' and 'gestational parents' than to rely on the concept of

biological parenthood. If we do use this concept, the problems expounded in this section should prompt us to be very careful in defining our terms. However, for the purposes of the current discussion, I shall continue to use the term 'biological parenthood' where that is the term used in the literature discussed, in order to avoid presuming that I can divine intended meanings where these are ambiguous.

2.2. Social parenthood

To note – as we did at the end of the previous section – that presumed biological parenthood carries social and legal value is not to say that biological parenthood is reducible to social parenthood, or vice versa. Adoption and step-parenthood immediately illustrate the way in which the two can come apart. Social parenthood, as characterised by Ettinger, is 'a complex function of intentions, actions, and emotional states… both defined and constrained by social norms' (2012, p. 243). One common aspect of social parenthood is *parenting* – that is, carrying out the work of raising a child within the context of a particular kind of intimate relationship. However, parenting is itself insufficient for social parenthood, since 'if that were the case then many nannies and baby-sitters would, counter-intuitively, be the social parents of the children they watch over' (p. 246). Rather, social parenthood 'entails that parent and child stand in an interlocking relationship that reflects, in part, the values and expectations of their society' (ibid). Social parenthood is therefore a complex normative concept, rather than simply a descriptive concept directly reflecting the work of parenting children; one must be recognised by others in one's society as occupying this role in order to be the social parent of a child, and one may be recognised in this way whether or not one carries out daily childcare, discipline, and so on.

The general expectation that biological parents are also social parents means that the way in which biological parenthood is understood in a particular social context is part of Ettinger's 'complex function'. In short, the way in which we understand biological parenthood informs the way in which we understand social parenthood. This complex relationship between social and biological parenthood has been interpreted in various ways by scholars in the field of philosophy of parenthood. The difficulty of understanding these concepts independently of one another might lead us to believe that, as Page suggests, one is 'parasitic' on the other. He argues that 'adoptive parenthood is modelled on natural parenthood' and that we cannot imagine how 'purely' social parenthood – that is, adoptive parenthood – could be understood independently of 'the established patterns and practice of parenthood grounded on the physical relation' (1984, p. 201). The clearest problem with this line of thought is that what Page seems to characterise as 'natural parenthood' is neither biological parenthood (as defined in 2.1) nor social parenthood, but rather the longstanding *association* of the two. This relationship is, as

Brake puts it, a 'malleable' one, dependent for its form on social and legal conventions that determine who is eligible to parent a child, and who we consider obliged to do so (2010, p. 165). Consider, for example our changing attitudes towards, and expectations of, men who father children out of wedlock.

Here, we must note the interdependence of social parenthood and moral parenthood – to be socially deemed a parent is to be subject to normative expectations. For example, as Anderson puts it, 'pregnancy is not simply a biological process but also a social practice' (1990, p. 81) – a visibly pregnant woman will often be expected to show concern for her foetus and behave in what is considered an suitably maternal way; emotional distance or perceived indifference to her 'bump' may give rise to disapproval. Morally loaded social norms also surround genetic fathers, who 'are expected to have a certain attitude toward their genetic children, whether or not they live with the gestational mother or have ever met the child' (Kolers and Bayne, 2003, p. 235). These social norms and the moral expectations with which they are heavily bound up go hand in hand in explaining the censure to which society often subjects 'dead-beat' fathers. Such individuals are social parents to the extent that they are recognised by others as parents, even if they are considered sub-standard parents. Here, however, it becomes difficult to draw a clear line between recognising the empirical fact of an individual's biological parenthood, and recognising them as occupying the social role of 'parent'. Further, we may note that the intertwinement of bearing and rearing children has historically been significantly greater for women than for men, the latter having greater freedom to abandon or transfer their offspring to others. As Shanley points out, the common law granted a man complete authority over any children born of his wife while freeing him of any parental responsibility of those sired out of wedlock, well into the nineteenth century (1995, p. 67). In modern societies, men and women have more symmetrical legal power to exit the parental role, but, as Brighouse and Swift note, 'more men than women who abandon their children are able to find ways of doing so that avoid social stigma' (2006, n. 28).

Whilst it seems that we can recognise a social concept of parenthood, this varies across social contexts, partly because of divergences in understandings of the relationship between biological parenthood and social parenthood, and partly because of divergences in broader social structures. Western views of social parenthood are quite firmly tied to a tradition of two-parent families and the connection of marriage and parenting (discussed further below), but we find significant variation in family forms and associated understandings of social parenthood in other (especially African and Oceanic) societies. For example, Brake states that a child's uncle takes 'the male parental role' in some matrilineal societies (2010 p. 164). Of course, when considering these cultural and historical differences in the social concept of parenthood (and its relationship with biological parenthood), we run the risk of imposing our own understanding of

this concept on different structures, and overlooking distinctions between parenthood on the one hand, and kinship relations more generally on the other hand. Within predominantly Islamic societies, there are firm social prohibitions against marrying someone with whom one shared a 'milk-mother' – that is, against marrying someone who was breastfed by the same woman as oneself (Guindi, 2018, pp. 178–179). The taboo against marrying a 'milk-sibling' is often explicitly compared with the taboo against marrying genetic siblings, a taboo likewise observed in these cultures (Parkes, 2001, p. 5). It might therefore be tempting to compare this to the (genetic) incest taboo predominant in Western societies, and to extrapolate the belief that breastfeeding is considered a form of biological parenthood in societies that observe 'milk kinship'. However, this line of thought presupposes (a) that social parenthood is understood in the same way in both contexts, and (b) that the relationship between social parenthood and biological parenthood functions likewise in both. Similarly, in those matrilineal societies to which Brake refers, a woman's brother may perform the kinds of childrearing tasks we expect a woman's spouse to perform according to Western models of parenthood, but we cannot assume on this basis that he is therefore a social parent.

Much as established for biological parenthood in 2.1, then, there is not a straightforward answer to how exactly we can describe or account for social parenthood in a given social context. Even within these contexts, there is clearly disagreement over certain aspects of social parenthood – for example, normative disagreement over the relationship between social parenthood and *moral* parental rights and obligations. This relationship is at least partly defined by means of additional (social or legal) rules about marriage, the differing status of men and women, and extended kinship structures.

2.3. Legal parenthood

Let us now turn to legal parenthood. Of the four concepts of parenthood addressed here, this one is perhaps the most straightforward to delineate. Legal parenthood is just whatever the law determines. However, legal parenthood is frequently defined by appeal to biological and social facts, and to further legal structures, such as the institution of marriage. For example, the legal status of those who adopt a child is (at least in UK legislation) explicitly defined by reference to biological parenthood: 'The child who is the subject of a parental order is to be treated in law as if born as the child of the persons who obtained the order, and not as being the child of any other person' (The Adoption and Children Act 2002 s67[9]). This might seem to enshrine a clear connection between biological parenthood and legal parenthood, but consideration of further legal structures tells us that 'to be born… of persons' (at least in the UK) means to be born of one

[9] As applied and modified by 2018 Regulations, s1.12.

person, and to be her legal child and the legal child of her husband/civil partner if she is married/in a civil partnership.

Purvis claims that 'there is a deep assumption… that biological parents are natural parents, and any other rules of parentage are the operation of law' (2012, p. 648). I take this to mean that (on this deep assumption), the 'natural' order of things is that biological parents are social parents, and that the intervention of the law is required where these two forms of parenthood come apart. At some level, this seems to be true; those who produce children through sexual reproduction are the social and legal parents of their offspring by default, whereas those who wish to become the social parents of unrelated children must complete the legal obstacle course involved in fostering or adoption (Archard, 1990, p. 188). On closer inspection, however, Purvis makes a significant over-generalisation here. For one thing, the 'default' status of procreators as legal parents *is* a legal rule of parentage (The Children Act 1989 s2.1). Further, this is straightforwardly the case only for gestational mothers. For most of Western history, the woman giving birth to a child has been recognised as the mother, simply because the biological connection was irrefutable. The primacy of the biological connection for men, on the other hand, has been more complicated: for centuries, the legal father of a child was (and continues to be, in most countries) the husband of the birth mother. Marriage, or the gestational mother's decision to name a certain individual on the child's birth certificate, thus play a greater role than biological parenthood in determining legal parenthood for men (Wilson, 2014).

In the 2002 case of *Magill v. Magill*, a man sued his former wife and was awarded $70,000 in damages for economic loss after it was revealed that he was not the genetic father of two of the three children he had financially supported for nearly a decade. Fuscaldo claims that 'The implications from this case are clear: that genes define parental roles and that in the absence of a genetic relationship with a child a putative father is relieved of any (financial) obligations irrespective of his relationship with the child or the child's mother' (2006, p. 65). However, this seems far from clear to me. We may again consider the scenario outlined in section 1.1: Adam and Beatrice move in together when her son Connor is only a few months old. Two more children follow, Adam is the social parent of all three, and few people know that Adam is not Connor's biological father, or that Connor's siblings are biologically half-siblings. Adam is neither the legal nor genetic parent of Connor; however, as a social parent, I think few would accept that Adam is straightforwardly free to withdraw his financial support for any of the three children, even following the dissolution of his relationship with Beatrice. The problem for Fuscaldo's argument is in her claim that the presence or absence of a genetic relationship determines a father's financial obligations '*irrespective of his relationship* with the child' (emphasis added). For one thing, if 'genes define parental roles' as she claims, then why would

the absence of the genetic relationship relieve a man only of financial obligations? In behaving as if Connor is his child (that is, in being a social parent to Connor), Adam establishes a social contract which is certainly relevant to his obligations, financial and otherwise. A question for *Magill v. Magill* that many would consider more pertinent than whether the plaintiff was genetically related to the children is whether a social parent-child relationship existed between him and those children prior to his divorce from their mother, and what kinds of support he was providing as part of this relationship.

Purvis suggests that statutory rules of legitimacy codify 'an assumed biological link' – the marital presumption rests on the assumption 'that married women did not bear children fathered by men other than their husbands' (p. 662). However, as noted above, the biological link between men and the children they sired out of wedlock underpinned no analogous social or legal rule. Statutory rules of legitimacy might well have codified social norms against adultery, rather than assumed biological links. The same might be said of modern legislation: in the UK, this rule of legitimacy – according to which the spouse of the birth mother is the child's second legal parent by default – remains unless rebutted 'by showing, on balance of probabilities, evidence to the contrary' (Law Commission and Scottish Law Commission, 2019, para. 4.34). This evidence usually takes the form of a genetic paternity test. In the case of same-sex married couples or civil partners, an identical statutory rule of legitimacy applies, such that the spouse or civil partner of the birth mother is the child's second legal parent by default. Such a law obviously codifies no assumed biological relationship, and cannot be rebutted by means of genetic testing. It may, however, be rebutted if the mother's spouse or partner demonstrates that they did not give consent to clinical intervention (for example, artificial insemination) by which the child could have been conceived. Legal parenthood is therefore not simply dependent on our concept of biological parenthood, but also on social norms such as the association between marriage and co-parenting.

Unlike the basic concept of legal parenthood, legal parental responsibility (PR) and parental rights *and* responsibilities (PRR) can be characterised and understood without reference to further concepts of parenthood. PR and PRR are simply a set of legal rights and/or responsibilities granted by the law to an adult individual with regard to their relationship with a given child. The Children Act 1989 does not give a comprehensive list of these rights and responsibilities, but the Children (Scotland) Act 1995 gives a more detailed outline, which at least gives some overview of the practical consequences of possessing PR or PRR. According to this Act, PR gives an individual the responsibility to safeguard and promote the child's health and welfare, to provide direction and guidance appropriate to the child's stage of development, to act as the child's legal representative, and to maintain a personal relationship with the child – including, if not living with the child, direct contact with the child on a regular basis (The

Children (Scotland) Act 1995, s1.1). An individual with PRR, in order to fulfil those responsibilities, has the right to have the child living with them (or otherwise regulate the child's residence), control, direct, or guide the child's upbringing in a manner appropriate to developmental stage, to act as the child's legal representative, and to maintain personal relations and direct contact with the child on a regular basis, whether or not the child is living with them (s2.1). To the extent that this gives us a formal list of the rights and/or responsibilities given to those individuals with a specific legal status, we can understand PR and PRR independently of any concept of parenthood. However, we cannot understand *why* these rights and responsibilities are characterised as parental, nor critique their suitability, without some understanding of the relationship between legal parenthood and social, biological, and/or moral parenthood. On some level, these legal rights and responsibilities have been defined as *parental*, and *these particular* rights and responsibilities delineated, *because* these are the roles and tasks that we already expect social parents to fulfil.

As new reproductive technologies and arrangements have been developed and introduced over the last half-century, social norms and legal structures surrounding reproduction and parenthood have shifted significantly to accommodate these advances. When undertaking their inquiry into human fertilisation and embryology and putting forward recommendations for the law's response to new reproductive technologies and practices in the UK, the Warnock Committee noted that these developments 'brought about situations not previously contemplated, in relation to which there is either no law at all, or such law as exists was designed for entirely different circumstances' (Department of Health and Social Security, 1984, p. 7). One significant problem that philosophers and legal scholars alike have attempted to resolve over the last quarter-century is the need to accommodate potential legal inconsistencies arising from changes in the relationship between biological, social, and legal parenthood in different contexts. How, for example, should the law accommodate both the general expectation that a child's genetic father be recognised as a parent and bear some legal responsibility for the child's upbringing, and the expectation that this *not* be the case if the child's genetic father is a sperm donor? Is it possible for surrogacy agreements to be legally recognised and/or enforced without coming into conflict with existing laws recognising gestational mothers as legal parents by default?

As noted above, the legal mechanism for determining parenthood where donor gametes have been used follows straightforwardly from precedent – that is, from the default legal parenthood of a child's gestational mother and her civil partner or spouse (or other individual named on the birth certificate by the gestational mother). However, the UK has thus far responded to the potential inconsistency arising from surrogacy arrangements by declining to recognise these arrangements as legally valid. A gestational mother's legal parenthood may not

be disclaimed at will in any circumstance, including in the context of surrogacy, and so may only be terminated by court order (Wilson, 2014, p. 1). Where a surrogacy arrangement proceeds as planned, the commissioning parents of the child therefore become legal parents via a parental order in the majority of cases – that is, in the same manner as adoptive parents (Law Commission and Scottish Law Commission, 2019, paras. 3.78-3.80). The coming apart of (certain forms of) biological parenthood and social parenthood in the context of different reproductive practices is thus accommodated insofar as consistent with the primacy of gestational parenthood in determining initial legal parenthood. But more recent developments in the UK – in particular, the suggestion that double donor surrogacy (DDS) arrangements be made legal, and that surrogate mothers be excluded from the default recognition of gestational parents as legal parents – have given rise to new problem cases. DDS arrangements would allow an individual or couple to become the social and legal parents of a child with whom they had no biological relationship, by means of a surrogate mother and two gamete donors (one of whom might also be the surrogate mother). Currently, this kind of relationship between social, legal, and biological parenthood is recognised in the form of adoption, and constitutes a *transfer* of legal parenthood. As noted above, legal parenthood is currently acquired originally by virtue of either gestational parenthood or proximity to gestational parenthood (that is, by virtue of relationship with a child's gestational mother). Genetic paternity is secondary to relationship with the child's gestational mother, in that one may appeal to genetic paternity in disputing or rebutting a spouse or civil partner's legal parenthood (within a certain short window of time following the child's birth) but the relationship is the primary factor determining legal parenthood. Legal parenthood of a child of whom one is neither a gestational parent, genetic parent, or the partner of a gestational parent thus necessarily involves a *transfer* of legal parenthood from the 'original' parents. The question that legal scholars need to answer, in assessing the possibility of (a) accommodating DDS in UK law, and (b) making the proposed changes to legal parentage for surrogate mothers, is whether the relationship between gestational parenthood, genetic parenthood, and legal parenthood can be modified in this way without producing inconsistencies. A second question, perhaps of greater interest to philosophers of parenthood, is whether this relationship can be modified and the proposed practices made legally permissible without infringing *moral* parental rights and obligations, and indeed the rights of children. Given the current checks and balances considered necessary to safeguard the interests of both biological parents and children – for example, the mandatory 6 week period before a gestational mother's (default) legal parenthood may be terminated – we may ask whether the proposed changes to legal parenthood structures governing assisted reproductive technologies (ARTs) and surrogacy are consistent with the relationships between social, biological, and moral parenthood.

Insofar as legal and moral parenthood come apart, we can (and do) criticise legal parenthood, and the mechanisms by which this is assigned, from a moral perspective. Many applied philosophers concerned with moral parental rights and obligations assume that such rights do exist independently of law, and indeed that – as Millum puts it – 'conclusions about legal parenthood should be responsive to conclusions about moral parenthood' (2010, p. 112). This was roughly the approach taken by the members of the Warnock Committee: 'The law itself… is the embodiment of a common moral position. It sets out a broad framework for what is morally acceptable within society' (Department of Health and Social Security, 1984, pp. 2–3). In the next section, I give an overview of the concept of moral parenthood and the ways in which this has been understood by scholars working in the field of philosophy of parenthood.

2.4. Moral parenthood

Before we consider the state of the literature in this field, it is worth first taking a brief detour to reflect on methodology – in particular, the role of intuition in work on moral parenthood. This will demonstrate further why it is crucial for philosophers to interrogate the different concepts of parenthood, and the relationships between them.

Discussions of moral parenthood frequently appeal to intuition. Such appeals are not unique to this area of philosophy and, given the subject matter (parenthood being a concept relevant to every person alive), they seem to provide a clear source of support for certain arguments. Philosophical accounts of parenthood respond to – and are often intended to inform – actual social practice, and such accounts will be automatically implausible if they are wildly unintuitive. Intuition may reflect practiced insight into social rules, but may also allow contradictions or double standards in those social rules to be brought to the fore, as when intuitive responses to thought experiments or hypothetical scenarios can force confrontation with previously uncritically accepted beliefs. One classic example is Thomson's (1976) now-famous appeal to the reader's intuitive response to the idea of finding oneself plugged into the dying violinist. The thought experiment is meant to allow one to consider the moral issue at stake (the permissibility of abortion) in a way that cuts through existing biases one might have about female bodily autonomy, dependence, and the sanctity of life. Appeals to intuition may therefore be useful. However, in constructing accounts of moral parenthood for use in understanding or assessing relatively new reproductive practices, there is a straightforward problem with this approach: there are not clear widespread intuitions about these practices to which we might appeal. As the example of gamete donation at the end of the previous section demonstrates, the existing literature is strongly divided over the legitimacy and permissibility of new reproductive practices, and over the distribution of parental rights and duties where these are employed. Appeal to intuition tends to reproduce these divisions, and so risks

producing only what Bigelow and Pargetter memorably describe as 'the dull thud of conflicting intuitions' (1987, p. 194).

