

The Moral Status of Babies and Our Obligations to Them

by
Lindsey Porter

*Submitted in accordance with the requirements for the degree
of Doctor of Philosophy*

The University of Sheffield
Department of Philosophy
September 2012

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54,301 words

Abstract

This thesis explores *who counts*: who is part of the so-called moral community, and why. If personhood is the measure of full moral considerability—as many take it to be—then marginal humans will not count as fully morally considerable. At best, we will have to say that they matter the way that sentient non-human animals do. Most of us will find this unsavoury.

To give an account of the moral status of marginal humans just is to give an account of moral status—of what features are morally salient or valuable. To this end, I discuss one of the most puzzling examples of marginal humanity: babies. I look at how we can account (if indeed we can) for the moral status of babies on a personhood-bound account of moral status, and more broadly at how we can account for the moral requirements on us with respect to babies.

In part one, I explore the moral status of babies by looking at whether birth can change moral status. I look at the two most plausible accounts of the moral significance of birth, both of which rely on variants of a relational account of moral significance. I argue that neither can successfully motivate the claim that birth is morally significant; but that relationships can change the moral quality of an act by changing the moral context.

In part two, I explore other ways of accounting for moral obligations to babies. I discuss how we ought to understand the most central of our special obligations to babies: parental obligations. I argue that a causal account of parental obligation is the best such account, and I discuss important consequences of this view.

Key words: moral status, marginal humans, personhood, special obligations, parenthood, abortion, infanticide

Acknowledgements

This thesis is the culmination of four years of puzzling over vague questions like ‘who counts?’ and ‘what is the range of morality?’ These questions, and the particular inquiry into how and why babies count have not ceased to challenge and fascinate me for even an hour throughout these years, and I suspect they will not cease to do so for some time to come. As such I must thank the people who have helped me along the way for being so gracious in the face of my sometimes over-exuberant, and often quite ill-formed questioning, hypothesising, and soliloquising.

Huge thanks are owed to my supervisor Chris Bennett for being so extraordinarily generous with his time and intellectual energy. I must also thank Alex Barber, Sean Cordell, Jules Holroyd, Fiona Woollard-Lambert, Stephen Laurence, Jimmy Lenman, Jennifer Saul, Julia Schroeder, Suzanne Uniacke, and several anonymous referees for fantastically helpful feedback on various elements of the thesis. Thank you to the political philosophy and the feminist philosophy reading groups at Sheffield University for many fruitful discussions that contributed hugely to my progress as a philosopher. Thank you to the *Journal of Applied Philosophy* for allowing me to reprint material in chapter five. Thank you to the Arts and Humanities Research Council for funding this research. And finally, thanks to Alex Barber, Ross Barber and Patsy Canavan for being tireless champions of my academic and professional progress.

This thesis is dedicated to Hank and Ian.

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Part One

THE MORAL SIGNIFICANCE OF BIRTH

Introduction

The broad aim of this thesis is to explore who counts in our moral reasoning: who is morally one of us, and on what grounds; and how and to what extent we must take beings into account in our moral reasoning. As I shall be using the terms, if you are 'morally considerable', then you are such that we must take you (perhaps, your interests) into account in our moral reasoning and decision-making; you are such that at least some of us may have obligations towards you; and probably, you have rights. When we enquire into a creature's 'moral status', we ask whether and to what extent that creature is morally considerable: does or ought it or he or she figure into our moral thinking, and how and (sometimes) how prominently so.

My overarching aim is to explore the grounds on which we attribute moral considerability; and relatedly, the scope and import of moral status in our broader understanding of right action. I will be doing this by examining a particular instance (babies) of a problem class of beings (marginal humans); beings who seem, *prima facie*, to be morally considerable, and yet do not seem to fit our standard ways of delineating moral status in theory. Getting to grips with this problem class of beings, I will argue below, is crucial to discovering a workable account of moral status.

1. Moral Status: the standard approach

The standard approach to moral status in contemporary moral philosophy is what I will call *personhood-bound*. A personhood-bound theory of moral status places persons at the centre of its conceptualisation of moral considerability: persons, on such accounts, are both the primary unit of moral concern, and the paradigm of moral considerability. On some personhood-bound accounts, persons exhaust the class of morally considerable beings.¹ However, on most contemporary accounts, persons exhaust the class of *fully* morally considerable beings, whereas *personlike* beings are fitted in around the periphery. Being personlike—for example, being human, or being sentient—affords one limited, or minimal moral considerability.

There are two ways that *person*, as a term-of-art, is commonly used in moral discourse, and it is important to be clear about how it is being used in this thesis. On the use most commonly employed in popular discourse on morality, *personhood* picks out moral considerability.² So, on this use,

¹ E.g. Kant (1991) (1997).

² These days, this use of the term tends to be the popular use, while philosophers tend to use the term in the second way, to be discussed below. Contemporary ‘personhood movements’, particularly in the US—that argue that foetuses ought to be declared persons—are employing this first use. But this first use is, it seems to me, also the older, perhaps the *historical* use within philosophy: Tooley (1972), to be discussed

we call all and only those creatures who are morally considerable *persons*. This use assumes criteria for moral considerability (assumes some set; or simply assumes that there is such a set), and calls those who meet the criteria, whatever they are, *persons*. On such a use, one asks questions like ‘are fetuses persons?’, ‘are chimpanzees persons?’ and so on; and what one is asking is *are fetuses morally considerable? Are chimpanzees morally considerable?* That is, considerability is what is built into the term, and what generates considerability is the separate, morally substantive question. That persons are morally considerable, on this use, is not a substantive claim: it is definitional.

However, on a second and more substantive use, whether persons are morally considerable, or singularly morally considerable, and why, is a substantive question. On this use, *person* picks out all and only those creatures who have a certain constellation of features—like rational agency; self-awareness; moral sensitivity; and so on—thought to be morally salient, though whether the features are indeed morally salient, and considerability-generating, is not assumed in picking them out.

below, seems to have been an instrumental part of the shift from this use to the next one I will discuss, but he is indeed using ‘personhood’ in this first way. Philosophers such as Finnis (1994) and even Thomson (1971) regularly use the term in this way. Their doing so was the birth of ‘person’ as a term of art: prior to these uses, ‘person’ was standardly used interchangeably with ‘human being’ (see e.g. Wertheimer (1971)).

On this use, it makes no sense to ask ‘are foetuses persons?’; rather, we agree (on empirical grounds) that foetuses are not persons, but ask ‘are they nonetheless morally considerable?’ We can also ask whether and why persons are morally privileged: it needs argument on this use, that, for example, all and only persons are fully morally considerable. The aim of theoretical exploration, on this use, is to determine whether those features that comprise *personhood*, so understood, are morally salient, and if so, why; and further to determine whether these features *alone* generate moral considerability, or whether additional features might also make a creature morally considerable.

In the following, I will be using *person* in this second way. So, whether a creature is or isn’t a *person* is an empirical question. Whether that creature is morally considerable is a separate, substantive moral question even if the answer to the personhood question is *yes*.

Personhood-bound accounts, then, are accounts that make the (substantive) claim that personhood drives moral considerability: that the natural features that characterise personhood are morally salient. Various explanations arise as to why personhood drives moral considerability: for example, because persons are part of the ‘kingdom of ends’ in virtue of being able to engage in moral decision-making;³ or because persons have reason for self-regarding care, or have interests;⁴ etc. But these

³ Kant, *Groundwork*, especially sec. II 4:428

⁴ See, for example, Tooley (1972).

theories all agree that persons are all (and sometimes only) fully morally considerable.

2. The Marginal Humans Problem

Personhood-bound theories of moral status draw a tight circle around 'us'. They are appealing theories, in that reasons for supposing that the constitutive features of personhood are salient are often very compelling; but they have their strength at the expense of an unintuitive exclusivity.

On a simple personhood-bound account, anyone reading this thesis has full moral considerability. If there is such a thing as a right to life, for example, you have one. Animals, however, mostly do not. Foetuses do not. Severely cognitively disabled individuals do not. Normal, healthy human babies do not. Worse than this, on a simple personhood account, it's not simply that these creatures have no right to life: they are not considerable at all; they do not themselves, for their own sake, figure into our moral reasoning. Kant, of course, famously, thought that treating animals cruelly was only of moral import insofar as it may cultivate cruelty in the nature of the actor. 'Animality', on his account, was indeed directly opposed to 'rationality'—to personhood and moral considerability, in other words.

When one behaves cruelly towards a 'nonrational' creature, Kant wrote, 'it dulls his shared feeling of their pain and so weakens and gradually uproots a natural predisposition that is very serviceable to morality in

one's relations with other men.' A caring attitude towards animals, he thought, 'belongs indirectly to man's duty *with regard to* these animals; considered as a *direct* duty, however, it is always only a duty of man *to* himself.'⁵

In other words, on Kant's pure personhood approach to moral status, nonpersons are morally inconsiderable, full-stop: we do not have duties towards them, they are not the sorts of beings towards whom one could have a duty.⁶ Insofar as we ought to treat animals kindly, we ought to do so out of care for ourselves and for our fellow persons.

While many of us find it morally acceptable to kill animals for food or other resources, surely it is wrong to suppose that we have *no* duties towards animals. Many contemporary philosophers, then, turn to two-tiered personhood-bound accounts to accommodate the intuition that we have, at the very least, weak beneficent duty towards animals.⁷

On a two-tiered account, the story is usually that, while personhood confers full moral considerability, sentience (for example) confers limited

⁵ Kant (1991) p 238.

⁶ For an attempt to reconcile Kantian theory with duties to animals see Wood (1998).

⁷ See e.g. McMahan (2002). McMahan has a more elaborate story to tell about marginal humans and what we owe to them, but his account is, broadly-speaking, a two-tiered persons-and-sentience account.

or minimal considerability. Usually, merely-sentient creatures are such that we ought not cause them unnecessary harm; or unnecessary pain; etc. But their sentience does not generate a prohibition—even a *pro tanto* prohibition—on making them dead. Persons, meanwhile, are such that we ought not cause them unnecessary harm and also we ought not make them dead. Sometimes this is cashed out in terms of rights: we have imperfect beneficent duty towards sentient creatures, but these creatures are not rights-bearers. Only persons are rights bearers, and as such, only persons have a right to life.

The two-tiered personhood-bound account is not without obstacles, with respect to non-human animals. If we say that sentience motivates a prohibition on the unnecessary causing of suffering, we are still left with the task of spelling out this necessity. Usually, what we mean pretheoretically when we talk about unnecessary cruelty to animals is something like necessity with respect to the needs of persons. But if the considerability, even minimal considerability, of non-human animals is to be taken seriously, we need to either take seriously the needs of animals when spelling out necessity; or we need to give an account of why beneficence to animals should be circumscribed by the needs of persons.

Even if we suppose that a two-tiered account can successfully motivate a duty of beneficence towards non-human animals (if not stronger, rights-based claims about what we owe to them), there is still a glaring problem with personhood-bound accounts: some human beings are not persons.

So, on a simple personhood-bound account, we cannot motivate duty or obligation towards any non-persons, and this leaves marginal humans, like severely cognitively disabled individuals and human babies outside of our moral realm.

On a two-tiered account, we can motivate modest beneficence claims regarding marginal humans, but no more. We cannot claim that they have a right to life; we can only say that, as with non-human animals, we ought not cause them harm unless it is necessary.⁸ But this doesn't seem to capture the intuitions most of us have about marginal humans. Most of us think that it is morally permissible—or at least, minimally morally problematic—to breed and kill non-human animals for food and clothing. Even if we think that causing these animals to suffer unnecessarily in the course of breeding them for food is impermissible, it is still the case that we accept their use 'as a means', and to what are essentially unnecessary ends (after all, we could wear cotton; we could eat beans); and we accept that ending their lives for our own ends is morally permissible. So, even if we suppose that non-human animals ought not

⁸ Indeed, it is not clear whether we can derive positive care duties towards marginal humans from a two-tiered account. In part two of this thesis, I will suggest that we might be able to motivate special obligations towards some marginal humans that do not arise from their moral status directly. I will explore parental obligation, in particular, as a way of fleshing out this possibility.

be made to suffer unnecessarily, the claim that marginal persons have the same moral status as non-human animals is a hefty bullet to bite.

There is a sizable literature surrounding the question of whether we ought to bite this bullet: whether we ought to accept a theory that generates the conclusion that human non-persons are morally on a par with non-human animals.⁹ Usually, when the bullet is bitten, it is done so lightly: the claim is not that we may eat marginal humans; rather, that non-human animals are deserving of much higher moral regard than we pretheoretically afford them.¹⁰ So, the claim is not that it is permissible to kill marginal humans for our own ends, but rather that it is impermissible to do so with non-human animals.¹¹

This lightened bullet-biting is still rather undesirable; it still leaves marginal humans with a lesser status than those of us fortunate enough to fit the personhood bill. This means that, when the rights or desert of marginal humans come into conflict with those of persons, our theory will

⁹ See, for example, McMahan (2005) and Kittay (2005).

¹⁰ See, for example, Singer (1975).

¹¹ Frey (2002) seems to toy with the idea of biting the bullet properly: that is, of accepting that some uses of non-human animals—particularly, in important medical research—are morally permissible, and that if this is so, so too is use of marginal humans for this purpose. It is not clear to me whether he means this as a *reductio*, or whether he is in earnest.

dictate a favouring of persons. So for example, the use of marginal humans in research towards life-saving treatment may still be justified.¹²

The marginal humans problem has led many philosophers to reject personhood-bound accounts, and to claim instead that being a member of the human species is what confers full moral considerability. Any human being, then, is fully morally considerable, no matter what features they do or do not possess; any non-human is at best minimally considerable. But if personhood-bound accounts sacrifice intuitive appeal for theoretical plausibility, these humanity accounts do the reverse: everyone we pretheoretically want to include in 'us' is included, but the theoretical grounds are mysterious.

First, it is unclear why a biological fact should be morally salient: what do chemical sequences in cells have to do with moral worth? The answer cannot be that those chemical sequences produce morally-valuable attributes, since this will simply collapse into a personhood-bound account. The problem, again, is that not all human beings have the constellation of cognitive features or capacities that characterise personhood. If we say that the moral value of the biological fact of being

¹² Lifesaving treatment for human persons will of course also benefit human non-persons. So, the worry probably isn't, in this case, that we're using marginal persons as means to our own ends. Rather, the worry is that they are second-class: we choose their suffering over our own, as a matter of principle, on this picture.

human lies in the fact that our biology allows us to have these morally valuable cognitive features, then it is the cognitive features (ie, it is personhood) that are doing the moral work. There is no reason, in that case, to suppose that individuals who have the biological features but not the cognitive features are morally considerable.

One might, then, want to appeal to the idea that human beings make up a 'natural kind'. That personhood is unique to the *kind*, and thus, being a member of that kind is morally salient. But there is an obvious threat of regress in this thinking. Why pick out *homo sapiens* as our 'kind'? Why not adult humans? Why not normally-able adult humans? Why not vertebrates? It is unclear how we could choose one 'natural kind' rather than another, on theoretical grounds.

Peter Singer, of course, argues that attributing moral considerability to all and only members of the human species is 'speciesist': that attributing moral import to species is arbitrary and bigoted in just the same way as attributing moral worth to race, or to gender.¹³ Some have rejected Singer's claim. Most often, the rejection takes the form of an appeal, in one form or another, to 'naturalness': that it is only natural that we should value our own species; even that so valuing is a product of evolution.¹⁴

¹³ Singer (1975), (2006). See also LaFollette and Shanks (1996).

¹⁴ See e.g. S. Post, (1993): 294. For a truly bizarre rejection of Singer's challenge, see Steinbock (1978): 'It is not racist to provide special care to

But of course, that it is natural we should do so does not show that it is *right* we should. In general, rejections of Singer's speciesism claim tend to struggle, theoretically.

Many philosophers, then, look for a middle way: an account of moral status that fits our intuitions about who counts, but that is theoretically plausible. Often times, such a middle way takes the form of an expanded personhood-bound account: an account that takes persons as paradigmatic, but tacks on additional qualifications to bring marginal humans within the moral fold.

In chapter one of this thesis, I will be discussing relational accounts of moral considerability. Pure relational accounts—often associated with 'care ethics'—pick out membership in communities or implication in care relationships as the singular criterion for moral considerability.¹⁵ For reasons that should become obvious in chapter one, such accounts are theoretically unworkable, and thus of little interest. On the other hand, mixed relational accounts—accounts that tack implication in care relationships onto personhood-bound accounts, thus privileging persons *and anyone cared for by persons*—are *prima facie* appealing (and also, it seems, very popular). These relational accounts seem to have all the theoretical plausibility of a personhood-bound account (since they are, at

members of your own race; it is racist to fall below your moral obligation to a person because of his or her race.'

¹⁵ e.g. Kittay (2005)

base, just that) and yet can accommodate our intuitions about marginal humans. They seem to include marginal humans, exclude non-human animals, and yet avoid speciesism. I'll argue, however, that this success is only apparent: in so accommodating, they lose their theoretical plausibility.

3. Infants and infanticide

So, theories of moral status seem stuck. The best we can do theoretically cannot accommodate marginal humans; and our attempts to accommodate marginal humans scupper theoretical coherence. It seems we are faced with a choice between intuitive plausibility and theoretical/explanatory plausibility. The marginal humans problem is *the* problem in need of solution with respect to theories of moral status. Solving it would just be to discover the right account of moral status: the right account of who counts and why. While this thesis will not offer a solution to the problem, the aim is to make progress towards it by taking one group of marginal humans—human infants—as a case study.

I have chosen infants because they are a particularly good example of the marginal humans problem. First, because most of us have very decided and strong intuitions about right-treatment of babies. Not only do we think they are morally considerable, but most intuitions lean towards the thought that babies deserve *more* consideration and care than do adult human beings. While intuitions vary somewhat about, for example,

individuals in a persistent vegetative state, or individuals with acute psychiatric disorder, they seem to be quite stable as regards infants.¹⁶

Second, because—in marked distinction to the clarity of our intuitions about their moral status, and about personhood—they are simply not persons. Babies are not rational; they are not self-aware; they do not have preferences or an understanding of themselves as persisting through time. Unlike individuals with acute mental disorder, for example, there is simply no question of whether a theoretically-useful conceptualisation of personhood can or ought to include infants. And yet,

¹⁶ This, of course, may not be historically or cross-culturally accurate.

There is evidence of widespread practice of, and apparent acceptance of infanticide (See e.g. Hrdy (2000)), But there are two points to be made about this. First, whether an infant has a right to life, as has been said, is a different question to whether an infant has a right to beneficent care. A being may have one sort of right without having another; still they are rights-bearers. There is no evidence that infanticide-practicing societies tend to be societies that deny beneficent care to infants. So, even when infanticide is practiced within a society, it is not the case that that society is denying all duty towards infants. Second, insofar as moral progress is a coherent idea, the fact that others have done or thought otherwise does not neutralize or de-legitimise strong intuitions we now have, even if it gives us reason to examine our intuitions more closely. And this is precisely what I would like to do.

the clear intuition is that we have strong obligations towards them, and that they probably have rights.¹⁷

The question of the moral status of infants appears most prominently in discussions of the moral difference between abortion and infanticide. Whether birth can be ‘morally significant’ (that is, whether birth can change the moral status of the foetus/neonate), and whether newborn infants are owed better, or different treatment to foetuses, is the locus of discussion of babies and moral considerability. So in part one of this thesis, I will explore this issue.

Comparisons between abortion and infanticide are, of course, standard in popular discussion of abortion rights. Michael Tooley’s 1972 article ‘Abortion and Infanticide’ brought the issue to the fore in academic philosophical discussion of reproductive rights; and indeed, Tooley’s discussion of abortion and infanticide seems to be a particularly striking illustration of the tension between personhood-bound accounts and intuitions about babies. Tooley argues that since neither foetuses nor neonates are capable of desiring continued existence, neither foetuses nor neonates have a right to life. And thus, abortion is morally permissible and so is infanticide.

¹⁷ Intuitions about rights are, of course, more murky.—see e.g. Archard and Macleod (eds) (2002)—though notice, while there is debate about whether children (and by extension, infants) have rights, I suspect few people lack the intuition that they have rights to life.

He argues, first, that understanding a right to life as simply a right to remain biologically alive is wrongheaded. For example, if we reprogramme your brain, such that your memories, preferences, etc, now bear no resemblance to the memories and preferences that *you* once had, while allowing you to remain biologically alive, we have not respected your right to life. Likewise, if you sustain injury that causes you to suffer brain death, while your body remains alive, we probably do not violate your right to life by ‘pulling the plug’ on you. A right to life, then, must be a right to something other than a beating heart. The correct understanding of the right, Tooley says, is as ‘the right of a subject of experiences and other mental states to continue to exist’.¹⁸

He then asks, ‘what properties must something have to be a person, i.e, to have a serious right to life?’¹⁹ What properties something must have to have this right will depend, in the first instance, on what properties something must have in order to have any rights at all. Tooley writes that

To ascribe a right to an individual is to assert something about the prima facie obligations of other individuals to act, or to refrain from acting, in certain ways. However, the obligations in question are

¹⁸ *Op.cit.* 46.

¹⁹ Tooley, again, is using ‘person’ in the first way mentioned above—more particularly, Tooley writes that ‘X is a person’ is synonymous, on his use, with ‘X has a serious (moral) right to life’ (p. 40).

conditional ones, being dependent upon the existence of certain desires of the individual to whom the right is ascribed. Thus if an individual asks one to destroy something to which he has a right, one does not violate his right to that thing if one proceeds to destroy it. This suggests the following analysis: "A has a right to X" is roughly synonymous with "If A desires X, then others are under a *prima facie* obligation to refrain from actions that would deprive him of it."^{20, 21}

This, then, seems to show that in order to be a rights-bearer, one must be able to have desires, since if one was unable to desire, the claim that others were under a *prima facie* obligation to honour one's right to X if one desires X would be vacuous. To be under an obligation not to deprive an individual of something, however, that individual needn't actively have the desire for it. So, for example, it is (arguably) a violation of a person's rights to steal her car, even if she is asleep and is therefore entertaining no desires whatever about her car. The actual desire, then, is not what is morally salient: the ability to desire is what motivates the having of rights.

²⁰ P. 45. Tooley later expands the conception to include cases where one *would* desire X were it not for (1) being in an emotionally-unbalanced state; (2) being temporarily unconscious; or (3) being conditioned to desire the absence of X.

²¹ I take it there has been a terminological shift over recent years, and that these days, we would probably want to call this a 'pro tanto' obligation, rather than a 'prima facie' obligation.

With regard to particular rights, one is only able to have a desire for X, Tooley claims, if one is able to have a concept of X. 'The desires a thing can have,' Tooley writes, 'are limited by the concepts it possesses.' Kittens, then, do not have property rights, for example, because kittens cannot have a concept of ownership.

In order to have a right to life (i.e. a right to continue to exist and be the subject of that existence), one must be capable of desiring life. In order to be capable of desiring life, one must have a concept of oneself as a subject persisting through time. Thus, persons (as we substantively understand them), and only persons, have a right to life, and since neither fetuses nor babies are persons, neither babies nor fetuses have a right to life. Tooley concludes, then, that not only is abortion permissible for any reason, but so is infanticide.

4. What to do with Tooley

As was said, Tooley's argument is a striking example of the tension between personhood-bound accounts of considerability and intuitions about babies. On the face of it, we seem to have four options: reject the intuition that infanticide is morally impermissible (bite the bullet); reject personhood as the measure of moral considerability; soften the personhood approach (take personhood to be a merely sufficient condition for considerability); or drive a conceptual wedge between the lack of a right to life, and the permissibility of killing.

Taking the first option—bullet-biting on infanticide, and on marginal humans more generally—would just be to accept Tooley’s argument. Since many of us think that abortion is morally permissible, and since it seems implausible that newborns and fetuses have different moral statuses, bullet-biting on infanticide may seem a tempting option. However, when we consider our intuitions about marginal humans more broadly, the temptation is markedly diminished: Tooley’s argument, if correct, shows not only that infanticide is permissible, but also that involuntary euthanasia of cognitively disabled human beings, elderly individuals in the throes of dementia, humans with acute psychiatric disorder, etc., is likewise permissible. This is a big bullet, indeed, for one easy bite. At least ruling out the other three options before biting, then, seems obligatory.

The second option—rejecting personhood—is, we have already seen, a difficult one. One does so at the expense of theoretical strength. For example, Rosalind Hursthouse argues that ‘only people who already agree with [Tooley] about these issues will accept his definition of a *person or the sort of being who has a right to life*’.²² Tooley’s argument is, according to Hursthouse, nothing more than a neat *reductio* on personhood-bound accounts. Hursthouse’s argument, however, relies on the appeal of her alternative theory of moral status, which runs, in a nutshell, as follows: personhood is morally salient; homo sapiens is a

²² Hursthouse (1987)

‘species of persons’; therefore being a member of homo sapiens is morally salient, and in particular, confers moral considerability.²³ To avoid a charge of speciesism, Hursthouse amends the view to take note of the fact that there may be other species of persons: so then, being a member of homo sapiens *or any other species of persons* confers moral considerability.

But of course, Hursthouse does not avoid the charge of speciesism at all: her account is deeply speciesist. Indeed, the ‘*or any other species of persons*’ amendment brings out the problem with the concept ‘person species’. That being a member of our species is not sufficient for personhood, in the substantive sense, is a given—the existence of marginal humans (just the problem we’re grappling with) shows this—but that it is also not *necessary* for personhood—evidenced by the amendment to include non-human persons—means that there simply is no viable moral link between personhood and humanness.

While ‘species of persons’ may be something of an accurate description—where we mean something like ‘species of which some members are persons’—it is doing no moral theoretical work. One might as well describe our species as ‘species of featherless bipeds who aren’t kangaroos’. That is, what’s driving considerability on Hursthouse’s account is species membership, plain and simple. Inclusion of other ‘person species’ does not save her account from the charge, just as

²³ (1987): 91-107

saying 'I'm not a white racist; I also like Asian people' does not save one from a charge of racism.

The theoretical implausibility of Hursthouse's reply illustrates the problem already noted: alternatives to personhood-bound accounts tend to capture intuitions at the expense of theoretical coherence. So, resolving the marginal humans problem is simply not as easy as reading Tooley as a *reductio*. In part one of this thesis, then, I'll be examining the two remaining options: softening personhood; and driving a wedge between the lack of a right to life, and the permissibility of killing.

In chapters one and two, I will evaluate two attempts to motivate the moral significance of birth: that is, the idea that birth can change the moral status of the foetus/neonate. In chapter one, I will discuss Mary Anne Warren's account of the moral significance of birth.²⁴ Warren represents an attempt to soften personhood by showing that personhood is merely a sufficient criterion for full moral considerability. Social community membership, and more specifically, being a party to care relationships, is also a sufficient condition on Warren's account. This means then that babies, once they are born and enter into relationships with persons, are fully morally considerable. This approach—what I will call a 'relational account of moral considerability'—is rather a popular approach to softening personhood-bound accounts. In chapter one, I will argue that it simply does not work, and will suggest an alternative

²⁴ Warren (1989)

conceptualisation of the moral salience of relationships that may be more promising.²⁵

In chapter two, I will discuss a variant-relational approach to the moral significance of birth. Jose Louis Bermudez argues that being in social contact with persons can trigger developmental changes in the neonate that render her fully morally considerable. On Bermudez's account, being in the relationships, itself, is not salient; but the relationships are, if you will, salient-feature triggers. His account is not susceptible to the criticisms I offer against the simple relational account of moral considerability, because being a party to care relationships is simply the trigger for the development of morally salient features, rather than the morally salient feature itself. However, Bermudez's account also fails, I will argue, because, first, he fails to show that fetuses cannot be likewise triggered; and second, because the personhood-softening necessary to make the account of birth tenable renders the overall picture of moral considerability theoretically unworkable.

Since neither the relational, nor the variant-relational approach can motivate the claim that babies but not fetuses are fully morally considerable, it might look as though we must accept that infanticide is morally permissible if abortion is. But I will argue that this does not follow:

²⁵ This alternative conceptualisation will foreshadow the argument in chapter three, in which I explore the possibility of driving a wedge between the lack of a right to life and the permissibility of killing.

a wedge can, indeed, be driven between the lack of a right to life, and the permissibility of killing. This means that sameness of moral status will not imply sameness of moral permissibility of killing.

In chapter three, then, I will defend this claim in the context of considering an updated version of Tooley's basic argument.²⁶ My critique of the updated argument relies on a superficial and, I think, uncontentious variety of what I will call moral contextualism: the idea that moral context bears on the moral rightness of any act. While it seems that a change in the moral status of the foetus/neonate is unlikely at birth, I will show that we still needn't conclude that infanticide is permissible if abortion is; and that even if a newborn lacks a right to life, this does not show that infanticide is morally permissible. By extension, even if we cannot generate anything like the possession of a right to life as regards marginal persons more generally, this is not a reason to accept the conclusion that it is *carte blanche* permissible to kill marginal humans.

5. Beyond Considerability

That there is no *prima facie* reason to accept the conclusion that it is permissible to kill marginal humans—and babies in particular—is a rather unsatisfying outcome. Probably we want our broader conception of right treatment of babies to go quite a way further. While there might be intuitional wiggle room on infanticide (or anyway, one might be persuaded to bite the bullet on infanticide), there is surely no such wiggle room when

²⁶ Giubilini and Minerva (2012)

it comes to right treatment of babies: it seems clear that we have beneficent obligations towards them.

However, these beneficent obligations needn't be described by our theory of moral considerability. We may want to say that, while the moral status of a baby cannot, on its own, motivate any robust beneficent duty, special obligations may be able to plug the intuitional gap.²⁷ To this end, in part two of the thesis I will discuss the most basic and intuitive of the possible special obligations towards babies: parental obligation.