What role, then, can appeal to intuition play in this field of research? Millum argues that a theory of moral parenthood, 'like any account of a contested normative concept, should help us decide difficult or borderline cases. We should not, therefore, use our intuitions about those cases to decide whether a particular theory is correct' (2010, p. 113). Of course, whilst philosophers have aimed to *accommodate* or *account for* existing widespread practices or intuitions, most theories of moral parenthood are also supported by principles outside the domain of parenthood and/or reproductive ethics. According to Millum, 'A theory whose principles are supported by a wide range of reflectively endorsed moral principles and intuitions is more plausible, all else being equal, than one whose principles are supported by a narrow range' (ibid). This seems a reasonable assumption to bear in mind when reviewing the current body of scholarship. However, as noted above, we cannot straightforwardly separate the different (social, biological, legal, and moral) concepts of parenthood we utilise in this area of philosophy, and indeed on a daily basis as part of social practice. They are intertwined in complex ways, and often defined by appeal to one another, despite trends in recent years which have seen these different senses of parenthood pulled apart. Given the extent to which moral concepts of parenthood are dependent on other (non-moral) concepts of parenthood, we must recognise the significant role played by intuitions about different kinds of parenthood – at least pertaining to straightforward, as opposed to 'borderline' cases – for philosophy of parenthood. These are intuitions which are generally accepted as presenting a clear constraint for accounts of moral parenthood. The first is the 'paradigm' case: Millum argues (uncontroversially) that a test of the adequacy of any theory of moral parenthood is whether it produces the 'right result' for paradigmatic cases, such as that of 'two people in a committed relationship [who] conceive and nurture a child' (2010, p. 113). This seems to be a widely shared position in this field. The second kind of intuition is that pertaining to individuals such as the IVF clinician, an example that pops up frequently in this literature. The clinician's role is often problematised in work on parental obligations; if one's causal role in bringing a child into existence grounds obligations to care for that child, then why does the IVF clinician (who plays a significant causal role in the production of some children) *not* acquire these obligations?[10] Much like the paradigm case Millum describes, this paradigmatic non-parent can be (and frequently is) used as a yardstick for the adequacy of an account of moral parenthood. We thus cannot evaluate an account of moral parenthood independently of certain presuppositions about the relationship between

[10] I discuss this problem in greater detail in section 2.4 and in *A Lost Cause? Fundamental problems for causal accounts of parenthood* (hereafter Paper #3).

moral parenthood and biological and/or social parenthood. Of course, a problem to bear in mind here is that these intuitions are likely to be informed by social practice and are unlikely to be 'clean' – the reason it seems terribly implausible for the genetic parents and IVF clinician to have similar obligations to the child they have all helped create may well be that we associate these obligations strongly with social, legal, and/or biological parenthood, and so intuitively place a moral wedge between the genetic parents and clinician.

All of this is to say: intuitions are important, and cannot be ignored. However, appeal to intuitions about parenthood should go hand in hand with interrogation of the relationships between different concepts of parenthood, and the way in which both the concepts and the relationships between them are understood. Our intuitions originate somewhere, after all; here, Rothman's critique of the way in which language normalises certain (patriarchal) perspectives is once more relevant.

Bearing in mind these considerations about methodology, let us now turn to the state of the literature on moral parenthood. When philosophers refer to 'parental rights and/or obligations' they are referring either to:

(a) Those moral rights and obligations that individuals acquire in virtue of (non-morally defined) parenthood; or

(b) Those moral rights and obligations we do, or should, consider distinctively parental.

Moral parenthood, according to useage (b), is the bearing of moral rights and/or obligations defined as *parental* rights and/or obligations by social norms. Precisely which rights and/or obligations are considered distinctively parental may vary from culture to culture. Under useage (a), however, 'parental rights and responsibilities' picks out the moral rights and responsibilities of those otherwise identified as parents (for example, gestational parents or legal parents). Moral parental rights and responsibilities under (a) are then roughly analogous to the moral rights and responsibilities of doctors or teachers. There is not an independent moral state of 'doctorhood', but an individual acquires certain moral rights and responsibilities in virtue of having the (socially and legally defined) role 'doctor.' Brake makes this point concerning legal parenthood, noting that 'legal assignment of parenthood may give the legal parent moral obligations, even if she had none beforehand' (2010, n. 2).

These ambiguities in language mean that, when assaying the existing literature on moral parenthood, it is crucial to identify the way in which scholars have used 'parental rights' and 'parental obligations' (or 'parental responsibilities'), lest we make comparisons where these are inappropriate. For the sake of simplicity, I use 'moral parenthood' hereafter to refer to the bearing of parental rights and/or obligations on usage (b).

According to usage (a), then, a theory of parental rights and obligations does not *identify* parents, but functions on the presupposition that parents have been (or could be) picked out

pretheoretically, on some independent concept of 'parent'. For example, an account of parental rights and responsibilities might then tell us what rights and responsibilities are acquired in virtue of being a genetic parent (see for example Callahan, 2012; Velleman, 2008). However, this would not be an account of *moral parenthood* unless the set of moral rights and obligations acquired in virtue of genetic parenthood and the set of distinctively parental moral rights and obligations are identical. One could therefore commit to two different accounts of parental rights and/or obligations, only one being an account of moral parenthood. For instance, Porter (2014) holds that *genetic* parents incur the moral obligation to ensure that *someone* provides their child with adequate care in the context of an intimate relationship, but not the responsibility to do so personally, and simultaneously holds that *moral* parents have an obligation to personally provide their child with adequate care in the context of an intimate relationship. [11] These are both beliefs about parental obligations, the former applying to parental obligations according to usage (a) and the latter to parental obligations on (b). It is consistent to believe both, as long genetic parents are not necessarily moral parents according to one's account of moral parenthood. Similarly, Archard distinguishes between the obligation 'to ensure *that* someone acts as a parent to the child', and the responsibility of acting as a parent to the child oneself (2010, p. 104). The former (which he refers to as 'parental obligation') is acquired in virtue of being 'causally responsible for there being a child in existence, and hence in need of care and protection' (p. 114). The latter (which he calls 'parental responsibilities') are assumed deliberately. This might be done by someone thus discharging their parental obligation to the child, but parental responsibilities may also be assumed by someone who did not cause the child to exist (p. 105). Archard's 'parental responsibilities' thus map onto usage (a) – they are moral obligations acquired in virtue of being a causal parent. His 'parental obligations' map onto usage (b) – they are distinctively parental moral obligations acquired by those who take on the parental role for a child, and so become moral parents.

Moral parental rights and obligations are not independent of non-moral concepts of parenthood. The way in which moral parenthood is framed in a significant portion of the relevant literature in philosophy of parenthood suggests a widespread presupposition that moral parental rights and obligations arise concomitantly in the majority of cases (a presupposition I discuss further in Paper #2). Here, the influence of existing social norms – particularly the normative significance of the 'paradigm case' – in shaping our concept of moral parenthood cannot be ignored. The way in which moral parental rights and/or obligations (by usage (b)) are characterised varies to some extent, but generally reflects prevalent social norms

[11] This is because genetic parents, on Porter's account, fall into the larger category of 'makers' – those who cause a child to exist and so incur 'maker obligations'. I discuss Porter's account in greater detail in Paper #3.

and expectations of parenthood. For example, descriptions of parental obligations in this literature often include the rearing of children within an intimate, caring relationship, in such a way as to give them a reasonable chance of a good life (for examples, see Benatar, 1999, p. 174; Brake, 2010, p. 160; Ferdinand Schoeman, 1980, pp. 9–10; Prusak, 2011, p. 71; Velleman, 2008, p. 258; Weinberg, 2008, p. 167). Philosophers generally invoke other concepts of parenthood in evaluating accounts of moral parenthood. Porter, for example, argues that 'any good theory [of parental obligation] needs to explain why *parents* – that is, the people we (pretheoretically) pick out as parents – are obliged' (2014, p. 186). Further, without appeal to other, non-moral, concepts of parenthood, it would be very difficult to explain why the relevant rights and obligations should be recognised as *parental* ones. Just as was the case for legal parenthood, an account of moral parenthood explaining why some adults have certain rights and responsibilities to some children is not clearly an account of moral *parenthood* unless those rights and responsibilities seem clearly to be parental ones (relying on pre-existing notions of parental labour, duties, privileges, etc.) and/or clearly held by parents, at least in the majority of cases (relying on pre-existing notions – biological, social, and/or legal – of parenthood). For this reason, it is unsurprising that the set of rights and responsibilities characterised as distinctively parental by many accounts of moral parenthood generally parallels legal parental rights and obligations.

This said, philosophers frequently give accounts of moral parenthood according to which moral parental rights and/or obligations either go beyond or fall short of legal parental rights and/or obligations.[12] Brake, for example, argues that legal requirements on genetic fathers to pay child support are not morally justified. It is also a matter of contention whether moral parental rights and/or obligations are always acquired concomitantly (I discuss this further in Paper #2) and whether they may be transferred or delegated to others (whereas the law makes clear under what circumstances one becomes, or ceases to be, a legal parent). Some philosophers have given separate accounts of parental rights and parental obligations, according to which these are acquired in different ways and justified by different reasons. Millum, for example, distinguishes between the reasons we acquire parental rights and parental responsibilities. He defends an 'investment' approach to the former, according to which 'the people with the strongest claim to parent are those who have put in the most parental work' (2010, p. 122). However, he accounts for parental responsibilities differently, suggesting that these are acquired by performing acts which have been given certain meanings by social

[12] Legal scholars likewise note this potential incongruence between moral and legal parenthood; for instance, the authors of the Warnock report note that 'Within the broad limits of legislation there is room for different, and perhaps much more stringent, moral rules. What is legally permissible may be thought of as the minimum requirement for a tolerable society' (Department of Health and Social Security, 1984, p. 3).

convention 'such that performing them is morally transformative' (2008, p. 79). On Millum's account, the social conventions surrounding sexual reproduction, adoption, and gamete donation explain the grounds of parental responsibilities (or their absence) in each of these cases (p. 81).

Accounts of moral parenthood – whether focused on rights or obligations or both – are often motivated by the same problem cases and novel practices that have resulted in shifting public and academic understandings of the relationships between biological, social, moral, and legal parenthood. Philosophers working in this field have aimed either to explain how some of the seeming inconsistencies arising from different reproductive practices can be explained, or to argue that we ought to reconsider these practices, on the grounds that they do not reflect the distribution of (assumed or established) parental rights and responsibilities. Some philosophers have, for example, attempted to explain the origins and nature of parental obligations in such a way as to accommodate the belief (underpinning gamete donation) that genetic parenthood does not necessarily come with the obligation to rear one's progeny, by arguing that such obligations are acquired through voluntary commitment, or by carrying out actions generally associated with parenthood in one's society (see for example Brake, 2005; Millum, 2008). Others have defended accounts of moral parenthood according to which genetic parents *are* moral parents, and have argued on this basis that gamete donation is impermissible in the majority of cases, since it involves the donor's neglect of his or her moral obligations (see for example Brandt, 2017; Velleman, 2008; Weinberg, 2008). Specific problem cases – whether real cases, such as those described at the beginning of the introduction, or hypothetical cases containing kidnap, cloning machines, and gamete theft – motivate many accounts of moral parenthood. The common theme connecting these problem cases is deviation from the 'paradigm case' in which biological parenthood is concomitant with social, legal, and moral parenthood. The exception to this general rule is the paradigm case itself; some philosophers have subjected this case to critique from both directions, analysing both the widespread belief that biological parents have the right to rear their own offspring (see for example Brighouse and Swift, 2006; Gheaus, 2012) and the similarly widespread belief that they have parental *obligations* to those offspring (see for example Austin, 2004; Brake, 2010). While many theories of moral parenthood have aimed to explain the significance of biological parenthood (and thus accommodate those widespread practices and beliefs mentioned above), very few have done so by claiming that biological parenthood *per se* has inherent moral value or significance.[13] Instead,

[13] This may go some way to explaining why the concept of biological parenthood is so rarely defined explicitly in this literature – instead, we must deduce the author's presuppositions about the meaning of this concept from their useage.

many accounts of moral parenthood appeal to the moral relevance of certain features of gamete contribution and/or gestation and childbirth – features not necessarily unique to biological parenthood. In the next two sub-sections, I give an overview of the directions philosophers have taken in explaining the grounds of moral parenthood.

2.4.1. Parental obligations

The two predominant approaches philosophers have taken in accounting for parental obligations and explaining their acquisition are, broadly speaking, *causal* and *voluntarist* approaches. The former has grown in popularity in recent years (though, as I demonstrate in Paper #3, it suffers from significant problems). The causal approach is often used to justify the beliefs surrounding biological parenthood mentioned above, by appealing to the causal role of progenitors and/or gestational parents in bringing their children into existence. This explains why they have obligations to protect and nurture those children:

> What causal connection could be more direct than biological procreation, without which human existence would not be possible? A father can hardly be held wholly responsible for *what* a child becomes – much will depend upon circumstances – but a father can be held responsible with the mother for the fact the child comes to be at all. (Callahan, 2012, p. 226)

According to causal accounts, biological parents, amongst other individuals, choose existence on behalf of their offspring, or impose upon them the risks of harm associated with existence. It is the moral force of causing harm (or a risk of harm), rather than some inherent moral significance in biological relatedness, which grounds parental obligations (see for example Archard, 1990; Blustein, 1997; Brandt, 2017; Nelson, 1991; Prusak, 2011).[14] However, these accounts vary in the extent to which they hold procreators *personally* obliged to care for their offspring in order to mitigate or compensate the possible harms associated with existence, and whether or not the obligations incurred as a result of one's causal role may be transferred or delegated to others. Some of the central principles grounding these causal accounts also justify stances for or against various reproductive practices. For example, some philosophers have appealed to causal approaches to parental obligation in rejecting the permissibility of 'surrogate' pregnancy or gamete donation – Brandt argues that gamete donors, by producing genetically related offspring, are 'freely engaging in an activity that places their offspring at risk

[14] It is worth noting here that most causal accounts consider causing a child to exist (however the scope of 'cause' is defined) *sufficient* for generating parental obligations, but not *necessary* – one can still acquire parental obligations by voluntarily taking these on, for example by adopting a child.

of harm' (2017, p. 673), and Nelson engages a similar line of argument in criticising surrogate mothers, who 'wilfully undertake responsibilities which they intend not to fulfil' (1991, p. 60). Shiffrin's case for parents' liability in 'wrongful birth' cases appeals to similar principles. These are cases in which – for example – a child is born with a congenital illness which causes them great suffering, following a parent's decision not to terminate the pregnancy in light of prenatal diagnosis. Shiffrin argues that procreation 'ineliminably involves serious moral hazards… because it involves imposing serious harms and risks on someone who is not in danger of suffering greater harm if one does not act' (1999, p. 136).

Crucially, proponents of causal accounts of moral parenthood often acknowledge that individuals other than the progenitors and gestators of a child play a significant causal role in that child's existence – for example, the matchmaking friend introducing a couple who will go on to procreate. Attempts to define the meaning of 'cause' in such a way as to justify the moral significance of biological parenthood *per se*, whilst excluding individuals causally involved in a child's birth in other ways (such as IVF clinicians, matchmakers, or legislators who ban abortion), undermine an account's plausibility. In Paper #3, I examine these issues in detail and argue that one criterion for a plausible causal account of parental obligation is that there are reasonable limits on the number of parentally obliged individuals, and that these limits cannot be arbitrary. Some accounts (in particular Nelson, 1991; Velleman, 2008; Weinberg, 2008) place these limits along the lines of reproductive contributions, singling out genetic progenitors as playing a uniquely significant causal role; whether this constitutes an *arbitrary* limit depends on the reasons for singling out the genetic contribution in each case.

Let us now consider the voluntarist approach. Here, philosophers account for parental obligations by appeal to intentions and/or voluntary acceptance of parenthood. One example is Millum, whose 'conventional-acts' theory (2008) is mentioned above. He appeals to social conventions in order to avoid some of the problems associated with causal accounts – for example, distinguishing between people who play an identical causal role in creating a child, but whom we believe to have different obligations (such as genetic fathers who conceive through intercourse and those who have genetic offspring by donating sperm). On Millum's account, 'It is not being a voluntary cause of the existence of the child per se that makes one a parent, but being a voluntary cause whom convention singles out as the performer of morally transformative actions' (2008, p. 82). On the other hand, Brake's rejection of the causal account is largely grounded in her claim that parental obligations are 'attached to socially constructed institutional roles', and so both these obligations and the ways in which these are assigned vary across cultural and historical contexts (2010, p. 151). Voluntary acceptance of moral parental obligations is necessary to acquire such obligations. However, such acceptance is not sufficient – Brake claims that 'the child [must] be eligible to be parented by them' and that those

undertaking parental obligations must also be able to carry them out, in order for them to acquire these obligations (2010, p. 152).

The issue of unintentional parenthood (particularly with regards to genetic fathers) has given rise to disagreement between different proponents of voluntarism. The man who unintentionally fathers a child (for example, due to a contraceptive failure) on the conventional-acts theory, acquires parental responsibility even though he does not volunteer explicitly (or even implicitly) to become a father. As long as the moral community believes that 'men are normally responsible for the biological children they beget because of the act of coitus that led to concept,' the (voluntary) act of coitus implies the acceptance of parental responsibilities for any resulting child (Millum, 2008, p. 89). Brake, however argues that (*contra* Millum's views) the notion of tacit consent cannot ground parental responsibility: 'It seems difficult to impute tacit consent to someone who intended to avoid pregnancy, simply because he or she knew of the possibility. This makes a mockery of the concept of consent' (2005, p. 60). On Brake's account, the accidental father who impregnates his female partner despite taking appropriate preventative measures 'does not owe child support to their children as a matter of justice' (p. 55).

The problem cases motivating accounts of moral parental rights often differ from those motivating accounts of parental obligations, but the relevant problem cases still tend to involve deviation from the 'paradigm' case (in which biological, social, moral and legal parenthood come as one neat package). Whereas the literature on parental obligations tends to focus on problem cases where candidate parents are disinclined to take on some form of parenting role, philosophers focusing on parental rights have often been concerned with an overabundance of candidate parents, and have aimed to provide solutions to potential disputes between parties to surrogacy agreements, biological parents and step- or adoptive parents; and between biological parents and the hypothetical 'best available parents'. Several of the real-life cases listed in the introduction to this thesis involved such disputes over parental rights: competing claims between two sets of would-be adoptive parents, between a 'surrogate' mother and commissioning parents, between a child's genetic father and adoptive parents, and between the gestational mother and genetic parents of twins following an embryo mix-up. As mentioned above, the paradigm case has itself also been problematized, as some philosophers have questioned the presumptive rights of biological parents, which (they suggest) might be undermined by the rights of children to be reared by the 'best possible' parents (see for example Vallentyne, 2003). In the next sub-section, I give a brief overview of some of the key approaches taken to accounting for parental rights in response to these problem cases.

2.4.2. Parental rights

Approaches to explaining the acquisition of parental rights have varied more than approaches to parental obligations. Whilst in the latter field two approaches clearly predominate (though with more proponents of causal accounts than of voluntarism), there does not seem to be an approach to parental rights that can claim clear predominance. Here, I will give a brief overview of five different routes philosophers have taken to establishing the grounds of parental rights: proprietary, labour-based, relationship-based, intentionalist, and obligation-based accounts.

The main proponents of proprietary accounts of parental rights are Page (1985, 1984) and Hall (1999). Proprietarian justifications of moral parenthood are relatively thin on the ground in contemporary philosophy, because – as Archard points out – most people in Western culture are strongly averse to imagining a child, or any human being, as the property of another. There are also clear difficulties in defending a proprietary account of parental rights, since 'If begetting did generate ownership, then it is hard to see why ownership should not be lifelong, how we would apportion property rights between mother and father, and how we might acknowledge the productive contributions of medical staff' (Archard 1990, p. 186). Nonetheless, Page's attempt to account for widely held beliefs about gamete donation makes use of a proprietary geneticist approach to parenthood, based on two key principles: first, that parental rights and duties are originally held by genetic parents; and second, that gametes and embryos are transferable, and parental rights and duties along with them (1985, p. 165). In the case of gestational surrogacy arrangements in which the intending parents are also the progenitors, the gestational mother acquires no parental rights, since the genetic parents 'do not voluntarily surrender and transfer their parental rights and duties. On the contrary, it is their explicit intention that they should retain them and have the child themselves' (p. 164). In contrast, sperm and egg donors explicitly surrender these rights when they surrender ownership of their gametes. Regarding surrogacy arrangements in which the gestational mother is also the genetic mother, Page proposes that we understand this practice as involving 'donation *in utero*' involving 'the transference of rights and duties in respect of the egg or embryo and the resulting child but not necessarily the movement of the egg or embryo physically from one person to another' (p. 168). Crucially, Page's account leaves no room for parental rights grounded in a gestational mother's ownership rights over her body – his focus is exclusively on the ownership of gametes.

Hall likewise attempts to account for the intuition that biological parents 'have initial entitlement to a child' (1999, p. 74) by means of a property rights approach, comparing parental rights to those rights we have over our bodies. She rejects Lockean labour theory as applied to

reproduction, arguing that labour 'is neither a necessary nor a sufficient factor in the attribution of rights to biological parents' (p. 75).[15] According to Hall, the 'more fundamental' factor in this ascription of rights is that 'the child represents a genetic part of its parents' and that 'parents are entitled to *their* children for the same reasons that they are entitled to anything that is a part of themselves' (p. 76). Her position is partly based on an appeal to moral intuitions regarding fairness, in response to laws which grant parental rights only to the *genetic father* and the *surrogate mother* in gestational surrogacy cases, even where the intending mother is a genetic parent. Hall argues that 'if it seems unfair that the sperm donor has presumed legal rights to the child but the ovum donor does not, it is because intuitively we believe that labour is not truly the determining factor of parental rights' (p. 76). This is certainly one way of interpreting the belief that such laws as unfair, but it is worth pointing out here that an equally consistent interpretation would be that such laws are unfair because labour is indeed the determining factor of parental rights, and that – given that we recognise the contribution of the genetic father as giving rise to parental rights – the genetic mother's efforts should likewise be recognised, in addition to those of the gestational mother. For Hall's to be the only correct interpretation, we must accept the further presupposition that the number of individuals who can acquire parental rights is capped at two.

Other philosophers, *contra* Hall, do consider labour to be decisive in the acquisition of parental rights. Millum's 'investment theory' – mentioned above – is an example of this approach. On this account, various activities involved in childbearing and childrearing, from gestation and breastfeeding to baby-proofing and changing nappies, count as parental labour, the performance of which gives rise to parental rights. Millum states that the person with the greatest claim to parent, at the time of the child's birth, would ordinarily be the gestational mother. One implication of this result is 'that [the birth mother] has the power to decide which other people will be permitted to invest parental work, and therefore who else will become a moral parent' (2010, p. 123). Though concerned more particularly with practicable legal rules applying to unwed fathers, Purvis likewise supports a labour-based approach, recognising labour performed prior to the child's birth (for example, taking parenting classes or preparing a nursery) as grounds for parental rights. She suggests that such an approach is superior to relationship-based approaches, the latter being 'dependent on the biological mother's willingness to allow such a bond to develop' (2012, p. 679). Another example, almost exactly on the borderline between labour-based and relationship-based accounts of parental rights, is Rothman's account: she understands gestation as a social 'care-giving' relationship (as well as a

[15] For a detailed assessment of the Lockean labour theory of acquisition as applied to gestation and parental rights, see Woollard (2017).

physical one), and argues that this 'unique nurturant relationship' between child and gestational mother is entirely determinative of parental rights at the time of the child's birth (1989, p. 254). Gestational mothers have full and exclusive parental rights at this moment, including the right to decide who else may be allowed to engage in caretaking and so who may develop a relationship with the child (leading eventually to parental rights).

Bartlett expresses a similar view in defending a relationship-based account of moral parenthood, arguing (1988, p. 315) that:

> At the time of childbirth, the mother's relationship to her child has developed through pregnancy and childbirth. In contrast, the father's relationship is only a potential one. Affirming the mother's connection to the child (rather than her 'rights' or the father's absence thereof) strengthens the importance of relationship to our understanding of parenthood.

Relationship-based accounts of parental rights often posit a general right to maintain intimate relationships, and appeal to the interests of either children, parents, or both, in maintaining their existing parent-child relationships. For example, Schoeman (1980) argues that the value of intimate relationships with others, including parent-child relationships, justifies parental rights, since the control or interference of those outside the relationship would undermine the privacy and autonomy necessary for intimacy. Some philosophers have emphasised the significance of parental interests (as opposed to children's interests or the general public good) in order to overcome the 'redistribution problem': as Brighouse and Swift put it, 'if all that matters is ensuring that children's interests are met as well as possible, then children should be distributed to those people judged most likely to raise them best' (2006, p. 86). Parents, they argue, also have fundamental (if conditional and limited) rights with respect to their children. Unlike Schoeman – who does not distinguish between parent-child relationships and relationships between consenting adults – Brighouse and Swift describe parent-child relationships as having a different moral quality to other intimate relationships; they 'make a different kind of contribution to [parents'] flourishing, and so are not interchangeable with other relationships' (p. 92). It is not the significance of privacy and autonomy in enabling intimate relationships that justify parental rights, but the distinctive moral quality of parent-child relationships specifically. This, they suggest, is down to 'the moral burden on the parent' imposed by the dependence of the child and the parent's responsibility for the child's wellbeing, the asymmetry of the relationship, the limited power of exit (in comparison with other relationships), and the unconditional and spontaneous love received by parents from their children (pp. 92-4).

However, as Gheaus points out (and Brighouse and Swift themselves note) these arguments do not suffice to overcome the redistribution problem – they justify rights to enter and maintain parent-child relationships, but 'their account does not provide an argument against *all* redistribution of babies away from their biological parents, but only against redistribution from adequate to 'better' parents' (2012, p. 435). How do we justify the right of biological parents to keep and rear *their own* offspring? Gheaus assumes, like the scholars discussed above, that intimate relationships 'are intrinsically valuable for those who are involved in them' (p. 436). However, unlike those scholars, she closes the gap between procreation and the acquisition of parental rights, arguing that babies come into the world already in relationship with their gestational mothers. Redistribution would therefore 'destroy already formed parent-baby relationships' (ibid).

The next approach we may consider is intentionalism, which some philosophers and legal scholars have used to justify parental rights, and in particular to defend the parental rights (moral and legal respectively) of commissioning parents in disputes over custody following surrogacy arrangements (Hill, 1991; Shultz, 1990; Stumpf, 1986). According to the intentionalist account defended by Hill (p. 419):

> The moral significance of the intended parents' role as prime movers in the procreative relationship, the preconception promise of the biological progenitors not to claim rights in the child, and the relative importance of having the identity of the parents determined from conception onward outweigh the potential harm to the gestational host in compelled relinquishment.

The 'moral priority' of the intended parents is thus grounded on three key elements, taken to outweigh the claims of either the gestational mother or progenitors: the causal role of the intended parents in engineering the child's birth; the commitment of other parties involved, and especially the original commitment of the gestational mother, in accordance with these intentions; and the need to avoid uncertainty over parental rights, which Hill argues is in the interests of 'all concerned parties', including the child (pp. 414-17). His account requires that the intended parents must intend to have a child prior to its conception, and that they use 'morally permissible' methods in their efforts to bring a child into the world (n. 12). Ettinger's account of parenthood (which similarly appeals to the significance of intentions) likewise argues that one may become a child's parent only in certain ways. Ettinger gives the example of an individual, Martin, who 'forms the intention to obtain a baby and become its primary care-giver by kidnapping it from the hospital' (2012, p. 250). Martin clearly does not become the child's parent in so doing. Ettinger suggests that he has a moral duty to care for the child long

enough to return her to her parents, but that he does not have parental *rights*, and the child certainly "does not have any filial duties or obligations towards her kidnapper' (ibid).

At this point, we may note that Hill relies on the presupposition that engaging a 'surrogate' mother and contracting her to relinquish her presumptive rights to her child is a morally permissible method of bringing a child into the world; this remains a matter of strong disagreement (see for example Berend, 2012; Brugger, 2012; Ekman, 2013; Ertman, 2003; Finn, 2018; Gheaus, 2016). We may also note that, whilst Hill's account gives a straightforward answer to the question of who has rights over a child produced through surrogacy, attempts to apply this account to other problem cases may leave us at a loss. He argues that 'Intentionality acts as a trump for the intended parents when conflicting claims are made by parties who have contributed biologically to the creation of the child' (p. 387). However, consider the 2019 case mentioned in the introduction, in which a mix-up by an fertility clinic resulted in a woman giving birth to the genetic offspring of another couple using the same clinic. It is clear that both couples involved had intentions, prior to the children's conception, that would make them candidates for parental rights – the progenitors intended to rear [the children produced using their embryos], whilst the gestational mother and her partner intended to rear [the children she gestated and gave birth to]. Both couples 'contributed biologically' to the birth of the twins. However, since neither couple knew that the children they formed these intentions regarding were actually the same children, we cannot say which intention should 'trump' the other.

We may further question the intentionalist account's focus on pre-conception intentions. Roberts points out that '*Baby M* dramatizes how intentions can change over time. Had the intentionalist theory required an evaluation of the parties' intentions at birth rather than prior to conception, the outcome generated by the theory would presumably have been quite different' (1993, p. 289). We do not consider pre-conception (or, for that matter, pre-birth) intentions determinative of parental rights in the case of adoption – in the UK, as in most jurisdictions, pre-birth adoption contracts are illegal, and the gestational mother of a child has a grace period following the birth before the termination of her legal rights and responsibilities can be finalized.

This brings us, finally, to obligation-based (sometimes called 'child-centred') accounts of parental rights. On this approach there are no parental rights independent of parental obligations; moral parents (in this instance, bearers of parental obligations) have parental rights only insofar as these rights enable them to fulfil their obligations. Parental obligations are, according to such accounts, morally prior to parental rights (see for example Archard, 2010, p. 108; Blustein, 1982, pp. 104–14). From the claim that parental rights are in this sense dependent on parental obligations, some philosophers take it to follow that parental obligations come with, or entail, parental rights – for example, Austin suggests that 'if mothers and fathers

possess obligations to their children, then they also possess a right to fulfil their parental obligations' (2004, p. 505). This is not the same as the view that parental rights may not be lost (or transferred or renounced) without parental obligations being likewise. As Archard notes, there are situations in which parental rights may be defeated without undermining parental obligations, using the examples of a rapist who fathers a child and an abusive parent who loses custody of his child: both are under parental obligations, but have no moral rights in respect of their offspring (2010, p. 107). The view that Austin espouses is consistent with this – it is simply the view that, absent factors which would undermine one's possession of parental rights, parental obligations imply the right to parent.[16] A motivation for this view might be the observation that parents 'certainly have discretion concerning *how* to care for [their children]; and the existence of this discretion implies that parents do indeed have rights regarding this children' (Montague, 2000, p. 62).

Montague's response to this line of argument notes that, whilst we are generally permitted to determine *how* we fulfil our obligations, we have no moral right to act on any particular one of those determinations (ibid).[17] You are permitted to return your borrowed books and so fulfil your obligations to the library, but you do not have the right to do so in the manner you choose. I am not obliged to refrain from interfering in your fulfilment of your obligation if, for example, the manner you choose is to cycle down the Broad during the Christmas market, when the street is closed to cyclists. Likewise, parents may generally have some discretion over how they fulfil their parental obligations, but this does not entail a *right* to choose any particular course of action.[18]

It is also worth mentioning a different kind of child-centred approach, defended by Vallentyne (2003), who appeals to children's best interests as determinative of childrearing rights. He describes this as a 'radically strong child-centred conception' of these rights (p. 995). According to his account, 'individuals can acquire childrearing rights over a child only if their possession of such rights is in the best interest of the child. Procreative and biological parenthood do not automatically generate these rights' (p. 1009). Whether one has an obligation to care for the child is irrelevant to one's acquiring childrearing rights; Vallentyne argues that those who meet the relevant conditions 'have the moral power to obtain those

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[16] See Paper #2 for a discussion of the relationship between parental rights and the right to parent.

[17] Our general right to fulfill our obligations may also be defeated by the rights of others – I may incur an obligation to compensate you after I carelessly run over your foot with my scooter, but if you refuse to have anything to do with me, I do not have a right to fulfill my obligation, since to do so would violate your right .

[18] The claim that parental obligations, together with the right to discharge our obligations, entail parental rights, should not be confused with the claim that *actually* discharging one's parental obligations gives rise to parental rights (as labour-based theories of parental rights such as those discussed above suggest).

rights, but they generally do not have a duty to exercise that power and acquire the childrearing rights' (p. 998).

As noted above, then, there is significant variation in the approaches philosophers have taken to accounting for parental rights. Whilst it is less varied in approaches, there is a similarly extensive literature devoted to justifying parental obligations. From the above assay of the literature, it is clear what moral parental rights and obligations *are* (though identifying them requires a reasonable grasp of other parenthood concepts). However, disagreement arises over how exactly to define who has these rights and obligations, and why. These are what (in Paper #3) I call the *who* and *why* questions for moral parenthood. So how should we answer these questions, and how can the above interrogation of the different concepts of parenthood aid in that project? I consider this in the final section of this introduction.

3. What next?

I suggest that the key takeaway from the above discussion is that philosophers concerned with parenthood should reject reductionist approaches that consider only one concept of parenthood; we need to consider more fully the relationships *between* these concepts. Most existing work in philosophy of parenthood has focused on one concept of parenthood, or has defined one concept in terms of another without interrogating either (for example, by appealing to biological parenthood as determinative of moral parental rights and/or obligations, without defining biological parenthood itself). Identifying and examining the relationships between different concepts of parenthood provides a new perspective from which to consider problem cases, and brings to light unjustified presuppositions or biases that may have previously hindered our analysis. In the three papers that constitute the rest of this thesis, I demonstrate some of the ways in which our understanding of these concepts of parenthood shapes our ability to deal with problem cases and to answer the *who* and *why* questions of moral parenthood.

In Paper #1 (Baron, 2019) I argue that certain (mistaken) ways of understanding the biological phenomenon of pregnancy enable certain views about who is and is not a parent, which underpin the practice and regulation of surrogacy. I demonstrate that these presuppositions about the maternal-foetal relationship (a) constrain philosophical analysis of pregnancy, and (b) underpin detrimental and oppressive attitudes towards pregnant women. These presuppositions are grounded in a 'containment' understanding of pregnancy – the foetal container model – which presents the pregnant woman and foetus as metaphysically and ethically distinct entities. Widespread uncritical reliance on this model has allowed the biological and moral significance of maternal-foetal intertwinement to be overlooked or denied, in the service of different aims in different contexts. This paper provides a critical lens for my

investigation of the philosophy of parenthood as a broad area, and identifies a key way in which widespread presuppositions about the relationship between gestation and different kinds of parenthood have directed social and legal practice.

In Paper #2 (Baron, forthcoming) I turn my attention to the moral parental rights and obligations of reproducers who are themselves, legally, still children. I note that the biological and moral significance of the maternal-foetal relationship has been largely overlooked by philosophers who critically investigate the presumed natural rights of biological parents to care for their offspring. I then argue that (even if we agree that, absent a proprietary view of parenthood, there are no *positive* rights to individual children) gestational mothers of any age have a strong negative right not to be forcibly separated from their newborn infants. Children and young adolescents who are physically capable of reproducing may therefore have some moral rights regarding their offspring, even if we deny that they have *all* moral and legal parental rights (as these are generally characterised).

Finally, in Paper #3 (Baron, 2020), I carry out a close critique of causal accounts of moral parental obligation. The causal approach has gained popularity in recent years, largely because it appears to accommodate the widespread intuition that those who bring children into the world (that is, their biological parents) have morally weighty obligations to (for example) care for and nurture those children. However, I demonstrate in this paper that we cannot account for parents' moral obligations simply by appeal to causal responsibility for a child's existence, if we maintain certain presuppositions about the nature of those obligations. When applied, causal accounts of parental obligation will either give strongly unintuitive results (producing either 'too many parents' or overly demanding obligations) or fail to produce results at all, in that they may not allow anyone to be identified with parental obligations.

Nobody Puts Baby in the Container: The foetal container model at work in medicine and commercial surrogacy.

Abstract

This paper argues that a particular metaphysical model permeates cultural practices surrounding pregnancy: the foetal container model.[1] Widespread uncritical reliance on this view of pregnancy has been highly detrimental to women's liberty and reproductive autonomy. In this paper, I extend existing critiques of the medical treatment of pregnant women to the context of the burgeoning commercial surrogacy industry. In doing so, I aim to show that our philosophical analysis in both spheres is constrained by the presupposition that the foetus and pregnant woman are metaphysically and ethically distinct entities. By exploring the similarities and differences between the expectations placed on pregnant women in these two spheres, I show that the foetal container model is not a homogenous understanding of pregnancy applied consistently across contexts; rather, it has been used to justify various practices and attitudes towards pregnancy and pregnant women through different moral frameworks, in the service of different overarching aims.

1. Introduction: Pregnancy and the foetal container model

Pregnancy, as a phenomenon in its own right, has been of relatively little interest to philosophers until quite recently. While considerable time has been given to questions about the morality of abortion and surrogacy, and to the metaphysics of personhood, the physical and metaphysical maternal-foetal relations involved in gestation have been remarkably absent from these discussions. Certain presuppositions about the nature of pregnancy – and, specifically, about the maternal-foetal relation – have allowed philosophers to focus on the 'foetus proper' as an object of discussion and debate, and to uncritically assume that the process of gestation is philosophically uninteresting and irrelevant to these questions.

The treatment of pregnancy in both philosophical literature and everyday life has, almost without exception, presupposed the metaphysical framework Kingma (2019) refers to as the 'foetal container model.' On this understanding of pregnancy, there is a fundamental separation between the foetus and the mother, such that the former is merely contained within

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[1] This paper was published as Baron, T. (2019), Nobody Puts Baby in the Container: The Foetal Container Model at Work in Medicine and Commercial Surrogacy. *Journal of Applied Philosophy*, 36: 491-505. doi:10.1111/japp.12336.

the latter and not, for example, a proper part of the maternal body. So far as I have been able to find, the only work which explicitly attempts to justify the foetal container model of pregnancy is Brogaard and Smith's description of the maternal-foetal relation as a 'tenant-niche' relation, comparing the gestating foetus to a 'tub of yogurt' in the refrigerator, or to 'a palm kernel that is lodged within your digestive tract' (2003, pp. 70, 74). Other philosophers seem to have simply presupposed this model of pregnancy in work which studies the foetus itself, its properties, and its status, without acknowledging the physical intertwinement (let alone the possible metaphysical intertwinement) which distinguishes the phenomenon of pregnancy from other interactions between organisms. The dominance of the foetal container model in academic literature has allowed the unique nature of gestation as a physical relationship to be overlooked, and resulted in discussions of pregnancy which uncritically apply conceptual tools built on the presumption that individuals are physically demarcated. As I argue below, the treatment of pregnant women in various social contexts relies, at least in part, on this conceptual separation of the foetus from the pregnant woman. It is important to note that even the language used here to discuss these issues may tend to reinforce this kind of conceptual separation; there is little terminology available that allows us to discuss maternal-foetal relations without seeming to refer to two entities.