While parental obligation surely cannot account for all beneficent duty towards babies, it is arguably the most central of special obligations towards them. The thesis, then, will not offer a thorough account of special obligations towards babies, but will rather focus in on parental obligation. In chapter four I will look at whether causal accounts of parental obligation—according to which, parents are obliged to care for their children in virtue of having brought them into being—are tenable. I

²⁷ Our account of moral considerability will still need to be the right sort. Particularly, it will still need to motivate the claim that babies are the sorts of creatures towards whom one could have duties at all. It is implausible, for example, to say that we have duties towards rocks; duties towards persons, however, seem well-motivated. Some account will still be needed of why babies fall on the person side—despite not being persons—rather than the rock side. In the introduction to part two I'll address this worry, and argue that we ought to take sentience seriously.

will discuss Elizabeth Brake's objections to causal accounts; and her positive, consent account of parental obligation; and I will argue that her objections can be answered, and a causal account ought to be preferred over a consent account.

In chapter five, I will expand my discussion of causal accounts of parental obligation. I will argue that what I call a 'bifurcated' causal account—one that distinguishes explicitly between progenitors and social parents—is the sort of account we ought to accept. I will then look at how this account bears on the abortion debate. I will claim that, because progenitors have life-long and non-transferrable obligation towards their offspring, adoption is not—as is often argued—a viable alternative to access to abortion.

Finally, in chapter six, I will look at further reproductive-ethical consequences of the bifurcated causal account of parental obligation. For example, I will look at the question of whether the causal account implies a duty to gestate, and thus that abortion is immoral. On the face of it, one might suppose it does: after all, if one is obliged to one's children in virtue of having created them, this seems to indicate that one is obliged to one's foetus in virtue of having created it. Of course, if we simply say that a foetus is not a person, and thus not morally considerable, and thus not such that we can have obligations towards it, this causes trouble for babies. A theory of parental obligation that can't account for our obligations towards babies is surely not desirable. However, I will argue

that causal accounts of parental obligation do not, on their own, imply a duty to gestate, for at least a couple of reasons.

First, causal accounts tell us *why* we are obliged, and not to what we are obliged. The obvious reply to this is that, though the details might be up for grabs, still we can say, generally, what we as parents are obliged to: we are obliged to provide care, of some appropriate sort. Gestating, then, might seem like the only way one could care for a foetus.²⁸ But this needn't be so. Given the dearth of theoretical backing for the claim that death harms non-persons, it needn't be the case that keeping the foetus alive is the best way to care for it. We might suppose that, for example, with adverse social or economic circumstances looming in the future, a short and comfortable existence in the womb—or indeed, the wholly experienceless existence zygotehood—is preferable to a longer existence filled with hardship.

Second, no matter how strong our obligation to our offspring, that obligation will always be in competition with other obligations and rights. To say that I have a *pro tanto* duty to x is not to say whether I must x in the face of duties also to y and z, and with rights of my own. So, even if the causal account of parenthood implies that I have an obligation to care for my foetus, it will not (necessarily) follow from this that I have an obligation to gestate, since I may be under many obligations—and certainly have rights—that may conflict with, and need to be balanced

²⁸ Perhaps also eating sensibly, refraining from recreational drug use, etc.

against my parental obligation. In order to show, then, that a pregnant woman has a duty to gestate, even if we accept the causal account of parenthood; and even if we accept that this implies an obligation to care for the foetus; and even if caring for the foetus involves keeping it alive; we would still have work to do.

YOU'RE NOBODY 'TIL SOMEBODY LOVES YOU, BABY

Introduction

Many of us share the intuition that abortion is (at least sometimes) morally permissible, but infanticide is not. While many have the intuition that late abortion is more morally weighty than early abortion, most agree that whatever the moral weight of late abortion, it is sometimes permissible whereas infanticide never is. But this is puzzling, since fetuses and neonates of similar gestational age seem like precisely the same creatures with the same intrinsic features. The standard move, then, is to craft accounts of abortion that mirror defensible person-killings: self-defence, or rightful failure to aid, for example. In other words, the standard move is to craft defences of abortion that work even if both fetuses and neonates are fully morally considerable.

These approaches are standard because the notion that birth could change the moral status of the fetus/neonate is *prima facie* implausible. Neonates just are fetuses outside of wombs. However, on inspection these defences of abortion are problematic. According to Judith Jarvis Thomson's account, for example, even if the fetus has a right to life, this right to life would not imply a corresponding duty on the part of the pregnant woman to provide life-saving aid to the fetus. As such, the pregnant woman does not have an obligation (unless she consents to be so obliged) to gestate the fetus (Thomson 1971). Thomson assumes that gestating, and subsequently birthing the baby constitutes tacit

consent to aid the baby.¹ But it is not clear why birthing the baby should constitute tacit consent, rather than, say, conceiving the embryo, or gestating it to the foetal stage, if both babies and foetuses are morally considerable. So it's not clear that Thomson's defence can work, on the assumption that infanticide is impermissible: if infanticide is impermissible because the woman has tacitly consented to aid the neonate in having brought it into being; and if foetuses have the same moral status as neonates; it is unclear why we oughtn't say that the pregnant woman has tacitly consented to aid the foetus in having brought it into being; and as such, abortion will be impermissible for the same reason infanticide is.

Jane English offers a defence of abortion modelled on self-defence, on which the pregnant woman is justified in causing the death of the foetus if it is necessary in order to defend herself against the threat of life-altering harm (English 1994). She concedes that 'thanks to modern technology, the cases are rare in which a pregnancy poses as clear a threat to a woman's bodily health as an attacker brandishing a switchblade,' but she argues that the threat of 'drastic injury to your life prospects' is enough to justify deadly self-defence, even where the source of the threat is

¹ According to Thomson, one must also not put the baby out for adoption in order to be said to have consented to aid. But it's not clear at what point I've not put the baby out for adoption. At the moment of birth? Within a fortnight? Surely I must have a duty to aid in the interim between birthing the baby and declining to adopt it out: I can't just let it die on grounds I intend to adopt it out.

innocent. Since unplanned parenthood can constitute such a threat—whether financially, or by scuppering core autonomous life plans—abortion is, according to English, permissible on self-defence grounds.

This will also fail as a defence of abortion on the assumption that infanticide is impermissible: if a foetus stands to do drastic injury to your life prospects, so too does the baby it will become. Indeed, the threat will surely be all the clearer once the pregnancy is over and parenthood begins. Having an abortion, rather than, say, smothering a newborn, is only preferable (qua right treatment of the foetus/neonate) on the assumption that the moral status of the foetus is different from, and in particular lower than that of the neonate.

It is likely that most defences of abortion will be susceptible to the same sort of problem. A reasonable response to this difficulty is to reconsider the moral significance of birth: to ask whether there could, after all, be a moral difference between a gestationally-advanced foetus and a newborn infant. Re-examination of the possibility of birth's being morally significant—despite the implausibility of it—is warranted, given the difficulties for defences of abortion in the face of a lack of such an account. In this paper, then, I will be examining the possibility that birth might change the moral status of the foetus/neonate.

The two most promising philosophical attempts to argue for the moral significance of birth in contemporary literature both employ variants on

the same strategy (Bermúdez 1996; Warren 1989). The basic strategy is to claim that relationships can change one's moral status: that being in relationships with persons can confer on one moral status, even that of a person. The more standard employment of this strategy is that of Mary Anne Warren. I will argue that her employment of a standard relational account of moral status is unsuccessful, because standard relational accounts are just unsuccessful. After showing in this chapter why basic relational accounts do not work, in the next chapter I will discuss Jose Luis Bermúdez's variant on the basic relational account. His variation is not susceptible to the worries I will set out in this chapter, but is likewise unsuccessful. First however, I will rehearse and criticise Warren's standard relational account.

Warren claims that both intrinsic and extrinsic features can confer moral status, and that baseline moral considerability is derived from intrinsic features. Her account of birth, then, is that both foetuses and neonates are sentient, and are both therefore minimally considerable; but that, since neonates are part of our social community, they are thereby part of our moral community, and we must accord to them the rights of a person.

Warren's account, because it is a relational account of moral considerability, simply does not work. However, there is undoubtedly something quite right in what she is doing. So, I will first present Warren's account of the moral significance of birth. Then I will discuss why it does not work. And finally, I will sketch out a picture of how Warren's insights

might be incorporated into a functioning account of the moral significance of birth.

1. Warren's Account

Warren (1989) claims that, though nothing changes about the foetus/neonate herself at birth, still we must accord to her a different status and different rights once she is born. Both foetuses and neonates are morally considerable, according to Warren, but not 'fully' so. We have minimal duties with respect to both—as we do with respect to any sentient creature—but neonates, and not foetuses, have rights. We must accord the neonate the status of a person when she is born, because now she is one of us; she is a part of our (social) community. Being a part of our community means that we are obliged to treat the community member as if she were a person: we must accord rights to her. But there is no such reason to treat the foetus as if she were a person, and there is good reason not to, namely, to respect the rights of the pregnant woman.

According to Warren, there are two assumptions lurking in the background of most accounts of moral considerability.

1. *The Intrinsic Properties Assumption*: the only facts that can justify the ascription of basic moral rights or moral standing to individuals are facts about the intrinsic properties of those individuals.

2. *The Single Criterion Assumption*: there is some single property, the presence or absence of which divides the world into those things which have moral rights or moral standing, and those things which do not.

The two most plausible criteria for moral considerability are, on the one hand, personhood, and on the other, sentience.² Warren argues that neither of these manages to capture core intuitions about considerability. As such, we ought to reject the Single Criterion Assumption. Once we reject the Single Criterion Assumption, we ought also to reject the Intrinsic Properties Assumption.

The first candidate for a single criterion—personhood—is a clear non-starter as regards fetuses and babies (and by hypothesis, marginal

² Warren actually talks about *self-awareness* and sentience. I take it that the role self-awareness plays in most personhood accounts is something like the following: one must be self-aware in order to act autonomously; so one must be self-aware in order to be a moral agent, ie, a person. Agency/personhood is the thing, on these accounts, that makes one morally considerable. (Think of Kant's kingdom of ends.) The taxonomy is tricky: is the self-awareness the property (ie, the criterion), or is personhood? It's not clear what to say about this. However, Warren's claims about self-awareness work, *mutatis mutandis*, for personhood, and I take it that personhood is the stronger position to attack. So, I'll present Warren as if in opposition to personhood.

humans more generally): neither is a person on a technical understanding of personhood; on which personhood is not coextensive with being a member of the human species.³ Most personhood accounts of moral considerability hedge, in the case of 'healthy normal infants', by claiming that *potential* persons are also morally considerable, on grounds that the person they will become will be morally considerable. But of course, this will not give us a moral difference between fetuses and babies, since fetuses are also potential persons. What's more, it is arguably the case that the aggregate of sperm and egg that has the possibility to become a foetus, and later a person, has the potential for personhood. So, hedging

³ The philosophical use of the term 'person' is different to both the common use—on which 'person' picks out all and only members of the human species—and the common use within the abortion debate—on which 'person' picks out fully morally considerable members of the human species. 'Person', in the present discussion, is used in a broadly Lockean way. On this use, personhood is characterized by a constellation of (apparently morally-salient) features, such as moral agency, self-awareness, and rationality. Possession of these features is both necessary and sufficient for personhood. It is usually taken that possession of this constellation of features renders one fully morally considerable, setting normal adult human beings apart, for example, from non-human animals. However, full moral considerability is not built in to the concept personhood: it is a substantive moral claim that having the constellation of features that make one a person makes one fully morally considerable.

in this way will not help motivate a moral difference between a foetus and a neonate, and will, further, generate unintuitive consequences.

Personhood is not apt as a criterion for moral considerability if we take it that babies are morally considerable and possible pairs of gametes are not.

Sentience, the second candidate for a single criterion, does not fare much better. Warren argues that whether we understand sentience as a threshold criterion or as a scalar criterion, the results speak strongly against core intuitions. If sentience is a threshold criterion, such that all minimally sentient beings have equal moral standing—that is, if mere, weak sentience makes one fully morally considerable—then we will be forced to say that what happens to any minimally sentient creature is as weighty as if it happened to you or me: swatting a bee would be as morally weighty as knocking down a child with your car; killing a mouse would be murder. Our everyday moral judgments seem very strongly to indicate that we give different moral weight to the death of a person and that of a mouse. So, sentience as a threshold criterion simply doesn't wash with our broader, pretheoretical views on moral value.

On the other hand, if sentience is a scalar criterion, such that the more sentient you are, the higher your moral status, then killing a person will rightly be taken as more serious than killing a mouse. However, the broader picture of moral value will still be deeply at odds with our everyday judgments. Human babies will not have anything like a right to life,

since they are nothing like 'fully' sentient, in the way that you and I are. On the other hand, housecats might have a right to life, or are anyway more likely to, since housecats are more sentient than human babies.⁴ This again is deeply at odds with our every-day judgments about value. So, whether sentience is a threshold or a scalar criterion, Warren says, it cannot work as a single criterion for moral considerability. It would be too big a bullet to bite.

Since neither of the two most plausible criteria captures core intuitions about moral considerability, Warren thinks we ought to reject the single criterion assumption, and look instead to a pluralist account of moral considerability (1997). On the pluralist account that she advocates, sentience acts as a 'baseline'. Merely sentient creatures are minimally morally considerable; sentient creatures who are (in morally-salient ways) more than merely sentient are more than minimally morally considerable.

⁴ It should be noted that the sentience view Warren is attacking is very different to the best-known sentience account—Peter Singer's. On Singer's account, sentience isn't a value-maker; it drives equality of consideration in the utilitarian calculus. So, on the gold-standard sentience account, it isn't the case either that 'more sentient' creatures are more valuable, or that killing a mouse is as weighty as killing a person. (See Singer (1975).) However, this clarification simply shifts the burden from sentience to utilitarianism. Exploring the aptness of the latter is obviously out of the scope of this essay.

So, sentience is a baseline for moral considerability. According to Warren, we are obliged to avoid unnecessary harm to sentient beings. However, merely sentient beings are not fully morally considerable: they are not full rights-bearers. Importantly, they do not have a right to life. But some sentient creatures who have morally-salient features in addition to sentience do have a right to life. Personhood is one feature that is rights-conferring. Another rights-conferring feature, according to Warren, is being a party to social, care relationships. Sentient beings who are part of our social community, according to Warren, are fully morally considerable. They have rights. Newborn infants, then, though they are not persons, and have no *intrinsic* properties other than sentience that can ground moral status, are none the less fully morally considerable, and have a right to life. She writes

The infant at birth enters the human social world, where, if it lives, it becomes involved in social relationships with others, of kinds that can only be dimly foreshadowed before birth. It begins to be known and cared for, not just as a potential member of the family or community, but as a socially-present and responsive individual.

Thus, although the human newborn may have no intrinsic properties that can ground a moral right to life stronger than that of a foetus just before birth, its

emergence into the social world makes it appropriate to treat it as if it had such a stronger right. (1989: 56)

Because the neonate, once born, is known and cared for by us, it is appropriate to attribute to it a right to life. Thus, newborn babies have a right to life (infanticide is impermissible), and foetuses do not (abortion is permissible).

2. Relational Accounts of Moral Considerability

In this section, I will consider whether Warren's account can motivate a change in moral status, and I will argue that it cannot.⁵ Warren's account is an instance of a relational account of moral considerability (henceforth RAMC). RAMCs, I will argue, are defective. Since it is an instance of this sort of account, Warren's argument is likewise defective.

An RAMC is a standard move in moral philosophy. According to RAMCs, *you're nobody 'til somebody loves you*. That is, being a party to social (especially care) relationships confers moral considerability. RAMCs are a standard way of accounting for the moral considerability of marginal humans. An RAMC attributes full moral status (and importantly, a right to life) to a being or group of beings in virtue of those beings being (in fact)

⁵ A prior worry is that Warren's account can't actually motivate the moral significance of *birth*, since birth could, in theory, happen in the absence of socialising. But I'll set this worry aside.

the objects of the love, care, concern, etc. of otherwise morally considerable beings. So, being the object of the care or concern of morally considerable creatures renders one, according to RAMCs, morally considerable. Social community membership confers moral community membership.

RAMCs occur in the context of personhood-bound theories of moral considerability. If personhood is the standard measure of full moral considerability (or rights-bearing), then so-called ‘marginal humans’ (babies; the severely cognitively disabled; comatose individuals; etc) will not count as fully morally considerable. At best, we will have to say that they matter the way that sentient non-human animals do. Most of us will find this unsavoury. After all, most of us feel that it’s permissible to do things like eat non-human animals. Surely marginal humans must not be, morally, like non-human animals. But on the assumption that species membership—a bare biological fact—is not morally salient (any more than skin colour or sex are), it falls to the personhood theorist to explain how these humans can still have full moral status. An account must be given that includes them, even though they’re not *persons*, and without appeal to their ‘humanness’. And this is precisely what RAMCs promise to do: to bring marginal humans within our moral circle on non-speciesist grounds.⁶

⁶ For the classic presentation of the speciesism argument, see Singer (1999). Singer’s positive theory of moral considerability is not widely accepted, but I take it there is (near) consensus that his speciesism

According to Michael Fox, for example, marginal humans are members of our 'human family', and in virtue of our quasi-familial love/care ties with them, we have special obligations—something like familial obligations—towards them beyond what their intrinsic properties would warrant (2002).

Bonnie Steinbock claims that the feelings of special obligation we experience towards members of our own species are morally relevant, and because we have these feelings, we owe marginal humans more than we owe comparably endowed non-humans (1978). Martha

Nussbaum argues that, though animal wellbeing is a proper matter of justice, humans and even humans who haven't—will never have, cannot have—'the capabilities' (ie, marginal humans) are owed as a matter of justice moral priority over non-human animals because they live in our human societies (2006).⁷ Kittay writes that '[i]dentities that we acquire are

argument is a genuine hurdle to be overcome for any proposed account of moral considerability. Whether this is right or not is, however, not a worry for my criticism. The RAMC just is a response to the speciesism worry; it assumes the moral irrelevance of species membership. Further, rejecting the speciesism worry does not help motivate a moral difference between foetuses and neonates.

⁷ Nussbaum's argument could be understood as something like this: 'marginal humans are human, and thus their wellbeing must be measured with respect to *human* capabilities; thus, justice demands greater care towards them, than if their wellbeing were measured with respect to the capabilities of species for whom, as it were, less could be expected.' This,

ones in which social relations play a *constitutive* role, conferring moral status and moral duty' (2005; emphasis added).

So, the thrust of the RAMC is that, if you are a human being in social, care relationships with persons, you thereby have the moral status of a person, whether your being in a care relationship is *part of who you are* (as Kittay would have it), or simply an extrinsic but morally-relevant fact about your being. Being cared for by persons means having the status of a person.

Warren's account of the moral significance of birth, reliant as it is on social belongingness and care, is an RAMC. Thus, Warren's argument suffers the flaws that the RAMC suffers. And the problem with RAMCs is that, read one way, they are circular; read another, they rely on is implying ought; and read yet another way, they simply can't do what they're meant to do. There is no reading of RAMCs on which they work.

though, leaves Nussbaum vulnerable to the charge of speciesism, since there is no reason, other than species membership, to judge their wellbeing thusly. But Nussbaum is aware of this vulnerability, and wants to avoid it by pointing to the fact that humans, even non-agentive humans, live (and 'must' live) in human communities; and thus cannot, practically speaking, be judged on anything but human criteria. Therein lies the RAMC.

The circular RAMC reading

The circular reading of a RAMC looks something like the following.

Circular RAMC: any creature whose wellbeing matters to morally considerable creatures is such that it is part of the moral community; i.e. its wellbeing matters to us (morally considerable creatures) as much as that of any morally considerable creature.

So, what motivates mattering is mattering. It could be non-vicious: RAMCs could simply be constitutionally conservative. They may, for example, describe folk morality as it is, and affirm the veridicality of it. But this lacks explanatory power; and furthermore, conservatism of this sort won't do when we're talking about marginal humans. We *don't*, as it happens, always care for marginal humans as if they were fully morally considerable—indeed sometimes we treat them abominably, and with abandon. Simply describing our pretheoretical morality or moral practice will give mixed results. We might think that qualifying the 'mattering' will help: what motivates mattering (morally) is mattering (socially). But what would this mattering socially amount to, in the case of marginal humans? We could make sense of *persons* mattering socially: persons engage in a social give-and-take; they play an active role in the functioning and structuring of our societies. Even 'do nothing' persons help shape our social world by their (autonomously) doing nothing. But it isn't clear how a non-person could so shape our social world in a morally salient way. We could perhaps say that babies, for example, play an integral role in our

customs and habits. The birth of a baby is an event of social importance; caring for babies is a highly socially-salient activity. But, since babies aren't actively *doing* anything, other than existing and being alive, to generate this social salience, it's not clear why we should say that babies 'matter socially' in a way that, say, houses do not. After all, buying or building a house is an event of social importance. It seems like, if 'mattering socially' can motivate mattering morally, the social 'mattering' needs to amount to something like being an active shaper of events. In other words, being a person. So, qualifying 'mattering' does not seem to alleviate the circularity; or anyway, it does not seem to do so in a way that will help the RAMC.

The is-begets-ought reading

The RAMC, however, is probably worse than circular. It probably trades on an ambiguity. 'Matters to us' in the antecedent, even unqualified, means something like 'we actively care about it'; whereas 'matters to us' in the consequent means 'is something that we ought to care about'.

Which brings us to the is-begets-ought reading:

Is-begets-ought RAMC: any creature about whom we (morally considerable creatures) care is such that it is part of the moral community; that is, we ought to care about it as much as we care about each other.

Read this way, RAMCs are non-starters. We all know someone who loves his car. He oughtn't love his car, but he does. In general, that someone *in fact* loves *x* does not show that he *ought* to love *x*, particularly when *x* is not a person. Indeed, when *x* is not a person, there is reason to suppose that, if anything, the lover *ought not* love *x* on a personhood-bound account. After all, we are all of us finite in our capacity to care for our fellow creatures; surely, as in the case of the car-lover, there is room for censure when love is given to morally-inconsiderate, or weakly-considerable entities when it could be given to fully considerable creatures.

One might want to claim that the ambiguity is not one that magics a value out of a fact. One might suppose that what I have called the 'is-begets-ought' reading is actually an evidentiary claim. If this is right, then 'matters' in the antecedent means something like 'we in fact care about it'; whereas 'matters' in the consequent means something like 'is in fact important/valuable, such that it deserves our care'. So, it would amount to the claim that our caring *is evidence for* hitherto undiscovered high moral status: that we actually care indicates that there is something there to care about.⁸

But this interpretation is doubly problematic. First, if the RAMC is an evidentiary claim, then we can ask 'what is this hitherto undiscovered quality that cared-for beings possess, such that they are valuable?' And it

⁸ This may be something like what Steinbock has in mind.

would seem that *that* quality will form the basis of our account of moral considerability. If we have no answer, then we have no account of moral considerability at all; the RAMC just dissolves into a reasonably-implausible epistemological claim. Second, the car-lover will still speak against the RAMC on this reading: that some people love their cars counts strongly against the claim that caring for something is evidence of its being morally valuable.

The special reading

This leaves a third, more sophisticated reading of the RAMC.

Special RAMC: any creature who is in a care relationship with us (morally considerable creatures) is such that it is part of the moral community, on grounds that we have special obligations to it that equal or surpass the general obligations we have to otherwise morally considerable creatures.

Michael Fox's 'human family' is a good representation of the Special RAMC. According to this account, obligations to marginal humans are like familial obligations, though ones that in theory can be generated from the ground up. That is, the creature to whom we are specially obliged can be so even in the absence of pre-existing general claims on us. Indeed, in theory, the creature's rights could be fully described by reference to these

quasi-familial obligations.⁹ So, on this sort of account, we have robust obligations to all human beings. Obligations to persons will be general obligations, whilst obligations to marginal humans will be special, but the end result will be the same: we are obliged to treat all human beings with the same respect and care.¹⁰

The first thing to worry about Special RAMC is that cars that we love might still slip into our moral community. (Perhaps we love them 'like family'.) Or more plausibly, baby dolls or vegetable gardens or hamsters might be fully morally considerable. We love them, we care for them, so they are part of our family. On pain of speciesism, we can't exclude them simply for failing to be human: we would need an account of how it happens that our 'family' consists of all and only human beings. And the account would need to be one that doesn't award moral status to

⁹ This gets one round charges of speciesism, since the morally relevant fact isn't that marginal humans are human; but rather that (in virtue of being human) they're parties to special relationships.

¹⁰ Indeed, it seems like an advocate of the Special reading of RAMC will need to say that we have 'special' obligations to *all* human beings—not just non-persons—since all human beings are in the 'human family'. So, perhaps the Special RAMC will want to say that our general obligations are to all creatures (or all things?), while we have a wide class of special obligations to human beings in particular. It is not clear, in this case, whether personhood will play any role at all.

humanness itself. Shy of this account (and of course, *this account* is exactly what the RAMC is meant to establish), we have no reason to exclude the hamster and the tomatoes.

If, like Warren, we suppose that sentience is a baseline for considerability, then the tomatoes are out, but the hamster stays in the family. That is, without an account of how marginal humans play the right role in the family, but hamsters do not, we will still not have managed to elevate marginal humans above non-human animals in our value attributions, because we will be forced to suppose that we have special obligations to *both* marginal humans and non-human animals about whom we care.

The RAMC is intended to place marginal humans *above* non-human animals on the considerability totem pole. If hamsters qualify, the RAMC has lost its *raison d'être*: at best, it will simply collapse into a sentience account of considerability; at worst, it will be no account at all.¹¹

¹¹ One might think to claim that it's simply an empirical fact that we care about humans in the right sort of way; that the quasi-familial love we feel happens always to point to human beings, and so human beings happen to make up our 'families'. But, as in the circular reading, this will be problematic both because it is a non-account, and because our actual care practices are surely not like this: many of us love our cats and dogs more than any human; and one can think of a huge variety of historical, if

In the face of this, the Special RAMC advocate will surely want to appeal to some particular quality or other that these care relationships must have in order to be the *right sort* of care relationship to generate the special obligations. As a first attempt, one might suppose that the relationships will need to be reciprocal. Potatoes and baby dolls, then, won't have it in them to be the right sort of relata. However, many animals will: Fido may even bring me my slippers in the evening, in addition to caring about me.

Again, the purpose of the RAMC is to include marginal humans, exclude non-human animals, but avoid speciesism—or at least to place marginal humans in a class above animals, morally speaking. So, we will need to exclude the sort of reciprocity we can experience with non-human animals like dogs. We will need, then, to make the claim that slipper-bringing isn't *the right sort of reciprocity*. Maybe we will say that the internal states (for example, love) simply aren't there. Even if your dog 'loves' you very much, we will say, this is not the special, valuable sort of love that is evident in relationships that generate special obligations: love between humans is qualitatively different to the love one feels for (and especially from) one's pet.

But this begs the question. Whether humans have special capacities or qualities other than mere species membership that can motivate

not contemporary, examples of total disregard for the rights or wellbeing of marginal humans.

considerability is just what we're trying to show. Appealing to 'humanness' is a non-starter. The obvious alternative is to appeal to the sort of love/care that persons can show to each other. And it seems plausible to suppose that this sort of care is indeed of a different quality to that of a loyal dog. But then, this sort of care requires *persons*.

The problem with Warren's account of the moral significance of birth, then, is not a problem with Warren's account in particular. It is a problem with the whole species of account of which hers is a member. Relational accounts of moral considerability simply do not work.

3. Considerations for a workable account

RAMCs are phantom solutions to the problem of marginal humans. Since Warren's account just is an RAMC, it is defective; it cannot motivate the claim that birth is morally significant. Relationships just can't drive moral status changes. At the same time, it seems as though there is something quite right about the idea that relationships matter morally. In this section, I'll suggest a way to conceptualise the moral importance of relationships in the context of abortion and infanticide in a non-defective way.

I will argue that relationships form a part of the wider moral context in which infanticide occurs, and that this means that the moral context of typical cases of infanticide is saliently different to that of typical cases of abortion, such that we cannot simply generalise across the two acts. In

chapter three, I will give a more thorough argument for the idea that we ought to understand the difference between abortion and infanticide as a contextual difference. In this section, I will focus on fleshing out Warren's relationships insight as a contextual claim. This does not, on its own, give us a fully-fledged account of the moral difference between abortion and infanticide. Other differences in moral context—for example, that the foetus but not the neonate is contained within and dependent upon another human being's body; that that other human beings has rights that are in conflict with those of the foetus (if indeed it has rights); and so on—would need to be fleshed out in order to give such a fully-fledged account.

Conceptualising relationships as moral-contextual features means, at the least, that there is morally salient dissimilarity between infanticide and abortion, and that this difference is there even if the moral status of the foetus/neonate does not change at birth. Thus, it shows that we needn't say that abortion is permissible if and only if infanticide is; and it may, indeed, form a key aspect of a fully-fledged account of the moral difference between the two acts.¹²

Moral Contextualism

The moral quality of an act is context-dependent. We cannot understand the moral quality of a particular act in isolation. Surrounding (though of course, they are not merely surrounding) moral facts feed into, or form a part of the moral facts about a particular act. It is only in looking at an act

¹² Again, I will be discussing this idea at length in Chapter Three.

situated in a moral context—who else stands to be helped/harmed? whose interests will be served? why act so? are there other ways I could act?—that we can accurately assess the moral quality of an act. Social relatedness cannot change what we owe to an individual; it cannot change the moral weight of harm to that individual; what it can do is change the moral quality of acts involving her, and it can do so because, since she is so related, the wellbeing and rights of persons become salient. That the act can harm *them* forms a part of the complete moral picture.

What I have in mind is not a virtue-ethics account of infanticide. The point is not that the actor's motives make her virtuous or vicious. Rather, the point is that the moral quality of a particular act is context-sensitive. Further, taking context into account does not simply amount to a utilitarian calculation: the utilitarian calculus happens to have contextualism built into it, but there is nothing essentially utilitarian about moral contextualism itself. Moral contextualism does not boil down to a relativist claim, since our judgments about acts can be context-sensitive, while socioculturally-insensitive—that is, they can be context-sensitive, though theoretically fully-specifiable. It isn't even (necessarily) a particularist claim: to say that moral quality is context-sensitive is not to pass judgment on whether or how that quality is grounded in natural fact. Context-sensitive moral quality may follow logically from salient general rules in a given context, or it may be ineffably composed, particular to the case at hand. The observation that the moral quality of an act is context

sensitive does not bear on our choice of moral framework; it is more superficial than that. The observation is simply that, whatever we pick out as right-making or wrong-making moral features, these features are interdependent within a moral context.