The aim of this paper is not to promote an alternative metaphysical model of pregnancy (though it is important to note that alternative understandings have been proposed[2]). Rather, by comparing the effects of the foetal container model in medical/legal contexts and the context of commercial surrogacy, I aim to show that this model constrains our moral analysis in these areas. Of course, pregnant women in the commercial surrogacy industry are also in the medical sphere, and this overlap can have complex results; for example, Deonandan, Green and van Beinum have noted the potential for conflicts of interest when medical professionals receive payment from surrogacy agencies or commissioning couples to perform procedures on surrogate mothers (2012, p. 744). However, this paper focuses primarily on the differences between narratives around pregnancy, and resultant practices, in the medical sphere and that of commercial surrogacy. While the foetal container model is used in both spheres to undermine women's liberty, it is used to do so in different ways. I build on the existing philosophical and sociological literature which explores and criticises the treatment of pregnant women and women in labour in the sphere of medicine; this paper extends this discussion into the sphere of commercial surrogacy. By comparing these contexts, I aim to highlight the effects that the

[2] For example, conceptions of pregnancy as involving a parthood relation have been expressed by Ekman (2013), Kingma (2019), and Young (2005).

presupposition of the foetal container model of pregnancy has on women's reproductive autonomy.[3]

It may be difficult to see the foetal container model as a premise which requires justification, given that the treatment of pregnant women in both literature and social life, is saturated with this understanding of pregnancy. However, in day-to-day life, we accept certain metaphysical beliefs about the world whether or not we engage in conscious philosophical deliberation. For example, most people will go their entire lives believing steadfastly that certain things exist, without ever deliberating over substance metaphysics; most will also agree that infants are persons without consciously considering philosophical theories of personhood. The conceptual separation of the foetus and pregnant woman – the view that the former is a distinct entity simply contained within the latter – is another such view, which many people hold uncritically, and which can be influenced and reinforced by the behaviour of others. Section 2 of this paper is therefore devoted to elucidating the origins of this understanding of pregnancy, and the many ways in which it permeates our culture.

This is not an entirely new observation. Although discussion of the foetal container model as a metaphysical framework has arisen only relatively recently, bioethicists and sociologists have developed a substantial body of work over several decades criticising social and medical practices which overlook the complexity of the maternal-foetal relation or treat women as incubators. Annas (1982) and Casper (1998) were writing two decades ago on the ways in which developments in medical technologies have exaggerated the distinction between foetus and pregnant woman by allowing the foetus to be treated as a separate patient, often with detrimental effects for pregnant women's medical autonomy. Purdy (1990) noted more than twenty-five years ago that social constraints on pregnant women's freedom and ethical deliberations about the rights of the foetus have treated pregnant women like mere containers for foetuses. However, much of this discussion has focused on the medical sphere; comparing the treatment of pregnant women in this context with that of commercial surrogacy exposes the way in which the foetal container model constrains our moral analysis. I aim to show that this model allows pregnant women's experiences and autonomy to be dismissed through different moral frameworks, in the service of different *aims*. In medical spheres, the assumption of the foetal container model, in the context of an individual-rights-focused framework, has resulted in both the over-burdening of personhood concepts with regards to the foetus, and in the undermining of pregnant women's subjectivity, as has been well documented by others. In the

[3] Of course, cultural differences in the treatment of pregnancy and surrogacy exist within and across these contexts, and I do not aim to present a homogeneous representation of either medicine or the surrogacy industry. A focus on particular practices and attitudes within these spheres highlights the ways in which the foetal container model can be used in the service of different aims.

context of commercial surrogacy practices, I argue, a focus on the rights of commissioning parents and on contracts has justified the (theoretical and practical) treatment of infants as products. We would therefore be mistaken to characterise the foetal container model as a homogeneous view of pregnancy which determines a specific moral treatment of pregnant women; rather, it should be understood as the conceptual basis for a variety of different cultural practices and attitudes. I suggest moreover that if we are unable or unwilling to critique the foetal container model so understood, it seems clear that we will be hindered in our critique of reproductive tourism and the burgeoning surrogacy industry. As Pande notes, scholarship on surrogacy (to date) has broadly fallen into certain categories: work which debates the morality of the practice, work which critiques surrogacy as a form of commodification or medicalisation of the female body, and, more recently, literature on the impact of surrogacy on 'cultural meanings of motherhood and kinship' (2010, p. 971). However, it seems that none of these categories of work have explored the relationship between metaphysical and ethical understandings of pregnancy, and in some cases (as I note below) have even unintentionally reinforced the foetal container model. The conclusion of this paper opens up new questions for each of these kinds of scholarship in light of the understanding of the foetal container model I propose.

2. The evolution of the foetal container model

For most of Western written history, the foetus has been understood as a distinct being, separate from its mother even while contained within her body; dominant understandings of pregnancy over the last few thousand years have vastly underestimated the female contribution to a child's existence. Early manifestations of the foetal container model of pregnancy, though certainly not named as such as the time, can be found in Aristotle's work. For Aristotle, the foetus 'behaves like seeds sown in the ground… [its] growth… supplied through the umbilicus in the same way that the plant's growth is supplied through its roots' (Connell, 2016, p. 129). After the foetus' heart has formed, according to this account of development, the foetus becomes independent and can feed itself: 'Once the foetus which has been formed is separate and distinct from both the parents, it must manage for itself, just like a son who has set up a house of his own independently of his father' (p. 146). While Connell argues that Aristotle's philosophy acknowledges clearly the vital role of the maternal body and the maternal soul in nurturing the gestating foetus, and the dependence of the foetus on its mother even after the arrival of its own nutritive soul, his account presents the foetus as an entity which is 'separate and distinct' from an early stage of development.

This view of maternity remained dominant in Western thought for the centuries that followed. The historical record, of course, reflects the views of those who were politically and

structurally dominant; we know comparatively little about women's views of pregnancy during Antiquity and the Middle Ages. The prevailing understanding of conception and gestation that has been passed down to us is therefore one according to which women contribute passively to development, providing a space and nutrition for the foetus; men, on the other hand, provide generative force and life. Feldman describes this as the 'flowerpot' view, noting the differential significance it grants to the male and female roles in reproduction: 'Without this pot there will be no plant, but what the plant will grow into is all contained in the seed. The true parent (in the sense of the formal cause) of the child is the father' (1992, p. 98). One major proponent of this view in the Middle Ages was Thomas Aquinas (Sauer, 2015, p. 30). In identifying the motivations for his support of the Aristotelian account of gestation, we may find it difficult to separate Aquinas' lack of biological knowledge from his sexism; his description of the female contribution to pregnancy as passive seems less than neutral, given his further claim that 'everything is passive according as it is deficient and imperfect' (1997, p. 259) The sexism embedded in the structure of Western societies throughout history has undoubtedly played a significant role in the dominance of the foetal container model of pregnancy. Another likely reason for this dominance is the fact that the male contribution to conception constitutes a visible emission, whilst female gametes are not so readily observed, and were not formally discovered in mammals until the 17th Century (Cobb, 2012). Sexist assumptions about the passivity of women and the vitality of men were therefore presumably bolstered for many centuries by limits to human observation of reproductive processes.

Whilst the discovery of female gametes – and, by extension, the female genetic contribution to reproduction – allowed the flowerpot view to be put to bed, it unfortunately did not spell the end for the foetal container model. While pregnant women were shown to provide more than 'fertile soil' for the male 'seed', this development did little to challenge the presupposition that the foetus is a distinct entity, mereologically distinct from (though dependent on) the maternal body. Rather, the female contribution to reproduction was then held as equivalent, from a genetic point of view, to the male role (Feldman, 1992, p. 98). The view that women simply incubated a homunculus (a fully formed human being embedded in sperm, which grew to full size in the womb) was replaced by the view that women incubated the foetus created through equal, combined efforts by man and woman in conception. Prevailing views of the relation between foetus and maternal body have thus continued to adhere to the foetal container model.

In the last century, this model has been reinforced by discussions of abortion in both academic literature and in the public sphere. In some philosophical work, the language used in describing pregnancy has certainly provided implicit, if not explicit, support for this view of the maternal-foetal relation. For example, Wertheimer, in the process of describing the liberal view

of viability as a cut-off point for abortion, claims that on this view, 'it is then that the child has the capacity to do all those things it does at birth; the sole difference is the quite inessential one of geography' (1971, p. 78). At birth, Wertheimer states that, 'the child leaves its own private space and enters the public world' (ibid). The processes of gestation and childbirth are not acknowledged as philosophically significant here, and the difference between a child, living and breathing independently, and a foetus, embedded in the uterine wall, is dismissed as mere 'geography.' The mother is imagined as entirely separate from the foetus, their physical intertwinement irrelevant. Not only is the child merely contained inside her womb, but it is not even *her* womb – it becomes the 'private space' of the child. This use of language allows Wertheimer not only to casually pass over the ethical difficulties arising from the fact that gestation occurs inside someone else's body, but to leave out of sight altogether the possible ethical difficulties that arise if we understand the foetus as a part of the maternal body. In many other philosophical works on abortion, insofar as the pregnant woman is acknowledged at all, she is seen as a mere container or living-space, while the process of gestation itself is seen as a matter of spatial arrangement.

In principle, there are at least three different issues to be considered here: the gestational process itself (the physical and possibly metaphysical intertwinement of mother and foetal organism, the nourishment of the foetus via the maternal bloodstream, etc.); the location of the process (inside the maternal body); and the issue, in human pregnancy, of recognising whether and/or when an additional person comes into existence during gestation. Conceptually, these issues tend to be conflated by the use of language indicating a foetal container model of pregnancy. Work which uncritically presupposes this model fails to address the crucial difference between pregnancy and any interaction between physically separate humans, and thus contributes to a body of literature which emphasises the subjectivity and personhood of the foetus as a separate being from the mother. This includes literature on abortion which *defends* a woman's moral right to end a pregnancy. For example, Thomson's famous defence of abortion presents a scenario in which one wakes up to find that your body has been hooked up to the circulatory system of a dying violinist, so that one's kidneys can be used as a living dialysis machine to extract the poisons from his blood. She appeals to our intuition that it would be quite unreasonable to force someone to stay plugged into the violinist against their will: 'I imagine you would regard this as outrageous' (1976, p. 49). She then expects that the reader extend that intuition to the case of the pregnant woman by positioning the two cases as analogous. However, the lack of fit between these two scenarios undermines Thomson's argument, as others have already argued (see for example Davis, 1984; Wiland, 2000). While sympathetic to the situation of women faced with an unwanted pregnancy, Thomson's analogy reinforces the conceptual separation of the foetus from the pregnant woman.

Public discourse on abortion, like philosophical literature, has both drawn on and reproduced the foetal container model. A crucial factor in shaping public discussion of abortion in the late 20th Century was, as Hartouni notes, 'the increased public presence of the foetus' (1998, p. 131). Anti-abortion campaigns have made frequent use of foetal imagery, and in particular of late-term sonograms and videos in which the similarities between foetal and newborn infant are most evident. Anti-abortion campaigners and foetal health advocates use similar rhetoric, the latter in policing the behaviour of pregnant women who 'are often urged by health educators to visualize their babies-to-be, no matter what developmental stage, as miniature infants' (Oaks, 2000, p. 75). Warnings against smoking during pregnancy, for example, personify foetuses through illustrations and cartoons from which the foetus 'speaks' to the mother. In Planned Parenthood's advertisement series 'Mommy Don't', which cautioned pregnant women against drinking, smoking, and taking drugs, the voice addressing 'Mommy' is, of course, that of the foetus (Oliver, 2013, p. 250).

Now, the question of foetal personhood is a different question from that of the metaphysical relation between foetal organism and maternal organism.[4] However, given the cultural predominance of the foetal container model, anthropomorphising language which supports the presupposition of foetal personhood will also tend to support the conceptual separation of the foetus and mother, as will the conceptual alignment of the foetus with the infant. While there may not be a necessary connection between the foetal container model and foetal personhood, the language and imagery of foetal personhood common in anti-abortion rhetoric and pre-natal health campaigns reinforces the presupposition that the foetus and pregnant woman are fundamentally distinct entities, metaphysically and ethically.[5]

As I argue in the next two sections, the foetal container model functions through different moral frameworks in different contexts. It facilitates a view of the foetus as a separate individual with aggrandised rights in certain medical and medical-legal contexts, whilst discussions of surrogacy use the same presuppositions about the maternal-foetal relationship to treat the foetus as a product. Constraints on the freedom of pregnant women are then justified in different ways in these contexts – by appeal to the rights of the foetus and to notions of

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[4] While some philosophers have argued that the foetus cannot be both a person and a part of the organism (for example, see Howsepian (2008); Smith and Brogaard (2003)) others have argued that there is no necessary tension here (for example, see Kingma (2019)).

[5] At least in philosophy, something like a maximality principle may be doing the work here; the assumption that a person cannot be part of another person, together with foetal personhood, provides support for a foetal container model of pregnancy. Broader public views of pregnancy may also be influenced by the person/part dichotomy presented by anti-abortion campaigns. Some such campaigns align the foetal container model with foetal personhood by emphasising the idea that a foetus is a person *and therefore* not a body part.

maternal-foetal conflict, or by appeal to contract and consumer satisfaction – while still relying at heart on the foetal container model.

3. Pregnant women as 'maternal environment'

Recent developments in medical technologies and practices have had a significant impact on the way in which pregnant or labouring women are viewed and treated in a medical context. Technologies such as electronic foetal monitors and sonograms allow medical personnel to observe and examine the foetus directly during gestation and childbirth. A consequence of these developments has been the construction of the foetus as a separate patient, whose needs may then appear to conflict with those of the pregnant woman. Working in conjunction with social norms regarding 'appropriate' maternal behaviour, this has led to increased pressures on pregnant women to accept interventions and police their own behaviour for the sake of foetal health. With increased dissemination of medical information to the general public through self-help books, information leaflets, websites, and instructive videos, this view of the pregnant subject has been widely taken up in society at large (Wetterberg, 2004, p. 40). Research into the effects of specific behaviours on foetal outcomes gives rise to increasingly specific recommendations for pregnant women to follow; Kukla tells us that they are held responsible 'from the moment of conception for controlling and perfecting their children's IQ, allergies, sense of rhythm, facial structure, freedom from genetic diseases, and much more' (2005, p. 126).

Pregnant women are thus expected to control and modify their lifestyles in particular ways and to keep up-to-date with the latest recommendations for prenatal care. Gendered expectations about maternity, as Mullin notes, 'are particularly likely to require pregnant women to accede to whatever foetal interests are thought to require' (2005, p. 76). Ideologies of motherhood have shifted in certain ways over time, but Lynch argues that from the late twentieth century they have been increasingly defined by a care-oriented ideal of maternity, according to which 'a woman must put her child's needs above her own and conscientiously respond to all the child's needs and desires' (2005, p. 33). In the medical sphere, then, the foetal container model shapes our common views of pregnancy through a particular moral framework. The foetus is seen not only as a distinct *entity* from the pregnant woman, but as a distinct *patient* with specific interests in optimal development. Further, where these interests are perceived as conflicting with maternal interests, the conclusion that foetal interests should be prioritised comes as a natural consequence of the cultural expectation 'that women's nurturing conform to ideals of self-sacrifice' (Mullin, 2005, p. 77).

The conceptual separation of foetus and pregnant woman may come quite naturally, especially insofar as we are influenced by medical practices which conceptually isolate the foetus from the mother. A now-ubiquitous image in Western society is that of the free-floating

foetus, whether this is in the form of 'baby's first picture' (the first sonogram) or in the form of cartoon representations of a foetus *in utero* we might recognise from our school textbooks. It is rare that we will see the foetus pictured inside the amniotic sac, embedded in the uterine wall. The foetal sonogram necessarily requires that we 'see through' the maternal body, but the effect is 'to make pregnant women so transparent as hardly to be seen at all' (Sandelowski, 1994, p. 240). The routine use of ultrasound technology to view images of the foetus during gestation has allowed 'access' to the foetus which, prior to this development, was unique to the mother. Sandelowski suggests that this has had the effect of 'minimizing pregnant women's special relationship to the foetus while maximizing their responsibility for foetal health and well-being' (p. 231).

This stress on maternal responsibility for foetal health is particularly evident in Casper's research into foetal surgery; in this context, the foetus is the primary patient, and pregnant women by extension 'are defined as support technologies or intensive-care units' (1997, p. 238). Pregnant women are often viewed as the primary threat to foetal welfare by foetal surgeons, whose comments 'reveal a discourse of blame and shifting accountability for postoperative problems – in this case, to the women who 'cause' their foetuses to die' (1998, p. 191). A similar attitude towards pregnant women seems to contribute to the growing tendency to view caesarean section as having better outcomes for foetal health than vaginal delivery (Ghosh and James, 2010, p. 21). More generally, social expectations regarding parental responsibilities seem almost entirely focused on maternal behaviour during pregnancy, despite the effects that environmental conditions, employer behaviours, and the life-style choices of partners can have on foetal health (Mullin, 2005, p. 80). Pregnant women's responsibility for foetal health is thus aggrandised; however, while pregnant women are rarely seen as actively contributing to the work of nurturing the foetus, any 'inappropriate' behaviour (including failure to adhere to all recommendations, such as taking particular vitamins) may be seen as *detracting* from the development process. There is therefore a perceived need for medical professionals to monitor and 'manage' pregnant women to ensure their compliance with medical advice (Johnson, 2008, p. 894).

This attitude extends to, and is particularly visible in, the medical treatment of pregnant women during childbirth. Standard practices and expectations in medical treatment, such as the requirement for informed consent, are frequently overturned in labour management. Hodges argues that the increasing rates of medical interventions – such as induction, episiotomy, and caesarean section – and the frequency with which these procedures are undertaken despite being medically unnecessary, point to the abuse of women giving birth (2009, p. 9). She further suggests that the power imbalance between the physician and pregnant woman allows the former to gain artificial consent for such procedures. In some cases not even artificial consent is

acquired, with some women reporting that their doctors carried out internal examinations and surgical procedures without communication, informed consent, or so much as eye contact (2017, p. 6). In one woman's experience of labour, 'There seemed to be a stream of men doing painful internal exams without asking my permission' (ibid). Another woman said, 'All I could see was this very impatient doctor in his white coat and about 6 other people I didn't know all waiting and watching me as my legs were spread wide open' (p. 7).

When treated in this way, pregnant women are reduced to machines or containers from which the infant must be extracted, as opposed to an autonomous subject actively giving birth. Childbirth is hardly a rare medical procedure, and yet women who give birth in a hospital setting (across all geographical regions and across high-, middle, and low-income countries) frequently receive treatment deviating significantly from accepted standards of professional care (Bohren et al., 2015; Freedman and Kruk, 2014). Women who preferred to deliver in positions other than supine 'felt that adopting an undesirable position at the demand of the health worker made them passive participants in their childbirth process' (Bohren et al., 2015, p. 12). When foetal outcomes are the central concern of health professionals, the pregnant woman is no longer the primary patient. Often women's autonomy is overlooked, and their subjectivity and active role in the birth process is seen as, at best, an inconvenience for the doctor 'managing' their labour, and at worst, an obstacle to the safe delivery of the infant. While the presumption of the foetal container model does not entail the reduction of women to *mere* containers, the former thus certainly facilitates the dismissal of pregnant women's subjectivity.

The foetal container model of pregnancy is perhaps never more evident than when the pregnant body is seen not only as a vessel or environment for the foetus, but as a potential threat from which it must be protected. The foetal container model and the concept of maternal-foetal conflict can be seen as mutually reinforcing constructs in this sense. This view of pregnancy has been increasingly taken up in legal practice, and medical personnel have played a crucial role in helping to implement 'foetal protection laws' (Goodwin, 2014, p. 729). In the legal sphere, the depiction of the foetus as separate from the pregnant woman has used a similar moral framework: a focus on individuals as bearers of rights. With increasing frequency over the last few decades, pregnant women have undergone forced caesarean sections, blood transfusions, and other interventions, even being kept on life-support for weeks after brain death against their wishes and those of their families, for the sake of foetal health and/or life (Cantor, 2012; Ulrich, 2012). The elevation of the status of the foetus, in conjunction with the deeply engrained conceptual separation of foetus and mother, has led to a state of affairs in which pregnant women (especially if poor and/or non-white) have come 'as close as a human being can get to being regarded, medically and legally, as 'mere body'' (Bordo, 1993, p. 76). At the other end of the scale, Bordo argues, the foetus has gained the status of '*super* subject' (p.

88). While it is important to note that few jurisdictions currently treat the foetus as a legal person, the wider effects of campaigns for 'foetal protection' legislation (for example, in emphasising pregnant women's responsibility for foetal health) should not be underestimated.

4. Surrogacy and the foetus as product

The normalisation of the foetal container model is perhaps most evident in discussions of surrogacy, which epitomise the view of pregnancy as a 'tenant-niche relation' (Finn, 2018a). Here, we find descriptions of pregnant women as 'bearers,' 'containers,' 'incubators,' 'hatcheries,' 'plumbing,' 'rented property,' or 'alternative reproductive vehicles' (Berkhout, 2008; Deonandan et al., 2012; Ekman, 2013). Surrogate mothers do not *have* a child, but merely 'utilize' their bodies to deliver a service (Ekman, 2013, p. 140). In this context, too, philosophers and sociologists have criticised the treatment of pregnant women for several decades, often describing the language of the surrogacy industry as dehumanising, and as instrumental to the commodification of reproduction or of children (see for example Anderson, 1990; Shanner, 1995). A fundamental distinction between mother and foetus is not merely presupposed in the context of surrogacy, but is often emphasised, as surrogacy depends on this notion for legitimacy. The justification of commercial surrogacy relies on the foetal container model of pregnancy in two ways: first, a sharp distinction between foetus and pregnant woman as separate entities is required to support the claim that only the woman's labour, and not her body, is commodified; second, this distinction is used to support an account of parenthood which denies the significance of gestation and labour.

The same kind of constraints on pregnant women's bodily autonomy are justified through the foetal container model in the surrogacy industry as in the medical context, though using a different moral framework. The privilege granted to the foetus once again limits pregnant women's bodily autonomy in surrogacy agreements; however, this is primarily due *not* to its status as a 'super subject' (as it is in the cases of forced medical intervention mentioned in the previous section) but to its conception as a product, commissioned and paid for by the intended parents, who do not want their goods damaged. Pregnant women who sign surrogacy contracts can find their bodily autonomy restricted with regards to everyday activities and the consumption of food and drink, and must submit to any physical examinations or interventions deemed necessary by the doctors or agency, or else risk a lawsuit for breach of contract (Ekman, 2013, pp. 164–65). The welfare of both the foetus and the pregnant woman in surrogacy arrangements are thus subordinated 'to fulfilling the desires of an infertile couple to have a child' (Tieu, 2009, p. 172). The welfare of the foetus is still prioritised over the mother's, but in the case of surrogacy, both are means to a specific end: consumer satisfaction.

This attitude is illustrated by the case of Baby Gammy, which caught international media attention in 2014. In this case, an Australian couple commissioned a Thai woman to act as a surrogate mother for them, and she became pregnant with non-identical twins. At seven months, the male twin was discovered to have Down syndrome and a congenital heart defect; after the children were born, the Australian couple took only the healthy female twin home with them, leaving the chronically ill baby Gammy in Thailand (Schover, 2014, pp. 1258–59). Another case, in 2008, which caught similar media attention, involved a Japanese couple who contracted an Indian woman to carry a child for them, but then divorced during her pregnancy and decided they no longer wanted the child (Ekman, 2013, p. 170). The treatment of children as products is also exemplified by those surrogacy contracts which grant the buyers the right to demand that the surrogate mother have an abortion if the results of amniocentesis indicate abnormal development (p. 164).

Philosophers have been concerned with the problem of commodification in surrogacy for several decades, and have considered whether the child itself, the mother's body, or the mother's reproductive labour (where understood as separate from the body) is commodified in commercial surrogacy cases. Ertman suggests that surrogacy involves the sale of parental rights; however, she then decries those laws which allow payment of lawyers and doctors involved in surrogacy arrangement, but not payment of surrogate mothers, 'despite the fact that it is the birth mother doing the most work in the transaction – indeed the most dangerous, life-altering work' (2003, p. 12). This would suggest that Ertman actually considers the commodity being sold in these transactions to be the child rather than parental rights to the child. The 'dangerous, life-altering work' she refers to is clearly not the legal relinquishment of parental rights, but rather gestation and childbirth, and the product of gestation and childbirth is, of course, a child. Similarly, the work of doctors and lawyers in surrogacy arrangements has nothing to do with parental rights, but to do with the production of a child.

Now, commercial surrogacy advocates, by and large, wish to avoid the conclusion that surrogacy is akin to baby-selling, but also need to deny that surrogacy involves the sale of parental rights, since many jurisdictions strictly prohibit payment for adoption. Instead, many advocates for surrogacy argue that the surrogate is not, and has never been the child's mother; the child in question has always been the child of the commissioning parent(s) (Ekman, 2013, p. 154). Mary Beth Whitehead, the birth mother of the 'Baby M,' wrote in her autobiography: 'Over and over, the [clinic] staff told me that it was the "couple's baby"' (Whitehead, 1989, p. 11). Similarly, one British surrogate mother, describing the 'right attitude' to have when entering surrogacy arrangements, said that 'In a way you have to be quite cold about it. I don't, from the start, see the baby as mine' (Baslington, 2002, p. 64). This attitude is encouraged by the director of an Indian maternity clinic, the site of Pande's fieldwork, tells the surrogate mothers there:

'It's not your baby. You are just providing it a home in your womb for nine months because it doesn't have a house of its own' (2010, p. 978).

The foetal container model is crucial in enabling the claim that the 'biological parents' of a child are the genetic parents, denying the significance of gestation and harking back to a flowerpot view of pregnancy: this time, the fully-formed homunculus is replaced by an embryo belonging to the commissioning parents, which the surrogate mother will simply incubate until it is ready to be given back. Jönsson goes as far as to deny that surrogacy involves a substitute mother or parent, but only 'the *uterus*' (2003, p. 15). Again, the language used in the surrogacy context reinforces such views through an emphasis on body parts and processes ('womb,' 'incubator,' 'maternal environment'). According to Berkhout, 'psychological studies of surrogate mothers suggest that by viewing themselves as tools used for producing someone else's child, surrogate mothers may make their experience of giving the child away easier' (Berkhout, 2008, pp. 105–6).

Of course, the embryo is indeed distinct from the pregnant woman prior to implantation, as is the infant born nine months later. The fiction which surrogacy advocates must uphold, however, is that the physical intertwinement which occurs in the interim is insignificant, and the language of the foetal container model assists in this aim. If one claims that the 'surrogate' mother is not in reality the mother of the child, and insists that it merely resides inside her, 'the only logical outcome is to view the relationship as one of ownership, the surrogate as a 'human incubator' and the child as the 'product' who bears no relationship to her other than partly being the result of her biological and physical labour' (Tieu, 2009, p. 174). Several philosophers have noted that language is used to disparage the connection between the pregnant woman and the foetus, by labelling her the 'surrogate' (meaning 'replacement') when this would more appropriately describe the woman commissioning the pregnancy. If the woman who gives birth to the infant is the surrogate, she is not the real mother, and so the child is not her child.

In order to guarantee that the 'surrogate' will relinquish a child to the intended parents, agencies and surrogacy brokers often encourage the suppression of any maternal feelings. In her examination of commercial surrogacy practices in India, Pande describes this as a 'disciplinary project' which aims to produce 'a disciplined contract worker' and simultaneously 'a selfless mother who will not treat surrogacy like a business' (2010, p. 976). Whilst the aim of such cognitive dissonance is different in the surrogacy context and in the medical context, similar kinds of double-think are demanded of women in both. In the medical context, with regards to miscarriage, Mullin notes that 'women are simultaneously encouraged to think of their foetuses as their children and yet expected not to mourn the loss of those foetuses at least in the same way they would mourn the loss of an infant child' (2005, p. 28). Likewise, surrogate

mothers are urged to care for and nurture their foetuses while at the same time being told to suppress any maternal feelings towards them (Ekman, 2013, pp. 170–71). In both contexts, it seems that the foetal container model is used to deny the intimacy of the maternal-foetal relationship and its significance for many pregnant women.

In spite of the attitudes they are encouraged to accept, the testimonies of some surrogate mothers indicate that this relationship sometimes cannot be denied. However, those who do express the pain they feel in giving up the child they have gestated, or who renege on their contracts, face a fierce backlash, often from other surrogate mothers (Baslington, 2002, p. 66; Ekman, 2013, pp. 188–89). Ekman suggests that the reason for this response is that surrogate mothers who change their minds and claim custody of their children threaten the 'ideological foundations' of surrogacy: 'Despite the fact that the surrogate world – thousands of surrogates, agencies, doctors, buyers, lawyers, and judges – applaud the decision to give up a child, one woman's refusal is enough to completely upend their emotions' (p. 190). In the more familiar terms I have been using in this paper, the decision of a surrogate mother to keep her child disrupts the moral framework central to commercial surrogacy, primarily by refiguring the infant as *her* child. Less dramatic ways in which surrogate mothers upset this moral framework include attempts to keep in touch with the child's family; some, for example, request updates or photographs. The foetal container model is used in conjunction with the language of the market to strictly limit the role of the gestational mother, and women's attempts to move outside of these limits may put pressure on the conceptual structure on which commercial surrogacy relies for justification.

It seems clear, then, that while the treatment of pregnant women in commercial surrogacy parallels the attitudes towards, and treatment of, pregnant and birthing women in medical and medical-legal contexts, different practices are justified in the two contexts by applying different moral frameworks to the foetal container model. Analyses of surrogacy, whether in philosophy, sociology, or feminist studies, can be further developed by understanding the foetal container model *not* as one uniform view of pregnancy, but as the conceptual foundation for a variety of practices and attitudes. Similarly, this understanding can be of significant use in discussing birthing practices, public discourses on abortion, prenatal health provision, media representations of pregnant women, and other social structures built around pregnancy.

5. Conclusions

In comparing the treatment of pregnancy and pregnant women in the medical sphere and in the context of commercial surrogacy, we can expose the different ways in which the foetal container model of pregnancy is used to deny the moral significance of gestation, in the service of different

aims. This model is used in conjunction with social ideals of motherhood to pressure expectant mothers to monitor and modify their behaviour and lifestyles, and to emphasise women's responsibility for foetal outcomes; it is used in conjunction with the language of the market to encourage women to view themselves as tools for the development of someone else's child. Different moral frameworks and concepts use the foetal container model to justify different outcomes in these contexts: to nurture the foetus but not mourn miscarriage, or to nurture the foetus but not mourn giving up the child; to claim that the rights of the foetus outweigh the rights of the gestating woman, or to claim that the rights of the commissioning parents outweigh the rights of the gestating woman. The foetal container model of pregnancy does not necessarily entail women's diminished subjectivity; however, in the patriarchal context in which this model has developed, it can pave the way for the reduction of pregnant women to *mere* containers.

As mentioned at the beginning of this paper, alternative models of pregnancy have been suggested; for example, we might understand the foetal-maternal relation as a part-whole relation, or as that of two organisms with shared parts (see for example Finn, 2018b). Whether or not we agree with such conceptions, active consideration of the complex relations involved in pregnancy can only help us to move away from the over-simplified and damaging views of pregnancy, and related practices, which the dominance of the foetal container model has facilitated.

Gestationalism and the Rights of Adolescent Mothers

Abstract

In this paper, I explore the ways in which consideration of adolescent parents forces us to confront and question common presuppositions about parental rights.[1] In particular, I argue that recognising the right of adolescent mothers not to be forcibly separated from their newborn children justifies rejecting the notion that parental rights are (a) all acquired in the same manner, and (b) acquired as a 'bundle' of concomitant moral rights. I conclude that children and adolescents who conceive and give birth have some parental rights concerning their newborn children – in particular, the right not to be forcibly separated from those children – even if they do not have the 'full complement' of parental rights as we generally characterise these.

1. Introduction

Reproduction and the rearing of children, and the moral rights and obligations of those involved, are subjects to which philosophers have devoted significant intellectual energy. In particular, they have inquired into the scope of parental rights and obligations, and the means by which they are acquired. In this area of applied philosophy, parents are generally taken to have obligations to care for, raise, and nurture a child within a particular kind of intimate relationship (see for example Brake, 2010, p. 161; Weinberg, 2008, p. 167). Parental rights, on the other hand, are generally taken to comprise rights to custody of one's child, and to make decisions regarding his/her education, healthcare, and moral and political upbringing (Archard, 1990, p. 184; Montague, 2000, p. 47; Page, 1984, p. 196). Alongside this literature on parenthood, there is a substantial body of work concerned with the moral status of children. Some philosophers have argued that children are beings with special moral status, whose vulnerability and lack of maturity both results in special duties on adults to protect them, and precludes their having rights to engage in activities such as voting, paid employment, or marriage (see for example Archard & Benatar, 2010; Ferdinand Schoeman, 1980). Others have argued for the 'liberation' of children from restrictions on their autonomy (see for example Cohen, 1980; Firestone, 1970; Holt, 1975). As one might expect, philosophical work on the

[1] This paper has been accepted for publication by *Moral Philosophy and Politics* and is forthcoming at the time of thesis submission.

rights and obligations of children intersects frequently with work on parenthood.[2] It is therefore striking that neither of these overlapping spheres of philosophical work has yet (as far as I can find) considered the ethical implications of reproduction by children.

In this paper, I argue that gestational mothers have weighty rights in relation to their newborn children, and that these rights may restrict the manner in which parental obligations to both children can be fulfilled. The right not to be forcibly separated from one's newborn is grounded in the more general right not to be subject to grave harms, and thus applies regardless of age, social position, or the existence of other rights and/or obligations concerning one's offspring.

2. The Uncertain Moral Status of Adolescent Parents

As Schapiro notes, 'we tend not to hold children responsible for what they do in the same way that we hold adults responsible for their actions' (1999, p. 717). She describes childhood as a 'normative predicament' – a child's agential incapacity disqualifies her from both moral responsibility and liberty rights (p. 730). Adults, on the other hand, (absent factors such as coercion or diminished capacity for reasoning) are near-universally taken to bear moral responsibility for their actions, and often for the actions of their young children.[3] There is no comparable widespread agreement regarding the moral responsibility of older children, or the extent to which responsibility for their actions might be passed to their parents.[4] This may be partly because characteristics generally taken to determine moral responsibility (such the capacity for rational thought) cannot straightforwardly be ascribed to a child as they reach any particular age. They certainly do not straightforwardly coincide with the development of reproductive capacities; a child may become biologically capable of reproducing as young as 6 or 7, but most would agree that a child of this age should not be held morally responsible for their actions in the same way as an adult.[5] We can make similar observations about our ascription of various moral rights to young children and adults on the one hand, and older children on the other hand: the moral status of older children is significantly more ambiguous

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[2] For example, philosophers have considered the ways in which parental obligations are shaped and determined by children's interests, and the extent to which parental rights to make decisions about their children's lives might be constrained by children's rights to autonomy.

[3] The person who comes home to find that his cat has been covered in poster paint tends to direct blame at his next-door neighbours, rather than at their two-year-old child.

[4] The person who comes home to find that his garden wall has been vandalized tends to direct blame at his next-door neighbours' fourteen-year-old child, but may also hold the parents morally responsible for their failure to instil certain moral values in their adolescent, and hold them financially responsible for the damage.

[5] The youngest mother on record gave birth at the age of 5 years and 7 months (Revel et al., 2009, p. 461).

than that of young children and adults. Parental rights and responsibilities are a particularly interesting example of this, because:

(a) We cannot make a comparison between adolescents and young children, since the latter are not capable of procreating or caring for other children; and

(b) Certain parental rights and responsibilities are taken to correspond to the rights and responsibilities of children themselves.

Adolescent reproduction is thus a situation in which questions concerning children's rights/obligations and parental rights/obligations intersect in a particularly thought-provoking way. However, questions about the rights of adolescent parents have largely been overlooked by philosophers working on parenthood. This may be because much of the research undertaken in this area focuses on problems arising from reproductive technologies available only to adults; reproduction by children is (in Western culture) something which we tend to work hard to avoid, rather than to enable. Nonetheless, while most will agree that it is far from desirable for children to have children themselves, it is a situation which can and does occur (albeit with greater frequency in some parts of the world than others). It is therefore important to consider how the balance of rights and duties is to be understood in such cases.

As Montague puts it, it is a commonly held view that 'parents who love and care for their children have rights (perhaps within broad limits) to determine how their children should be educated, what sort of health care they should receive, what (if any) religious doctrines they should be encouraged to accept, and so on' (2000, p. 47). I presuppose here that children and young adolescents do not have (the full complement of) parental rights, understood in this way, over their own offspring.[6] A 10-year-old girl may be biologically capable of conceiving, gestating, and giving birth to her own child, but as long as we presume that she does not have full liberty rights regarding her own education, living and travel arrangements, and healthcare, it would seem strange to suppose that she has the right to parent her own child, where we take this to include making similar decisions for that child. However, I will argue here that denying that children have the right *to parent* does not entail that they have no parental rights. On the account I defend here, we may accept that a young girl may not have the parental rights to decide on the medical treatment of her own infant, discipline the child, or undertake other parts of the traditional role of parent, while also accepting the possibility that she has other rights concerning her child, which might be understood as parental rights.[7] I will first argue that the

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[6] This account is therefore consistent with the possibility that there are *not* in fact parental rights over children characterised in this way, as has been argued by some theorists (see for example Archard, 1990; Vallentyne, 2003).

[7] We should note that children may well (and frequently do) parent their own children, and indeed the children of others, even if they have no moral right or obligation to do so.

gestational mother of a child (whether that mother is a child, adolescent, or adult) has a right not to be forcibly separated from her newborn.

3. Gestationalism and grave harms

In this section, I present an argument for a limited form of gestationalism. Broadly speaking, gestationalism is the view that initial parental rights over a child are acquired through gestation and childbirth (though gestationalism is compatible with the belief that parental rights may be acquired by other means – for example, by carrying out the work of parenting). Different forms of gestationalism have been defended in recent years; one notable proponent of gestationalism is Gheaus (2018), who argues that gestation is a means by which a parent enters the intimate parent-child relationship, and that we have the right to maintain such intimate relationships. Another example – whilst he does not describe his account as gestationalism – is Millum's 'investment' theory, in which he argues that gestation constitutes parental work which will 'substantially outweigh' that carried out by others during the course of pregnancy and childbirth, thus giving the gestational mother 'a massive majority stake in the child' (2010, p. 123). In this paper, I defend a restricted form of gestationalism. I argue that gestation grounds a strong negative right not to be forcibly separated from one's newborn. I deny that all parental rights are necessarily acquired concomitantly, but leave it an open question whether further parental rights (such as rights to full custody, care-related decision-making, etc.) may be derived from the right not to be forcibly separated from one's newborn.