Rachels (1975) makes this same superficial contextualist claim in the course of looking at the moral difference between active and passive euthanasia. It is often claimed that allowing a patient to die (passive euthanasia) is less morally problematic than actively causing a patient's death (active euthanasia; a 'doing' rather than an 'allowing'). Rachels argues that active euthanasia is—contrary to standard doctrine—less morally problematic, as it results in less suffering while serving the same end, and should be practiced in those cases in which we consider passive euthanasia appropriate. Crucial to his argument is the claim that abstracting away from context in our moral reasoning will often result in a wrong judgment.

Rachels imagines the case of Smith, who is second in line to inherit the family fortune, behind his young cousin. One evening, the young cousin is in the bath. The cousin slips, hits her head, and is knocked unconscious and will drown if not saved. Smith sees his chance. He does not save her, she dies, and Smith inherits the family fortune. Rachels asks us to compare this to a similar scenario. In the similar scenario, the young cousin is in the bath, perfectly well, and Smith seizes the opportunity to murder her and make it look like an accident, by sneaking into the

bathroom and drowning her. She dies, and Smith inherits the family fortune.

In the first scenario, Smith merely allows his cousin to die. In the second, he kills her. But it is clear that we should make the same moral judgment in each scenario. Reading the moral facts off the difference (if we assume there is one) between killing and letting-die in abstraction would lead us astray. Rachels writes that

it is very easy to conflate the question of whether killing is, in itself, worse than letting die with the very different question of whether most actual cases of killing are more reprehensible than most actual cases of letting die. Most actual cases of killing are terrible...and one hears of such cases every day. On the other hand, one hardly ever hears of a case of letting die, except for the actions of doctors who are motivated by humanitarian reasons. So one learns to think of killing in a much worse light than letting die. But this does not mean that there is something about killing that makes it in itself worse than letting die, for it is not the bare difference between killing and letting die that makes the difference in these cases.

The claim, then, is that the contexts in which most killings occur are saliently different to the contexts in which most lettings-die occur; and that our moral assessment of particular cases of killing, on the one hand, and letting-die on the other, are crucially (and rightly) influenced by the moral context in which they occur. Our intuitions about the moral difference

between killing and letting die in abstraction are thus influenced by the moral effects of their typical contexts. When killings or lettings-die occur in atypical moral contexts (such as in the case where Smith lets his cousin die), the effect of context comes to the fore. So, in the case of Smith, it's clear that it doesn't much matter whether he simply failed to rescue his cousin, or actively drown her; his actions either way were reprehensible, and this is so on account of the moral context of the actions.

The context of infanticide

Rachels's primary claim is that there is no *pro tanto* moral difference between killing and letting die. Whether we ought to accept that claim is out of the scope of this essay. But the supporting claim—that context matters to the permissibility of a given instance of an act—is surely right. That an act is permissible or impermissible *pro tanto* is only one part of the moral story. Applying Rachels's insight to the question of the difference between abortion and infanticide, what we'll say is that the moral status of the foetus and of the neonate is but one part of the moral story; the other part is context. Context is where care relationships fit in: that a being is loved or cared for by persons forms a part of the moral context of any act involving that being. Relationships matter morally to particular acts because context matters morally to particular acts.

So, in applying this contextualist observation to an account of birth, what we will say is something like this: the moral status of the foetus/neonate

does not change. The extent to which death *harms* the foetus/neonate does not change. The extent to which we must take the foetus/neonate into account does not change. The foetus/neonate's rights do not change. Nothing about the foetus/neonate qua moral patient changes; there is no change in moral facts about *it*. What changes is the (situated) moral quality of the act of killing it.

Though the moral status of foetuses and neonates is the same, the typical moral contexts in which their deaths occur (in the case of abortion, on the one hand; and infanticide, on the other) are saliently different. In particular, as Warren rightly points out, the neonate is situated in care relationships with people whose interests and wellbeing are salient. Because of these care relationships—because they open up the possibility of harm to the people who are in them—the act of killing the neonate is just (morally) different to the act of killing the foetus. The moral importance of relationships is probably not enough, on its own, to show that abortion is permissible while infanticide is impermissible; but it is enough to show that the permissibility of the one is a separate question to the permissibility of the other, even if birth can't change moral status.

**A MODIFIED RELATIONAL ACCOUNT OF THE MORAL
SIGNIFICANCE OF BIRTH**

Introduction

In the last chapter, we saw that the RAMC cannot motivate the claim that birth changes the moral status of the foetus/neonate. A creature's social situatedness (an extrinsic fact about it) simply cannot change what we owe it for its own sake. In this chapter, I'll look at a clever modification to the RAMC. José Luis Bermúdez argues that social-situatedness can change a creature's intrinsic features.¹ Being born, Bermúdez argues, exposes the neonate to persons, and being so exposed allows them to exercise a morally relevant capacity. This exercise of capacity is considerability-generating, where mere potential for exercise is not. Thus, the neonate is morally considerable, where the foetus is not.

Bermúdez's modified RAMC is intriguing, because it seems unsusceptible to the criticisms rehearsed in the previous chapter against the simple RAMC: if social-situatedness actually changes something intrinsic and morally significant about the neonate, then the neonate's resultant moral status is not contingent and tenuous: the neonate will be morally considerable even if we fail to care about it. However, I will argue that Bermúdez has not shown that birth changes something intrinsic and morally significant about the neonate. Even if we accept the claim that the

¹ Bermúdez, J.L. (1996)

behaviour in question is dependent on contact with persons, and thus that it cannot occur in the womb; and even if we accept the claim that the capacity mentioned is a morally relevant one; it does not follow that the moral status of the foetus/neonate has thereby changed, because the behaviour that Bermúdez discusses does not exhaust the possible exercise of the capacity that he picks out as morally significant: it is but one way in which the capacity could be exercised.

Bermúdez cites empirical research that shows that neonates as young as forty-two minutes old can imitate facial gestures. This, he argues, is an exercise of a 'primitive' capacity for self-awareness. Since self-awareness is morally significant, Bermúdez argues, so is primitive self-awareness. Following Tooley,² Bermúdez argues that mere possession of a capacity like self-awareness is not morally significant, only *exercise of* the capacity is. Since neonates, but not foetuses, can imitate facial gestures, neonates, but not foetuses, can exercise this morally relevant capacity. Thus, Bermúdez concludes, neonates, but not foetuses, are morally considerable.

However, even if foetuses cannot imitate facial gestures, this does not show that foetuses cannot exercise primitive self-awareness. After all, imitation of facial gestures is not obviously the only way in which one can exercise primitive self-awareness. Indeed, on the assumption that self-awareness is at least primitive self-awareness, it surely is not, since you

² Tooley (1983)

and I exercise self-awareness at every waking moment, but only sometimes imitate facial gestures. Bermúdez gives us no reason to suppose that there mightn't be other ways to exercise primitive self-awareness that would be open to the foetus. Thus, he does not succeed in showing that exercise of this morally-relevant capacity is impossible for foetuses: simply that facial imitation is. Since it is self-awareness, and not facial imitation, that is morally relevant, Bermúdez's argument does not show that there is a difference between foetuses and neonates with respect to exercise of this capacity. And thus, he has not shown that birth changes the moral status of the foetus/neonate.

Bermúdez's modified RAMC is not defective in the way that the simple RAMC is. If it could be shown that contact with persons changes a creature's intrinsic features in morally-relevant ways, it would follow that social-situatedness can generate moral considerability. However, because Bermúdez has merely shown that this one way of exercising a morally-relevant capacity relies on social-situatedness, he has not succeeded in showing that social-situatedness changes intrinsic features. Thus he has not shown that social-situatedness can generate moral considerability.

In section one of this chapter, I will rehearse Bermúdez's account of the moral significance of birth. In section two, I will argue that this account does not work; that facial imitation is sufficient but not necessary to show self-awareness. In section three, I will argue that Bermúdez's Principle of

Derived Moral Significance generates a regress, that this principle is a core problem with his account, and that the account falls apart without it.

1. Bermúdez's Argument

Bermúdez, contra Warren, accepts the standard conception of moral considerability on which one's considerability is dependent only on intrinsic features, and where one feature or set of features can be decisive. But he claims that empirical evidence shows us that the intrinsic properties of neonates can be different from those of fetuses. His claim, in essence, is that neonates do things that fetuses cannot do, and that doing these things is enough to render the neonate morally considerable where even a fetus of the same age is not. Using Meltzoff and Moore's (1977) research into neonatal facial imitation, Bermúdez claims to show that, in virtue of coming into contact with persons, neonates are able to exercise a morally relevant capacity that fetuses cannot. His claim is that the exercise of these capacities renders the neonate morally considerable to a greater degree than the fetus, even if the neonate and fetus are of identical gestational age and development.

Bermúdez claims that the standard argument against the moral significance of birth relies on what he calls 'the Continuity Thesis':

The Continuity Thesis: Birth cannot be a morally relevant fact in the transition from zygote to person; there can be no morally relevant difference between a fetus inside the womb and

about to be born and the same foetus just after it has been born.³

He picks out three claims commonly cited in defence of the continuity thesis: first, that the difference between neonate and foetus is one of spatial location; second, the claim that foetuses and neonates are alike in morally relevant features; and third, the claim that some late foetuses may even be more developed (in morally relevant ways) than some early neonates. All of these, if Bermúdez is correct, are mistaken.

Bermúdez's argument can be divided into two parts. First, he argues that, given the empirical evidence from Meltzoff and Moore, it is clear that neonates are morally considerable. Second, he argues that, given the moral primacy of *exercise* of capacities (over simple possession of capacity, or potential for exercise), and given the physical facts of gestation, a foetus—even of the same age and development as the neonate—cannot be considerable, though a neonate is.

a. Neonates are Morally Considerable

Bermúdez claims that neonates, in virtue of coming into contact with persons, can exercise morally-relevant features that foetuses in the womb cannot, and thus are morally considerable to a greater degree than are foetuses. First, he argues that self-consciousness is morally salient, because self-consciousness is necessary for the capacity to value one's

³ *op. cit.* 386.

own life. Second, he says that self-consciousness that fails to generate the capacity to value one's own life is status-conferring, though to a lesser degree than that which allows a creature to value its life. And third, he argues that neonates, but not foetuses, exercise this lesser (or 'primitive') self-consciousness. Thus, neonates are morally considerable to a greater degree than are foetuses, in virtue of simply being born.

First, following Harris (1984), Bermúdez maintains that beings that value their own lives are fully morally considerable (are persons and have a right to life). He rejects Harris's assumption that *only* beings that value their own lives are fully considerable—and in particular, that only beings that value their own lives have a right to life—but takes it as a starting point that *at least* such beings are. (That is, that life-valuing is sufficient to confer moral considerability.)

Second, again following Harris, Bermúdez notes that self-consciousness is needed in order to value one's own life:

There are, furthermore, certain cognitive capacities that must hold for an individual to value her own life in this morally relevant way. She must be capable of envisaging her own future and, furthermore, of wanting to experience that future. To be capable of this she must be at least minimally self-conscious and aware of herself as existing over time. (381)

According to this picture, those who are capable of valuing their own lives are fully morally considerable. While sentient creatures are minimally morally considerable, insofar as harming them matters morally, only those creatures who value their own lives are harmed by death. Thus, only those creatures who have the capacity to value their own lives are fully morally considerable (are persons; have a right to life). Only those who are self-conscious are capable of valuing their own lives. Self-consciousness, then, is a status-conferring feature—self-conscious creatures are of a higher moral status than merely sentient creatures—on grounds that the capacity to value one's own life depends on self-consciousness.

So, the picture so far is that sentience is minimally status-conferring, and life-valuing confers full moral status. Bermúdez rejects Harris's assumption that humans and other animals can be divided into those who are simply sentient (are basically morally considerable), and those who are persons (who are self-conscious and thus have a right to life). Rather, he takes it that there can be varying degrees of moral significance as properties like self-consciousness vary within the human species. For example he points out that

...most people (however wholeheartedly they approve of abortion) would, I think, feel that the decision to abort at the end of the second trimester is more morally

serious than the decision to abort at the end of the first trimester... The six month old foetus has in some sense more to lose than the three month old foetus, and that is why killing the older foetus has certain moral dimensions absent in the younger case.⁴

He suggests that the way to make sense of this gradation is to recognise that morally salient features can vary in intensity and moral significance along a continuum from absence to fully-fledged moral significance, and thus, that possessors of these features may lie along a moral-status continuum, just as the features do. So for example, in the case of self-consciousness, though it's clear that only conscious creatures are capable of valuing their own lives, it is not the case that *all* conscious creatures can. And yet, Bermúdez suggests, consciousness should be taken to be morally significant, even if it is not sufficient to allow the creature to value its own life; consciousness should be taken as significant in proportion to the fullness with which a possessor possesses it. He thus introduces 'the principle of derived moral significance'.

The Principle of Derived Moral Significance: If a particular feature or property is deemed to confer moral significance, then any 'primitive' form of that property

⁴ *Op. cit* 381-82. Warren's worries about sentience as a scalar criterion, from chapter one pp. 9-10, will apply.

will also confer moral significance, although not necessarily to the same degree. (383)

In other words, if some property *P* is status-conferring because (say) *P* is necessary for *V* (where *V* is some value that justifies the *P* claim), then instances of *P* that are not sufficient for *V* will be status-conferring, though to a lesser degree. So in this case, if self-consciousness is deemed to confer full moral considerability because self-consciousness is necessary for having the capacity to value life, then a 'primitive' form of self-consciousness—one that is not sufficient for the capacity to value life—will also confer moral considerability, though not fully so. What he has in mind, it seems, is a moral status that does not imply a *right* to life, but does imply that death is morally weighty—vastly more so than for a creature who isn't self-conscious at all. The principle is not, he says, susceptible to the usual worries about arguments from potential: the primitive form of the property will confer status even if it never will develop into its more robust form. A primitive form of self-consciousness is, says Bermúdez, evident in and available to neonatal infants, but not to late-term foetuses.

There is reason to worry about the Principle of Derived Moral Significance (PDMS). But I want to set the worry aside for now and look at how Bermúdez's account works on the assumption that the principle is a good one. I'll return to the PDMS in section 3, and argue that it itself is problematic.

Since 'primitive' self-consciousness is status-conferring, if neonates exhibit such self-consciousness, then their status is elevated above creatures who do not. Bermúdez thinks that neonates do. Citing Meltzoff and Moore's finding that 'infants between twelve and twenty-one days old could successfully imitate three distinct facial acts—lip protrusion, mouth opening and tongue protrusion—and one manual act (sequential finger movements)', Bermúdez claims that neonatal infants are capable of exhibiting a 'primitive' form of self-awareness: 'a primitive form of body image, of a single representational framework coded in an amodal manner allowing the integration of perceptions and motor commands'.⁵ The same findings have been extended to infants as young as forty-two minutes old.

The facial imitation study demonstrates, says Bermúdez, that these infants are minimally aware of themselves as selves, and as certain sorts of selves. He rejects the idea that the findings could be attributable to automatic or reflex actions on the part of the babies. They had dummies in their mouths while watching the researchers make faces, and their acumen at mimicry was judged by their facial gesture *after* the researcher's face-making was complete.⁶ Since the babies had to watch the facial gestures, remember them, and *then* mimic them, cognitive

⁵ (1996) 389-390.

⁶ The dummy was removed after the face had been made at them; the babies then made faces.

processing was clearly involved. (If this is unconvincing, it isn't a worry. For our purposes it is sufficient to assume for the moment that neonatal facial imitation is indeed evidence of primitive self-awareness.)

Because neonates can exercise primitive self-awareness (by imitating facial gestures), by the Principle of Derived Significance, neonates are more than minimally morally significant, though to a lesser degree than are those who possess full-blown self-awareness capable of allowing one to value one's own life. Among other things, killing neonates is more (and probably much more) morally weighty than killing a merely sentient creature. The second half of Bermúdez's argument, then, will need to establish that foetuses are not likewise more-than-minimally morally significant.

b. Foetuses Cannot be Likewise Morally Considerable

Late-term foetuses are not capable of exercising a capacity to imitate faces, as are neonates, because foetuses are in the womb: there are no faces in the womb to imitate. Bermúdez considers the possibility that other sorts of imitation could be preformed in the womb: a researcher could tap at the pregnant woman's abdomen, and the foetus could tap back, for example. But this, he says, will not give the same result. It is precisely in imitating something *like themselves*, and thus exhibiting an understanding of what sorts of selves they are, that neonates use their primitive self-awareness.

The counter to this objection is to stress that not every form of imitation should be taken to imply a degree of self-awareness. The form of imitation that is manifested by the Meltzoff and Moore experiment is, I have suggested, interesting because it involves a complex of abilities, including a primitive form of self-other differentiation and a capacity to recognise that the person being imitated is the same sort of being as oneself. [...] It is precisely because what one is imitating is something like oneself that one's imitative behaviour reveals a form of awareness of oneself. If this is so, however, it seems to imply that interesting types of imitation are intersubjective. And this, surely, makes it in principle impossible for them to take place inside the womb.⁷

So, Bermúdez allows that it may be the case that full-term foetuses could imitate something like tapping from outside the womb. But this would not show the same sort of self-awareness, because it would not be a case of it recognising the gesture as a gesture preformed *by a being like itself*. It would not, then, be imitation of a morally-relevant sort.

The second objection that Bermúdez considers is that the foetus, even if it isn't in a position to imitate a face, still has the same capacity to do so:

⁷ (1996): 395.

physiologically and neurophysiologically, the full-term foetus has every intrinsic property and feature possessed by the neonate. [...] The fact of birth does admittedly make possible the exercise of these capacities, but they were in existence before birth.⁸

The idea then, is that given it has the same capacity, it must then have the same moral status as the imitating neonate. He rejects this claim, arguing instead that the possession of a capacity is not morally relevant: only the *exercise* of it is. Following Tooley, Bermúdez claims that an unexercised capacity cannot confer moral status.⁹ Though the foetus may

⁸ (1996): 396

⁹ Michael Tooley (1983) introduces what he calls the Moral Symmetry Principle. It says, in a nutshell, that if something (or set of things) C is morally considerable because of its capacity to produce E, then preventing its production of E is on a par with preventing C. So, if a capacity is morally significant, then preventing its exercise is same—morally-speaking—as preventing the capacity from arising at all. In the case of human-making, the Moral Symmetry Principle would mean that, if foetal capacities are morally significant, then preventing their exercise (say, by having an abortion) is impermissible; and furthermore, preventing their very being (say, by not copulating) is equally impermissible. Since refraining from copulation is clearly not impermissible, then it follows that *preventing the exercise of foetal capacities* by aborting is likewise not

have the very same capacities as the neonate, it is nonetheless not morally considerable,¹⁰ because mere possession of capacities does not cut it: only exercise of capacities confers moral status, and fetuses cannot imitate facial gestures.

2. The Problem with Bermúdez's Modified RAMC

Bermúdez argues that

- (a) neonates imitate facial gestures but fetuses cannot;

impermissible. From this, Tooley concludes that simple possession of (unexercised) capacities cannot make a being morally significant; rather, exercise of morally relevant capacities is what confers moral considerability. Bermúdez thinks that Tooley's argument doesn't work, though he thinks the conclusion is right. He offers his own argument for the salience of exercise. I'm going to leave this aside, though, because it's not crucial to the discussion—the problem with his argument lies elsewhere.

¹⁰ Or anyway, not to the same degree, one assumes. Bermúdez actually seems to imply—in establishing that a two-tiered approach to moral considerability amongst biological humans runs counter to intuition (381-382)—that late-term fetuses *are* morally considerable. Further, he doesn't give us any indication of what, exactly, the difference is in fetus's & neonate's considerability, even if he is right that neonates are morally significant. But reading charitably, one must clearly assume that there is some difference or other that Bermúdez could spell out.

- (b) only exercise of a morally relevant capacity can confer moral status, not mere possession of it;
- (c) so only neonates (not fetuses) can be fully morally considerable.

The first thing to note, of course, is that just like Warren, Bermúdez hasn't shown that *birth* is morally significant, even if everything he says works. Birth makes contact with persons possible, and thus makes facial imitation possible, but it is not the same thing as facial imitation. Contact with persons, and in particular, imitative contact, is what changes moral status, according to this story. This might happen soon after, but isn't the same as, birth.

Setting that aside, there is the question of whether Bermúdez's modified RAMC is successful in motivating the moral significance of birth (or, soon-after-birth, as it were), and I think it is clearly not. The account is not susceptible to the simple RAMC worries mentioned in the previous chapter. Exercise of a capacity is not an extrinsic feature. That I have exercised my capacity for self-awareness is a fact *about me*, and not a fact about my circumstances. And attribution of moral status on the basis of self-consciousness is motivated to the extent that a personhood account of status is motivated. This modified RAMC, in other words, is potentially as theoretically stable as is the basic personhood account. So, Bermúdez's account should have all the strength of a standard personhood (intrinsic-properties) account of moral status, but still

incorporates the thought that social-situatedness makes a moral difference. It should be a Successful RAMC.

But Bermúdez's account simply does not motivate the moral significance of birth. That it appears to do so is probably because the account shifts its focus somewhere midway through. What the Principle of Derived Significance and Tooley's exercise/capacity claim come together to motivate is the claim that exercising the capacity for *primitive self-consciousness* is status conferring. What Bermúdez has shown is that neonates, but not foetuses, exercise the capacity for *facial imitation*. If Bermúdez is correct about imitation—that is, if he is correct that the imitative behaviours of neonates are not simple reflexes, say—then facial imitation involves primitive self-consciousness. Neonates, then, in so far as they imitate faces¹¹ will be morally considerable on this picture. But the matching claim that foetuses will not be hasn't been adequately argued for. The problem is that facial imitation is not the same as self-consciousness, or even primitive self-consciousness, even if it *requires* primitive self-consciousness. The account trades on a capacity slight-of-hand.

According to Bermúdez's account, facial imitation is significant either because facial imitation is an instance of exercise of primitive self-

¹¹ Assuming they all do. Though of course, some babies are visually impaired, or have neurological issues that would prevent them from making these faces, and so on.

consciousness, or because facial imitation causes such consciousness to 'emerge' (399). It is not clear which he intends. If facial imitation causes primitive self-consciousness to 'emerge'—that is, if it triggers development of primitive self-consciousness—then there must be alternative events or actions that can cause primitive self-consciousness to emerge: else people with congenital blindness, or cranio-facial neurological deficit will never achieve primitive self-consciousness. This is implausible: blind persons are persons.

If there are other ways in which primitive self-consciousness could emerge, we need some story about why it's implausible to suppose that these ways couldn't happen in the womb. Bermúdez considers the objection that some other sort of relevant imitative behaviour could occur in the womb, and rejects the possibility (as discussed above); but he does not even consider the possibility that some behaviour *other than imitation* might both be capable of causing primitive self-consciousness to emerge, and be possible in the womb. So, he hasn't given us any reason to suppose that primitive self-consciousness couldn't be triggered or emerge in the womb.

On the other hand, if facial imitation is itself an instance of exercise of primitive self-consciousness, then the objection is even simpler: imitating facial gestures is categorically not the only way to exercise primitive self-consciousness. I am, at this very moment, exercising my capacity for primitive self-consciousness. But I am not imitating anyone's face.

Indeed, I often exercise my capacity for self-consciousness (primitive and otherwise) even when there isn't anyone else around. Reacting to, and interacting with other creatures in certain ways and not in others is one way in which I often exercise my capacity for primitive self-consciousness. But so is scratching an itch on my elbow; so is hearing a noise and understanding its source as spatially located in some certain direction and distance from my body; so is feeling content.

None of these ways—scratching, feeling content—would be so compelling as proof of primitive self-awareness to outside observers as facial imitation. In fact, aliens from outer space might not be at all convinced by my elbow-scratching. But I am. I know that when I scratch an itch on my elbow, I do so because I have a certain sensation that I locate in my own body, and not because my body is simply moving in a reflexive way. Whether anyone else can tell that I am primitively self-aware is not the morally salient fact. The morally salient fact is that I am. So too for babies. And indeed, insofar as facial imitation constitutes proof, for us, that neonates are exercising primitive self-consciousness, it seems right that we should also take it as proof that fetuses of similar development are exercising primitive self-consciousness, even though we cannot stick our tongues out at them to test.

If facial imitation is an exercise of the capacity for primitive self-consciousness (even if it's an easily identifiable one), it very clearly isn't *the* exercise of the capacity for primitive self-consciousness. There are

lots of ways in which a creature can exercise this capacity. Nothing in Bermúdez's argument supports the idea that there is no alternate way available to the foetus to so exercise. What needs to be shown is that neonates, but not foetuses, can exercise self-awareness; what is instead shown is that neonates, but not foetuses, can exercise facial-imitative capacity. Facial-imitative capacity might be sufficient reason to make a moral considerability attribution, but it is obviously not necessary for doing so.

3. Worries about the Principle of Derived Moral Significance

Facial imitation isn't *itself* morally salient; and Bermúdez hasn't shown that foetuses aren't able to exercise primitive self-consciousness. So, as a defence of the moral significance of birth, Bermúdez's account is clearly unsuccessful. But it seems there is a bigger problem with the account, *qua* theory of moral status. His Principle of Derived Moral Significance (PDMS), combined with his use of features *necessary*, rather than *sufficient* for morally salient valuing, is cause itself for real worry.

As was said in section one, Bermúdez assumes that self-consciousness is morally significant (and status-conferring) because self-consciousness is necessary for the capacity to value life. Valuing life, again, makes death a harm. Any creature who can be harmed by death has a right to life. Thus, Bermúdez concludes that self-consciousness is a status-conferring feature. But surely, any status-conferring feature needs to be *sufficient* to generate the right; not merely necessary. Bermúdez's PDMS

flags the fact that self-consciousness is merely necessary—as indeed, does his entire argument—by flagging the fact that not all self-conscious beings have the capacity to value their lives.¹² Neonates, even Bermúdez concedes, do not have the capacity to value their lives. The fact that Bermúdez calls self-consciousness that doesn't allow one to value one's life 'primitive' self-consciousness belies the fact that *it is self-consciousness, full-stop*: it is just not, on its own, sufficient for the capacity to value life.

'Primitive' self-consciousness is not some other feature that's somehow related to the one that allows for life-valuing: it is the very feature. And what this shows is that some other feature (or features) will need to be added to self-consciousness in order to make it such that the creature is able to value its own life. So, why would self-consciousness be status-conferring at all? And if it is status-conferring at all, why would some self-consciousness only be derivatively so? Surely this mystery additional feature that one needs, in addition to self-consciousness in order to value life is the property that will confer moral considerability. Else, if self-consciousness confers because it is necessary for life-valuing, then so does consciousness, because it is also necessary; if consciousness does, then so does biological life, for it too is necessary. It seems like

¹² If self-consciousness were sufficient for life-valuing, or for the capacity to value life, then there would be no place for the PDMS, since all self-consciousness would imply life-valuing: all self-consciousness would have immediate, rather than derived moral significance.

there will be a regress. It seems like the embryo will have an elevated moral status, if the PDMS is correct.

It is open to Bermúdez to respond as follows: in some sense, a regress is just right. What we want to build is a picture of moral status on which there are multiple tiers, just as intuition tells us there are such tiers. It is consistent with this aim that biological life should confer a little; consciousness a little more; and self-consciousness a little more.

In the end, there is just a real problem with the claim that a feature can be status-conferring in virtue of being merely necessary for life-valuing: being a multi-cellular organism is *necessary* for life-valuing, after all. That the PDMS move is available on such an account shows this. If valuing one's life is justificatory, then valuing one's life is what will confer moral status. If the capacity to value one's own life (as is more intuitive) is justificatory, then *that*, or those features in conjunction that are jointly sufficient for that—and not some feature merely necessary for it—must be status conferring.

Picking out features that are merely necessary for status-conferring capacities as themselves status-conferring casts the net too widely. Necessity is transitive: if C is necessary for B and B is necessary for A, then C is necessary for A. Self-consciousness is necessary for the capacity to value life, but so is having a circulatory system, since having a circulatory system is necessary for having self-consciousness. The

introduction of the concept of 'primitive' features is simply an *ad hoc* device for disguising this fact.

Calling non-life-value-capacity-conferring self-consciousness 'primitive self-consciousness' surreptitiously adds something to the concept 'self-consciousness'. If self-consciousness plus this added something are jointly sufficient for the capacity to value life, it is just not clear why self-consciousness on its own ought to confer status, since a whole host of other features we could pick out (like having a circulatory system; like being a three-dimensional object) are also part of this joint sufficiency, but are clearly not morally salient on their own. Unless we are willing to accept that being biologically alive (as ferns, for example, are) is derivatively morally significant, there is no reason we should accept the PDMS.

Conclusion

Bermúdez's account of the moral significance of birth is unsuccessful for two reasons. First—most immediately—because it fails to establish that neonates, but not foetuses, can exercise morally salient capacities. The argument succeeds in establishing that neonates, but not foetuses can imitate faces; but facial imitation is not itself morally salient. Further, facial imitation is but one way to exercise self-awareness. And, since Bermúdez has not ruled out foetal exercise of self-awareness in other forms, he has not shown that neonates can exercise a morally salient capacity while foetuses cannot.

The second, less-immediate but far more troubling way in which Bermúdez's argument is unsuccessful is that it presents us with a flatly unworkable account of moral status more generally. The Principle of Derived Moral Significance cannot tell us why we have a right to life but potted ferns do not, since potted ferns are biologically alive and biological life is necessary for valuing life.

Bermúdez's account is a modification to the relational account of moral significance, and one that ought to have got round the worries outlined in Chapter One: the moral status of the neonate, in the end, is meant to rest on its intrinsic features, though they are triggered by extrinsic features (namely, by contact with persons). But Bermúdez is not successful in showing that a morally salient intrinsic feature can be so triggered, and can be triggered after, but not before birth.