There are certain harms which may be characterised as *grave* harms, such as the torture of a child. I assume here that most will recognise the forcible separation of a mother from her newborn as a grave harm. Our condemnation of the treatment of girls and women detained in Ireland's Magdalene Laundries (for example) is not only a condemnation of violations of their right to freedom and bodily autonomy, but also recognises the grave harm inflicted on women and girls in having their newborn children forcibly removed from them and adopted without their consent. 'Forcible separation' does not refer only to the use of physical force to separate a mother from her newborn, but also the use of coercion, blackmail, deception, or (threatened or actual) legal prosecution. A woman who is unwillingly placed under general anaesthetic, and who wakes up to find that a caesarean section has been performed and her newborn taken into custody by a third party, has as much right to claim that she has been grievously harmed as the woman whose child is ripped from her arms as she recovers from childbirth.[8] Recognising this

[8] Some might consider this a needlessly fanciful attempt to play on the reader's emotions; unfortunately, this describes an arrangement approved by the court in *NHS Trust v JP* (2019) . The arrangement ultimately was not carried out, because the woman in question came to hospital and gave birth to a healthy child, via vaginal delivery, ahead of her due date.

as a grave harm does not require us first to posit any specific parental rights over one's offspring. Animal protection laws which dictate the minimum length of time before (for example) cows and dogs may have their offspring removed from them do not rely on claims that animals have parental rights. Rather, they are justified by (a) a more general commitment to animals' prima facie rights not to be subjected to harm, and (b) a recognition of the deep distress experienced by these animals when separated from newborn offspring (recognition of this distress in the latter being a focal point for some vegan activism).

Even if we accept the above, some might dispute the assumption that forcible separation from her newborn would likewise constitute a grave harm for an adolescent mother. However, it would be highly unreasonable to recognise it as such for adult women and for female mammals such as dogs and cows, but suppose girls and adolescents to be immune from this kind of distress. If anything, we should recognise the possibility that a child will suffer greater harm than an adult woman in having her newborn forcibly removed from her, given her relatively diminished capacities for understanding, and the increased vulnerability which arises from her age and social status. We should therefore accept that forcible separation from one's newborn constitutes a grave harm regardless the age or social position of the mother. On this basis, I propose the following argument for (restricted) gestationalism:

P1: To forcibly separate a mother from her newborn constitutes a grave harm.
P2: We have a *prima facie* right not to be subjected to grave harms.
C1: A mother has a *prima facie* right not to be forcibly separated from her newborn.

C1 does not entail that a mother cannot give up custody of her newborn voluntarily. It is also consistent with the belief that there are certain cases in which it is justifiable to forcibly remove a newborn from its mother. Rights are often defeasible, especially where they conflict with the rights of others. The mother's right might be outweighed by the rights of that child – for example, where the mother does not consent to medical staff removing the newborn for urgent medical treatment.

As Preda notes, there is a distinction between positive and negative rights, and between their correlative duties (2015, p. 680). The duty that correlates with a right 'has the same content as the right' in that both are satisfied by the performance of that duty (p. 679). Positive rights correlate with duties to perform certain actions; negative rights correlate with duties to abstain from an action. To determine whether a right is positive or negative, Preda argues that 'we need to clarify what its correlative duty is since typical formulations are often ambiguous' (pp. 680-81). This point is crucial to the discussion of parental rights in this paper. The right to life 'can mean a claim that others abstain from murder but it can also mean a claim that others

provide us with what is necessary for survival' (p. 681). Likewise, parental rights to custody of a particular child might be positive rights, correlating with a duty on others to provide one with access to that child and enable continued custody, or they might be negative rights, correlating with an obligation on the part of others to abstain from removing or interfering with her custody of the child.

The right not to have one's newborn child forcibly removed seems clearly to be a negative right, since a child is always born *to* a specific person and so comes into existence in someone's custody – specifically, that of the gestational mother. The newborn is 'with' the mother by default, since, as Rothman puts it (1996, p. 1246):

> We begin as parts of our mothers' bodies. We don't, as the language of patriarchy would have it, 'enter the world' or 'arrive.' From where? Women who give birth, I have often pointed out, don't feel babies arrive. We feel them leave.

The forcible separation of mother from newborn would thus constitute an intervention which (given the *prima facie* rights of the mother as defended above) must be justified by sufficiently weighty rights of others. These might be the rights of the child not to be harmed, or they might be some third party's positive right to custody of that child. We may consider cases described elsewhere in the literature on parental rights, in which the genetic father of a child born and adopted without his knowledge makes a claim for custody (Oren, 2006; Shanley, 1995). If this claim is underpinned by a positive right to custody, the correlative duty of others is to provide him with the child, including the adoptive parents, who presumably have a duty to give up custody. They cannot simultaneously have the duty to give up custody and the right to maintain custody; only one of these can be valid. However, the account I defend here leaves open the question of whether there *are* positive parental rights, and so whether a third party's positive right to custody of a particular child could conflict with (and outweigh) a gestational mother's right not to be forcibly separated from her newborn.[9]

It might be objected at this point that it is unreasonable to posit a negative right regarding one's relationship to, or custody of, a non-consenting party.[10] Vallentyne, for example, argues that 'A man's profound interest in having a relationship with a given woman does not

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[9] It is worth clarifying at this point that separation is not simply the absence of physical contact (or we could say that the mother disavowed her rights the first time she put the infant in a bassinet in order to get some sleep). For the purposes of this paper, I suggest that the two have been separated, forcibly or otherwise, if her newborn is removed without her consent or knowledge, she is denied information about its whereabouts, and/or she is kept from seeing or accessing her newborn.

[10] Many thanks to the guest editors for raising this point.

give him any rights to control access to her. The situation with children is no different' (2003, p. 1001). However, the relationship between mother and newborn is very different to that which exists between adults, or between an adult and an unrelated child. As Gheaus (2018) argues, when a newborn comes into existence it is, in most cases, already in an intimate relationship with its mother, regardless of its capacity for consent (or lack thereof). The infant recognises the voice and heartbeat of the gestational mother, 'physical contact with whom regulates the baby's hormone levels, temperature, metabolism, heartbeat, and antibody production' (2018, p. 235). In defending the rights of the mother not to be separated from her newborn without her consent, we may also reflect once more on animal welfare legislation which, in protecting both female mammals and their newborn offspring from the distress of forcible separation, presupposes neither the existence of parental rights in animals nor their capacity for consent to relationships.

Unlike other gestationalist accounts which have been put forward in recent years, this account does not defend gestation as a grounds for any parental rights beyond the *prima facie* right not to be forcibly separated from one's newborn. However, we may ask whether this right gives rise to others, such as the right to custody. Where custody is understood as the care and control of a person, animal, or object, then the right to custody of a child seems strongly to imply the right to parent that child. There are situations in which we would reject the claim that a mother has the right to parent her newborn – in particular (as noted in section 1), the case of a young adolescent mother. If an adolescent mother has a *prima facie* right to custody of her newborn, as a result of her right not to be forcibly separated from him/her, and the right to custody is concomitant with the right to parent the child, then we seem to have a conflict. However, if the right not to be forcibly separated from one's newborn does *not* entail a right to parent the child, we might doubt the characterisation of the former as a parental right. I address these concerns in the next section.

4. Parental rights and the right to parent

In this section, I argue that accepting that a 10-year-old girl has the right not to be forcibly separated from her newborn does not entail accepting that she has full parental rights (as traditionally characterised). In order to make this further step, we would have to demonstrate both (a) that parental rights are necessarily acquired concomitantly; and (b) that the right not to be forcibly separated from one's newborn is a parental right. I will consider the distinction between parental rights and the right *to parent* a child, and argue that we may consistently recognise a child's right not to be forcibly separated from her newborn whilst denying that she has the right to parent.

If we understand the right to parent as the right to carry out the parental work of childcare (for example, housing, nurturing, and disciplining that child, and making the decisions mentioned above) within a parent-child relationship, then it may seem that it is a right which can only be held by parents. Others, including teachers and nurses, may carry out part of the daily work of childcare, but we would not characterise them as *parenting* the child. If the right to parent a particular child is restricted to the parents of that child, then it seems reasonable to say that the right to parent is a parental right. However, some accounts of parenthood suggest that parental rights are acquired *by* carrying out this parental work – that is, by parenting. Millum, for example, argues that 'the primary caregivers, those who have invested substantial parenting work into a child, are also the rights-holders' (2010, p. 118). On this account, parental work is done within 'a particular form of caring, intimate relationship with a child' (pp. 120–21). If we accept an account of parenthood according to which parental rights over a child are acquired by parenting that child, it follows that the right *to parent* that child cannot be a parental right. If anything, the acquisition of parental rights is (on such an account) contingent on first having the right to parent.

Of course, many accounts of parenthood presuppose that parental rights are acquired as a concomitant 'bundle', and that they are acquired by the same means. But is it the case that one must have either *full* parental rights or *no* parental rights? And are all parental rights acquired by virtue of the same actions, relations, or characteristics? Many philosophers have argued that parental rights and *obligations* are acquired by different means – Archard, for example, criticises the 'parental package' view (that 'If someone has both some parental rights and some parental responsibilities then they have all of the parental rights and all of the parental responsibilities') on the grounds that we can explain the origins of parental obligations by appeal to facts which 'cannot serve as a ground for parental rights' (2010, p. 109). Some philosophers posit a particular relationship between the two – for example, suggesting that the acquisition of parental rights is contingent on the fulfilment of parental obligations, or that an individual has parental rights only insofar as they *allow* these obligations to be fulfilled (for example Archard, 1990; Vallentyne, 2003). It is also widely accepted in this literature that parental obligations and rights have different defeasibility conditions – a neglectful parent may lose their parental rights, whilst retaining the ultimate responsibility to ensure the care of the child. However, the question of whether parental rights themselves (or indeed, parental obligations) come as an 'all or nothing' package has been largely overlooked. Moral philosophers have tended to focus on the acquisition and defeasibility conditions of 'parental

rights' more broadly, often characterizing these by appeal to 'commonsense' or everyday understandings of the rights of parents.[11]

I hold that the right *to parent* should not be understood as the (single) right to carry out all tasks and decisions characterised as parenting, but rather as a set of particular rights (such as the right to maintain one's relationship with the child, to carry out childcare, and to make healthcare- and education-related decisions for the child) which usually are, but need not be, concomitant. Gheaus (2015) denies that traditional parental rights like the right to custody and authority over a child are necessarily concomitant with the right to form and continue an intimate relationship with a child. Absent the culturally specific expectation that only a small handful of people carry out all 'parental' tasks for a given child, it seems more reasonable to think that different parental rights can be acquired by different people, depending on their position with respect to the child and to parental labour. On this understanding, we cannot deny that those rights are parental rights on the grounds that they do not entail (all) other parental rights. Having established the adolescent mother's right not to be forcibly separated from her newborn, and in light of the strong intuition that she does not have parental rights *in toto*, it is more reasonable to conclude that parental rights are not acquired concomitantly than to conclude that this right is not a parental right.[12] Despite the tendency in this field of research to refer to 'parental rights' as a cluster (rather than singling out individual rights), there is no obvious reason to assume that these rights must be acquired together, and in the same manner.

What does this mean for the adolescent mother? If we reject the notion that parental rights are all acquired in the same way or for the same reasons, we can say that children and adolescents have some parental rights, without committing to the unintuitive claim that they have the right to parent (in the sense outlined above). As mentioned earlier, this may have implications for accounts of further parental rights – for example, the right not to be forcibly separated from one's newborn might provide adolescent parents with a basis for other parental rights, such as the right to custody and the right to make decisions regarding one's child's upbringing. Whether or not that is the case, acknowledging this strong negative right has significant implications for philosophy of parenthood.

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[11] One exception to the tendency to consider parental rights as a concomitant bundle is found in Brighouse and Swift's account (2006). Brighouse and Swift distinguish between fundamental 'associational rights' (parents' rights to maintain a relationship with their children) and 'control rights' (for example, the right to decide whether or not to withdraw one's child from school). The latter are, on this account, derived from the former.

[12] That this particular right applies only during a relatively short period following the child's birth might seem to undermine its characterisation as a parental right. However, plenty of rights generally understood as parental rights which apply only under certain circumstances or during particular points in a child's life. For example, the right to choose one's child's name applies likewise only during a short period following their birth, and the right to make decisions about their education applies only when they are is school-aged.

5. Obligations to both children

Following the above discussion, let us suppose for the moment that a 10-year-old girl has the right not to be separated from her newborn against her will, but that (beyond this) she has neither full parental rights nor parental obligations in the sense described in section 1. Both children in this scenario have rights to care and support; as a dependent herself, the mother is not in a position to provide this for her newborn, and so the newborn's rights give rise to duties of care in some third party. Despite not having full parental rights, it the adolescent mother has a weighty *prima facie* right to stay with her newborn, since to remove the newborn (for adoption, for example) without her consent would constitute a grave harm. Any arrangement which would protect both the rights of the adolescent mother and those of her newborn would require intervention on the part of others. In this section, I address the question of whether both sets of rights can simultaneously be protected, and the question of whether the mother's rights concerning her newborn can reasonably be characterised as negative rights if they give rise to obligations on the part of others.

To answer the first question, we may return to the intersection of children's rights/obligations and of parental rights/obligations at which we find adolescent reproduction. A child or young adolescent who reproduces is in an ambiguous position not only with regard to her own rights and obligations to the newborn, but also with regard to parental rights and obligations with regard to *her.* Whilst most philosophers of parenthood agree that parental obligations to infants and young children are weighty and extensive – however such obligations are acquired – it is less clear what parents owe to their older children. However (whatever disputes we may have over the extent to which parents owe their children emotional support, moral education, or career opportunities) it seems reasonable to say that if parents have *any* obligation to their children, they are obliged to protect their children from grave harms. The person or persons with parental obligations to the adolescent mother, then, have an obligation to protect her from the grave harm of being forcibly separated from her newborn.[13] One of the most straightforward ways in which this might be achieved is for those who have parental obligations regarding the adolescent mother to take custody of her newborn as well. If the same person or persons parent both the mother and the newborn, her rights may be protected without violating the rights of the newborn to safety and care. Depending on her age, the mother may be able to play a role in parenting her child.

Of course, that such an arrangement would provide a straightforward solution to the problem at hand is not to say that parental obligations to a young girl automatically give rise to

[13] This seems clearly to include the obligation not to be the party who forcibly separates her from her newborn.

parental obligations to any children she may bear. The implication that one could thus enter a regress and acquire a series of new parenting obligations to which one has not consented, is highly implausible.[14] I have not discussed in this paper the question of who acquires parental obligations corresponding to the rights of the newborn to be cared for, but we cannot presume that they would automatically be incurred by those parentally responsible for the adolescent mother (in the way that obligations for repairs may be incurred by those responsible for a child whose behaviour causes property damage). It is not clear or intuitive that parental obligations are 'passed back' in this sense. The claim that those with parental obligations regarding the adolescent mother might, under some circumstances, be obliged to take custody of her newborn, does not entail that they automatically acquire parental obligations regarding the newborn. Those parentally responsible for an adolescent mother can safeguard her right not to be forcibly separated from her newborn in a variety of ways, which do not necessarily require them to take on parental obligations for the infant. For example, they might care for both children on a temporary basis until the mother is able to come to terms with the infant's adoption or removal into foster care, thus eliminating the need for forcible separation; or they might arrange foster care for the infant in such a way as to allow frequent visits, until (depending on her age when she gives birth) the mother reaches a level of maturity and independence allowing her to parent her child.[15] Where the adolescent could *only* be protected from grave harm if those parentally responsible for her took on parental obligations for her newborn, might we conclude that they have a duty to do so; however, it is reasonable to assume that these would be uncommon circumstances.

At this point, it is worth noting that it is far from certain that (even if allowed to reside with or visit her child whilst he or she is parented by others) the adolescent mother would have the right to parent her child by the time her circumstances allowed her to do so. After a certain period has passed, during which a third party has been caring for the infant, a new parent-child relationship exists; this may well ground different rights and obligations for all parties, even if the adolescent mother resides with her child or has frequent visits with the child's adoptive parents/foster carers. An arrangement which safeguards the adolescent mother's *prima facie* rights regarding forcible separation from her newborn may therefore preclude her acquiring any further parental rights. As noted in section 3, some philosophers have argued that parental rights are acquired in virtue of the development of this relationship, or by the undertaking of

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[14] Many thanks to an anonymous reviewer for raising this point.

[15] The latter would still require that such a foster care arrangement be initiated only when the mother is ready to release the newborn into another's custody; if the promise of visitation is insufficient to secure her consent, forcibly separating her from the infant would constitute a grave harm regardless of promises to allow her to see the child again.

parental labour. Thus, if a third party takes parental obligations for the infant after its birth, it may well be that by the time the mother reaches an age and capacity to independently parent the child herself, she will not have a right to do so (or will not have a right strong enough to outweigh the child's rights to continue being parented by those with whom he or she has established an intimate parent-child relationship).[16] However, as long as we do not presuppose that the adolescent mother has parental rights beyond the right not to be forcibly separated from her newborn, this does not necessarily produce a conflict. Acknowledging that others may (eventually) acquire parental rights regarding the newborn therefore does not undermine the claim that the adolescent mother has rights corresponding with *prima facie* obligations on the part of those others to ensure the care of the newborn without forcibly removing it from her.

We may therefore conclude that the rights of a child or adolescent who gestates and gives birth, and who (crucially) *does not consent to be separated from her newborn,* may give rise to obligations on others – including those with parental obligations to her – to ensure her own care and custody and of her newborn in a way which protects the rights of both children. If we do not believe that parental obligations to older children extend beyond protection from grave harm, this obligation might be met by arranging for the custody of both the mother and newborn to be taken by some third party or institution, or by organising an open adoption or fostering arrangement. On the other hand, recognising more extensive parental obligations – such as the obligation to continue caring for a child with whom one has established an intimate parent-child relationship (see Prusak, 2011; Weinberg, 2008) – might imply that those parentally responsible for the adolescent mother are obliged to take temporary, or even permanent, custody of her offspring. The precise obligations arising for those parentally responsible for the adolescent mother thus depend on how extensive and weighty we consider parental obligations more generally.

Whether or not we recognise her as a bearer of parental rights *in toto,* the adolescent mother has rights with relation to her newborn which – insofar as she remains dependent on adults for care and support – give rise to obligations on the part of others to provide her and her newborn with care and support in a particular way. Does this undermine the characterisation of her rights regarding the child as negative rights? I discuss this in the next section.

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[16] The outcome here depends on the mother's age when her child is born and on the way in which their care is arranged; it would be unreasonable to expect the same distribution of rights and obligations in a case where the mother gives birth at the age of 8 and is raised alongside her newborn by her parents, and in a case in which a 14-year old girl gives birth and consents to her newborn being placed with foster parents for a short period (during which she visits the child frequently) and seeks custody of her child when she leaves school at 16.