So, it appears that neither the RAMC, nor Bermúdez's modified RAMC can motivate the claim that babies, but not foetuses, are fully morally considerable. Neither can they motivate the claim that birth is morally significant. In the next chapter, I'll explore what this means for moral judgments about abortion and infanticide. I will present and criticise Giubilini and Minerva's recent article 'After-birth abortion: why should the baby live?', in which the authors argue that, since neither foetuses nor neonates have a right to life, infanticide is permissible whenever abortion would have been permissible.¹³

¹³ Giubilini and Minerva (2012)

ABORTION, INFANTICIDE, AND MORAL CONTEXT

Introduction

In Chapters One and Two, I argued that neither a relational, nor a modified-relational account of moral considerability can motivate the claim that babies, but not foetuses are fully morally considerable. Since these sorts of account are the most promising way to account for the full moral considerability of babies on a personhood-bound account of moral status, we are left, it seems, with a picture on which neither babies nor foetuses is fully morally considerable. That is: neither babies nor foetuses have a right to life.

A standard way of accounting for the permissibility of abortion is to claim that abortion is morally permissible because foetuses are not fully morally considerable, and thus do not have a right to life.¹ This account of the permissibility of abortion, however, seems to imply that infanticide is also morally permissible, since there is no principled reason to suppose that neonates have a right to life if foetuses do not. This implication has been

¹ Warren (1989), (1996), (1997); Tooley (1972), (1983); Steinbock (1992) (Though Steinbock makes this claim only for foetuses in the first trimester). I call this a 'standard' way; in fact, very few philosophers publish such claims these days. However, I think it is still the case that many philosophers (and people more generally) assume such an argument, though they mayn't put it in writing.

a particular sticking point for defences of abortion at least since Tooley's 'Abortion and Infanticide'.² I have already argued that, even if we cannot motivate the claim that birth changes the status of the foetus/neonate, we might still claim that there are morally salient differences between abortion and infanticide. In this chapter, I will reply to a new version of Tooley's argument that, indeed, the lack of a right to life explains the permissibility of abortion, and also shows that infanticide is morally permissible. I will make the negative claim that such arguments are simply invalid.

In 'After-birth abortion: why should the baby live?', Giubilini and Minerva join Tooley (1972) in arguing that infanticide (or, 'after-birth abortion', as they call it) is morally permissible for the same reasons that would have made abortion permissible. They argue that, since both foetuses and newborns lack a right to life, killing a newborn is morally on a par with killing a foetus, and thus,

If criteria such as costs (social, psychological, economic) for the potential parents are good enough reasons for having an abortion even when the foetus is healthy...then the same reasons...should also justify the killing of a potential person when it is at the stage of a newborn.³

² Tooley (1972)

³ p. 3

The authors argue that the foetus's lack of a right to life is what makes abortion permissible; that foetuses lack a right to life because foetuses are not persons, and only persons have a right to life; that newborns are also not persons; therefore newborns also lack a right to life; and that therefore, infanticide is permissible just so far as abortion is permissible. (The authors prefer the term 'after-birth abortion'. However, this term has the moral parity of abortion and infanticide built into it. I will stick to 'infanticide', so as not to beg the question.)

I will show that their argument is invalid. The permissibility of killing an individual does not follow of necessity from its lacking a right to life—just as the impermissibility of killing an individual does not follow of necessity from its possessing a right to life. Furthermore, insofar as it is true that killing a foetus and killing a newborn each require like justification, it is only vacuously true. If the authors are correct about personhood and rights to life, the two sorts of killings are *pro tanto* morally alike—in other words, have identical moral value in identical moral contexts—but these killings will simply never occur (or have the possibility of occurring) in identical moral contexts. Thus, while infanticide might be like abortion in theory, in practice one cannot generalise across the two acts.

1. 'After-birth abortion'

Giubilini and Minerva argue that infanticide should be permitted for the same reasons abortion would've been permissible. It is already the case, the authors point out, that neonatal euthanasia is permitted in many

countries—either explicitly or tacitly—in cases of severe abnormality or illness that was not detected *in utero*. Thus, in cases of severe disability, abnormality, or illness that would render the infant's life not worth living, we already allow that infants can sometimes be allowed to die, or even assisted in dying. But, the authors point out, the reasons that make abortion permissible are much wider than this. Thus, a woman may choose to abort if the birth of a child would mean serious economic or emotional hardships for her, even if doing so is not in the best interest, or future best interest of the foetus. Giubilini and Minerva argue that, if abortion is permissible on such grounds, then infanticide ought also to be so on such grounds. More broadly, they argue that abortion and infanticide ought to have identical justificatory requirements.

Their argument looks like this:

1. Foetuses are not persons.
2. Non-persons cannot be harmed by death.
3. A right to life requires to potential for being harmed by death.
4. Non-persons lack a right to life. (2,3)
5. Foetuses lack a right to life. (1, 4)
6. Newborn babies are not persons.
7. Newborn babies lack a right to life. (4, 6)
8. Infanticide is permissible for the same reason(s) abortion is or would have been permissible. (5, 7)

Giubilini and Minerva state that some non-persons are morally considerable—that is, what we do to some non-persons matters morally.⁴ They are not, then, claiming that fetuses and newborns are morally irrelevant: that we are permitted in doing whatsoever we like with them. They are only making the narrow claim that fetuses and newborns (and indeed all non-persons) lack a right to life.

The authors argue that all and only persons have a right to life, because all and only persons are such that they can be harmed by death. Persons are the only creatures who can be so harmed because all and only persons can be 'prevented from accomplishing [their] aims by being killed', since all and only persons can have aims and be aware of having them.⁵ Fetuses and newborns cannot have aims or be aware of (not) having them; thus fetuses and newborns are not persons. Fetuses and babies, then, lack a right to life, because death is not a harm to fetuses or to newborns.

That the fetus lacks a right to life, according to this argument, explains the breadth of justifications for abortion: since death is not a harm to the fetus, harms to persons (in particular, harms that threaten the pregnant woman) that fall far short of loss of life can justify abortion. Thus for example, abortion is permissible when a child, or an additional child, would constitute a financial hardship for the would-be mother.

⁴ p. 2

⁵ p. 2

Since the foetus's lack of a right to life explains the breadth of justifications for abortion, the authors infer that infanticide must also have the same breadth, since newborns also lack a right to life. So, the authors conclude that infanticide is permissible for all those reasons abortion is (or would be or would've been) permissible. I will argue that the authors' argument is invalid: that is, that the conclusion does not follow, even if the premises are all true. So, my claim is that even if neither foetuses nor newborns have a right to life, it does not follow that infanticide is permissible for the same reasons that abortion is or would have been permissible.

Giubilini and Minerva's argument is very similar to Michael Tooley's well-known infanticide thesis.⁶ The general form of the argument, in each, is that babies aren't persons, thus don't have a right to life, and are thus on a par with foetuses. However, the two arguments are not the same. Giubilini and Minerva allow that non-persons can be rights bearers. For example, they claim that creatures who are capable of experiencing pain have a right not to have pain inflicted upon them. But they argue that only persons can be harmed by death, so only persons have a right to life. Tooley, on the other hand, relies on the claim that only persons can be rights-bearers, and thus only persons can have a right to life. Giubilini and Minerva's argument is an improvement on Tooley's: the contentiousness of the claim that no non-persons have rights is a weakness for Tooley

⁶ Tooley (1972) and Tooley (1983)

that Giubilini and Minerva have avoided. My criticisms are applicable, however, to both forms of the argument.

2. Rights to life

The contemporary academic abortion debate is divided into three camps: those who think the foetus has a right to life so abortion is impermissible; those who think the foetus has a right to life yet abortion is permissible; and those who think the foetus lacks a right to life so abortion is permissible. The first of these—that abortion is impermissible because the foetus has a right to life—is clearly invalid. A right to life does not guarantee that killing a creature is impermissible in any circumstance. For example, I probably have a right to defend myself against an attacker, even to the death, if my life is threatened. My attacker is a person, and thus has a right to life, but it is permissible to kill her in self-defense. An obvious way to reply to this is to suppose that the attacker has ‘forfeited’ her right to life in attacking me. But many of us think that even an innocent threat can sometimes be killed in self-defense. So, right-to-life forfeiture cannot explain these cases away: we must conclude that a right to life on its own is indecisive. (It is still coherent to hold that abortion is impermissible and the foetus has a right to life; it just does not work to claim that abortion is impermissible *because* the foetus has a right to life.)

Judith Jarvis Thomson’s highly influential defense of abortion showed us, at minimum, that the anti-abortion argument given by the first camp,

above, is invalid.⁷ Her argument rests on the conceptual space between a right to life and the impermissibility of killing its possessor. Thomson argued that, even if the foetus has a right to life, it doesn't follow from this that the pregnant woman has a duty to sustain that life; so it doesn't follow that the woman has a duty to gestate. Her argument, then, is that even granting an innate right to life, there are circumstances in which it is nonetheless permissible to abort. A right to life, then, is not decisive.

To see the problem with the claim that conclusions about abortion follow cleanly from claims about rights to life, one needn't even agree with Thomson: one could think that Thomson is wrong, and that pregnant women have a duty to gestate. Still, there is simply no denying the conceptual space between a right to life and the impermissibility of killing, even if one thinks that there is a duty to gestate. In the next section I will argue that there is also a gap at the other end: there is conceptual space between a lack of a right to life, and permissible killing.

3. Tree Lobsters

The Lord Howe stick insect (*Dryococelus australis*)—commonly known as the 'tree lobster' for its enormous size, crustacean-like exoskeleton, and arboreal habitat—was formerly abundant on Lord Howe Island off the coast of Australia.⁸ In the 1920s, invader-species rats from a nearby shipwreck began to populate Lord Howe Island, and within two years the

⁷ Thomson (1971)

⁸ Krulwich (2012) and Priddle, Carlile, Humphrey *et. al.* (2003)

rats had munched the tree lobster into apparent extinction. However, in the 1960s, climbers discovered what appeared to be recently dead tree lobsters on the nearby small rocky island of Ball's Pyramid. Recent scientific investigation has revealed that, indeed, a tiny population of tree lobsters had managed to migrate to this rocky outcrop and cling on there for most of a century, in vanishingly small numbers. (Researchers counted 24 tree lobsters in all.) After some deliberation, two pair of tree lobsters were removed from Ball's Pyramid and taken to the mainland, where one pair died, but the second went on to form the beginning of a successful breeding programme at the Melbourne Zoo. Today they number in the hundreds.

Tree lobsters, being nothing more than impressively-sized primitive insects, do not have a right to life; but you ought not kill them.

Tree lobsters are near to extinction even now. Killing even one tree lobster could have serious consequences for the population as a whole, and thus for global biodiversity. It is not the case that this makes tree lobsters morally considerable: we're not saving them *for their sake*. Still, whatever their moral status, since we care about biodiversity, we have strong reasons not to kill them, and acting in accordance with those reasons is morally non-optional. Killing tree lobsters is impermissible.

Judith Thomson's argument shows, at minimum, that the claim that abortion is impermissible *because* the foetus possesses a right to life is

mistaken. The tree lobster, on the other hand, shows that the claim that abortion is *permissible* because the foetus *lacks* a right to life is likewise mistaken. Rights to life just aren't on their own decisive. Notice that even if one disagrees—even if one rejects the claim that killing tree lobsters is impermissible—the claim that it is impermissible is still a coherent one. This shows that there is conceptual space, and conceptual space is all that's needed to show that the permissibility of killing does not follow of necessity from the lack of a right to life.

4. Moral Context

It is impermissible to kill a tree lobster, but this is not because tree lobsters have a right to life. If they were abundant, rather than endangered, it might be just fine to kill them. Facts external to tree lobsters, and to tree lobsters' rights (or lack of) bear on the permissibility of killing them. Neither newborns nor fetuses are an endangered species, but just like tree lobsters, there are non-intrinsic facts about them that are relevant to moral claims about them. In theorising about permissible treatment of fetuses and newborns, we can't simply look at their intrinsic features—we can't consider fetuses and newborns in a vacuum. Context matters.

However, the authors are not arguing that the newborn's lack of a right to life gives us *carte blanche* to kill babies. Their general claim is narrower. They write that '...we claim that killing a newborn could be ethically

permissible in all circumstances where abortion would be'.⁹ What they seem to mean by this is that all the reasons a woman might have to abort that we would find acceptable, we ought also to find acceptable as reasons for infanticide. For example, if a woman may choose to abort because she cannot afford to raise a child, then she may choose to 'after-birth abort' (ie, she may choose infanticide) for the same reason. But even this narrow conclusion does not follow from the moral parity of the foetus and the newborn.

Reasons, when they are justificatory, are justificatory within a context. Claims about the justificatory power of any given reason do not generalise across saliently dissimilar moral contexts. So for example, at first blush we might think that I am permitted in killing a tree lobster if it has crawled onto me in my bed in the dark of night, because I am afraid it will sting me. After all, if it were some other insect that also lacked a right to life—a wasp, say—my killing it for this reason would probably be permissible. But since it is a tree lobster, since it is endangered, I am probably obliged to take greater care: pluck up courage and endeavour to remove the tree lobster from my bed without harming it. So, even given the same moral status *and* the same primary justificatory reason, identical moral judgment about killing does not follow.

Even if both foetuses and neonates lack a right to life, then, it does not follow that a woman's (permissible, justified) reason(s) for abortion will

⁹ p. 2

suffice to justify infanticide. So, even if the threat of financial hardship, say, justifies killing a foetus, we cannot thereby conclude that the threat of financial hardship justifies killing a newborn. However, on the assumption that the authors are right about the moral parity of foetuses and newborns, a different reading of their general claim does follow from their premises. It does follow that given identical moral contexts, we must make identical judgements with respect to killing foetuses and newborns. But the claim that the same moral context results in the same judgment is trivial, since foetuses and newborns *will never be in the same moral context*.

One important difference between the sorts of contexts in which abortion occurs and the sorts in which infanticide might occur (though by no means the only difference) is brought out by the authors' choice of wording. They write, for example, that '...after-birth abortion should be considered a permissible option *for women* who would be damaged by giving up their newborns for adoption'.¹⁰ The choice of whether to 'after-birth abort', according to the authors, is *the woman's* choice. While this is a reasonable claim to make about abortion, it surely isn't about infanticide.

The choice of infanticide would almost never be a choice just for the woman. Where, when pregnant, the woman is in a unique and singular sort of a relation to the foetus, such that it makes perfect sense to say

¹⁰ p. 3; emphasis added.

that the choice is hers, this is simply not so once the newborn is outside of her body. The baby is then—almost always—in various sorts of relationships with several or even many people. And where two progenitors are involved with a birth, the relationship between the woman and the baby is not even unique: the would-be father stands in the same potential-care-relation to the newborn that the would-be mother does. So, while it makes sense to talk about abortion being a pregnant woman's choice, and hers alone, the moral context of possible infanticide will almost never be one in which the choice is hers alone. (Even when it is, the overall context will still not be the same as in abortion.)

The point of this is not, in particular, that infanticide can't be a woman's singular choice. The point is that the moral context surrounding decisions about abortion will always be different—and probably saliently different—from that surrounding decisions about infanticide. More interests will be at stake; more choices than just the woman's will matter; the neonate will be implicated in more and richer relationships; the neonate will not be impinging of necessity on the physical integrity of any one person in particular; and so on. This does not show that infanticide is impermissible while abortion is permissible. What it shows is that you can't generalise from one to the other. Moral context matters, and the contexts will never be the same.

Conclusion

Giubilini and Minerva argue that the same reasons that justify abortion would justify infanticide. They claim that the foetus's lack of a right to life means that abortion is permissible even when abortion does not primarily serve the interests (or would-be interests) of the foetus; that babies also lack a right to life; and that therefore infanticide is permissible for the same set of reasons abortion is, and in particular, is permissible even when it is not primarily in the interest (or would-be interest) of the newborn. I have argued that the possession or lack of a right to life is not decisive: sometimes killing creatures with a right to life is permissible, and sometimes killing creatures who lack a right to life is impermissible. Moral status does not function in isolation—it functions in a moral context—and the moral context of infanticide will never be sufficiently like that of abortion such that we could generalise across the two.

Even granting Giubilini and Minerva's claims about personhood and its implications for a right to life, the authors have not proved that infanticide—or 'after-birth abortion'—is permissible for the same reasons abortion is. It is, of course, still open to the authors to claim that there are no morally salient contextual differences between possible instances of abortion and possible instances of infanticide, but intuition pushes heavily against such a claim. The burden would be theirs to prove that there are no such differences. Without doing so, their argument simply does not work.

This conclusion is a negative one. I have not given a positive account of the moral difference (if there is one) between abortion and infanticide. I have merely shown that the moral quality of one does not follow from the moral quality of the other. As I argued in Chapter One, it seems likely that there are morally salient contextual differences between abortion and infanticide that can motivate the claim that abortion is permissible where infanticide is not. I suggested that relationships are one such contextual difference. Surely bodily autonomy rights are another: that the foetus is in and reliant upon the body of a person with the right to autonomous decision-making about her body would quite clearly make a difference to what we say about abortion on the assumption that the foetus does not have a right to life, and very plausibly does even if it possess a right to life.¹¹ Since the neonate is not in another's body, no such right will be part of the moral context. In some ways, however, the question of just what contextual features will come into play is premature, on the assumption that we have not arrived at an account of the moral status of foetuses or babies. In the introduction to Part Two of the thesis, I will what we ought to say about the moral status of foetuses and babies, and will use that as a jumping-off point for broader discussion of how we ought to understand our obligations to them.

¹¹ Thomson (1971)

Part Two

SPECIAL OBLIGATIONS TO BABIES

Introduction

In part one, I explored the moral status of babies. In chapters one and two, I looked at whether we can give an account of the moral significance of birth: the claim that birth can change the moral status of the foetus/neonate. I concluded that neither a relational, nor a modified-relational account of moral status can motivate the claim that birth changes the moral status of the foetus/neonate. Since relational accounts are the most promising way to account for the moral considerability of babies on a personhood-bound theory, it seems unlikely that we can either defend the moral significance of birth, or that we can give an adequate account of the moral status of babies: even if we accept the conclusion that there can be no difference in moral status between late foetus and newborn baby, we still have no account of the moral status of babies—or foetuses or indeed of marginal humans more generally—on the assumption that personhood is central to moral considerability.

1. Potential Persons

A common way, of course, to attribute moral considerability to babies and foetuses—though it does nothing for other marginal humans—is to appeal to potential: babies and foetuses are morally considerable because they will one day be persons; or because they have the potential to become persons; or because they are potential persons.¹ This strategy has wide popular appeal, but it should be immediately obvious that it faces difficulties. A potential *x* is not an *x*, after all.

¹ See e.g. Finnis (1994). For an argument that aborted foetuses are not potential persons, see Harman (2003).

The usual metaphors are apt: an acorn is not an oak tree; an egg is not a chicken; and so on. These metaphors make clear that there is a problem with assigning the moral value of *x* to something in virtue of its being a potential-*x*. One might worry, though, that even if we cannot attribute the same *value* to it, still its being a potential-*x* might mean that it has the same desert, or the same rights. To simply assert that a chicken has certain rights (if indeed chickens have rights) but an egg does not is question-begging in the context of discussing the moral status of the foetus. However, when we consider what rights it might make sense to attribute to a chicken, and why, it becomes clear that our reasons for attributing rights to an *x* will at least not always suffice for attributing rights to a potential-*x*. So for example, we might say that a chicken has a right not to be tortured; and if we say this, we will probably say that it has this right on grounds that (say) everything that can suffer has a right against suffering. But it makes no sense to say that an egg has a right against torture, and this is because an egg cannot suffer. The chicken, in short, has very different properties to the egg. On pain of speciesism, it must be the case that properties—and not biological kinship—are what ground moral status.

Still, one might want to argue that having the property of *being a potential person* is itself morally salient. We might point out that a fertilised egg is valuable in that if we handle it correctly, we will get a chicken from it. So perhaps we might say that having the potential to be a person is itself morally valuable. This, however, will only show that an egg is instrumentally valuable, and not morally valuable. What the defender of potentiality will want to show is

not that babies and foetuses are valuable the way that gold is valuable; they want to show that babies and foetuses are valuable in the way that you and I are valuable.

Tooley argues that the sort of 'potential' that foetuses possess is just not the sort of potential that could count as intrinsically morally valuable. He distinguishes between three sorts of potential: active potential, latent potential, and passive potential.² He argues that foetuses have, if anything, passive potential to become persons—given that foetuses must be gestated and so on in order to become persons—and that passive potential cannot drive moral value: passive potential simply 'covers too many possibilities'.

Active Potential: an entity may be said to have an active potentiality for acquiring some property P if there are within it all of the positive causal factors needed to bring it about that it will acquire property P.

Latent Potential: an entity has latent potential if all of the positive factors are present within it, but there is some feature of it that will block the action of those factors.

Passive Potential: an entity has passive potentiality for acquiring property P if other things could act upon it in such a way as to bring it about that it acquires property P.³

² (1983): 167-169.

³ (1983): 167.

Foetuses cannot be said to have active potential to become persons, since there are many positive causal factors needed for the foetus to become a person that are not at all 'within' it: if it is not gestated, for example, it will not become a person. Babies, too, will fail the test for active potential, since babies are not even able to nourish themselves. Left to their own devices, babies simply would not develop into persons.

We might think that foetuses and babies will have latent potential to become persons, since their helplessness seems to be what's 'blocking' them from developing on their own. We would say, then, that a foetal or infant body is perfectly equipped to develop into a body that could sustain personhood if not for the 'block' of its helplessness. But this belies the intense amounts of care and nurturing required by a foetus or baby to develop. Babies and foetuses simply don't have 'all the positive causal factors' present within them: they need care, and that need is not a block on their potential, but rather a fact about what sort of potential they have.

So, it seems that we are forced to say that, insofar as babies and foetuses are potential persons, they are passive potential persons. And this seems simply not enough to generate moral considerability. A zygote has the (passive) potential to become a person—if gestated, and then subsequently nurtured to maturity—but so does a carrot: if consumed, digested, used to grow reproductive cells that are then fertilised and gestated and so on. Passive potential captures too much.

2. Futures Like Ours

It seems, then, that potential personhood cannot ground full moral status. One further possible way of grounding full moral status for babies and fetuses worth considering is Don Marquis's 'valuable future like ours' account.⁴

Marquis argues that fetuses and babies have a right to life because they possess a future like ours (henceforth, FLO). FLOs, Marquis argues, are highly valuable, such that taking an FLO away from anyone who possesses one is '*prima facie* seriously wrong'.⁵ He argues that what grounds the badness of killing a person is that killing a person robs them of their FLO; and that, since fetuses and babies have the same sorts of valuable futures that persons have, killing fetuses and babies is likewise bad. Thus, fetuses and babies have a right to life.⁶

⁴ Marquis (1989)

⁵ (1989): 190.

⁶ I am altering Marquis's account in two ways here. First, Marquis does not discuss babies, except as an aside (e.g. p.192)—but I take it that what he says about fetuses clearly applies to babies *mutatis mutandis*—and second, Marquis's primary claim is that *abortion* is *prima facie* seriously wrong, or presumptively seriously wrong; that 'it could be justified only by the most compelling reasons'; that it is 'at least as great a loss as the loss of the future of a standard adult human being who is killed', etc (194). I am not, here concerned with the abortion claim. The claim that abortion is *prima facie* seriously wrong, as the discussion in Chapter Three should make clear, would not follow even if Marquis's FLO account of the harm of death were accepted: rights to life are not decisive. (However it should be noted that Marquis

There is something nice about Marquis's account of the harm of death. It gets it right in a whole host of non-standard death cases: it implies that death might not be a harm to someone whose future is filled with suffering because of incurable disease; it implies that the death of a child is more serious than the death of an adult because they have more future to lose; and so on. In short, it's a nice account of why death is a harm. But I think, first, it certainly cannot generate the sort of rounded picture of the moral status of babies that we want. It cannot, for example, generate the claim that babies are such that we can have beneficent duties towards them; and second, it's not clear that FLO even can generate a right to life.

It cannot generate the rounded picture of moral status that we want, quite obviously, because we want to be able to say much more than simply that we ought not kill babies. Our obligations to babies are surely much stronger than simply an obligation not to actively end their lives: we are obliged to care for them, and to attend to their interests in a much more than minimal way. A right to life, in the absence of something like personhood, cannot generate any such obligations. Indeed, simply abandoning a baby to its fate—leaving it in the woods, say, to fend for itself, might be consistent with a right to life, since a right to life arguably only implies a prohibition on active killing.⁷ But

explicitly states that his argument shows that *if* rights to life are decisive, then abortion is seriously wrong (202). So, it isn't clear that Marquis is actually claiming that abortion is seriously wrong.)

⁷ c.f. Thomson (1971).

even setting this worry aside, it is not clear that FLO can, indeed, generate a right to life.

Walter Sinnott-Armstrong argues that grounding a right to life in FLO is circular: its being seriously wrong to take an FLO from someone relies on that someone having a right to their FLO.⁸ His argument relies on the claim that a loss is only a moral loss if the loser has a right to the thing lost. He distinguishes, then, between what he calls a neutral or non-moral loss (NL) and a moral loss (ML), characterising them thusly:

(NL) An agent's act causes the *neutral* loss of something valuable to a loser iff (i) the agent does the act, and (ii) the loser does not gain or keep the valuable thing, but (iii) the loser would gain or keep the valuable thing if the agent did not act.

(ML) An agent's act causes the *moral* loss of something valuable to a loser iff (i) the agent does the act, (ii) the loser does not gain or keep the valuable thing, (iii) the loser would gain or keep the valuable thing if the agent did not do the act, (iv) the loser has a moral right to the means necessary for gaining or keeping that valuable thing, and (v) the agent does not have a moral right to those means.⁹

⁸ Sinnott-Armstrong (1997)

⁹ (1997): 62.

Sinnott-Armstrong points out, first, that valuable futures are not something that we *have* in the way that we have material possessions or friends or etc: they are something that we *will*, given the right circumstances, have. Because of this, the clear story we have of why taking one's money, for example, is wrong is absent. Taking something that one currently has (ie, owns) is wrong if and when that someone has a right to what she has.

Sinnott-Armstrong asks us to imagine by analogy a foot race, where the prize for the winner will be a very valuable trophy. If runner Kristin wins the race, and runner Lee does not, Kristin will have taken the trophy from Lee: Lee will have lost the trophy. However, since there is no sense in which Lee had a prior *right* to the trophy, it seems clear that Kristin has not wronged Lee in winning the race. That is, Kristin's taking the trophy from Lee constitutes a loss for Lee, but only a Neutral Loss. It is morally O.K. for Kristin to win the race.

If Marquis's FLO account of the harm of death is right, then fetuses who are aborted suffer at least a Neutral Loss in being killed, but an argument is still needed to show that the loss is also a Moral Loss, since Neutral Losses are not the sort of losses that can make an action seriously morally wrong, as the foot race example shows. So Sinnott-Armstrong then asks, what would have to change about the foot race example in order for Lee's loss to count as a Moral Loss—that is, in order for Kristin's taking the trophy to be wrong. He suggests that, if Kristin had won the race because she stole Lee's running shoes before the race began, then Kristin's taking the trophy, and Lee's losing

the trophy, would seem to be a Moral Loss, rather than simply a Neutral Loss. That is, Kristin's having won the race by taking Lee's shoes would be wrong.

It seems that we can explain this by noting that Lee has a right to his shoes—they are his—and Kristin does not have a right to take them. This suggests that taking a possible future valuable possession from someone is *wrong* just in case that someone has a right to the means to acquire that future thing. Applying this to foetuses, then, it seems as though we need to say that taking a valuable FLO from a foetus is morally wrong on the assumption that the foetus owns or has a right to the means of achieving that valuable future. In other words, only if the foetus either possesses the means to progress to that future, or otherwise has a right to those means. Foetuses, of course, do not possess the means to progress to their own valuable futures—and nor do babies—so, it seems that taking an FLO from a foetus is wrong on the assumption that foetuses have a right to the means to progress to their own futures. That is, it seems that taking an FLO from a foetus is wrong (constitutes a Moral Loss) on the assumption that the foetus has a right to be gestated—since gestation is, in the first instance, what the foetus needs in order to progress towards her valuable future. A right to be gestated, as should be clear from previous discussion, is surely a broader right than a right to life: it is both a negative right to life (not to be killed), and a positive right to be kept alive by a specified individual. FLO, then, cannot ground a right to life: it relies on one.¹⁰

¹⁰ The same argument can be run for babies, since babies need complex, positive care in order to progress to their valuable futures.

If Sinnott-Armstrong's account of morally salient loss is correct, then a right to life—and thus, a key component of full moral status—cannot be grounded in valuable FLOs. So, neither potential, nor valuable futures can generate the claim that fetuses and babies are fully morally considerable. They cannot even generate the claim that babies and fetuses are minimally morally considerable. It is not obvious what to do in the face of this. In the introduction to Part One, I argued that, in the face of the marginal humans problem for personhood-bound accounts of moral status, and in particular, questions over the permissibility of infanticide, there seemed to be four possible responses:

- (1) Reject the intuition that infanticide is morally impermissible (bite the bullet);
- (2) reject personhood as the measure of moral considerability;
- (3) soften the personhood approach (take personhood to be a merely sufficient condition for considerability); or
- (4) drive a conceptual wedge between the lack of a right to life, and the permissibility of killing.

It seems that both (1) and (2) ought to be resisted. Since we want an account that both *works*, theoretically, and that speaks to our most core moral intuitions, what we ideally want is an account that can explain the impermissibility of infanticide, and that utilises the personhood framework. If either (3) or (4) can be achieved, then it is at least possible that we can resist both (1) and (2). In Part One, then, I argued in Chapters One and Two that (3)

is not possible on the most promising version of a ‘softened’ personhood account (a relational account). Above I have rehearsed two less-promising, but more common approaches to (3): potential, and FLO. These, as well, seem not to work. In Chapter Three, I argued that (4) is a live possibility: I argued that the lack of a right to life does not imply permissibility of killing.

However, (4) on its own does not tell us anything about the moral status of babies. That it is not clear that we may kill them doesn’t tell us very much about their moral status. If we resist (1) and (2), and secure (4) in the absence of (3), it suggests the following picture: persons, and probably only persons, are fully morally considerable. Babies are not fully morally considerable, and probably don’t have rights to life, but that does not mean it’s permissible to kill them. It may still turn out that it is; all I have shown, so far, is that we cannot, from moral status alone, conclude that it is permissible. However—more worryingly—we also cannot conclude that it’s not.