6. Negative rights and corresponding obligations

Many rights ascribed to children correspond with duties on the part of others to act. The adolescent mother's right to freedom from grave harm and the rights of her newborn demands action on the part of those others, as both are children dependent on others. It might be argued that this undermines the characterisation of the mother's *prima facie* right not to be forcibly separated from her child as a negative right. However, there are two key reasons for characterising it so.

First, we must once more acknowledge the fact that the newborn comes into existence in relationship with its mother, and that the removal of the newborn against the mother's will constitutes a particular kind of harm to which gestational mothers are uniquely vulnerable in the period following childbirth. Non-intervention may harm both children in other ways, but the specific harm of forcible separation can only come about through action. Therefore, if there is a duty to refrain from this action (given the more general duty to refrain from actions which cause grave harm) then this duty corresponds to a negative right.

Second: the adolescent mother's right to care and support from those parentally responsible for her is a positive right, in that it corresponds with an obligation that they actively care and support her; however, it is not a right to a specific form of care and support. Her other rights, including negative rights to freedom from certain kinds of action or intervention, may restrict the possible ways in which her positive rights can be met (and so restrict the ways in which those responsible for her can fulfil their parental obligations). A child's positive right to a certain level of care corresponds with obligations to act – for example, the obligation to provide the child with food – but the ways in which these obligations may be fulfilled are restricted by the child's other rights, including the negative right not to be harmed. The obligation to provide the child with food may not be fulfilled by providing the child with food to which she is allergic. The adolescent mother's negative rights with relation to her newborn likewise restrict the possible ways in which obligations to care for her and her infant in the period following childbirth may be fulfilled.

7. Conclusions

The presupposition that children and young adolescents neither have the capacity nor the right to parent their own offspring does not entail that they have no rights with regard to the offspring they produce. I have argued here that any girl or woman who gestates and gives birth has the strong *prima facie* negative right not to be forcibly separated from her newborn, on the grounds that all people have a *prima facie* right to freedom from grave harm, and that this forcible separation constitutes a grave harm. Even if we do not accept that this is a parental

right, akin to other rights commonly characterised as such, our recognition of this right has significant implications for our understanding of both children's rights and parental obligations.

A Lost Cause? Fundamental Problems for Causal Theories of Parenthood.

Abstract

In this paper, I offer a critique of (actual and possible) causal theories of parenthood. I do not offer a competing account of who incurs parental obligations and why; rather, I aim to show that there are fundamental problems for any account of *who* acquires parental obligations and *why* by appeal to causal responsibility for a child's existence.[1] I outline and justify three criteria that any plausible causal account of parental obligation must meet, and demonstrate that attempting to fulfil all three criteria simultaneously will give rise to one or both of two potentially insurmountable dilemmas.

1. Accounting for the *who* and the *why* of parental obligation

There is currently no universally agreed-upon outline of the precise scope of parental obligations. However, the plausibility of any theory of parenthood will hinge to a certain extent on the way in which we characterize these obligations—the more extensive and weighty we consider them, the more that any theory has to account for in explaining *who* acquires (initial) parental obligations, and *why.* Some theorists have defended a narrow understanding of parental obligation as the duty to ensure that one's child is provided with a certain standard of care, whether or not one provides that care oneself (Archard, 2010, p. 114; Ettinger, 2012, p. 246). Others have argued that parents have significantly more extensive and weighty obligations to their children, some of which may not be delegated, including the duty to provide nurture, emotional support, and guidance in identity-formation (Brake, 2010, p. 160; Prusak, 2011, p. 71; Velleman, 2008, p. 258).

Putting these disagreements aside for the moment, let us consider: what is the minimum that a theory of parental obligation must account for? Most philosophers in this field agree that parental obligations differ from what Brake describes as a 'general duty of rescue' that any adult (prima facie) owes to a child in danger (p. 174). They are, as Millum puts it, 'weightier duties than they owe other children' (2008, p. 71). Whilst all adults have a collective duty to protect children from abuse, and any adult might have an obligation to rescue a specific child from peril (for example, upon seeing that child drowning in the nearby pond) parental obligations are not fulfilled by merely keeping a child from danger. Parental obligations are also 'not owed by every moral agent to every endangered patient, but by particular adults to particular children' (Brake,

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[1] This paper was published as Baron, T. (2020). A lost cause? Fundamental problems for causal theories of parenthood. *Bioethics*; 00: 1– 7. doi:10.1111/bioe.12719.

2010, n. 2). A plausible philosophical account of parental obligation must therefore, at a minimum:

(a) Explain why parental obligations go beyond the general duties of rescue owed by adults to children;

(b) Produce the result that only certain people incur these obligations, and only to certain children; and

(c) Explain *why* it is (only) these people who incur parental obligations.

How have philosophers attempted to achieve this?

Theories of parenthood have fallen, broadly speaking, into two main camps: those holding that parental obligations are acquired *voluntarily* (that is, by virtue of consciously taking on those obligations, as one does when making a promise to *x* and thus acquiring the obligation to *x*), and those holding that parental obligations are acquired *non-voluntarily* (that is, by virtue of some action, behaviour, or relationship, regardless of whether the individual in question accepts or is even aware of their obligations).[2] Voluntarist theories, such as that defended by Elizabeth Brake, fall into the former category (as one might expect). According to Brake, parental obligations arise from assumption of responsibility for a child. She rejects the notion that we assume such responsibility through tacit consent if we undertake actions with the known possibility that a child might result; on this account, a man does not incur parental obligations to a child produced through sexual intercourse merely because he knew that conception was a possible consequence of this action (2005, p. 59).

Millum's conventional-acts account is less permissive. On this account, acquisition of parental obligation is voluntary in that we can incur parental obligations only through voluntary behaviour, but we can incur these obligations without deciding to take on the parental role; social conventions determine which actions, behaviours, or relations result in someone incurring parental obligations. These conventions 'make a difference by giving certain acts meanings, such that performing them is morally transformative' (2008, p. 79). If, according to the conventions of our moral community, 'men are normally responsible for the biological children they beget because of the act of coitus that led to conception', then according to the conventional-acts theory, voluntarily engaging in sexual intercourse 'constitutes taking on parental responsibilities' (p. 89).

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[2] It may be the case that non-voluntarily acquired obligations may be acquired only through *voluntary* actions, behaviours, etc. Several scholars have argued that rape is an instance in which the actions or relations ordinarily giving rise to non-voluntarily acquired obligations, do *not* do so, because those actions or relations are not undertaken voluntarily (see for example Blustein, 1997, pp. 81–82; Weinberg, 2008, p. 171). The existence of initial parental obligation is also compatible with accounts of how such obligation may be relinquished, passed on, or acquired by other means, for example through adoption or foster care.

Causal theories also fall into the second camp. Such theories have grown in popularity in recent years, in large part due to their intuitive appeal regarding the relation between biological parent- hood and the obligation to care for children. A significant strength of such theories has been that they seem to provide a straightforward answer to not only the *who* question, but also the *why* question. Causal accounts attempt to answer these questions by appealing to the notion that causing new life to exist involves either harming others or exposing them to the risk of harm, given the unavoidable vulnerability and neediness of children.[3] Causal responsibility for a child's existence gives rise to a moral obligation to care for the child in order to mitigate or compensate for this harm (see for example Nelson, 1991; Porter, 2014; Prusak, 2011; Shiffrin, 1999; Velleman, 2008; Weinberg, 2008). These accounts are founded on a notion that Nelson describes as belonging to 'common sense ethics': that causal responsibility for harm, or the risk of harm, begets moral responsibility to make amends. He argues (p. 50):

> If you've run over your neighbour with your motorcycle, smashed her Ming vases with your expansive gesticulations, or trapped his children in the old refrigerator left invitingly in your front yard, there doesn't seem much question about who has a particular obligation to make matters as right as possible, to compensate for damage, and to remove existing risk.

This is the principle underlying causal accounts of parental obligation (and which is supposed to answer the question posed in (a) above). Beyond this shared foundation, however, there has been significant variation in the formulation of causal accounts of parental obligation.

One way in which disagreement concerning the *why* question has manifested is debate over whether causing a person's existence gives rise to the obligation *to parent*, or only to more general obligations. Porter suggests that 'the moral force of causing someone to exist seems straightforward' (2014, p. 182). However, it may not be straightforward that causing someone to exist gives rise to obligations beyond general duties of rescue or of compensation for harm, or that these more extensive obligations land only on a few shoulders. If, on the one hand, contributing to causing someone's existence results only in the obligation to mitigate or compensate for harm, then we need to go beyond a causal account of responsibility to explain why some people have specific *parental* obligations to their children (or else conclude that most parents go above and beyond the call of duty in educating, disciplining, and nurturing their

[3] It is a matter of significant debate whether causing a person's existence can be described as *harming* them, but for the purposes of this paper I will presuppose that causing a child to exist does, at a minimum, expose them to the risk of harm.

children).[4] But if, on the other hand, causing a child to exist does give rise to those obligations we ordinarily think of as *parental* obligations, a causal account will produce unintuitive results. For example, in cases of IVF treatment, many more people play a significant causal role in producing a child than we would ordinarily believe have parental obligations to that child. Where an IVF technician is the individual bringing together egg and sperm, we can plausibly say that she plays a necessary role not just in the existence of *a* child, but in the existence of *this specific child*, since her action determines the genetic make-up of the resultant embryo.[5] However, as Prusak notes, 'it is unlikely that we would want to call the embryologist and clinician parents of the child and say that they bear parental obligations' (2011, p. 62). Similar concerns have been raised by both proponents and critics of causal theories (see for exmple Brake, 2010, p. 158; Porter, 2012, p. 72; Weinberg, 2008, p. 68).

This leads us to the way in which the *who* question has troubled proponents of causal accounts. There has been significant debate concerning the reach of parental obligations: the extent to which playing any causal role in this existence gives rise to obligations (parental or otherwise). Some causal accounts face objections on the grounds that they result in 'too many parents': we generally wish to avoid the unintuitive outcome that the fertility doctor and the matchmaking friend end up with parental obligations by virtue of their roles in the causal chain leading to a child's existence. However, attempts to overcome this problem may result in further difficulties for causal accounts, by failing to pick out anyone with parental obligation—if we weaken the connection between causal responsibility and parental obligation, so as to avoid the undesirable result that the matchmaker and IVF doctor incur parental obligations, we run the risk that (in some cases) we will identify no-one at all with these obligations.

Attempts to overcome the same problem may also go too far in the opposite direction, by producing moral obligations for non-parents that appear unreasonably demanding. For example, Porter argues that all those who contribute to causing a child to exist (including, she notes, IVF technicians) 'have a duty to ensure the care of the child they cause to exist, and a *pro tanto* obligation to parent the child' (p. 196). Most would assume that the IVF technician who helps to cause a child to exist has no obligation to ensure or protect the child's welfare once they have completed their task. At most, we might hold them to account for their 'procreative responsibility' *before* the child is brought into existence. Bayne suggests that those institutions

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[4] Brake's case for voluntarism rests on precisely this argument. If parental obligations were incurred as compensation for the harms of having placed the child in a situation of neediness without reasonable assurance of a minimally decent life, this compensation ("procreative costs") would stretch only to "ensuring mere survival to independence and a minimally decent life. However, this is far from equivalent to parental obligations, at least as we generally construe them (2010, p. 160).

[5] For a discussion of the impact of the timing and manner of conception on personal identity, see Parfit (1987).

and individuals who play a role in producing children, such as gamete donors and fertility doctors, 'should exercise their procreative role responsibly' (2003, pp. 85–86). We might, then, expect doctors and clinicians to provide IVF treatment only to individuals meeting certain criteria; however, it would be strongly counterintuitive to suggest that those doctors and clinics incur obligations to ensure the care of resulting children if their parents were not able to do so.

Some philosophers have attempted to avoid the problem of 'too many parents' by advocating the use of specific definitions of 'causes' in their accounts of parental obligation. Porter, for example, favours Mackie's 'so-called INUS causation (Insufficient Necessary link in an Unnecessary Sufficient causal chain)' (2012, p. 68). The genetic parents of the child will be captured as causes under this definition, since the fertilisation of *this* specific egg by *this* specific sperm is a necessary condition for *this* person to have been born. But if anyone's intervention made it the case that this egg and sperm should be brought together, they will also count as INUS causes; Porter acknowledges that this will capture IVF doctors, even if not midwives, matchmakers and pushy grandparents (p. 69).

Nelson, on the other hand, claims that genetic parents play a causal role more significant than the 'but-for' causal roles played by other agents: 'the making available of one's gametes is an act highly proximate to conception, and, in concert with the other parent's actions, is jointly sufficient for it' (p. 54). It is this proximity and sufficiency that (Nelson claims) allow us to characterize the act of conception as *the* cause, giving rise to parental obligations and rights only for genetic progenitors. However, while this constraint might allow his account to avoid the problem of 'too many parents', it produces unintuitive results in many common scenarios. The actions of a couple who use IVF to conceive are not jointly sufficient; they must be joined with their clinician's actions. Consideration of the woman who conceives using a donor embryo makes clear that the making available of one's gametes is jointly sufficient for very little, if not followed by implantation and gestation.

Despite the appearance of a straightforward ethical foundation, causal accounts of parental obligation have not yielded a straightforward answer to the *who* and *why* questions of parental obligation. Widely held beliefs about the nature of parenthood place one kind of constraint on the success of a causal account; other constraints, as I demonstrate in the next section, are inherent in the nature of causal accounts themselves. I will outline three criteria that a causal account of parental obligation must meet in order to coherently answer the *who* and *why* questions. I will then argue that a causal account cannot meet all three criteria without undermining the moral significance of causal responsibility and collapsing into another kind of account (for example, voluntarist or social constructionist).

2. Criteria for a plausible causal account

Let us assume that our aim is to explain *who* acquires parental obligations and *why* they acquire these obligations, by means of a causal account. That is, the aim of our account is to (a) identify those individuals who have parental obligations by virtue of their causal role in a child's existence, and (b) explain why this causal role gives rise to parental obligations. In this section, I lay out criteria that a causal account of parental obligation must meet in order to be considered plausible. One of these criteria arises from the nature of a *causal* account, whilst the other two are pragmatic requirements for acceptability. I will explain why each of these criteria must be met for a causal account to be successful, and then demonstrate that these criteria, brought together, give rise to two significant dilemmas for the causal theorists. The first criterion I propose for a coherent causal account of parental obligation is:

> *Identification:* The account must identify *at least someone* who has initial parental obligations regarding the child.

Given the presupposition that it is a causal account we wish to develop, it is illogical to reject *Identification*, since (unless through freakish coincidence children begin to pop into existence entirely uncaused) there will always be someone whose actions can be described as causing the child to exist.[6] In the event that *Brave New World*-style artificial reproduction is developed, the question of parental obligation may simply be redundant. The possibility of tragic cases (in which, for example, the child's father dies prior to the birth and its mother dies in childbirth) do not prove against this criterion, since a causal account consistent with these criteria could still tell us who *would have* had parental responsibility for the child, had it not been for their unfortunate demise. There are also pragmatic reasons for requiring that a causal account of parental obligation fulfils this criterion — one of the reasons for favouring a causal account, in Porter's words, is that 'it has teeth: it can hold negligent parents to account' (2014, pp. 193-94). If the connection we make between causal responsibility and parental obligation is too tenuous, or parental obligations are too weak (for example, they do not go beyond general duties of rescue) then 'it seems the causal account may lose those teeth' (p. 194).

As stated in Section 1, I presuppose (at a minimum) that parental obligation go beyond the general duties of rescue owed by adults to children, and are held only by certain adults with

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[6] This criterion may still be fulfilled by causal accounts which allow for the acquisition of parental obligation voluntarily (e.g. by adoption). If we accept that I can acquire the obligation to take you to the hospital just as well by promising to do so as by being the one to drop a bucket of bricks on your toes, then it strikes me as common sense to accept that, even if we believe that certain causal roles give rise to parental obligations, these obligations could also be acquired by voluntarily taking them on.

respect to certain children. An account of parental obligation must explain *why* this is, and *which* adults incur these obligations. However, plausibility further requires that the account identify only a small number of people as incurring parental obligations, in order to avoid the problem of 'too many parents' discussed in Section 1. As several philosophers in this field have pointed out, parental obligations are generally considered to be such that they can only be held and carried out by a small number of people. Prusak, for example, claims that procreators have 'a *prima facie* duty to develop an affective bond with the children whom they bring into being' (2011, p. 69). Weinberg likewise argues that parental responsibilities require one to nurture and guide a child within a 'long-term, loving relationship' (2008, p. 167). As well as owing their children a 'rich, intimate, daily personal relationship' Brake argues that parents 'must personally supervise many aspects of their children's lives' (2010, p. 161). This is something that, on a practical level, cannot be achieved by a large number of people. Parental obligation understood this way seems straightforwardly incompatible with any account that results in more than a handful of individuals acquiring such obligations. The second criterion I therefore propose is as follows:

> *Limits:* The account must provide clear, plausible limits to the reach of parental obligations. These limits must further be independently justifiable (that is, they must not include or exclude people from the reach of parental obligation on arbitrary grounds).

Given that causal theorists of parental obligations understand these as moral obligations (rather than, say, legal obligations), we cannot accept arbitrary limits simply on the grounds that they allow us to more easily identify those who acquire parental obligation. An account may thus fail to fulfil *Limits* in one (or both) of two possible ways. Firstly, it may provide only vague limits, or implausible limits, to the reach of parental obligation – for example, Fuscaldo's view that parental duties are acquired by 'everyone whose actions reasonably foreseeably result in the existence of a child' (2006, p. 74) In many cases, the number of people who play a 'but-for' causal role in a child's existence will far outstrip the number who may be plausibly characterized as moral parents. Secondly, an account may fail to fulfil *Limits* by providing only arbitrary limits to the reach of parental obligation – for example, Weinberg's account restricts parental obligation to those individuals who *produce* the gametes from which a child develops, despite acknowledging that the actions of genetic parents are often not causally sufficient to produce that child. If the moral force of her theory is grounded in voluntary engagement in behaviour that risks causing a needy and innocent being to come into the world, it is arbitrary to

claim that only the original owners of the hazardous material in question acquire initial parental obligations.

It seems clear that an account that justifies the limits on who incurs parental obligations by appeal to non-causal factors, is not genuinely a *causal* account of parenthood. Consider, for example, that we develop an account according to which those whose actions are INUS causes of a child's existence incur parental obligations. Such an account may capture the actions of both the genetic parents of a child *and* the clinician who combines their gametes through IVF. This result is undesirable – however, if the aim is to defend a causal account of parental obligation, we cannot then appeal to some non-causal factor such as the intentions of the relevant parties, or the proprietary relation of the genetic parents to the gametes used, in order to explain the belief that the genetic parents, but not the clinician, incur parental obligations. If playing *x* causal role is the reason that *y* incurs parental obligations, then any other agent who carries out *x* must also incur parental obligations.

Fulfilling the *Limits* criterion ensures that a causal account does not fall foul of the problem of 'too many parents'. However, plausibility does not only require that a limited number of individuals incur parental obligations to any given child, but that this number not include individuals to whom it seems highly unintuitive to ascribe these obligations (for example, the IVF clinician or the matchmaking friend). Further, as established in Section 1, whilst we generally hold that 'some obligations are owed *by* all *to* all children' (for example, the duty of adults collectively to protect children from abuse), only the bearers of parental obligations have the primary responsibility for the care of a given child (Blustein, 1997, p. 79). These considerations strongly suggest that, for an account of parental obligation to be compatible with (a) our ordinary conception of parental obligations, and (b) our more general views on the relationship between causal responsibility for harm and moral responsibility for compensation, it must fulfil this third criterion:

> *Demandingness*: The account must not (a) place unreasonably demanding moral burdens on individuals who do not incur parental obligations; or (b) identify as incurring parental obligations individuals of whom this seems strongly unintuitive.

In order to fulfil the Demandingness criterion, a causal account must not give straightforwardly implausible results as concerns the specific individuals who incur parental obligations. It must

further explain why causal responsibility for a child's existence gives rise to such substantial obligations for parents, but does not produce nearly so heavy a moral burden for anyone else.[7]

These three criteria (*Identification, Limits,* and *Demandingness*) clearly seem to be independently justified, given the general requirements for accounts of parental obligation outlined in Section 1, and the existing criticisms that have been made of causal accounts. We must now ask whether it is possible for an account to meet all three of these criteria simultaneously. In the next section, I will explain the problems that arise when we attempt to do so.

3. Two dilemmas for causal theories of parental obligation

In this section, I will use Porter's most recent defence of a causal account of parental obligation as a case study to demonstrate the difficulties in applying *Identification*, *Limits,* and *Demandingness* simultaneously. This analysis is not simply a critique of Porter, but aims to expose potentially fundamental problems for all causal accounts. Specifically, the three criteria I have outlined above give rise to two distinct dilemmas for such accounts:

> *Dilemma 1:* A causal theory of parental obligation will either fail to fulfill *Limits* or will cease to be a causal theory (for example, by collapsing into a form of voluntarism or social constructionism).
>
> *Dilemma 2:* A causal theory of parental obligation cannot satisfy both *Identification* and *Demandingness* simultaneously.

I will demonstrate how these dilemmas arise using Porter's account as a case study.

Porter describes those who contribute to causing a child to exist (including gamete donors, IVF doctors, etc.) as 'makers', and presents a framework according to which 'maker' and 'parent' are distinct but connected moral roles, with different obligations attached to each. She argues that makers 'have a duty to ensure the care of the child they cause to exist, and a *pro tanto* obligation to parent the child' (2014, p. 196). The child's right to be cared for is then claimed against makers, but as long as someone takes on the role of parent, this right is met. Parental obligations are acquired by taking on the role of parent, and makers therefore do not incur full parental obligations purely by virtue of their causal role in bringing about new life.

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[7] The discussion of Porter's account in the next section will illustrate in more detail what we might understand as an unreasonably demanding moral burden.

The claim that a maker must first take on the role of 'parent' before incurring full parental obligations allows Porter's account to avoid the problem of 'too many parents' (as long as we assume that the practical requirements of the parental role preclude more than a handful of individuals taking on this role). This also seems to solve another common problem faced by causal accounts, mentioned in Section 1: explaining how one may acquire, in virtue of one's causal role, obligations that go beyond mere harm mitigation/compensation. The suggestion that these obligations are acquired by voluntary commitment to the parental role removes the onus from *causal* responsibility to explain how these obligations are acquired. Porter's account also avoids this problem by grounding maker obligations (which include the obligation to parent the child if no other person takes on the parental role) not in causal responsibility for potential or actual harms, but in the action of choosing, for another, that they exist—'this obliges [one] to make existence, as best they can, a good choice' (ibid). Porter thus presents us with a 'broadly Kantian' causal account of parental obligation, aiming to fill the explanatory gap between causing a person's existence and owing them care; in particular, she aims to explain why it is that causing a child's existence gives rise to more than simply the obligation to minimize neediness. However, maker obligations still fall short of parental obligations, and so the voluntary aspect of acquisition of parental obligation acquisition in Porter's account gives rise to *Dilemma 1.* Either:

1. The requirement that acquisition of parental obligations requires voluntary acceptance of the parental role is an arbitrary limit on the reach of such obligations, and the account thus fails to fulfil *Limits* after all; ⌊SEP⌋

2. This requirement that acquisition of parental obligations requires voluntary acceptance of the parental role is not an arbitrary limit, because this voluntary acceptance plays a morally significant role in determining the reach of parental obligations. However, Porter's account then collapses into voluntarism and is no longer a causal account of parental obligation. ⌊SEP⌋

Is voluntary commitment to the parental role an arbitrary limit on the reach of parental obligations? I would argue that, if we presuppose that parental obligations are incurred non-voluntarily (that is, by virtue of our actions, behaviours, or relations to others), then voluntary commitment to the parental role as the determining factor for acquisition of these obligations must be considered an arbitrary limit. Of course, Porter does not share this presupposition, and argues only that maker obligations are acquired non-voluntarily. However, if one's causal responsibility for the existence of the child in question does not determine one's acquisition of

parental obligations, then it is questionable whether we can reasonably describe this (as Porter does) as a causal account of *parenthood*.

The *Identification* and *Demandingness* criteria also present problems for Porter's account, giving rise to *Dilemma 2*. If we grant enough moral weight to causation to justify the claim that some individual acquires parental obligation by virtue of their causal role in a child's existence (*Identification*) we will struggle to justify denying that heavy moral burdens are also acquired by non-parents by virtue of their causal roles (*Demandingness*). For Porter's account to fulfil *Identification*, it must be the case that the account identifies someone as non-voluntarily acquiring parental obligations, by virtue of their causal role in producing the child. However, in order to meet *Demandingness* we need to avoid the conclusion that all makers have the obligation to parent—or indeed, any obligations weightier than the general duty of rescue owed by all adults to all children. Makers, according to Porter, have 'the obligation to make the child's existence a good one to the extent that [they] can' whether or not they take on the parental role (2014, p. 193). It is one thing to say that makers have an obligation to be *careful* in helping others to reproduce, perhaps by ensuring that children are not caused to exist where the risk of harm arising from that existence is too great. It is quite another to say that all makers acquire an obligation to parent the child by virtue of their contribution, even if the likelihood that they will have to fulfil that obligation themselves is small. In order to meet *Demandingness*, then, we must avoid the result that all makers acquire such weighty moral obligations by virtue of their causal roles. But it is unclear how we can then ensure that the account meets the *Identification* criterion. If the pro tanto obligation to take on the parental role need not actually be fulfilled by any given maker, we cannot say of any individual that they acquire parental obligations by virtue of their causal role in bringing a child into existence.

Porter does note that the pro tanto obligation to take on the role of parent, incurred by all makers, is defeasible. She argues that 'other factors' make some makers more obliged to take on the parental role. In the case of gamete donation, for example, she claims that the gamete donor's maker obligation will, under normal circumstances, be 'outdone by the rights and commitments of the intended parents' (2014, p. 195). We may interpret this claim in two possible ways:

1. All makers incur weighty moral obligations to ensure the care of children they contribute to causing to exist, but these obligations are defeated when some individual takes on the parental role and accepts parental obligations.

2. Makers do not incur weighty moral obligations if other factors determining acquisition of parental obligation (for example, voluntary commitment or intention to parent) are present.

Interpretation (1) causes problems for both *Identification* and *Demandingness*, by simultaneously identifying no-one who incurs *parental* obligations by virtue of their causal role (since Porter denies that maker obligations constitute parental obligations), and ascribing weighty obligations, beyond mere duties of rescue, to all involved in causing a child's existence. It is strongly counterintuitive to suggest that IVF doctors, matchmaking friends, and pushy grandparents might all incur the obligation to ensure the care of children they contribute to causing to exist, *even if* those obligations are quickly defeated by someone else's acceptance of the parental role.

However, if we accept (2) then we run once more into the jaws of *Dilemma 1*: if Porter's account can only fulfil all three criteria by appeal to non-causal factors (such as intentions or voluntary commitments) as determining the acquisition of parental obligations, then it is no longer a causal account of parental obligations. It simply collapses into a different kind of account, such as a voluntarist or social constructionist account. Further, in the scenario where other morally relevant factors are not present (for example, where no individuals intend or volunteer to raise the child), we return by default to (1) and the concomitant difficulties for *Identification* and *Demandingness*.

This analysis exposes not just difficulties for Porter's account, but more fundamental problems for causal accounts of parental obligation in general. If we grant enough moral weight to causation to justify the claim that some individual acquires parental obligation by virtue of their causal role in a child's existence (*Identification*) we will struggle to justify denying that heavy moral burdens are also acquired by non-parents by virtue of their causal roles (*Demandingness*). Further, without appeal to non-causal criteria, it is unclear how we can avoid the conclusion that many more people than seems reasonable acquire parental obligations (*Limits*). To solve this problem, we must appeal to further conditions (such as tacit acceptance of parental responsibility when engaging in sexual activity), at which point we cease to have a causal account of parental obligation. Considering these difficulties, it seems that a purely causal account of parental obligation will inevitably be 'leaky': in attempting to plug one gap, we will create a new hole.

Where, then, should we go from here? The widespread belief that causal responsibility is relevant to moral responsibility seems to justify the view that causation is relevant to parental

responsibility. However, the above analysis demonstrates that explaining parental obligation by reference to causal roles *alone* will produce unwanted results, one way or another.[8]

4. Conclusions: A lost cause

The above discussion strongly indicates that a causal account of parental obligations is unlikely to succeed if we wish to maintain certain presuppositions about parenthood (in particular, that parents' obligations to their children extend significantly beyond the responsibility to compensate for and/or mitigate harm; that they include the obligation to nurture those children within an intimate relationship; and that most individuals have minimal obligations to the children of others, even if they were involved in some way in the causal chain leading to their birth). These considerations suggest that the nature of parental obligations simply precludes our answering the *who* and *why* questions by appeal to the 'common sense ethics' according to which causal responsibility for harm gives rise to the obligation to compensate for that harm. Even if we accept the presupposition that causing a person's existence constitutes a harm, or exposes them to the risk of harm, the analyses I have given above demonstrate that a causal account cannot plausibly explain the acquisition of parental obligations, as long as we continue to understand these obligations in the way supposed here.

[8] It may of course be possible to produce a successful hybrid account of parental obligations appealing to both causal and non-causal factors as morally significant in determining the acquisition of these obligations. However, if that account depends on causal responsibility for a child's existence as the moral driving force of parental obligation, it seems clear that it will suffer from the same problems outlined here.

Conclusions

The question at the centre of this body of work is that of the relationship between biological parenthood and moral parenthood. What forms of procreation (if any) give rise to moral parental rights and/or obligations (if any)? What social or legal facts affect this relationship? The three papers in this thesis demonstrate that the perceived relationship between these concepts is informed by our understandings of biological parenthood and moral parenthood. However, that perceived relationship also influences our understandings of the concepts of parenthood individually. Our beliefs about the concordance or discordance of different kinds of parenthood in different circumstances shapes the meanings we attribute to procreative roles, and our views of parental rights and obligations.

Paper #1 demonstrates that that the relationship between the different concepts of parenthood is deeply malleable, and that beliefs about biological parenthood and moral parenthood are not straightforwardly determined by our understanding of procreative processes. The foetal container model of pregnancy is consistent with different conclusions about (biological, social and moral) parenthood, as illustrated by a comparison of medical contexts and the commercial surrogacy industry. This foetal container model of the maternal-foetal relationship during pregnancy enables and underpins different views of biological parenthood, moral parenthood, and the relationship between the two, because it is not itself a model of biological parenthood; it is compatible with the view that a gestational mother is a biological parent (or not) and a moral parent (or not). However, other, more general beliefs about the relationship between biological parenthood and moral parenthood will, in concert with the foetal container model, influence our views of pregnancy and the rights and/or obligations of gestational mothers. Given uncritical acceptance of the foetal container model, the gestating woman is considered an incubator; however, depending on the moral framework and social norms at work, she may be seen as a detached and professional incubator (a perfect machine to produce someone else's baby) or a nurturing and motherly incubator (sacrificing her own needs and wants in accordance with normative expectations of motherhood). In contexts in which gestational mothers are not seen as social parents and/or as bearers of parental rights – as in the context of commercial surrogacy – predominant views of biological parenthood grant centre-stage to genetic connection, in accordance with what Stuvøy describes as 'a culturally familiar script of the significance of the gene in the Western world' (2018, p. 286).

In contexts in which the pregnant or birthing woman *is* considered a parent (biologically, socially, and/or morally speaking), the foetal container model enables different –

though no less restrictive – moral standards to be imposed. Absent an understanding of pregnancy as involving intimate and complex maternal-foetal intertwinement, the parental obligations ascribed to pregnant and birthing women are exaggerated, enabling some of the restrictions and abuses discussed in section 3 of Paper #1. Overlooking or denying the complexity of the maternal-foetal relationship by assuming the foetal container model of pregnancy thus allows pregnant and birthing women's parental rights to be denied and/or their parental obligations exaggerated, depending on the understandings of biological and moral parenthood at work.

One question we might ask in light of the above discussion is whether a different model of the maternal-foetal relationship would be more accurate or more helpful for understanding the moral significance of gestation. The answer depends very much on how we construe the model – some theorists (notably Finn, 2018a; Kingma, 2019; Smith and Brogaard, 2003) have considered the relationship between the pregnant organism and foetus as a mereological problem, and defended various metaphysical models as most apt to describe this relationship. However, as noted in Paper #1, the foetal container model that underpins and enables certain practices and beliefs surrounding pregnancy and pregnant women is not a mereological model justified by a specific metaphysical framework; rather, it is a conceptual separation of the foetus and pregnant woman. To presuppose the foetal container model is to presuppose that the foetus is not only a *physically* distinct entity simply contained within the maternal organism's body, but that it is ethically considerable as a distinct entity. It seems clear that the foetal container model, thus understood, both inaccurately represents the physical maternal-foetal relationship and allows the moral significance of pregnancy to be denied, to the detriment of women's wellbeing and autonomy. Identifying the correct (or most useful) understanding of pregnancy is, however, a task for future research.

Papers #1 and #2 also present further questions regarding the permissibility of surrogacy, by calling attention (though in different ways) to the moral significance of gestation and childbirth. As noted above, the foetal container model allows this significance to be overlooked or flatly denied in the context of the commercial surrogacy industry. Here, the pregnant woman may be presented as an incubator or 'hatchery', or as a babysitter or foster parent; crucially, though, the maternal-foetal relationship is not considered a form of, or foundation for, parenthood. In Paper #2, however, I argue that the maternal-foetal relationship grounds the strong negative right not to be forcibly separated from one's newborn. To the extent that the commercial surrogacy industry requires that surrogate mothers who change their mind nonetheless relinquish the children to whom they give birth (sometimes, as documented by scholars such as Pande and Ekman, relying on financial necessity or the threat of legal action to ensure this), it would seem that this industry violates these women's rights.

The restricted gestationalism I defend in Paper #2 is compatible with the moral permissibility of altruistic surrogacy, and perhaps also with commercial surrogacy in jurisdictions that do not enforce surrogacy contracts (though the possibility of financial coercion should still give us pause for thought here). Nonetheless, I suggest that recognition of the moral importance of gestation and childbirth, central to Paper #2, raises questions about the permissibility of surrogacy as a practice. Whether altruistic or commercial in nature, surrogacy is premised on the separation of gestational mothers from their children – and so their relinquishment of their *prima facie* parental rights to custody – as a means to others acquiring children to raise.

Whatever approach is taken to justifying and explaining the acquisition of parental rights, we can observe that most scholars have proceeded under the assumption that these rights come together as one package, rather than identifying separate (distinctively parental) rights and considering their individual underpinnings. Most work on parental obligations has proceeded likewise. This is perhaps unsurprising, since most rights and obligations characterised as distinctively parental have a nature that precludes their division from one another and/or distribution across multiple people. For example, it is difficult to see how one person could have the right to custody of a child, but not the right to make decisions regarding their education, diet, and healthcare. Likewise, the obligation to rear a child is not straightforwardly divisible into distinct obligations (such as the obligation to nurture the child, the obligation to provide discipline, the obligation to ensure their physical wellbeing, and so on) which might be acquired separately. As noted at the end of Paper #3, our characterisation of certain rights and obligations as distinctively parental therefore gives rise to constraints on the plausibility of any given account of moral parenthood. The state of the literature might be very different if we expected different rights and obligations to children to be acquired by different parties and for different reasons – but as the above literature review demonstrates, such an expectation would also hinge on very different social and legal understandings of parenthood.

The problem, then, is not that we have defined some rights/obligations as parental; the problem is that most research has proceeded with the aim of identifying *one* unified moral justification for the package of parental rights and/or obligations. The fundamental difficulties for causal accounts of parental obligation identified in Paper #3 are largely rooted in this problem. If we presuppose that the moral obligations that we consider distinctly parental are acquired *together* and *for the same reasons*, then we are unlikely to find one causal justification for those obligations. We consider certain obligations distinctly parental largely because of our understandings of social parenthood; we must therefore appeal to social parenthood in accounting for parental obligations on the 'package' view, or let go of that view, and instead take on the project of accounting for these obligations piecemeal. A similar problem applies for research into parental rights. Noting this problem with respect to his own work, Vallentyne

comments, '**I** write as if the rights to raise a child are an indivisible bundle of rights. Of course, this is not so' (2003, p. 998). His approach, whilst undertaken for the sake of simplicity, means 'neglecting many important issues that need to be addressed' (ibid).

Dividing up parental rights from one another (as opposed to treating them as one package of rights acquired concomitantly) may indeed introduce complications, and certainly may create extra work for philosophers of parenthood. However, Paper #2 demonstrates the way in which research can proceed when we take the piecemeal approach. We can still fruitfully investigate (and produce answers to) problem cases when we focus more narrowly on particular elements of the relationship between different forms of parenthood. In the case of Paper #2, forgoing the presupposition that parental rights are acquired as a bundle proves to be not only useful but crucial to exploring the issue of whether gestation grounds any rights over offspring for adolescent mothers (and indeed for adult mothers). Paper #2 also illustrates further something noted in the introduction to this thesis, which other philosophers have also demonstrated: investigating the moral significance of specific aspects of procreation for parenthood is likely to yield different (and, I believe, better) fruit than the use of the more general and disparately understood concept of biological parenthood. In inquiring into moral parenthood, what some philosophers have identified as important about gestation is not that it is a *biological* process, but that (for Gheaus, Bartlett, and Rothman, among others) it constitutes an intimate relationship; or that (as I argue in Paper #2) it is a phenomenon giving rise to deeply felt needs and desires in many human mothers, just as in other mammalian species; or that (for theorists such as Millum and Purvis) it is a form of labour by which gestational mothers actively (not passively, as the foetal container model suggests) bring children into the world. Likewise, philosophers of parenthood concerned with the significance of gamete contribution have considered this process important not simply because it is *biological*, but because (for Weinberg, Brandt, Prusak, and others) it is a way in which many people, in concert with others, cause their children to exist; or because (for scholars such as Vallentyne and Callahan) genetic inheritance constitutes a form of parent-child connection to which we ascribe social and moral meaning.

Parenthood is a messy business, not only for philosophers and legal theorists but for all of us. Family connections, whether they are 'blood ties' or those built out of love and labour, are deeply important to most of us, and fundamental to the structure of our lives. In order to gain a deeper understanding of parenthood as philosophers, we need to be willing to get elbows-deep in that mess, pulling apart the various forms of parenthood and apprehending their entanglements. This may mean accepting that there simply is no unifying framework or universal rule, and no straightforward answer to the question 'who is a parent?' However, asking smaller questions may bring us more answers in the long run, and better answers at that.

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