3. Moral Status Underdescribes

It seems, then, that moral status is not telling the whole of the story we want told; it seems as though moral status *underdescribes*. In Part Two, then, I’ll take a different approach. I’ll be looking at special obligations. I’ll assume that general obligations roughly track moral status: that is, that our general duties to one another can be read off moral status, more or less. So, I’ll take the claim that moral status underdescribes as either coextensive with, or as implying that general obligations underdescribe. While we may yet have some general obligations to babies, even if they are not *fully* morally considerable,

still it is clear that we must discuss special obligations if we are to understand the full moral picture as regards babies.

Fully delineating all special obligations towards babies would, I suspect, be a mammoth task; one too large for a single thesis. If special obligations can fill out our account of what we owe to babies in the absence of full moral considerability, they will have to be voluminous. After all, there are surely a multitude of people that stand in a multitude of distinct relations to babies each owing each baby something a bit different: parents, teachers, strangers, distant relatives, neighbours, and so on.

However, the idea that there are a multitude of special obligations we can describe towards babies seems perfectly plausible even in the absence of a full account. So, as a start, I'll be focussing on what I take to be the most immediate, and probably primary special obligation one can have towards a baby: parental obligation. My claim is not that parental obligation can fully describe morality with respect to babies; merely that it is an important piece of the puzzle that warrants a careful treatment. I do not think that what we say about parental obligation can generalise to other special obligations we might have to babies. In fact, as shall be seen, I think exactly the opposite: parental obligation is utterly unique, and unlike any other obligatory relationship we can be in. Whatever we say about special obligations that persons other than parents and progenitors can have towards babies will be different and additional to what we say about parental obligations. However, since parental obligation will be so central to understand right treatment of babies, and since

a full account of special obligations to babies would be well out of the scope of a mere thesis, I have chosen to focus on parental obligation.

Before we can even discuss parental obligations to babies, however, there are two concerns that will need to be addressed. First, even if we are content to conclude that babies are not fully morally considerable, or that we are not warranted in claiming that they are,¹¹ and that right treatment of them must be described by delineation of special obligations, we must still give an account of the grounds on which they are the right sorts of creatures towards whom one could have special obligations. In other words, we have to say *something* about the moral status of babies in order even to claim that we can be obliged to them. Second, the broader account of special obligations will need to be the right sort of account. It is often held that special obligations are necessarily *voluntary*—that none of us has special obligations we did not ‘sign up to’.¹² If this is right, the claim that special obligations can fill out the moral picture with respect to babies, in the absence of an account of full moral considerability, seems shaky: the sorts of *oughts* that seem to attach to babies don’t seem like the sort we can decline. We will need to give a non-voluntarist account of special obligations. In the next two sections, then, I will

¹¹ I do not want to commit to the claim that babies are not fully morally considerable. Rather, I am making the modest claim that there is no account of why they would be to hand: we don’t have theoretical warrant to claim that they are.

¹² See Hardimon (1994), Jeske (1998), Thomson (1971)

look first at what we ought to say about the moral status of babies; and second, at the nature of special obligations.

4. Babies and sentience

If we suppose that babies are simply not morally considerable, then the claim that we have obligations towards them makes little sense. Things like rocks and turnips fully lack moral considerability. We cannot have special obligations towards them, or indeed any obligations towards them, because they are simply not the sorts of things towards which one can be obliged. Their treatment lies outside the scope of morality.¹³ It seems clear that babies are not like this. We can have obligations *to* babies, *for their own* sake. Some account, then, will need to be given of why we can have obligations towards babies, while we cannot towards rocks, even granting that babies aren't (or at least, for all we know aren't) fully morally considerable.

This means, then, that if we give a personhood-bound account of moral status, it will need to be the sort of 'two-tiered' account discussed in the introduction to Part One—that is, we will need to do something like (3): soften the personhood account. It seems clear from the foregone discussion that softening personhood to allow for fully-morally-considerable babies holds little promise. But softening it to allow for less-than-fully morally considerable

¹³ Of course, sometimes what we do *with* rocks and turnips is a moral issue. But not *for the sake of* the rocks and turnips. I am interested to do justice to the intuition that when we owe things to babies, we owe it *to them*; the rightness of their right treatment is not (primarily) instrumental.

entities seems relatively unproblematic. On such a softened, two-tiered account, persons will be fully morally considerable, and some non-persons will be at least minimally morally considerable, where 'at least minimally morally considerable' will need to mean something like 'are within the scope of morality, and are such that we have obligations towards them'.

I propose that we ought to accept a theory of moral status on which sentience—just as Warren proposed—confers moral considerability, though not full moral considerability.¹⁴ To the extent that Warren's overall pluralist account is meant to motivate full moral considerability for babies, as I argued in Chapter One, it is theoretically unworkable: relationships simply cannot confer full moral considerability. However, as I've argued, what we owe to babies can plausibly be described by special obligations. If this is so, and given that moral status underdescribes, all we need theoretically speaking is to show that babies are a minimally morally considerable: that our treatment of babies is a proper subject of morality. Warren's claim that sentience confers minimally, setting her broader theory aside, seems perfectly unproblematic—and seems so whatever broader normative framework we adopt.

Sentient creatures can experience suffering because they can be the subjects of experience. To pick this capacity out as morally relevant is not to take sides on what sort of broader moral theory we ought to adopt. Usually, when we talk about sentience as morally relevant, we think of consequentialist conceptions

¹⁴ Warren (1997)

of morality: the capacity to suffer is morally relevant because suffering is basic to moral concern; because suffering figures negatively into our moral calculations; etc.¹⁵ But there is no reason one would need to adopt a consequentialist perspective. A deontologist, for example, might easily say that the moral status of sentient creatures follows from a duty of non-malevolence: if we have a duty not to harm, then all those capable of being so harmed fall within the scope of morality, in other words, will be morally considerable.¹⁶

The claim that suffering is bad, and matters morally is relatively uncontentious. So, the supposition that sentient creatures are at least minimally morally considerable seems likewise relatively uncontentious. If one insists on an account of moral status based around moral *value*—that is, if what one wants out of a moral theory is an account of how much you and I are *worth*, as individuals—then this defence of sentience will probably not satisfy. However, even those who worry about ‘moral worth’ might still make room in their moral thinking for simpler questions about what acts morality ranges over. It might still be the case that, even if persons, say, and persons alone have *moral worth* or *moral value* in and of themselves, still we can have a coherent discussion about creatures that are such that actions directed towards them are within the purview of morality.

¹⁵ Singer (1975), (2006)

¹⁶ See, e.g. Ross (1930) especially Appendix I: Rights.

If we accept this two-tiered theory of moral status, then we will say that all sentient creatures are such that we have (general) obligations towards them. We will probably say that persons are such that we have obligations to them in addition to the ones we have to merely sentient creatures.¹⁷ This picture will not be adequate, as regards intuitions about babies, for two reasons.

First, while we might all agree that we have negative, non-malevolence sorts of obligations towards nonhuman animals, it seems that we have positive, care obligations towards babies. 'Leaving them to their own devices' often seems a perfectly appropriate way to fulfil our obligations towards nonhuman animals, but surely doesn't seem so for babies. Notice that, even if it's the case that 'leaving them to their own devices' might result in the death of a nonhuman animal, we often think it a morally appropriate thing to do. So the difference cannot simply be that, while most nonhuman animals are capable of looking after themselves, human babies require active care. The obligation really seems to be qualitatively different. If sentience is what drives our general obligations towards nonpersons, and the particular needs of the

¹⁷ Whether we say that general obligations to persons are *stronger* or *more stringent* than those we have to merely sentient creatures is a separate question. I think the usual intuition will be that obligations to persons matter more than those to nonhuman animals. Things are more complicated, again, when it comes to human nonpersons. I will remain neutral on whether our obligations to persons matter more than those to nonpersons, and simply claim that we have more or different general obligations to persons than we have to nonpersons.

creature in question cannot motivate differences in how our sentience-motivated obligations are realised, positing special obligations towards babies is necessary to explain the difference.¹⁸

The second reason we cannot simply note that we have general obligations to sentient creatures and leave it at that is that the obligations we feel ourselves to have towards babies often *outstrip* the obligations we feel ourselves to have towards persons. Where we feel we must attend to the wellbeing of persons, we feel we must give extra attention to the wellbeing of babies. Where we must be kind to persons, we must be positively loving to babies, often even towards babies unrelated to us. To some extent, this feature of our obligations to babies does seem to be driven by the difference in what persons and babies need to be well. Persons can usually care for themselves, more or less, while babies cannot. But it is easy to see that this does not tell the whole story.

For example, if we imagine a situation in which an adult person and a baby are both suffering from identical physical injuries, and both need medical attention and cannot simply attend to themselves, we will probably judge that we ought to help the baby first. We might want to explain this in terms of how

¹⁸ Oftentimes, what we owe to babies and other vulnerable humans who are not closely related to us is cashed out in terms of a general 'duty of rescue'. I think this approach does not work, on pain of speciesism, for roughly the reasons just outlined. I will discuss general duties of rescue directly in the conclusion to the thesis.

the capacities of the adult, on the one hand, and the baby, on the other will colour the experience of pain for each of them: the adult can understand why she must suffer longer, and can bravely endure, where the baby has no such understanding. But then, even if both the adult and the baby are positively beyond rationality with pain, such that the adult is not in a position to understand the wait, we would probably still help the baby first. It might seem that this can be explained by the fact that the adult will *later* be able to understand being passed up; but then, the baby mightn't even remember the event later. The adult seems far more likely, despite her ability to understand the situation, to be troubled by the memory of it.

On a two-tiered personhood-bound account of moral considerability, the obligations we have towards babies cannot be adequately explained via appeal to general obligations towards sentient creatures, because the obligations we have towards babies are both different to those we have towards nonhuman animals, and stronger than those we have towards persons.¹⁹ Special obligations, then, are a promising avenue of inquiry. However, as I noted earlier, explaining what we owe to babies in terms of special obligations is only a plausible strategy if special obligations, as a species of obligation, are sufficiently robust. Standard accounts of special

¹⁹ They are also different to those we have towards persons. For example, it is unlikely we have an obligation to show respect to babies; it makes no sense to complain of paternalism towards babies. This is another reason to favour an account on which our obligations to babies have a different explanation from that of our obligations to persons.

obligations—on which special obligations are voluntary or consent-driven—simply will not do.

5. Non-Voluntary Special Obligations

The standard account of special obligations is that they are in some sense voluntary. If I have a special obligation, I have it because in one way or another I agreed to have it: I volunteered or consented either explicitly or tacitly; I placed myself under the obligation contractually either explicitly or tacitly; I promised; I enjoyed the benefits of a role or institution that generated it; or something like this.²⁰ In other words, whether I have a special obligation is in some real sense up to me—a matter of choice.

This is the standard view for at least two reasons. First, it is theoretically tidy: on this sort of account of special obligations, special obligations fall out of general duty. On this sort of account, the obligations we have can be fully specified in general terms. We have general obligations, one of which is to do the things we said we would do. In other words, on this sort of account, there is nothing morally special about special obligations. Our general account of moral duty, then, is simpler and tidier than an account on which there are obligations that apply to everyone, and then different sorts of obligations that only apply to some people in some circumstance.

²⁰ See Rawls (1971) esp. pp.113-114; Jeske (1998); Thomson (1971); Ross (1930) esp. p. 27; Hardimon (1994).

The second reason why the voluntarist account of special obligations is standard is that there is something satisfyingly *fair* about such an account: we are all obliged equally; morality doesn't fall more heavily on any particular person than it does on everyone else. On such an account, we are all equal in the eyes of The Right. The account strikes us as fair, just, equitable.

However, such an account sits uneasily with the notion that we can explain our obligations to babies by talking about special obligations. Volunteer is simply too weak. What we owe to babies is just not a matter of choice. This might incline one towards abandoning special obligations as a strategy for explaining our obligations to babies. But before we do, it is worth noting that there is a more general problem with the voluntarist account of special obligations. The more general problem speaks in favour of abandoning the standard account of special obligations.

6. Hardimon on Role Obligations

Not only do voluntary obligations seem too weak to account for what we owe to babies, they also seem too weak (and really, just wrong) to account for a whole class of what are commonly called 'role obligations'—special obligations we have in virtue of fulfilling certain institutional roles. Michael Hardimon (1994) picks out familial obligations and civic obligations, in particular, as role obligations that do not seem amenable to a voluntarist account. That these sorts of obligations are non-voluntary, Hardimon argues, is simply too central to our moral intuitions to abandon, even if the end theoretical product is made tidy by doing so. He writes that 'the idea that we

have [nonvoluntary] familial obligations is one of the most salient moral beliefs we have'.²¹ In other words, it is not an appropriate bullet to bite lightly.

Hardimon argues, instead, that familial and civic obligations are generated by non-voluntary role occupation—such as being a sibling or a daughter or a citizen—and that these roles have the moral weight that they do because we are born into them; they are, in a way, part of who we are, we identify with them, and they are *reflectively acceptable*. He writes that

Determining that a given social role is reflectively acceptable involves judging that it is (in some sense) meaningful, rational, or good. [...] To say that a role is reflectively acceptable is to say that one would find it acceptable were one to reflect upon it in suitably specified circumstances. In contrast to the volunteer principle, which calls for a form of *choice* that is actual, the ideal of reflective acceptability calls for a form of acceptance that is *hypothetical*. (348)

So, familial and civic role obligations are morally binding if and when they are reflectively acceptable; and this is unproblematic because we are born into them, and thus are not *impressed* into them—that is, our rights are not violated; we are not unfairly done by the obligations these roles generate.

²¹ (1994) 342. Hardimon uses the term 'noncontractual', rather than 'nonvoluntary'; the difference is immaterial in the context of this discussion, so I have changed it to avoid confusion.

Hardimon responds to the worry over special obligations being unfairly forced upon us ('impressment', as he calls it) by appealing to the fact that we are born into familial and civic roles. Because of this, they are just part of who we are, rather than something that's been thrust upon us.²² However, it should be clear that this response only works for a certain subclass of familial roles. Spouses, for example, are not born into their spousal roles, and importantly for my discussion, nor are parents. The defender of the standard view of special obligations might rightly object that, even if filial obligation, and the obligations of (some) citizens can be made acceptable in this way, parental obligations surely cannot.

One way that Hardimon might respond to this objection is simply to say that indeed only *some* familial and civic obligations are nonvoluntary; others are acquired by consent. In the case of civic obligations, for example, it is clear that some citizens are citizens because they were born into citizenship, while others take it on voluntarily through naturalisation. And this seems perfectly unproblematic. Likewise with familial obligations, some familial obligations have their force through identification—because we are born into roles such as sibling and child—while others, like parental and spousal obligations, have moral force through consent.

As I shall discuss further in Chapter Four, the idea that parental obligation is voluntary is clearly not beyond defence. However, as I've already noted, parental obligation having its moral force through consent doesn't seem to gel

²² (1994): 347

with intuitions about what we owe to babies. Parental obligations, on this account, are simply too weak to fill in gaps left by moral considerability. A better way to respond to the worry over familial obligations into which we have not been born—and more generally, to the worry over ‘impressment’—is to note, first, that impressment needs an agent, and second, that impressment might simply be too weak a worry, in the case of parental obligation, to warrant acceptance of a voluntarist view of parenthood.²³

7. Impressment

The motivation against abandoning the standard view of role obligations, Hardimon writes, is driven by ‘our horror at the thought of being *impressed*—like the seamen of old—into social roles and burdened with their attendant obligations against our will.’²⁴ Hardimon does not think we ought to reject the idea that *some* role obligations are voluntary: clearly some are. But argues that we ought not think of the choice as one between volunteering and being impressed. When role obligations are non-voluntary, they are not, Hardimon argues, thereby instances of impressment; they are simply part of who we are. But as I’ve said, this account does not seem to work, if the claim is that parental obligations are non-voluntary. A similar, and functionally-equivalent reply, however, will.

²³ I take it that is quite obvious that spousal obligations just do not fit the non-voluntarist mould. This seems unproblematic. To say that some special obligations are non-voluntary is not to say that all are.

²⁴ (1994) 347

What is wrong with impressment is that it is something like a rights violation, or an autonomy violation. It is a taking away of my free choice. But a loss of choice is only a violation of this worrying sort if it is caused *by another agent*. So for example, being electrocuted is horrible no matter; but if I am electrocuted by my neighbour holding a bare wire to my head, this is a rights violation, whereas if I am struck by lightning no right of mine has been violated even though I am harmed. Impressment (of a morally-worrying sort) requires rights violation; it requires an agent. So, even if I am a parent involuntarily, and thus have non-voluntary parental obligations, even though I have not chosen it (and have not been born into it), my rights are not thereby violated. Nature and luck simply cannot wrong me in that way.

One might, of course, object that in some cases of involuntary parenthood, an agent *is* the cause: 'unwilling' fathers seem to be a case in point. This is a central worry driving Elizabeth Brake's voluntarist account of parenthood, and I will discuss it at length in Chapters Four and Five.²⁵ For now I will simply note that, even if unwilling fathers are *impressed* into their roles, and even if this impressment is a rights violation, it is not clear that (or why) this should absolve such fathers of obligation. After all, it is not the child herself who has so wronged the father; so, it is not clear why the child is the one towards whom obligation should no longer hold.

In the chapters ahead, I will be exploring the nature of parental obligation, and I will defend a non-voluntarist account. I will begin in Chapter Four by

²⁵ Brake (2005), (2010).

defending such an account against Elizabeth Brake's objections to non-voluntarism about parental obligation.²⁶

Chapter Five will further explore the nature of parental obligation by exploring the intersection between a causal account of parental obligation and reproductive liberty—a mirror to Part One's focus on the contrast between fetuses and neonates. In that chapter, I will say more about how we ought to understand the nature of causation in the context of parenthood, and will argue that Brake's worries over unwilling fathers ought to compel us to give a more robust account of parental obligation, rather than a more lenient one. In particular, I will argue that Brake rightly picks out a mismatch between fathers being compelled to pay child support, and mothers having the freedom to put their babies up for adoption, but that she grasps the wrong horn of the dilemma: rather than concluding that unwilling fathers mustn't be obliged, we ought to conclude that unwilling mothers are not, after all, free to absolve themselves of obligation towards their offspring.

I will conclude Part Two by exploring further reproductive-ethical consequences of the account of parental obligation that I defend in Chapters Four and Five. Chapter Six, then, will look at whether men have a 'right to choose'; whether the right to abort depends critically on the physicality of pregnancy; and whether a causal account of parental obligation implies a duty to gestate.

²⁶ (2010) in particular

**WHY AND HOW TO PREFER A CAUSAL ACCOUNT OF
PARENTHOOD**

Introduction

Elizabeth Brake argues that a voluntarist account of parental obligation should be preferred over other competing conceptions of parenthood. Importantly, she argues that a voluntarist account is preferable to a (non-voluntarist) causal account. Causal accounts, Brake argues, suffer (at least) two conceptual weaknesses: there is an explanatory gap between being the metaphysical cause of someone's existence and owing that someone care; and causal accounts belie the socially-constructed nature of parenthood itself.

I will argue that the explanatory gap between causing and obligation can be filled on a more plausible conception of the nature of the obligation; and that, while a simple causal account cannot answer Brake's concerns about the scope and nature of parenthood, there are easy and intuitive modifications available to a causal account, such that a modified causal account can be consistent with recognition of social construction.

In section one, I will rehearse Brake's arguments against a causal account. In section two, I will present her positive account, and give some reasons for thinking we ought not bite the voluntarist bullet. In section three, I will discuss David Archard's modified causal account of parental

obligation, and show how it (at least partly) answers Brake's concern over the contingent nature of parenthood. In section four, I will argue that modification stronger than what Archard suggests is needed to successfully get round Brake's worry over social construction. And in section five, I will present an alternative to Brake's libellous causing account of the moral power of causing: a broadly Kantian account of causing existence as choosing for.

1. Why Brake wants volunteers

On the face of it, causal accounts of parental obligation have much to recommend them. According to a causal account, parents are obliged to care for their children in virtue of having caused their children to exist. On this picture, then, we have an apparently coherent account of why parents are obliged, that fits with other accounts of obligation: parental obligation is a sort of liability; it is acquired in virtue of the morally weighty action (causing existence) of the parents.

Causal accounts, at first blush seem promising accounts of parental obligation. A causal account is more plausible than, say, a biological account—on which parents are obliged because they are uniquely biologically related to the child—since they don't pick out people who are biologically related but, we think, morally unrelated: for example, persons whose gametes have been stolen and used to create an embryo; or identical twins. Further, since causal accounts hinge on something the parent has *done*, rather than a simple biological fact about the parent's

body, the connection between the relationship and the obligation seems much clearer and more plausible.

Causal accounts, importantly, have teeth. One doesn't have to be willing to be held to account. The parent who says 'I don't want to' has failed, on a causal account, in her moral duty. Consent accounts, on the other hand, appear to be unable to hold 'dead-beat' parents, feckless neglecters, and the like, to account. So, causal accounts clearly have a lot going for them. But, Brake argues, they have (at least) two serious problems, serious enough that we ought to reject them.

a. Libellous Causing

Brake's first worry about causal accounts is that the connection between causing and being obliged is not so clear as it may first appear. A first worry about causing as an obligation-motivator is that it is unclear who should count as a cause: are obstetricians causes? Are gamete donors? Are the parents' match-makers? A causal account of parental obligation needs a solid account of causation, on pain of picking out the wrong people as parents, and the account must be non-circular. In section three I'll discuss this worry further, and argue that an appropriate conceptualisation of causation is available to the causal theorist. However, the larger worry, according to Brake, is with the very conceptualisation of parental obligations as compensatory obligations: how do we get from causing human existence to owing care?

First, Brake points out that only some acts of wronging an individual oblige us to compensate them for that harm. For example, if I hurt your feelings, I am presumably not obliged to compensate you for this hurt; however, if I damage your car, I probably am. So, an account is needed of why causing someone to exist is the sort of harm that generates compensatory obligations. Brake argues that such an account is unavailable.

The first step in explaining the link between causing existence and being obliged to compensate is to motivate the claim that causing someone to exist results in the right sort of harm. Brake points out that compensatory obligations are rectificatory. They are obligations to fix bad states of affairs for which one is morally responsible; to 'make the victim whole again'. The harm that generates them, then, must be either a rights-violation, or a 'serious boundary-crossing harm' (159). So, we will need an account of why (or in what sense) causing someone to exist is either a rights-violation, or a serious boundary-crossing harm.

Some theorists have supposed that the child's neediness is the relevant harm. Making it such that someone is needy is, plausibly, a harm that would generate compensatory obligation. When one causes a child to exist, one causes an individual to be needy, since babies and children just are needy. The compensatory obligation, then, is the obligation to rectify the child's neediness. Causing neediness, then, would count as a serious boundary-crossing harm.

Alternately, we might suppose that causing existence generates rights that must not be violated. Brake considers Feinberg's claim that children have a 'right to a reasonable assurance of a minimally decent life' (159). On this account, causing a child to exist would be a rights violation in the absence of care. For the sake of argument, Brake assumes that both of these claims are correct: that causing neediness is a harm that demands compensation; and that failure to provide reasonable assurance of a minimally decent life would constitute a rights-violation. The harm and the potential rights-violation together, then, would generate what Brake calls 'procreative costs': what one owes to the child in virtue of the harm done and of the child's rights.

On this picture, one would have compensatory obligations towards one's offspring in virtue of having caused the child to exist. However, Brake points out, parental obligation far outstrips procreative costs. If neediness is the bad state of affairs that must be rectified, then the compensation ought to consist of making the child non-needy. Clearly, children cannot be made non-needy; at best, their neediness can only be minimised. Minimising neediness, it seems, would require the parent to enable the child to meet her own needs as far as is possible. If a reasonable assurance of a minimally decent life is the right that mustn't be violated, then the obligation is just to provide reasonable assurance of a minimally decent life.

But parents surely owe their children more (and different) than simply enabling of self-sufficiency, and opportunities for minimal decency. Importantly, we think that parents owe their children love, interpersonal warmth, and close involvement in their lives for at least many years. So, even if it is right to suppose that children are harmed by being brought into existence; and that children are put in danger of having their rights violated by being brought into existence, it seems that the compensatory obligations generated by this harm and this right cannot fully describe parental obligation.

Furthermore, the extent to which parents must provide for the wellbeing of their children is significantly dependent upon social circumstances. A child raised in a society that lacks basic sanitation, educational opportunities, etc., is by default further off the 'minimally decent' mark than is a child raised in a society that offers robust social care. This means that what parents are obliged to, on this compensatory model, will vary with social circumstance. In this sense, the child's 'neediness' is simply not caused by the causal parents alone.

So there is a gap. I will argue that this gap can be bridged by reconceptualising the connection between causing existence and parental obligation: compensation is just not the appropriate model. In section three, I'll present an alternative account of the connection between causing existence and incurring obligation—one that is not

rectificatory in nature. But first, I will discuss Brake's second objection to causal accounts, and present her positive, voluntarist account.

b. Parenthood as a Social Construct

Brake's weightiest worry about the causal account is a worry over the social, or institutional nature of parenthood. Who we take to be parents depends upon how our societies are structured. Likewise, what parental obligation consists in is, in Brake's words, 'institutional, not natural': both what children need, and what parents are expected to provide them with, are delineated by our social practices. Parenthood, then, is socially constructed. This seems to make two different sorts of problems for a causal account. First, it seems like it simply can't be the case that certain people (biological progenitors, for example) belong to the category 'parent' of necessity, or 'naturally'. And second, it seems like it can't be the case that parents, of necessity, have the obligations we intuitively assign to parents.

Parental obligations are role obligations; that is, they are obligations one has only in virtue of being a parent. (They are a species of special obligation.) So, parental obligations will apply to anyone who fulfils the role. It is a challenge for any theory of parenthood to get this right: any good theory needs to explain why *parents*—that is, the people we (pretheoretically) pick out as parents—are obliged.

As a point of clarification, Brake differentiates between three sorts of parenthood: moral parenthood, social parenthood, and legal parenthood. Legal parents are just those who the law holds accountable for the care of children. Social parents are those who fill the social, care role of parent for the child. Moral parents are those who we take to be morally responsible for the care of the child. These three sorts of parenthood come apart. For example, an absent father may be a legal parent—obliged by law to pay child support, say—while having never even met a child, and thus not fulfilling the social role of parent. Grandparents who take on the full-time care of their grandchildren might be social parents, though we mightn't think them morally obliged to provide such care. And so on.

The primary concern of a (moral) theory of parenthood is to fix moral parenthood; that is, to assign obligations to all and only those people who are moral parents. And this task is not straightforward. For example, a simple biological account of parenthood will not pick out all and only those we take to be parents, since we usually think that gamete donors are not parents, despite being biological progenitors. A simple causal account will not do, since adoptive parents—who probably we ought to take to be proper parents—do not cause their children to exist.¹ So,

¹ This is not an insurmountable obstacle for a simple causal account, since assigning obligations only to causal parents on causal grounds does not rule out non-causal parents having obligations on other grounds.

properly delineating the role of parent is a challenge for any theory of parenthood.

Brake's worry, however, goes one step further: the worry is that there is no correct delineation of parenthood; or rather, that because 'parent' varies so greatly in its meaning across history and cultures, we must conclude that there is no real moral category to be delineated. It seems like parents are just *those who parent*. If this is right, then it is difficult to see how we can get from a natural fact—like biology, or causation—to the social fact of parenthood.

One might be tempted to reply as follows: 'even if we use "parent" in lots of ways, still we can talk about *parents*; that is, even if someone, say, *acts as a parent*, and we call him "a parent", still we can separate him, in our theory, from *a real parent*. And it's the real parents who have the obligations.' But who might these real parents be? We can't say that the source of the sperm and the source of the ovum are the 'real' parents, since sperm donors aren't parents. We can't say that either the biological parents, or the adoptive parents are the parents, since adoption just happens to be the legal convention by which we in the west in this day and age formalise familial arrangements centred round children. In matrilineal societies, Brake points out, children are traditionally raised by their mothers and their mothers' families; primarily by mother and

But it does mean the causal theorist needs to do more work, else her account is incomplete.

maternal uncle. In most societies until relatively recently, children were cared for by larger extended families. Nuclear mother/father families are our paradigm setting for childrearing by social convention, and social convention surely cannot drive moral fact.

One might be tempted, still, to say that, while the extended family may have cared for the child, still the extended family is not *the parents*. But it isn't clear how we can make sense of this stance. In the case of matrilineal communities, for example, where mother and uncle traditionally raise a child, the male progenitor is in the same relationship to the child as is a sperm donor in 21st century Western society. If the sperm donor is not a parent, it seems unlikely the 'father' in the matrilineal society is. If the non-biological 'father' in cases of sperm donation is the father (and surely he is), then it seems like the mother's brother is the father in matrilineal societies. And there are examples much closer to home: many grandparents, for example, raise their grandchildren. It doesn't do to point to the fact that the children don't call them 'parents': children in China don't call their parents 'parents' either; and yet they are.

Fixing parenthood seems a serious difficulty for a consent account of parenthood. On the one hand, if we understand cause narrowly—such that, for example, only those immediately responsible for conceiving and gestating the embryo that becomes the child are taken to be causes of the child's existence—then our conception of parenthood is tethered to our narrow social understanding. As Brake puts it, it would seem simply

to 'reflect the heterosexual nuclear-family practices common in contemporary western society', rather than to rightly pick out moral parents (167).

On the other hand, if we understand cause in a way that takes social practice into account, then the moral force of causing seems to melt away. For example, we might say that maternal uncles in matrilineal societies are causes of a child's existence: the child is conceived, gestated, and birthed on the understanding that the uncle will be a primary carer to the child, and has responsibility for the child's wellbeing. The social understanding that he will fulfil this role is part of the circumstances in which the child is brought into being, and he has actively played this role. Therefore, he is a cause.

But if we understand cause in this way, causal parenthood becomes impossibly large and indefinite, and the causal account loses its 'teeth'. Fixing moral parenthood will depend on contingent social facts, rather than anything metaphysical; most plausibly, it will also depend on the intentions of prospective moral parents. This will mean, in effect, that one is cause of a child's existence only if she intends to parent. Causation will drop out entirely. The account will collapse into voluntarism: parents will be those who choose to be so, and causing will lose its explanatory power altogether. Brake, then, concludes that the causal account ought to be abandoned, and a straight-forwardly voluntarist account given.

2. Brake's Strong Voluntarist Account

Because causal accounts seem to fall down with respect to motivating compensatory obligation, and fixing moral parenthood, Brake argues that a voluntarist account of parenthood is, after all, the most plausible account we can give. In Brake's terminology, moral parenthood springs from social parenthood; and whether one is a social parent depends upon whether one has consented to occupy the social role parent.

a. Strong voluntarism

On this account, one acquires parental obligation by consenting—either explicitly or tacitly—to parent, and by being in the appropriate rights position with respect to the child. (That is, by having a legitimate claim to parent the child.) On standard consent accounts of parenthood, consent to parent is sufficient, but not necessary for parental obligation.² This sort of account makes sense of the obligations adoptive parents, and *de facto* (non-biological) parents are under with respect to their children, but leaves open the question of how such obligation can be otherwise acquired. Brake defends a stronger version of a consent account, on which consent is necessary, but not sufficient for parental obligation. (It is not sufficient because, again, one must be in the appropriate rights position with respect to the child: simply declaring oneself the parent of a child will not generate parental obligation if the child is, for example, someone else's child.)

² Cf. O'Neill (1979)

The plausibility of this view, Brake writes, 'derives from the thought that obligations limit liberty, and liberty can only be limited through choice or as a result of wrong-doing' (156). Because, as we have seen, conceiving of parental obligation as compensatory obligation fails, the curtailment of liberty that parental obligation constitutes must be voluntary. Brake considers the objection that many special obligations—for example, filial obligations—seem to be non-voluntary: it seems as though we have duties to family members that we did not choose. In that case, it is unclear why we should need to *choose* to have parental obligations; why parental obligations should not be like other sorts of familial duties. She suggests that these non-voluntary obligations may be 'duties of virtue'—rather than duties of justice—that do not correlate to moral rights (156). In other words, whilst I may have filial duties towards my parents, even though I have never consented to have such duties, my parents do not have a right that those duties be fulfilled. I fulfill my duties towards my family as a matter of virtue; if I do not, I am perhaps vicious, but I have not violated anyone's rights. In contrast, if I fail in my parental obligations, I have exactly violated my child's rights; I have perpetrated an injustice against my child.

b. Broad consent

That parental obligation requires consent does not, at first blush, square with the realities of becoming a parent. Many parents become so either under pressure from family, partners, society, and so on; or simply accidentally, or even fecklessly, carried along by fate. One may even

become a parent through need arising by chance: do to the sudden death of a child's birth parents, for example. The notion that parents become so by careful reasoned intentional action is implausible. Brake acknowledges this, and utilises a broad understanding of consent, on which it might be careful and intentional; or it might simply be 'tacit voluntary acceptance' of the role—one may choose it, actively, or one may simply not decline to enter into it (157). Echoing Thomson,³ she writes that

'...once someone has chosen not to abort, undergone prenatal medical care, bought some baby clothes, and taken an infant home, the role of parent has been tacitly accepted. In our society, taking a child home as one's own counts as assuming the role of parent—there is no other way to describe this activity, except as baby-snatching. If abortion is an option, then choosing to continue a

³ Thomson (1971) writes that 'Surely we do not have any such "special responsibility" for a person unless we have assumed it, explicitly or implicitly. If a set of parents do not try to prevent pregnancy, do not obtain an abortion, and then at the time of birth of the child do not put it out for adoption, but rather take it home with them, then they have assumed responsibility for it, they have given it rights, and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for it. But if they have taken all reasonable precautions against having a child, they do not simply by virtue of their biological relationship to the child who comes into existence have a special responsibility for it.' (65)

pregnancy without making plans for adoption constitutes accepting the role of parent.’ (171)

In other words, one consents to parent, basically, by doing it; by parenting. And once one has done so—once one has taken up the (social) role—one is thereby (morally) obliged. There is no other way, according to Brake’s account, to acquire parental obligation. All parental obligation is (broadly) voluntary.

c. Deadbeat dads

Voluntarist accounts are vulnerable to an objection that Brake has dubbed ‘the ‘deadbeat dads’ objection. Indeed, this objection seems to be the strongest objection to a voluntarist account. Brake argues that the worry is only apparent: that the intuitions we have about ‘deadbeat dads’ can be adequately handled by broader moral considerations in a way consistent with the voluntarist account.

According to the deadbeat dads objection, a voluntarist account is implausible because so-called deadbeat dads cannot be held to account: fathers who abandon their children and fail to provide support cannot be said to have violated their child’s rights; nor are they subject to moral scrutiny for having declined to support them. Voluntarist accounts seem to be unable to attribute blameworthiness in the face of global parental failing.

Brake argues that the intuition that biological fathers who abandon their children are blameworthy is not apt as a criticism of the voluntarist account. To the extent that 'deadbeat dads' ought to be held to account, she argues, they are not so obliged on parental grounds. Thus, though the voluntarist account cannot, on its own, explain why abandoning one's offspring is morally reprehensible; or why fathers ought to, for example, be obliged to pay child support; this does not tell against the account, because we can explain these judgments on other grounds.

First, Brake writes, fathers 'owe general duties of rescue to the infant' (174). Just like everyone else, fathers have a general duty not to knowingly abandon a child to its death. Arguably, biological parents are in a particularly good position to aid their biological children. And anyone in a good position to save a helpless child from imminent death or danger has a (general) duty to do so. So, since biological fathers are often uniquely situated to rescue their children, they have a general (non-parental) duty to do so if need arises.

Second, there are strong social-justice reasons in favour of assigning legal parenthood to biological fathers, even if we cannot assign moral parenthood to them. Most notably: single mothers and their children are amongst the most vulnerable in our society. Assigning legal support duties to biological fathers is in keeping, then, with maintaining social justice by alleviating the vulnerability of both the child and the mother.

And finally, ‘reckless procreators’ can be held to moral account on non-parental grounds. Brake points out that “‘deadbeat dads’ usually describes men who accept obligations and then abandon their families’ (175)—social (and thus moral) dads who walk out on their children. In these cases, a voluntarist account is perfectly able to attribute wrongdoing, since these ‘deadbeat dads’ are parents with parental obligation on a voluntarist account.

On the other hand, some people we might want to describe as ‘deadbeat dads’ are not social parents who have abandoned their children. They are what Brake calls ‘reckless procreators’: men who do not take precaution against procreation, but do not subsequently take up the parenthood role. These deadbeat dads cannot be held to account *qua parents* on a voluntarist account, but the blameworthiness of their behaviour can be otherwise explained. This variety of deadbeat dad, according to Brake, has harmed the mother: ‘Pregnancy has life-altering, sometimes devastating, social, economic, and physical effects on women, and reckless male procreators may be rightly blamed for subjecting them to these’ (175). So, while reckless procreators have not failed in any parental obligation—since they have none—still they can be rightly criticised for harming the mothers of their children.⁴

⁴ Brake also notes that ‘intuitions about “deadbeat dads” draw on cultural readiness to blame such men’, and draws comparison with what she calls ‘the “altruistic stud”—a man who provides sperm to single women who want impregnation’ (175).

But, while this reply to the deadbeat dads worry can account for blameworthiness, it doesn't seem to get the right sort of blame in. What seems blameworthy about the deadbeat dad's behaviour is that he has harmed *the child*; not the child's mother--though of course, he has probably done that also. And the intuition is that he owes the child (at least) rescue because he bears a unique relation to the child, and not simply because he is like anyone able to rescue.

To describe the deadbeat dad as violating a general duty does not seem to capture the intuition about what is wrong with the abandonment. After all, doctors and nurses in hospital are probably in a *better* position to provide aid to the baby in the first instance, but we do not have the intuition that they must provide rescue.⁵ Indeed, if the baby is left in peril by all around her, we would attribute blame to the parents first, and not to the other persons within reach; so, the intuition is distinctly not one about general duties. An account that could preserve, specifically, this feature of the intuition ought to be preferred.

⁵ Where 'rescue' means something financial, hospital staff may not be in a good position at all to aid. Surely they are not paid enough to support every baby that is born in their hospital. But then, the father may be of limited means himself. We have the intuition that he ought to make sacrifices nonetheless, where we have no such intuition about the nursery nurses who tend to the newborn.

Furthermore, in the absence of a motivation for picking out the biological father as being in a particular obligation-relation to the child, it is unclear why it would serve justice to assign legal parenthood to him, even given what justice demands for the mother. Why not tax all males of sexual maturity? Why not assign legal parenthood to the mother's nearest male kin—brother or father, say?⁶ It seems unlikely that a purely practical reason for holding the father to account could justify compelling him to provide care if we cannot attribute moral parenthood to him.

The problem with Brake's reply to the deadbeat dads objection is just that voluntarism about parenthood is implausible. More broadly, the idea that morality cannot curtail our liberty without our consent is just implausible. The relationships we find ourselves in with other persons—whether we enter them purposively and voluntarily (as with friendships or promises), or simply find ourselves in them (as in familial relationships, or even as bystanders or neighbours or fellow citizens)—plainly do generate moral obligations. We do have special obligations that we do not choose, and this is borne out in a great many of our every-day moral intuitions.

However, Brake is right that an insistence on the deadbeat dad's having violated a special obligation to the child is question-begging in the absence of a plausible alternative account of such special obligation: after all, feckless procreators, anyway, are not social parents. In the next

⁶ Of course, it seems like we want to justify the choice of the father as legal parent on grounds that he caused the child to come into being.

section, I'll present David Archard's causal account of parental obligation, and discuss how he addresses Brake's worries about the socially-constructed nature of parenthood. In section four, I'll argue that a stronger version of Archard's modification is more preferable, and discuss how that stronger modification will look. And in the final section of the paper, I will present an alternative to the 'liability' understanding of causal parenthood: a Kantian conceptualisation of causing to exist as morally meaningful 'choosing for'.

3. 'Obligation' and 'Responsibility'

A causal account of parenthood meets the challenge of the deadbeat dads objection: it has *teeth*. Procreators can be held to account for not caring for their children. It is more flexible than a biological account, since non-genetic procreators can still be causes. It is a very promising account, indeed. However, a simple causal account is not without difficulties. As Brake points out, it is hard to make sense of a causal account in the face of the social-constructedness of parenthood. Social parenthood and moral parenthood don't match up on a simple causal account in non-hetero/nuclear parenting cultures and families. Further, it is difficult to know what to say about gamete donors (amongst others) on a causal account. It seems like gamete donors are causes; but we tend to think that gamete donors do not have parental obligation. And if we include non-genetic procreators⁷ as causes, it is difficult to exclude others involved in the conception—IVF doctors, for example. (They are a

⁷ Procreators who procreate using donated gametes.

particular worry when donated gametes are used, since the doctors are the ones who actually bring sperm and egg together.) However, contra Brake, these worries needn't doom the causal account: they simply show that modification is needed. Archard's account (2010) presents such modification.

According to Archard, there is an important distinction to be made between 'the obligation to ensure *that* someone acts as a parent to the child' and 'the responsibilities of *acting as a parent*' (104). This distinction can make sense of the social-constructedness of parenthood.

Causing a child to exist, on Archard's terminology, generates parental 'obligation': the duty to the child, to ensure its proper care. Being a parent generates parental 'responsibility': the duty to actively care for the child.

Archard writes that

...*if* someone *does* incur a parental obligation to make provision for a child they have caused to exist then he or she is not under a duty to provide that care themselves. ...a simple causal theory of parental obligation is not defensible if it holds that causing a child to exist is sufficient to incur [parental responsibility]. (114)

So, on Archard's account, causing a child to exist does not make one a parent, and it does not generate parental responsibility—duties to (actively) care for the child. What it does is generate a duty to ensure that the child is well parented; and this duty can be discharged either by parenting, or by securing parents for the child other than oneself.

Making this distinction between obligation and responsibility answers Brake's second objection to the causal account—the worry that causal accounts belie the social-constructedness of parenthood. If the claim is simply that causers are *obliged* (but not *responsible*), then we needn't say that biological mother and father are the ones who must care for the child. Our account, then, is not heteronormative. Who takes on the role of parent can be decided (as it actually is) by custom and circumstance, and there is no judgment against non-hetero/nuclear family structures. Whoever takes on the role of parent has parental *responsibility*: has a duty to care for and love the child actively throughout its life. Those responsible for causing the child to exist simply have an obligation to see that *someone* parents the child well.

The amendment addresses worries over gamete donation and assisted reproduction as well. Gamete donors, etc., if they are causes, will be obliged to ensure that the child is cared for, but will not have a duty to care for the child themselves—will not be parents. So, the amendment neutralises Brake's social-construction objection to a causal account. And, since a causal account can better meet the 'deadbeat dads' challenge, we ought to prefer the amended causal account.

However, there are still adjustments that need to be made to the causal account in order for it to both live up to its potential as a toothy theory of parenthood, and still dissolve Brake's worries. First, I will argue that in

order to retain the *prima facie* strength of the causal account, causally-generated 'obligation' (in Archard's terminology) must imply a *pro tanto* duty to parent. Second, I will argue that Archard's account should be modified to take account of the full conceptual and moral distinctness of the roles of causer of a new person, on the one hand; and parent of that person, on the other. I will present these arguments in the next section.

Finally, Archard's amended account does not speak to Brake's first worry over libellous causing: his account is agnostic with respect to how we characterise the connection between causing someone to exist and being obliged to them, neither accepting nor rejecting Brake's libellous causing account. In the final section of the paper, I will present an alternative account of how causing obliges, based on Kant's characterisation of parental obligation. On this alternative account, one is obliged through causing, not because the causing was libellous, but because the causing was an act of *choosing for*. On this account, the connection between causing and being obliged is simply that making choices on behalf of others obliges one to make it such that one has *chosen well*.

4. A Stronger Modification to the Causal Account

Archard's modified causal account of parenthood gets round Brake's worry about the social construction of parenthood. However, separating out parental obligation and parental responsibility might unacceptably weaken the causal account. The best reason to prefer a causal account, again, is that it has teeth: it can hold negligent parents to account. But if

parental obligation is too weak; and if the connection between obligation and responsibility is too tentative, it seems the causal account may lose those teeth.

In particular, it seems like we want to say that children have a *right* to be cared for. And it seems that, in order for saying so to mean anything, we need to say that children have this right *against someone*. That is, there needs to be some particular person (or persons) from whom the child has a right to care.⁸ If the causal account can provide no such person, then its strength is significantly diminished. On Archard's modified account, it seems like there is no such person. The people who caused the child to exist do not have a duty to care for the child; only to see that *someone* does.

⁸ Even if, as Brake's account appears to suppose, our obligations to our children outstrip their rights against us, it is still the case that they have rights against us if and only if we have *at least* corresponding obligations towards them. It is implausible to suppose that we all have, say, some general *duty of parent*, such that children might have a right *against society* to be parented by whoever is in a position to do so. So, if we cannot say that some particular person has an obligation to parent a child, it seems that we cannot say that the child has a right to be parented. For discussion of how children's rights match up with our obligations towards children, see O'Neill (1988).

We might want to say that having a duty to see that someone cares for the child can adequately motivate a rights claim on behalf of the child. We might say that the child's right is that she be parented; and the causer's obligation is to make it the case that she be parented. But on inspection, it is not so simple as this. According to Archard, parental obligation (the duty to make it the case that the child is parented), is fully separable from parental responsibility (the duty to care for the child). In the usual run of things, the child's right to be cared for or parented is met, and there is no worry over who the right is against. But one must simply imagine a situation in which *no one*, including the causal parent, wants to parent a given child in order to see the problem.

If the birth parent tries his best to find a parent for the child, but, because no one (including himself) is willing to volunteer, fails to find one, the causal parent seems to have fulfilled his duty on Archard's account—or anyway, the child has no strong claim against him. The causal parent has tried his best; no one is willing; and since the causal parent has obligation, but not responsibility, there is no reason to say that the causal parent, more so than anyone else, ought to care for the child if unwilling. And yet as we have said, the child's right to be cared for will have been violated. This shows that on Archard's account there is an asymmetry between the causal parent's obligation, and the child's right. That is, the child's right can't be paired with the causal parent's obligation. The right cannot be *against the birth parent* on this account. It is unclear, then, against whom we can say the child has a claim.

We might think to say that the child's right is against the (social) parent if and when one is acquired. But then, in a case where no willing parent is found we would be forced to say that the child has no right to be cared for. Surely, if any child has a right to be cared for, all children do, regardless of who is keen to parent them. So, if parental obligation is simply the duty to make sure someone cares for the child, and does not imply a duty to do the caring, we'll have to say that children do not have a right to be cared for. And this seems wrong.

In order for a modified causal account to retain the plausibility and theoretical strength that makes a causal account attractive in the first place, it appears that the connection between obligation and responsibility needs to be stronger. In particular, we need to say that causing a child to exist generates a *pro tanto* duty to parent. Parental obligation, then, will be to make it the case that the child is cared for, and this will imply a *pro tanto* duty to do the caring oneself.

On such an additionally-modified causal account, the child's primary right to be cared for will be against those people who caused her existence.⁹ If the right is met by others, then the right is met. If no other parents are available to the child, the causal parents are obliged to parent. However, if the right is not met—if the child is not cared for by anyone—then even if

⁹ The child will also presumably have rights against the social parents, if they are different to the causal parents.

the causal parent and the social parent are different people, the child will still have a claim against the causal parents, since regardless of what duties the social parents have in virtue of taking up the role, the child has a right against the causal parents.

This strengthened causal account may seem to lose the advantage meant to be gained by Archard's modification. It may seem to lose plausibility with respect to gamete donors, etc. If the child has a right against the causal parent, then it seems that children created with the use of donated gametes will have care rights against their willing biological progenitors: against the sperm or egg donor(s). After all, the donation of the gamete, when a donated gamete is used, is a crucial component in the causal chain that brought the child into being. It would seem, then, that gamete donors are moral parents. And this may seem too big a bullet to bite. However, upon inspection it will be found to be a small, and even intuitive bullet. A modification to the terminology brings this out.

Rather than attributing 'parental obligation' to 'causal parents', and 'parental responsibility' to 'social parents', we ought instead to say that 'Makers' (ie, those who caused the child to exist) have 'Maker obligation' towards the child, whereas 'Parents' have 'Parental obligation' (or 'parental responsibility') towards the child. In other words, we ought to use language that makes explicit the difference between someone who causes a child to exist, and someone who is a *parent*. These two moral roles are distinct, and saliently morally different.

In these terms, the implications for gamete donors are more palatable. Gamete donors are categorically not *parents*. But they are *makers*. The child created with their gamete has a right against them. Though gamete donors have a *pro tanto* obligation to parent the child in virtue of having caused the child to exist, this obligation will be, under normal circumstance of gamete donation, outdone by the rights and commitments of the gamete recipients. That the recipients of the donated gametes have instigated the creation of the child with the express intention of parenting it, coupled with the Maker obligation of those recipients, will mean that the gamete recipients are more strongly obliged (much more strongly, one suspects) to parent the child; and even, much more strongly obliged to ensure that the child is parented. However, it will still be the case that if the child who is created is not cared for, and her rights are violated, then the gamete donor's having brought about this state of affairs will be a rights violation: she or he will have failed in his/her obligation to the child. Gamete donors, then, will not count as parents on this account; but they will, along with the gamete recipients (and indeed perhaps the IVF doctors who have conceived the embryo) count as 'makers', and will have 'maker obligation'.

In some sense, this modification to Archard's proposal is simply linguistic—'maker' and 'parental' obligation rather than 'parental obligation' and 'parental responsibility'. But in another sense, it is substantive: if we conceptualise the obligations as attaching to two

distinct moral roles, we both dissolve Brake's worry over the social constructedness of parenthood, and retain both the moral-revisionary strength and intuitive plausibility of the causal account. We can say that causing generates an obligation to the child and that children have a right to be parented and that not all causers are parents.

5. Causing as Choosing For

I have argued that a modified causal account of parental obligation, on which 'makers' have a duty to ensure the care of the child they cause to exist, and a *pro tanto* obligation to parent the child, can meet the challenge set by Brake's social-construction objection to causal accounts, while still retaining the core attractiveness of a causal account. However, there remains a worry over how causing someone to exist can generate care obligations towards them.

Brake's claim is that Parental obligation cannot be construed as rectificatory, and thus the moral link between causing and being obliged is mysterious. In this section I will argue that the rectificatory conception of causal obligation is not the appropriate way to conceive of the connection between causing and being obliged. Rather, the obligation should be understood as moral constraints on making choices on others' behalf. I will first look at another instance of choosing for, in order to better pinpoint the concept and draw analogy. Then, I will discuss Kant's reflections on parental obligation as a formal invocation of this choosing for conception of causal obligation.

Choosing For

Imagine that Susan and I are dining in a restaurant, in advance of an important train journey. We have very little time, and will need to order straight away if we are to eat before it is time to go. While we wait for the waiter to arrive to take our order, Susan receives an urgent telephone call on her mobile. She excuses herself from the table. Predictably, the waiter appears to take our order just after Susan has gone. Since we are in a hurry, such that Susan will otherwise have no chance of eating, I decide to order a meal for Susan. She has not told me what she would like to eat. However, I do my best to make a good guess at what she would like.

When I order for Susan, I am choosing for her. In some sense, I am taking the decision away from her; but in the circumstances, this is probably not the right way to think of what I am doing. I am not acting paternalistically. I am not making the judgment that Susan is unfit to choose for herself. I am not choosing for Susan when I know that she would rather choose for herself. There simply is no opportunity for Susan to make the choice herself. So, it seems likely that my choosing for her is permissible.

However, what is important to notice is that *how* I choose for her will make the difference to whether my choosing for her is permissible. For example, if I know that Susan is allergic to shellfish, ordering the lobster is impermissible; if I know that she is a vegetarian, ordering the *foie gras*

is impermissible. My choosing for Susan is permissible *if I do it right*. That is, if I do my best to choose well for her. More generally, choosing for, under the right circumstances, is permissible only if the chooser does her best to choose well.

In most cases, choosing for others when one hasn't been asked to do so is at best not very nice, and at worst impermissibly paternalistic. For example, if Susan were sitting at the table when the waiter arrived, and I decide to choose for her despite her wishes, this would be wrong.

Likewise, if Susan had simply walked a few feet away from the table to admire the artwork on the wall, choosing for her, rather than calling her back to the table to order for herself would be impermissible. But given that there is no opportunity for Susan to choose for herself, and given that she will not otherwise eat, *choosing well* for her—or anyway, doing my best to choose well for her—is permissible.

My claim is that causing existence is an instance of (potentially morally permissible) choosing for. When I make it the case that someone comes into existence, I am choosing existence for them. Because there is no opportunity for a non-existent person to make her own choice, we can assume that this choosing for is, like choosing food for Susan, permissible *if I do my best to choose well*. In the restaurant example, choosing well begins and ends at the choosing. But in the case of causing someone to exit, whether the choice was a good one or not

depends on my on-going actions; it depends on what I do to make that chosen existence a good one once it is underway.

Whether someone has a good existence or not is, as Brake points out, heavily dependent upon circumstances out of the control of the chooser. So in that sense, the causal parent cannot singly make it the case that the choice was a good one. But likewise, in the case of the restaurant chooser, whether the meal is good depends heavily on what happens in the kitchen. Still, the restaurant chooser is obliged to do her best insofar as her actions can make the choice good—and so is the causal parent (the maker), because choosing for someone obliges one thusly. There is nothing rectificatory in it; it is just what morally permissible choosing for requires.

Kant's causal account of parental obligation seems to rest on just such an understanding of causal obligation. In the *Metaphysics of Morals*, he writes that

... it is a quite correct and even necessary Idea to regard the act of procreation as one by which we have brought a person into the world without his consent and on our own initiative, for which deed the parents incur an obligation to make the child content with his condition so far as they can. (§28)

So, what is key, then, is not that one has caused harm, or that one has caused the potential for harm; but rather, that one has acted without the child's consent. The makers of the child choose, for the child, that it exists. And this obliges them to make existence, as best they can, a good choice.

Summary

We ought to prefer a causal account of parental obligation—but we must do it in the right way. Causal accounts are strong accounts: on the appropriate conceptualisation of causing existence (choosing for), the moral force of causing is clear, easily understood, and generalizable; choosing for generates obligation. However, simple a causal account seems to be tethered to contingent social facts. It cannot account for the moral role of gamete donors; for biological parents who are not taken to be parents in their 'home' societies; for non-hetero-nuclear families; and so on.

On the correct account of parental obligation, I have argued, causing a child to exist generates maker obligation, and does so because causing a child to exist is an instance of morally weighty choosing for. Maker obligation is the obligation to do one's best to make the child's existence a good one, and implies a *pro tanto* obligation to take on the role of parent. Parents, on this account, have parental obligation: the duty to actively care for the child. Parental obligation is fulfilled by adequately parenting the child. Maker obligation is fulfilled by making it the case that

the child is adequately parented, either by so parenting, or by securing parents for the child. This account, then, retains the strength and plausibility of the simple causal account, while dissolving Brake's reasons for rejecting such an account.

In the next chapter, I will expand on the ideas I have developed in this chapter. I will explore what this 'bifurcated' causal account of parental obligation implies about adoption, and how this bears on the abortion debate. Along the way, I will discuss how we ought to understand the metaphysical concept of a *cause* in this context.

ADOPTION IS NOT ABORTION-LITE

Introduction*

Understood as a substantive claim about procreative options, the claim “she could give the baby up for adoption instead” is false in virtually all contexts.¹ That is, the claim that adoption is a suitable alternative to abortion—one that does what one primarily seeks to do in aborting—is false, and not (simply) because one continues to be pregnant. “She could give the baby up for adoption instead” is false even setting aside the physicality of pregnancy. Adoption simply cannot function as a stand-in for abortion.

On the most plausible account of parental obligation—what I’ll call a bifurcated causal account of parental obligation—parental responsibility cannot be avoided by giving a child up for adoption. Because of this, the

*A version of this chapter appears in the *Journal of Applied Philosophy* (2012) vol. 29, iss. 1, pp. 63-78, under the same title.

¹ For example, Hursthouse (1987) writes that “For if what she wants is not to increase her family...then those wants could be satisfied by continuing with the pregnancy and having the baby adopted” (210); and later “Nevertheless, there may be something selfish and self-indulgent in taking abortion as the easy way out of avoiding either the guilt of adoption or the responsibility of bringing up the child oneself. It may also be simply thoughtless—if the woman does not even get round to considering adoption as a possibility—or cowardly.” (212)

claim that adoption is always available as a remedy to parenthood, thus focusing the abortion debate on the physicality of pregnancy and presenting abortion as the morally-murkier of two options, is a false one. Put simply, there is no way other than abortion to have an abortion.

In this chapter, I begin by discussing the three most plausible varieties of account of parental obligation: biological accounts; consent accounts; and causal accounts. I will argue that a causal account is the most successful of the three. Causal accounts suffer various weaknesses that can be remedied by amending them to reflect the *bifurcated* nature of parenthood: a birth parent who raises her own child is both a carer, and a progenitor. These two roles are separable, and each is morally salient. Because in giving a child up for adoption one ceases to be the child's carer but does not cease to be the child's progenitor; and because causing a child to exist generates obligation towards that child; birth parents are, in an important sense, always parents come what may. This is not a defence of abortion, but a clarification of one step routinely made in both defences of and arguments against the permissibility of abortion.

1. What Grounds Parenthood?

I will speak about parental obligation as a role obligation. Role obligations are moral obligations that attach to individuals indirectly: they attach directly to *roles*, and indirectly to whatever individuals fulfil those roles. If ϕ is a role obligation, then I am obliged to ϕ in virtue of being in some role R. It is then, in some easy sense, not I who am obliged to ϕ , but the R,

whoever she or he may be. Only in virtue of being the R do I thereby have (or acquire) an obligation to ϕ .

When we talk about parental obligations as role obligations, we mean simply that they are those obligations that attach to the role of parent², and the person who has parental obligations is the relevant role-filler. This means, then, that what we want from a theory of parenthood, broadly speaking, is a way of knowing who fulfils the role 'Parent'. The practical importance of getting this account right is that it will tell us (a) who has parental obligations towards a given child; and (b) who has parental rights with respect to a given child.

For the purpose of this essay, parental obligations are the main concern, though many philosophers have focused on answering the question of who fills this role with an eye to grounding parental rights. The focus makes a difference: if one is concerned with obligations, more so than with rights, various theories of parenthood show themselves to be implausible from the outset. For example, some philosophers have argued for proprietary theories of parenthood, attempting to ground the claim that I am the parent by arguing for my *ownership* of the child—maybe à la Locke, appealing to the *labour* I put into producing the child;

² N.B. my assumption is that 'Mother' and 'Father' are not distinct roles, just gendered ways of calling the role Parent.

or a la Thomson, appealing to my ownership of my body, and thereby of my genes and genetic products.³

A proprietary theory of parenthood might succeed in explaining parental rights. After all, to own a thing is just to have a unique and robust right to it. But it's clear that such an account will do little to explain parental obligation: if I own my car, it's clearer that I have a right to cut it in half than that I have an obligation to care for it. Michael Austin gives a thorough discussion of these sorts of accounts in his *Conceptions of Parenthood*, and points out, additionally, that children are probably not the sorts of entities that can be owned.⁴ I don't find his argument for the moral status of babies particularly compelling; but it seems quite obvious that *persons* can't be owned, and usually, babies turn into persons—and persons with parents, at that. So, even if babies can be owned, children probably can't be. But again, if they could, this still wouldn't tell us why we have to care for them.

With the focus squarely on grounding parental obligations, three basic sorts of accounts stand out as plausible: biological accounts, consent accounts, and causal accounts. Biological accounts are simply those

³ Aristotle, in the *Nicomachean Ethics*, tells us that one's child is 'one's own...like a part of one's self' (like one's wife and one's chattels); book V, 1134b. See Narveson (1988); or Gheaus (2011) for a labour-based proprietary account. See Page (1984) for a biological-proprietary account.

⁴ Austin (2007)

accounts that ground parenthood in biology: the parents are the ones who share the DNA with the child. As was said earlier, one variant of a biological account is a proprietary biological account: I am the parent because I *own* the child because he is made with my DNA and I own my DNA. This sort of account has already been shown to be implausible. But a biological account needn't be proprietary. One could simply say that the parent-child relationship just is a biological one, and that in virtue of that biological connectedness, people who stand in such a relation are obliged and have rights.

The account is intuitively plausible, since the biological connection is concrete, testable, and unique. But of course, many parents are not the progenitors of their children. A theory of parenthood that fundamentally excludes non-genetic parents is simply unacceptable. Further, it's not clear why a biological fact should imply a moral one; how a chemical configuration could generate an ethical obligation. Maybe it could, but lots more would need to be said. Michael Austin points out, for example, that if the genetic kinship between parent and child is what generates parental obligations, then twins ought to be each other's parents, since their genetic kinship is even stronger than that between genetic parent and child. Biology, then, seems an implausible way to ground parenthood.

According to a voluntarist or consent account, one takes on the role of Parent by consenting to do so. Once one has taken up the role, one is thereby obliged to care for the child. This sort of account has the

advantage of being able to explain non-biological parents' obligations. More importantly, it actually works as a grounding for obligations: in general, consenting to take up a set of duties obliges you. There is nothing mysterious about the connection between the theory of parenthood, on the one hand, and parental obligation, on the other. Judith Thomson gives just such an account in her famous defence of abortion:

Surely we do not have any such "special responsibility" for a person unless we have assumed it, explicitly or implicitly. If a set of parents do not try to prevent pregnancy, do not obtain an abortion, and then at the time of birth of the child do not put it out for adoption, but rather take it home with them, then they have assumed responsibility for it, they have given it rights, and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for it.⁵

On Thomson's account, tacit consent is sufficient. One consents to Parent, in some sense, simply by parenting. The grounds on which we can claim that Parents are obliged to care, then, are readily apparent. They are obliged to care because they have agreed to do so. However, consent accounts are not trouble-free. In particular, one of the most important practical applications of a theory of parenthood is that it gives teeth to claims of parental wrongdoing. It should, exactly, hold to account the *reluctant* parent—so-called 'dead-beat dads', for example.

⁵ Thomson (1971): 65.

Elizabeth Brake argues compellingly, and I think rightly, that if consent grounds parental obligation, then unintentional fathers have no parental obligation.⁶ Brake accepts, and indeed argues for the claim that consent grounds parental obligation—because she takes the consent account of Parenthood as the grounding for a woman’s right to decline to gestate—and takes it as proof for the claim that unintentional fathers have no parental obligation.

Brake is arguing that unintentional fathers ought not be compelled to do things like pay child support. Her argument is simple and valid. She appeals to what is sometimes called the parity principle: ‘that being a father does not make an individual more of a parent than being a mother, and *vice versa*’.⁷ Applying this principle, Brake concludes that if women can choose (where women’s choice is grounded in consent), men can too. But looking at Brake’s argument outside of the context of the abortion debate (and in particular, outside the context of a Thomson-style defence of abortion), her argument is a neat *reductio* of consent accounts of parenthood: any account of parenthood that fails to generate a claim of

⁶ Brake (2005)

⁷ Austin (2007): 24. For an account amenable to the suggestion that gestation is primary (and thus, dismissive of the parity principle) see, for example, Gheaus (2011), or Wieland (2011).

Parental obligation for absent fathers is not an account we ought to accept.⁸

This leaves us with a causal account. On a causal account, one occupies the role of parent in virtue of having caused the child in question to exist. This appears to have been Kant's favoured theory of parenthood.

So from a practical point of view it is a quite correct and even necessary idea to regard the act of procreation as one by which we have brought a person into the world without his consent and on our own initiative, for which deed the parents incur an obligation to make the child content with his condition so far as they can.⁹

There is a worry regarding the exact sort of causation this kind of account needs,¹⁰ and I'll address that worry briefly in the next section. But put

⁸Brake is exactly right that trying to salvage the consent view by appeal to something like tacit consent 'makes a mockery of the notion of consent': I no more consent to procreation in consenting to sex than I consent to being knocked down by a bus in consenting to cross the road (60). Consent seems to be neither necessary nor sufficient for parenthood. It is not necessary, because clearly there are some parents who didn't choose to be so. It is not sufficient, because simply consenting to parent some child does not, on its own, make you that child's parent.

⁹ Kant (1991): §28.

¹⁰ See, for example, Blustein (1997); or Nelson (1991).

simply, the idea is that a parent is someone who causes a new person to exist. The explanation for parental obligation, then, is just that the parent is the source of this child's vulnerability, insofar as, had it not been for the parent's actions, the child would not exist, and would therefore not be susceptible to harm.¹¹ A causal account has the excellent advantage of being a coherent account of obligation: it's a bit like ordinary liability; it fits with many other every-day intuitions we have about obligation and responsibility.

Further, with its built-in emphasis on parental obligation, rather than rights, it gets us well out of the range of proprietary accounts. Children are certainly not, on this view, things that we own. Finally, causal accounts are more inclusive than biological accounts. Lots of people who we take to be parents, but who are not genetic parents, will count. For

¹¹ This relies crucially on the intuition that things that don't exist cannot be harmed.

In addition, I should point out that many philosophers put great emphasis on the fact that the being who is brought into existence is brought into existence 'vulnerable'. This opens up conceptual space for the claim that, even if I am responsible for the existence of a child, I am not thereby responsible for its being *vulnerable*, and so have no duty, outside of what I consent to, to attend to its vulnerability. But humans—especially children—*just are* vulnerable creatures. You can't make a human without making a vulnerable creature, just like you can't make a chair without making a piece of furniture.

example, fathers who have children via sperm donation will be causes of their children's existence, and so will be parents on this view.¹² And furthering both the inclusivity and explanatory power of the account, causal accounts cast unwitting and unwilling parents as parents.

Causal theories of parenthood are not, however, perfect. In section III, I'll be arguing for a bifurcated causal account to deal with some of its more worrying imperfections. First, adoptive parents do not cause their children to exist, yet still seem to be parents with parental obligations. Second, while I've just mentioned causal theories' inclusivity as a virtue, it may also be a vice: what about the doctor who provides IVF treatment? She seems to have caused a person to exist; is she the IVF baby's parent? This seems wrong. Below, and further in section V, I will discuss the worry at the centre of Brake's (and Thomson's) rejection of a causal account: that a causal account implies a duty to gestate. In section V, I will argue that this implication is only apparent, and depends on other judgments that remain up for grabs in the theory.¹³

¹² A causal account will also include birth mothers who are not genetic progenitors (i.e., mothers who have babies via egg donation).

Confusingly, some 'biological' accounts do not include these mothers, though they are clearly biological mothers.

¹³ Judgments about the moral status of the fetus; judgments about who/what can be harmed by death; judgments about what sorts of lives are unfortunate.

Brake raises two further worries about causal theories that seem worth exploring before going on to talk about my bifurcated causal account. First, she worries that causal accounts conflate causal responsibility with moral responsibility.¹⁴ She worries that standard examples of moral responsibility usually involve someone doing something they oughtn't, or not doing something that they ought to have done. She gives the example of not shovelling the snow from the footpath in front of my house, such that you, innocent pedestrian, fall down on my property and injure yourself. In this case, Brake reckons, I am responsible for your injury because I failed to do something I ought (shovel the snow); there was something morally amiss with the behaviour that constituted the causing. If there had been a blizzard, and I was totally unable to keep the footpath clear, Brake reckons, we would not say that I was morally responsible for your injury. Likewise, the worry goes, since I have done nothing wrong in having sex (or otherwise procreating) it is unclear in what sense I am morally responsible for my child's suffering, if he suffers.

JL Nelson defends a causal theory of parenthood. Responding to a worry like Brake's, he writes that

A prudent driver who, despite due care, strikes a pedestrian bears some special responsibility for doing what can be done to succour the accident victim; saying "but I was extremely careful" may

¹⁴(2005): 59-60.

reduce or even eliminate our tendency to blame the driver, but the responsibility to help out remains.¹⁵

Bernard Williams, in 'Moral Luck', discussing a nearly identical example, writes that

we feel sorry for the driver, but that sentiment co-exists with, indeed presupposes, that there is something special about his relation to this happening, something which cannot merely be eliminated by the consideration that it was not his fault.¹⁶

In Brake's worry and Nelson's reply, the conceptual divide between blameworthiness and responsibility becomes salient. The careful driver is to blame for the pedestrian's predicament in a way that the blizzard-bound homeowner is not: in no sense is the blizzard-bound homeowner responsible for a blizzard; the driver, on the other hand, might've stayed home. Like the driver, and unlike the homeowner, it may be quite right that the unwitting parent is not *to blame* for the child's vulnerability, such that moral condemnation would be appropriate, but it is still the case that he or she is responsible for that vulnerability in a way that obliges.

Further, as Kant pointed out, the child—like the pedestrian in both of these examples—is not a consenting party to the event. This is not a

¹⁵ (1991): 55.

¹⁶ Williams (1981)

throw-away fact: when we take decisions on behalf of others, and especially when we do not or can not even consider what decision would be consistent with their preferences, it means something, morally speaking. It commits us to actively working towards a situation in which the decision was in the interest of the person for whom we made it. In the case of bringing children into existence, this point is especially important, since, when we bring a child into existence, we don't simply choose some sort of life or other for her; we choose the very fact *of her*. Our choice, on behalf of the child, is global in a way that no other choice can be.

Brake's second worry is about fetuses: it seems as though causal accounts of parental obligation imply that pregnant women have a duty to gestate. Since the woman is responsible for the foetus's existence, and since without gestation the foetus will die, it appears that the causally-responsible pregnant woman must gestate—that is, must not have an abortion. As has been mentioned, a duty to gestate does not, in fact, follow from a causal account of parenthood (and I'll defend this claim in section 5). But it's easy to see how one might take it to. Given, then, that we want to reject a duty to gestate, it seems that we must likewise reject the causal account.

If we reject a causal account in favour of a consent account, then the standard moral picture of adoption emerges: when a parent gives her child up for adoption, she ceases to be its parent, and thus ceases to have parental obligation. As Brake rightly notes, birth mothers may

choose to give their babies up for adoption, but unwilling fathers, on the other hand, cannot do so. That is, it appears that mothers, but not fathers, are consensual parents. And this seems wrong. Brake then presents us with what is surely a true biconditional: female progenitors can decline to care for their offspring iff male progenitors can decline to care for their offspring. From this, Brake concludes that fathers can decline.

In the next section, I'll briefly take a closer look at causation. After that, I will explain my bifurcated causal account of parental obligation, and on grounds of it, claim that neither mothers nor fathers can decline to be obliged to their offspring.¹⁷ Since a causal account does not imply a duty to gestate, there is no reason to accept the counterintuitive proposal that unwitting fathers have no obligation towards their offspring; and strong reason to accept the claim that birth mothers cannot decline to be obliged to their offspring.

2. What sort of causation?

Of the three general forms that a theory of parenthood could take, a causal theory seems to do the best job of explaining parental obligation, and of gelling with our intuitions about who is and isn't a parent; and has the most potential as a driver of moral progress. However, there are still

¹⁷ I am, of course, using 'mothers' and 'fathers' very loosely here. I ought to say 'female progenitors' and 'male progenitors', or possibly 'birth mothers' and 'birth fathers'.

problems with such an account. In particular, it seems to imply that adoptive parents aren't parents (since they don't cause their children to exist); and it seems to imply that other people—for example, IVF doctors, gamete donors, maybe parents' matchmakers, etc.—are parents (since they do seem to play a causal role in the child's coming into existence). So, we might say more generally that there's an issue with the causal account's permissiveness. Specifying what sort of causation we have in mind will get us part of the way towards dealing with this issue; bifurcation will do the rest.

In 'Procreation and Parental Responsibility', Jeffrey Blustein worries that picking out the wrong sort of causation will result in a 'tremendous proliferation in the number of persons who could be considered the child's "parents".'¹⁸ He notes that there seem to be at least two things we might mean when we talk about something's being a cause: Lewisian-style counterfactual causation, and so-called INUS causation (Insufficient Necessary link in an Unnecessary Sufficient causal chain).¹⁹ It's not clear that either of these gets it just right; and I take it there are other

¹⁸ Blustein (1997): 82.

¹⁹ Blustein actually looks at three sorts of causation: counterfactual, INUS, and 'proximate cause'. But listing proximate cause as a third sort of cause seems mistaken to me: surely this whole exercise of finding the right sort of causation just is an exercise in sorting out what we take to be the proximate cause. The term 'INUS', as well as the standard formulation, comes from Mackie (1965).

conceptions of what it is to be a cause out there. But as a first step, we can say that what we want is more like an INUS condition than a counterfactual cause.

On David Lewis's account of counterfactual (or 'but for') causation—and I take his to be the standard—an event *c* caused event *e* iff for any possible world in which *c* and not *e*, there is some closer possible world in which *c* and *e*.²⁰ It's difficult to know what this sort of account would mean for a causal account of parental responsibility. But on the face of it, rather than being too permissive, it will probably be too restrictive. Most acts conducive to bringing a sperm and an egg together *do not* result in the existence of a new person. So, for any individual, there are close possible worlds in which their parents, if you will, did what they did, and the individual does not exist. Their having done it, then, won't count as a counterfactual cause of the child's coming into existence. So, if counterfactual causation were the grounding for parenthood, it could mean that, for most of us, we're wrong about who our parents are.

Perhaps gestational mothers would be parents: after all, most foetuses (these days, anyway) who are gestated go on to become persons—so, most acts of gestation do result in a new person's coming into existence. But this is obviously not enough.²¹ As a very minimal requirement, we

²⁰ Lewis (1973). Lewis's account is more complex than I have presented it, but not in ways that bear essentially on the present topic.

²¹ Blustein actually looks at three sorts of causation: counterfactual, INUS, and 'proximate cause'. But listing proximate cause as a third sort of

need our theory to pick out fathers as parents.²² As Bayne and Kolers point out, ‘it seems that including the gestational and genetic parents is a litmus test of any account of the right sort of causal linkage.’²³ So counterfactual causation might not bring about a tremendous proliferation of parents, but it seems to go too far in the opposite direction.

INUS conditions are more promising. Something’s being an INUS condition for some event E means that that event was a necessary part of the conditions that *in fact* occurred, and that are jointly sufficient for E. So for example, lightning may be the cause of the house’s catching fire, even though the house might’ve caught fire otherwise, or might not have caught fire if other facts were different, because, given how things actually went—the lightning struck the area just so, the timber frame was very dry, etc.—the lightning was a necessary link in the actual, sufficient chain of events.

cause seems mistaken to me: surely this whole exercise of finding the right sort of causation just is an exercise in sorting out what we take to be the proximate cause.

²² See, for example, Austin (2007): 24. Austin calls this ‘the parity principle’: ‘that being a father does not make an individual more of a parent than being a mother, and *vice versa*’. For an account amenable to the suggestion that gestation is primary (and thus, dismissive of the parity principle) see, for example, Gheaus (2011).

²³ Bayne and Kolers (2003)

To begin, every necessary condition is going to count as an INUS condition, because if it happens in every possible world in which E, then it's a constituent in every set of conditions sufficient for E. (Mackie tells us that 'A caused B' means, then, that A is *at least* an INUS condition for B. (247)) So, in the usual circumstance, birth mother and father are going to count as causes, since mother and father are what made this egg meet with this sperm, and that's having been the case is indeed a necessary condition. In addition, if anyone else should happen to have brought this sperm together with this egg—say someone steals gametes and makes a baby—they will also count, as their actions are at least INUS conditions. But further, if, say, the particular relevant embryo is such that it couldn't have survived without a particular sort of medical treatment, and some doctor provides this, then the doctor's actions will be INUS conditions. And even, if I introduce two friends, and they procreate together, it seems like I might be a parent to their baby, since my having introduced the parents will, it seems, be an INUS condition on the child's having come to be.

But INUS—as Mackie formulated it—is not quite so permissive as it may at first appear. Mackie specified that the sufficient sets must be 'minimal specifications'. That is, they must specify all and only those events that need to be specified in order for the outcome to be implied by the set.²⁴ In

²⁴ The permissiveness worry was voiced about Mackie's conception of causation more broadly in Denise (1984). Denise worried that, according to Mackie's formalisation of INUS, irrelevant background facts would

order to articulate the set that leads to the birth of a baby, we normally don't have to say more than what their parents did after they met. That is, their making a baby entails their having met somehow or other; so we needn't specify anything about how that meeting happened. The minimal set, in standard cases of procreation, will probably only contain the fact that *this egg* fused with *this sperm* and was gestated (since all the details about how exactly it happened will be, themselves, unnecessary; only the fact that *it did happen somehow* will be necessary in order to imply that this baby came to be). So we can, anyway, rule out matchmakers; likewise, midwives who deliver babies, doctors who care for pregnant women, and so on. INUS, then, will pick out biological parents as causes; it will also pick out anyone else whose actions are such that they will be included in a minimal specification for the child's having come into existence: IVF doctors, for example, as well as gamete donors. In section V, I'll discuss how a bifurcated causal account can render these sorts of inclusions intuitively acceptable.

3. A Bifurcated Causal Account

INUS conditions are still too permissive. In particular, gamete donors seem to count as parents, if INUS is what we mean by 'cause', since their having provided the genetic material used in the conception of the embryo counts as a cause of the child's coming to exist. INUS—and

count as causes. For a reply to the worry (discussion of minimal specification) see Dale (1984).

indeed, any form of causation—is also still too restrictive: adoptive parents aren't counted as parents. My key claim is that this is not a problem with causal accounts of parental responsibility: this is a problem with our use of the title 'parent'. In particular, there are two very distinct roles we can and often do mean to pick out when we say 'parent'. On the one hand, 'parent' can mean progenitor: a parent is the maker of a baby. On the other hand, 'parent' can mean carer: a parent stands in a unique and invaluable social, personal, love relation to the child. There are two distinct moral roles that a biological parent who raises her child fulfils: the social role of parent, and the metaphysical role of—as I shall call it—maker.

On a bifurcated causal account, in standard biological-familial circumstances, one parents because one is obliged to parent. One is obliged to parent in virtue of being the child's maker. My claim is that what we usually think of as parental obligation is, indeed, maker obligation. That is, paradigm parents are obliged in virtue of being in the role of maker, rather than in virtue of being in the role of parent. Being in the role of parent does oblige one to do important and valuable things. But in standard instances, the crucial aspect of this most central of special obligations is that it's not just that one is obliged *qua* parent: it is, indeed, that one is obliged *to be a parent*; to stand in the role of parent. The obligation is not simply to do what a parent must do, so long as one is the parent; it is, rather, to be a parent.

However, it is implausibly narrow to suppose that the maker obligation is simply 'to be the parent'. People who willingly give over the role of parent to others are not usually shirking a duty. I suspect that the average birth parent who gives her child up for adoption is doing something loving and caring, and she is doing something that she judges best with respect to her obligation. That is, she is doing her best to fulfill her obligation to her child in giving the child up for adoption. It is a difficult task, then, to specify precisely what this obligation is. As an initial attempt, we might say that the obligation is something like 'to do one's best to make existence not a misfortune for the child'. But perhaps Kant's formulation is better: to make the child content with her condition so far as one can. In most cases, then, the best way to fulfil this obligation will be to take on the role of parent, and to fulfil one's obligations therein. It seems reasonable to suppose, then, that the maker obligation implies a *prima facie* obligation to take on the role of parent, though this obligation is overridden when parenting the child will not best fulfil the obligation.

So, on this view, someone who causes a child to exist will thereby—in so causing—become the maker of that child. The maker of a child has an obligation to 'make the child content with her condition so far as one can'. One who fulfils the role of maker is not automatically a parent, but is automatically obliged to the child, in the big and life-changing ways that we pre-theoretically think parents are: the child's wellbeing is and will always be the maker's concern.

It is consistent with this view that parents who are not also makers are still parents, and are still weightily obliged to their children. It is not the case that all and only makers are parents; it is the case that all and only makers have a *prima facie* obligation to parent. Those who take up the role of parent, whether out of obligation, or out of desire or big-heartedness or otherwise, are obliged to care for their children because they have taken on that role.

4. Maker Obligation

On a bifurcated causal account of parenthood, those who cause a child to exist are thereby the makers of that child. In virtue of fulfilling this role, they are obliged to attend to the wellbeing of the child. Of course, not all makers are parents. Some makers never meet their children. Some makers seek out adoptive parents for the benefit of the child to whom they are obliged. Some makers fail so completely in fulfilling their obligations to the child that one could hardly call them parents at all, even if no other parent comes into the picture. Still, if one is a maker, one is obliged to the child one has made.

In order to make the contours of the maker obligation clear, it is useful to talk again about role obligations. The important thing to notice about role obligations and their attending roles is the ways in which role obligations can be done away with --the ways in which one can cease to be so obliged. There appear to be two ways: one can discharge the obligation, or one can exit the role. To take a professional obligation as an example,

suppose that I am Susan's research supervisor. I am obliged, as her supervisor, to supervise her thesis. If I want to cease to be so obliged, I can either supervise her thesis to completion (after which time I no longer have a thesis-supervisory obligation towards Susan); or I can cease to be her supervisor. Even if I arrange for a colleague to read and give feedback on all of Susan's work, I still have this obligation if I am still her supervisor. So, while Susan is writing her thesis, the only way in which I could cease to be obliged to supervise her thesis is to quit being her supervisor.

For the maker obligation, the implication should be clear. There is no way to quit being a maker. This, then, explains why we feel that absent fathers are obliged to their offspring, even if we couldn't imagine using words like 'dad' to describe them: it's true, they are not parents; but they are makers, and in virtue of this, their offspring's wellbeing is their business. Being the maker of a child is what obliges one to care for this child. It is what makes a particular person irrevocably morally bound to a particular child, in a way that no other persons (save other makers) are so bound.

One might object that, once one becomes a parent to a child—whether through birth or adoption—one is likewise irrevocably bound. Surely parents are obliged to continue to parent, come what may. But the moral facts are subtly different in the case of parenting. If one abandons one's role as parent, one has done something, probably, abominable. What could be more horrible? What could be more contrary to duty? All the

same, *one can abandon the role*. Not so with makers. There simply is no way to not be a maker any more, so long as that child lives.

One might object, further, that though maker obligation is life-long, it is minimal: after all, if a child is adopted, and others parent her, then the maker will in practice have very little to do. The parent, of course, has all of the hard work. In practice, parents are the real champions. It is parents who do the every-day tasks, and the every-day worrying, and the life-changing that is necessary to secure a good existence for a child. But this simply does not mean that the maker has her obligation done and dusted if she does not parent.

This is most clear in the case of unforeseen destitution. Imagine a woman gives her baby up for adoption. Her circumstances are such that she is unable to parent effectively. She takes her obligation to the baby very seriously, and as such, does her utmost to secure a good future for her child, by finding good adoptive parents who are eager to parent her. And, were it not for bad luck—bad luck to which we are all vulnerable—the maker's (ie, the 'birth mother's) obligation would have been met.

However, the adoptive family are subject to misfortune. Their financial resources are devastated by an act of god. The circumstances for the adoptive family, and thus for the child, become dire.

In this case, according to what I have said is the most plausible theory of parenthood, the makers of the child are obliged to assist. It simply does

not do to say 'but I'm not the parent anymore'. To do so would be monstrous. And not in a vicious-but-not-really-contrary-to-duty way; it would be exactly contrary to duty. The maker and the adoptive parent(s) have made an agreement with each other. The maker has signed over day-to-day duties and rights to the adoptive parent(s). The adoptive parent(s) has taken it upon him/herself to be the parent to this child. But the adults agreeing amongst themselves simply cannot undo the maker's obligation *to the child* in virtue of being her maker.²⁵

One can think of many scenarios like this: one's birth child may need a kidney; one's birth child may be subject to abuse in her home; one's birth child may simply be unhappy. These troubles are the maker's concern, and they will always be. If a child is adopted out, with the best of intentions on the part of the makers, and with all the best chances of a good life, and tragedy befalls the child unbeknownst to the makers, we might be reserved in blaming them; we might say something like 'they did their best'; but it would still constitute a failure to fulfil their obligation to the child. It may be true that, in the normal course of things, the time, energy and care that a parent is obliged to expend on a child is greater than that of a mere maker, but it is still the case that the maker's

²⁵ Imagine that I owe you a large sum of money. My friend Bill agrees to repay it you. This is just fine, so long as Bill pays. But if Bill fails to pay, it does not do for me to say 'I don't owe you anything; Bill and I had an agreement'. That Bill and I agreed a course of action does not change what is owed between you and me.

obligations are real, substantial, irrevocable, and prior to 'parental' obligation.

5. Who is a Maker, and to what are they obliged

I said in sections II and III that, if we take INUS conditions to be constitutive of 'causes' for the purpose of spelling out parenthood, then some people we wouldn't normally think of as parents turn out to be makers. In particular, gamete donors will be makers. As well, doctors who assist in reproduction (administering IVF treatment, IUI, and so on) will also count as makers. It is an advantage, then, of a bifurcated account that it can make sense of intuitions regarding obligation or responsibility on the part of gamete donors, for example, without wrongly classifying such people as parents.

In 'The Unbearable Lightness of Bringing into Being', David Benatar argues that 'the overwhelming majority of gamete donors are amongst those who treat decisions about bringing children into existence too lightly'.²⁶ Genetic parents, Benatar argues, have a 'presumptive responsibility' for rearing their genetic children—for 'attend[ing] to the details' of the offspring's nurturing and flourishing. The implication is that, mostly, gamete donation is immoral.

On a simple causal account of parental responsibility, it is hard to see how this conclusion could be avoided. After all, parents are obliged to

²⁶ Benatar (1999)

nurture their children. But on a bifurcated account, the picture is much more plausible: gamete donors are not parents, but they are makers. As such, they have an obligation towards the resultant children; they are obliged to see to it that the child's existence is not a misfortune for her. So, Benatar is right: one mustn't be 'unbearably light' about gamete donation. But there is no reason to think that a child suitably parented—even by persons other than their makers—cannot have a good life.²⁷ The situation of the gamete donor will be weighty, but not doomed to be immoral. And a similar story can be told for IVF doctors and the like.

Key to Brake's argument, discussed above, was the worry that certain accounts of parental obligation would imply a duty on the part of the pregnant woman to gestate. A bifurcated causal account does not, on its own, imply a duty to gestate—though it is compatible with such a duty. It's crucial to this account that the thing being caused is a morally considerable thing. Only in creating a morally considerable entity could we plausibly be said to generate obligations towards the thing created in so creating. As Brake notes, if the foetus is not a morally considerable entity, then the pregnant woman has no duty to gestate, regardless of what theory of parenthood we adopt. But, even supposing that the foetus

²⁷ The heft of Benatar's argument, to my mind, rests on mysterious empirical claims, like 'Child-rearing can be, and regularly is, done badly. There are so many ways to go wrong' (176). I suspect this is moral panic, rather than good reasoning. Contrast with Bayne (2003).

is morally considerable, it is still an open question whether a pregnant woman has a duty to gestate on my account.

If foetuses are morally considerable, it will follow from a bifurcated causal account of parenthood that the pregnant woman is obliged towards the foetus in the same way that she is obliged towards any child that she causes to exist: she is obliged to make the foetus's existence not a misfortune. But from this, a duty to gestate does not cleanly follow, because after all, we don't have a duty to gestate our (non-foetal) children. There are plainly differences in what constitutes good care towards children, on the one hand, and foetuses on the other. It stands to reason, then, that there will also be differences in what constitutes misfortune for each. So while it may be plausible to suppose that keeping a child alive is a key component to making that child's existence non-bad, it does not follow that this will be so for a (morally considerable) foetus.

A brief and trouble-free existence (as one would have, were one's existence but a short stint in a womb) might actually be highly desirable.

Arguably, one needs something like self-awareness, or awareness of one's persistence through time, in order to be harmed by death.

Foetuses, even morally considerable ones, do not have this. On the other hand, it may be that death is a misfortune to a morally considerable foetus—perhaps because they have a future like ours.²⁸ Quite simply, a

²⁸ Marquis (1989)

causal account of parental obligation does not preclude a duty to gestate, but also does not imply one.

6. Little's Intimate Duties View

My bifurcated account owes much to the work of Margaret Little. Like myself, Little places importance on recognising, in her terminology, the different 'layers' of parenthood. She writes that 'parenthood' can mean a 'biological, legal, but also personal relationship—and that crucially, different moral responsibilities attach to different layers'.²⁹ Further, Little observes that in addition to facts about how we are obliged *qua* parent, there are also facts about when we are obliged to enter into relationships that generate obligation, and about when it is permissible to exit.³⁰ I agree with Little's observation that there are obligations to enter into, or exit from or decline roles, as well as her insight that 'parent' can mean many things. However, I think that Little is wrong about what making obliges one to.

According to Little, the lived, personal parental relationship is the one that generates substantive duties of care. Biological parenthood, on the other hand, obliges one, according to Little, only to 'be open' to entering into a personal relationship. I think this is a mistake. My claim is that (now in my terminology), makerhood (which, notice, is not co-extensive with biological parenthood) is the morally primary relationship. It brings with it

²⁹ Little (1999)

³⁰ (1999): 307.

the heavy obligation. And more than being obliged to 'be open' to parenthood, makers have a *prima facie* obligation to Parent.

Little's starting point is the observation that pregnancy is unlike any other interpersonal moral situation: the intertwinement, 'enmeshment' of the two individuals involved (the foetus, and the pregnant woman; if one can even call them 'individuals') is so distinctly unlike any other circumstance in human life, that much of the discussion surrounding abortion—reliant as it is on analogy with other moral situations—is deeply flawed. Within this context, Little examines the role conceptions of motherhood, and intuitions about parental obligation play in forming our beliefs about abortion.

Little argues that gestation is a form of physical intimacy, somewhat analogous in its moral contours to sex. Further, she points out that there is more than one role being fulfilled by a birth mother who raises her child. Finally, she argues that being the biological progenitor of a foetus does not oblige one to be intimately entwined with the foetus: being the biological progenitor is not the same as being the mother, so it does not imply a duty to care. Little writes that

We need to understand what makes someone a parent in the thickly normative sense, and what the contours of the responsibility really are. I want to argue that parenthood can have different layers—biological, legal, but also personal

relationships—and that, crucially, different moral responsibilities attach to different layers.³¹

Little is interested to show that some anti-abortion-rights intuitions regarding the morality of abortion spring from a misunderstanding of, in my terminology, roles. She sees the personal relationship of motherhood (what I have called the parent role³²) as the relationship that gives rise to maternal obligation. The confusion, says Little, comes from failing to distinguish biology from relationship: from thinking a mother is a mother is a mother, and thereby assuming that mothers of all sorts are obliged to care for their offspring. This, she says, results in the (mistaken) impression that one has a duty to gestate.

So, the biological relationship, according to Little, is not the sort of relationship that generates special obligations, save one:

[It provides] children with a moral claim that the person so related be open towards developing a deeper relationship. ...And the point isn't that one must pursue the relationship, but that one must be open to doing so: there will certainly be

³¹ (1999): 305-306.

³² Though, her 'personal relationship' is set out as separate to the legal role that mothers play in the lives of their children. On my account, Mother will include all practical aspects of mothering (though I do not deny that the role could be broken down more finely).

cases in which a person biologically related to a child may legitimately decline to pursue any further relationship.³³

In other words, if I am the biological mother of a child, it's not the case that I have care duties towards that child simply in virtue of my biological relation to her. Rather, in virtue of biology (makerhood), I have a duty to be open to a personal relationship (parenthood) with her; and should I enter into that relationship with her, I should thereby acquire care duties towards her. But to have a duty to be open to a relationship is not to have the duties that being in that relationship would place on me. So while Little's is also (at least) a bifurcated account, the portioning of obligations happens in a way opposite to how I am proposing. Creating a child puts one under only minimal obligation; it is the acceptance of the parent role that places one under the weighty obligations of parenthood.

Little's goal is twofold. She wants to both explain the source of mistaken attributions of moral impermissibility to abortion; and to give a fuller picture of the wrong that's done to a woman when she is forced to gestate. As to the former, Little assumes that something like this is thought by anti-abortionists: a mother has a duty to care for her child; and so a mother has a duty to gestate her child. Little's reply is that a biological mother does not a parent make; and it's only a parent who has a duty of care.

³³ (1999): 308.

I suspect that the reason Little's maker/parent distinction runs in the opposite direction to mine is that we are conceptualising the biological relationship differently. In particular, the biological relationship between a parent and her child is not simply like that between a woman and her cousin: it is not simply a sharing of genes that may give us some natural urge, or *prima facie* reason to become or continue to be socially related to one another.³⁴ It is crucially a causal relationship, in addition to being a genetic one. The biological mother causes the child to come into being. This causal relationship obliges one to something much more substantial than openness to enter into a personal relationship.

Further, it is unclear whether the maker/parent distinction is even necessary to aid Little's explication of forced gestation. The main theme of her picture is the characterization of forced gestation as *intimacy without consent*.

To mandate that the woman remain pregnant is to mandate that she remain in a state of physical intertwinement against her consent. [...] Just as sexual intercourse can be a joy under consent and a violation without it, gestation can be a beautiful experience with it and a harmful one without it.³⁵

³⁴(1999): 307

³⁵ (1999): 301-302.

So in other words, the *physical intimacy* involved in pregnancy is at least as important and as personal as that of sex; so being forced to gestate is like being raped.³⁶

It is unclear, however, what Little's distinction between maternal duty, and duty to openness is doing for her argument. It does not seem that my lack of relationship with the foetus explains my right to refuse intimacy; it does not seem plausible that my being in a relationship with the foetus would generate a duty to be intimate. After all, my being in a romantic or even marital relationship with another person clearly does not generate a duty to be sexually intimate with them.³⁷

My claim is that the role of maker is the morally prior role. Further, the sort of obligation that attaches to a maker is not such that one may choose to decline it. While it is possible to decline an interpersonal

³⁶ Little recognizes that, unlike rape, the other party to the non-consensual intimacy is not an attacker, but an innocent. The perpetrator, on this picture, is the state (303).

³⁷ Perhaps Little should be read not as saying that if a pregnant woman were already a Parent, she would have a duty to gestate; but rather, as saying that she would have a *prima facie* duty to gestate: she could not simply decline for any old reason. But even this seems problematic, since surely a person does not need weighty reasons to refuse physical intimacy with her spouse or partner. Surely she can refuse for whatever reason she likes.

relationship with one's offspring, what I am claiming is that one cannot thereby decline to be obliged. However, it's important to note that this finding does not do what Little fears: it does not, on its own, place on the pregnant woman a duty to gestate, just as a loving romantic partnership does not place on a person a duty to have sexual intercourse.

7. Maker obligation, adoption and abortion

Of the theories of parenthood on offer, the most plausible of them is a causal theory, according to which one is a parent—and thus, has parental rights and obligations—in virtue of having caused the child to exist. But a causal theory only makes sense of our core, pre-theoretical understanding of parenthood if we build into the theory a recognition of the ambiguity lurking in the title 'parent': progenitors are sometimes called 'parents', as are primary carers, and these two roles can and do come apart.

A bifurcated causal account, on which parental obligation, in the normal course of things, follows from maker obligation, nicely explains both who is a parent and why; and why parents and makers are obliged to their children (and how). But on this theory, makers—that is, 'birth parents' and other causes—do not and cannot cease to be obliged to their birth children, even when adoption takes place.

I said earlier that Brake's key claim was that mothers may relinquish responsibility for their offspring iff fathers may do so. Because Brake

favours a consent account of parental obligation, there is nothing barring the claim that mothers may relinquish responsibility for their offspring. And the view that ‘she could always give the baby up for adoption’ assumes precisely that mothers may so relinquish. But a consent account of parental responsibility is implausible. So, my claim is that (a) Brake’s biconditional is true, and (b) neither mothers nor fathers may relinquish responsibility. At least, not in the way we suppose they can.

Parenting agreements can be made between makers and adoptive parents, and often these agreements are in the best interest of everyone involved. But likewise, parenting agreements can be made between one maker and another, and again, for many children, being raised by one stable willing parent is better than being raised, chaotically, by two. But in both situations—in adoption, and in single-parenting—the makers continue to be obliged.³⁸ The makers continue to be parents, in the

³⁸ An anonymous referee raised the worry of whether birth parents are obliged to remain in contact with their offspring. I cannot answer this in a blanket way. Surely every situation will be different. I suppose Makers ought to be willing to make ‘open’ adoption arrangements if that is, given the particulars of their situation, the best situation for the child. But this will not always be the case. There will no doubt be situations in which the very best thing a birth parent can do for her child is to step out of the picture. In this case, she must hope that the adoptive situation is a good one for her offspring. If it is not, she has failed in her duty, even though she has tried her best.

morally-salient 'progenitor' sense of 'parent'. This means that, when faced with an unwanted pregnancy, and when the lack of want is explained by a lack of want of parenthood (as I assume it usually is), women have but one option: abortion. Adoption simply doesn't do it.

**PATERNAL ABORTION, ECTOGENIC FOETICIDE, AND OTHER
STRANGE ISSUES AT THE NEXUS OF REPRODUCTIVE RIGHTS
AND PARENTAL OBLIGATION**

Introduction

The interface between parental obligation on the one hand, and reproductive rights on the other, rarely features in discussion of issues like abortion. Consent accounts of parental obligation are the norm in reproductive ethics, and for obvious reason: consent is so very central to our thinking about reproductive rights. But stepping outside the abortion debate, consent accounts of parental obligation simply do not work. It is implausible that one might have obligations to one's children only if one agrees to be so obliged.

The most plausible account of parental obligation, as I have argued in Chapters Four and Five, is a bifurcated causal account of parental obligation, on which one has a *pro tanto* obligation to parent in virtue of being a maker. This account picks out all those individuals a theory of parenthood really ought to pick out: all those people who collude in causing the new person to exist (and any others who sign up voluntarily). But this account has strange and potentially worrying consequences when it comes to reproductive rights. In this chapter, I will briefly review the reasons for favouring such an account of parental obligation, and then go on to explore some of its consequences for reproductive ethics.

1. What Grounds Parental Obligation?

Usually, a consent account of parental obligation is assumed in discussion of reproductive rights, if any account is assumed.¹ On such an account, what grounds parental obligation is that the parent consents to be so obliged: that is, she consents to parent. Stepping outside of the abortion debate, however, this account of parental obligation looks implausible. Surely parents who do not want to be parents still have obligations toward their children. If an account of parental obligation is to have any teeth at all, it must do things like ascribe obligations to unwilling parents: it must say, of parents who choose not to care adequately for the children, that they ought to.

Of the non-voluntary accounts of parental obligations, there are three basic types on offer in the literature: proprietary accounts; biological accounts; and causal accounts.² Proprietary accounts explain

¹ See Thomson (1971); Little (1999). Often times there is no account of parental obligation assumed, because the assumption is that the foetus is a non-morally-considerable entity, and thus (among other things) not the sort of creature towards which one could have parental rights. But as I shall argue, what grounds parental obligations is relevant, even on the assumption that the foetus is not morally considerable.

² For a proprietary account, see e.g. Gheaus (2011) or Aristotle (1999); for a biological account, see Page (1984); for a causal account, see Nelson (1991) or Archard (2010).

parenthood—and thus, parental rights and obligations—in terms of ownership. On this sort of account, the child is my responsibility because she is ‘mine’; I own her. These accounts are clear non-starters³: being the owner of an X does not oblige you to care for that X, except insofar as you desire to keep the X in good knick. So for example, if I am the owner of the Ford Fiesta that I drive, there is a sense in which I am obliged to take care of it, insofar as it is no one else’s responsibility to do so, and cars do need looking after if they’re to stay in good working order. But there’s also a sense in which it is very much my choice whether I look after it. Since I own the car, I can decide whether to care for it, or cut it to bits and sell it for scrap.⁴ Indeed, my ownership more strongly indicates my right to dismantle the thing owned than it does my obligation to care for it. This obviously is of little help in explaining parental obligation.⁵

³ Proprietary accounts of parenthood usually come up in the context of explaining parental rights. In this context, there is some appeal: if I own my child, I obviously have a right to her. This seems like a good motivation for the claim that I have a right to parent my child. Its *prima facie* plausibility in light of parental rights explains its being on the theoretical table at all. With respect to obligations, it is implausible.

⁴ One might think that something like pet ownership would be a better analogy. But this is surely question-begging. As well, it seems like pet owners have the right to give their pets away; even to have the pet put down.

⁵ It has been pointed out to me that there are some situations of ownership in which one’s owning something does seem to imply a duty to

Biological accounts likewise fail to fit the bill. Adoptive parents will not have parental obligations on such an account. One could give a biological account on which biology was sufficient but not necessary for parental obligation, but this would still not capture all of our non-controversial intuitions about who is a parent. For example, on many biological accounts, gestational, non-genetic mothers would not count as parents.⁶

care for it. For example, if I own a famous work of art, I am presumably under an obligation to keep it safe, see that it is maintained, etc. But in this case, it seems that my ownership is doing only part of the work—and indeed, my ownership is surely some kind of ownership*: something more like stewardship. The ownership might explain why I have an obligation prior to anyone else's, but it does not explain *why I have an obligation at all*. Something else, like the artwork's place in the history of art or in culture, is doing the real moral work.

⁶ On some biological accounts, gestation mothers count as parents, but *merely genetic* ones do not. On these accounts, it is usually also the case that either fathers do not count equally as parents (since fathers do not gestate); or fathers are parents in a derivative way via something like 'support for the mother in pregnancy'. See, e.g., Gheaus (2012). Such accounts are non-starters to my mind: whatever it is that grounds parental obligation, it surely obliges parents equally. This claim is often called 'the parity principle'. (See Austin (2007).) An argument for it is out of the scope of this thesis, but I suspect that the parity principle will fall out of

The bigger problem with biological accounts, however, is that it is not clear why biological likeness would imply duty. What is the connection between the biological fact and the moral claim? Surely what is crucial is that the biological parent is the *progenitor*, and not just biologically related. The biological parent *makes* the child, and in so doing generates obligation towards the child. This, then, leads us to a causal account of parental obligation: on which parents are obliged because they cause their children to exist.

On a causal account of parental obligation, one has parental obligation in virtue of causing the child to exist. This, then, is both more inclusive than a biological account (e.g. mothers whose children were conceived using donor eggs will count; parents whose children were conceived or gestated via surrogacy will count; and so on), and more strict than a consent account: unwilling (causal) parents will still be obliged. But a simple causal account of parental obligation, as I have argued, will not do. Not all parents are progenitors; not all progenitors are parents. The trouble seems to be that our use of the word 'parent' is ambiguous between, on the one hand, carers; and on the other, progenitors—or as I have called them, 'makers'.⁷

Hardimon's reflective acceptability requirement on role obligations—or indeed, out of any justice-based requirement, etc.

⁷ Since not all makers are progenitors, strictly speaking. Fathers whose children were conceived using donor sperm, for example, are makers, but not progenitors.

A bifurcated causal account of parental obligation disambiguates parenthood. On such an account, what generates the obligation, in the first instance, is the causal act: making the child exist. Doing so obliges one, as Kant puts it, 'to make the child content with his condition so far as they can'.⁸ In practice, social facts as they are, this constitutes a *pro tanto* obligation to take on the role of parent, and all of its attendant every-day duties. However, it is clearly true that some makers will better fulfil their obligations towards their children by not parenting: by giving their children up for adoption. But in this case, it is not the case that the birth parent is 'transferring' her duty: such a transferral would make no sense in the context of a causal account, since the obligation is acquired via being the maker of the child; and giving the child up for adoption does not cause one to cease to be a maker. Further, a lifelong obligation towards a child (as we assume parents have) is not the sort of obligation that can be 'discharged' in one go, even if that one go is a handing-over of practical duties. If one is obliged to any child that he or she causes to exist, in virtue of having caused the child to exist, then he or she is obliged, so long as the child exists and so long as he or she has caused the child to exist; and she or he will have always caused the child to exist.

I argued in Chapter Five that this means that adoption cannot function as a less morally-troublesome stand-in for abortion. When one seeks

⁸ Kant (1991): §28.

abortion, what one usually wants is *not to become a mother*.⁹ The morally substantive sense of ‘become a mother’ (and thus, the one that probably matters) is surely something like ‘acquire life-long and important obligations to a/this child’. Since one does this, whether one gives the child up for adoption or not, it is clear that adoption doesn’t work as a substitute for abortion.

This has important implications for our theorising about reproductive rights, since at present, the assumption that adoption is always an alternative to abortion means that the later existence of a child cannot figure into the reasons for or against abortion rights. But this is not the only noteworthy consequence of looking at reproductive rights in light of parenthood theory. In the next four sections, I will discuss four further apparent reproductive-rights consequences of such a view.

First, it seems on the face of it that a bifurcated causal account of parenthood implies an obligation on the part of the pregnant woman to gestate. I suggested, in Chapter Five, that this is not so. In this chapter I will expand that argument. Second, if pregnant women do not have a duty to gestate, then we may need to wonder whether potential fathers have a right to choose abortion. I will argue that if women have a right to abort, then so do men, though given gestation, this right in practice is highly defeasible. Third, as has been mentioned, a causal account (bifurcated or

⁹ Or not to become a mother now; or not to mother this particular child; or etc.

not) will imply that gamete donors have parental obligation. I have already argued that this result ought not trouble us, but I will say more about this claim. And finally, fourth, a causal account will imply that, if abortion is permissible, then so is foeticide, full-stop: even in cases of ectogenesis, it seems that parents will have a right to choose.

2. The View Appears to show that Abortion is Morally Impermissible

One might worry that this view of parental obligation would show that abortion is impermissible. Indeed, we might worry that maker obligation—the obligation one has in virtue of being the maker of a person—might mean that we are obliged to gestate, since being a maker obliges one to make the child ‘content with his condition’. Surely, then, pregnant women, having made a foetus, must make it content. And it seems that the only way to make a foetus content is to gestate it.

But this does not follow. There are several possible states of fact that might affect how maker obligation figures into the moral equation. Firstly, whether a foetus is a morally considerable entity (and whether it has a right to life) matters.

If the foetus is not morally considerable, then one cannot have parental obligation towards a foetus, since one can only be obliged to a morally considerable entity. (We may have obligations *regarding* entities that lack status; but this is not the right sort of obligation. parental obligation is obligation *to* the child, *herself*.) So, if we take the foetus’s lack of

personhood to be decisive, as regards moral status, then this account of parental obligation cannot imply a duty to gestate. If this is right, then our theory of parental obligation is probably neither here nor there with respect to the moral permissibility of abortion: it will say nothing about our obligations with respect to gestation.

I have argued that we ought to accept a view of moral status on which both babies and fetuses of advanced gestational age are (at least minimally) morally considerable, though mayn't have a right to life. If we grant that the foetus is morally considerable, it is still an open question whether parental obligation prescribes gestation. In particular, it seems plausible to assume that the obligation to strive to make the child content with her lot might manifest itself differently at different stages of development, since children need different things at different stages of development.

If we understand 'contentment' quite literally, then it seems as though whether the woman gestates the foetus or not is irrelevant. We can assume that a gestating foetus is content: it has everything that it needs without a worry in the world. Indeed, it is difficult to think of a state of being that could be more contenting. But likewise, it is hard to see how a foetus that is not gestated suffers any *discontent*: there is nothing for which it wants either before or after it ceases to be gestated.

However, perhaps this strict focus on contentment is implausible: perhaps what is relevant is whether the foetus is afforded a reasonably good life by its maker (ie, the pregnant woman). If this is so, then we will need to decide what constitutes a good life for a merely sentient creature.

Contentment will surely be a large part of this, but it mayn't be all. Among other things, longevity seems to be taken very often as an important component of what generally makes a life go well. Indeed, some have argued that a life cut short just is less good than a long life.¹⁰ When we speak about persons, this idea—that a long life is a better life—has some purchase. After all, long life allows us to fulfil more of the hopes and ambitions we have. But merely-sentient foetuses have no such hopes and ambitions. So it is perfectly reasonable to suppose that longevity is less important than contentment. It may be the case that providing a short, and perfectly content existence to the foetus by ending gestation *is* a way of giving it a short but good life.

If I am right that a foetus is a minimally morally considerable being with no right to life, then not only is it unclear that my account of parental

¹⁰ McMahan (2002) seems to accept this claim in his argument against Marquis (1989). He argues that Marquis's *future like ours* view of the harm of death implies that early abortion is more serious than late abortion, because early abortion robs the foetus of *more* future than does late abortion (p.271). This argument, it seems to me, assumes that *more is better*—as does Marquis's—and it is not clear why we should make this assumption.

obligation implies a duty to gestate; but also, it may actually lend weight to the claim that abortion is morally permissible. The view implies that if a woman does not abort, then she is subject to weighty, lifelong, and non-transferrable obligation towards the person who will come to be. And it seems like we want to say that, when there is opportunity to do so, I have a right to decline weighty, lifelong, non-transferrable obligation. If it is the case that abortion is consistent with an obligation to make the foetus's life a good one, then this right on the part of the pregnant woman will strengthen the case for abortion's permissibility.¹¹

If, contrary to what I have argued, the foetus is after all fully morally considerable with an inviolable right to life, my claims about maker obligations might after all strengthen the case against abortion rights. An obligation to care for an individual with an inviolable right to life certainly does seem to imply an obligation to keep that individual alive. But of course, it doesn't seem as though I am a person with an inviolable right to life: you may be perfectly justified, for example, in killing me in self-defence. So, even if the foetus is fully morally considerable, such that the

¹¹ Indeed, in a way this is rather a nicer defense of abortion than those standardly on offer: it gets with the reasons women actually have to abort, unlike, for example, Thomson's (1971) defense. On this sort of account, we needn't say that the woman doesn't want to be a mother, and she doesn't have to be because she has a right to control her body. We can say that the woman doesn't want to be a mother, and she doesn't have to be because she has a right not to be a mother.

bifurcated causal account of parental obligation implies a duty to gestate, it is at best a *pro tanto* duty. The rights of the woman, or indeed welfare concerns for the foetus, may trump such a right.

3. Men May Have a Right to Choose

What about fathers? A bifurcated causal account obeys the parity principle: it picks out fathers and mothers equally. If making it the case that a person exists creates obligation towards the new person that attaches permanently, clearly both parents are obliged. We said in the last section that this obligation might point to a harm in forced gestation, since forcing a woman to gestate (in addition to scuppering bodily autonomy, etc.) would force the woman to acquire weighty, lifelong, and non-transferable obligation. This then, was presented as a possible additional support for a woman's right to choose. Given parental parity, then, one will no doubt wonder whether fathers, too, might have a right to choose. And it seems that the view commits us to answering 'yes'. If the maker of a child has obligations to that child in virtue of her or his act of making, then the potential father of a child will be so obliged. And if potential mothers have a right to decline this obligation, then it seems so will fathers.

Rosalind Hursthouse suggests that

In a decision to terminate a pregnancy that resulted from a casual night with a stranger, consideration of his rights and

feelings is not called for. But if my decision amounts to killing what would be not only *my* child, but the child of someone with whom I have bonds of respect and trust, friendship if not love, then what *he* thinks and wants must be a consideration to be taken into account if I am not to be callous, irresponsible, arrogant and insensitive.¹²

So, according to Hursthouse, whether the man has a right to ‘weigh in’ on whether the woman has an abortion depends on whether the man is in a relationship with the woman.¹³ But a correct account of parenthood will pick out mothers and fathers equally: men will be parents in virtue of having created their children, just like women are; and not derivatively via their relationship to the child’s mother. This will mean that men are equally obliged to the child, if gestation occurs and a child results. Further, since the account is non-voluntary, it will imply that men have obligation towards their children whether they choose it or not; whether they know about it or not. So, if a woman has a right to choose in virtue of having a right to decline lifelong obligation, then on pain of inconsistency we must say that men do, too.

¹² (1987): 213.

¹³ It’s complicated, of course, since Hursthouse is talking in virtue terms. I assume that something’s being ‘callous’ is not exactly the same as its being wrong.

This conclusion is messy, practically speaking. It's not clear how such a right would be realized, or anyway, it's not clear how it would be realized without trampling badly on the rights of women—could it *ever* be realised without a woman's rights being trampled? One might worry that a man's having a right to choose is precisely *a right so to trample*. But I think this worry disappears on reflection.

While it's true that this is the sort of right that would hardly ever fail to conflict with competing rights, biological and technological facts as they are, it's not difficult to imagine situations where it wouldn't. For example, if a man's pregnant partner falls into an irreversible coma; if (in the year 2080) the foetus is being gestated in a jar and the woman abandons it (or doesn't); in deciding whether embryos created using IVF may be gestated. If, simply, a woman is unsure what to do, we might say that the man's right to choose will come into play where, not recognizing a man's right to choose, we might say that it would be inappropriate, insensitive, callous or even objectifying for a man to weigh in on the decision.

Indeed, current UK and European law seems to recognise a man's right to choose. The case of Natalie Evans's frozen embryos seem to show just such a recognition.

In 2001, Natalie Evans and her partner had embryos—created with her ova and her partner, Howard Johnston's sperm—frozen before Natalie underwent cancer treatment that would permanently damage her

reproductive capacity.¹⁴ Subsequently, Natalie and Johnston split up, and Johnston started a family with a new partner. When Natalie later decided to use some of the embryos to have a baby on her own, Johnston objected, withdrawing his consent for the embryos to be implanted.

In 2007, after lengthy UK and EU court battles, the embryos were ordered destroyed.¹⁵ According to UK law, both parties to IVF treatment must consent to each successive phase of the process. Each is permitted to withdraw consent at any point up to and including implantation. The thinking seems to be that, even if in 'natural' conception the opportunity for the man to choose does not arise, this does not show he has no such right: if he is in a position to decline without infringing upon the woman's more immediate bodily rights, he may do so.

One cannot help but feel very sad for Natalie Evans. But if one considers how the case would look if things were slightly different, it is clear that this is the right result. If, for example, Natalie's partner had declined to take steps to procreate in the usual way (that is, via sexual intercourse) before her treatment, we would surely not say that he had acted badly, even if it would be Natalie's last chance to bear her own genetic offspring.

¹⁴ Full embryos, rather than simple ova, were frozen because, at the time the technology for ova preservation was unreliable.

¹⁵ BBC Online (2007)

Johnston, like all of us, has a right to decide whether, when, and with whom to procreate.¹⁶

If Natalie and her partner had conceived naturally before her treatment, and Natalie herself had then decided to abort, we would not say that she had acted impermissibly.¹⁷ We would say that she had exercised her right to reproductive autonomy. If Natalie can change her mind after conception, surely her partner can too when doing so is not in conflict with Natalie's right to bodily autonomy. This seems to show that, even if it is merely a defeasible right, men also have a 'right to choose'.

If we think that Howard Johnston had a right to decline to proceed with the process of procreating with Natalie Evans, it seems we must conclude that male potential procreators have a right to choose. Competing rights in situations of 'natural' procreation are easily pointed to in order to explain why, in most cases, it is impermissible for men to exercise such a right.

One final thing to say about men's 'right to choose' is that when men are not informed of a pregnancy, and not given even a chance to 'weigh in' on the decision, we often think that they have been wronged. The woman

¹⁶ A right, insofar as he has a willing partner, that is. Obviously we do not have the right to procreate with *whoever* we please: we do not have the right to procreate with individuals who do not want to procreate with us. That, I suppose, is just the point in the Natalie Evans ruling.

¹⁷ On the assumption that abortion is generally permissible.

may even be thereby obliged to take on at least some of the man's obligation to the child, perhaps in the form of disproportionate care of the child. Elizabeth Brake argues that men in such situations do not have parental obligation, and that in principle they ought not be required to pay child support.¹⁸ But this is surely wrong: parental obligation is obligation to the child, not to the child's mother. What a third party does cannot change the facts about the obligations one has to a person. Still, we might say that the woman—in causing the man to be weightily obliged against his will—thereby generates compensatory obligation towards him.

4. Are Gamete Donors Makers?

A related concern is that of the status of egg and sperm donors, discussed briefly in chapters Four and Five. In some sense, donors are completely separated from the process of procreation and the decision to procreate. This, of course, is exactly the point of sperm and egg donation. But if I am correct about how parental obligation attaches, then it will be unclear just how separated donors really are.

¹⁸ Brake (2005). Brake's argument concerns cases in which the man has taken all reasonable precaution against procreation. She allows that there may be practical, justice reasons to legally oblige men in such cases to pay child support nonetheless. I find this unconvincing, as I have argued in Chapter Four.

It does not follow from a causal account that biological facts are decisive. If, for example, I were to have my eggs harvested for the purpose of IVF, and an unscrupulous nurse stole them and used them to conceive a child for herself, a causal account will probably not imply that I am obliged to the resultant child since the causal account relies on something I've *done* rather than simply on my genetic sequencing. But donating a gamete is very different to this: in donating, I am doing so with the intention, knowledge and consent that my gamete be used for the purpose of procreation. I am willingly and knowingly playing a crucial role in the creation of a new person. My donation is an INUS condition on the creation; I am, then, a maker.

The bifurcated account, then, will pick out the gamete donor as a *maker*, and the gamete donor will have maker obligation. The gamete donor will be obliged to do her or his best to ensure that the child is content with his/her condition. But this does not show that the donor is a *parent*. As I argued in Chapter Four, makers are under a *pro tanto* obligation to take on the role of parent. Gamete donors, I take it, are an excellent illustration of that obligation being merely *pro tanto*. Other features of the situation of gestation will outweigh the gamete donor's obligation to parent—and probably hugely so. However, on this account the gamete donors will have an obligation to aid if necessary, to ensure that the child's life goes well. So, if the child's parenting arrangements fall through, it may be that the gamete donor will be under an obligation to take on the role of parent.

But in ideal situations of gamete donation, this sort of obligation will simply not arise for the gamete donor.¹⁹

The situation is surely complicated by the fact that the gamete donor is aiding the future parents (carers) in their own procreative ambitions; it is their project, their desire, and not that of the donor. So one might be tempted to think that this lessens the donor's obligation to the child. But I don't think this is quite right. What seems right is that in this case, in addition to parental obligations, the gamete recipients probably have an obligation *to the donor* to see that her/his obligation to the child is met. In this case, if the parents fail in their obligation to the child, they have not only failed the child; they have also failed the donor. (But notice that the reason they have failed the donor is that they have brought it about that the donor has failed the child.)

5. A Right to Abort a Foetus Gestating in a Jar?

If what I have said about reproductive rights in the context of the bifurcated causal account of parenthood is correct, then contra Thomson, it may be that a woman has a right to abortion even if gestation is not occurring in her body.²⁰ This should be no surprise, since I've claimed that men may have a right to choose, and men do not gestate. But it

¹⁹ I take it many instances of gamete donation are, in fact, non-ideal. It is still not clear, however, that many gamete donors are obliged, all things considered, to parent.

²⁰ (1971)

deviates from the standard account of abortion rights, on which the foetus's reliance on the woman's body is crucial to the right to abort.

In her defence of abortion, Thomson writes

I have argued that you are not morally required to spend nine months in bed, sustaining the life of that violinist; but to say this is by no means to say that if, when you unplug yourself, there is a miracle and he survives, you then have a right to turn round and slit his throat. [...] I agree that the desire for the child's death is not one which anybody may gratify, should it turn out to be possible to detach the child alive.²¹

Hursthouse (rhetorically) asks

Suppose that medical technology had advanced to the point where foetuses, or even embryos, could be extracted from the womb alive and undamaged, and develop into normal healthy babies under laboratory conditions. Would we think then that a woman has a right to say whether her foetus was to be aborted dead or live, on the grounds that she would be devastated by feeling responsible for it for the rest of her life? And if she had such a right, that it was alright for her to exercise it?²²

²¹ (1971): 66.

²² *Op. cit.* 212.

If what I have said about parental obligation is correct, *feeling devastated* is not what's at stake. Whether, when, how and with whom we take on the massively important and lifelong obligation of being a parent is probably the most important (moral) decision any of us makes in a life. Making this decision for oneself, then, is exactly central to leading an autonomous, self-authored life. And again, according to the bifurcated causal account of parental obligation, it is not that one will 'feel' obliged to the resulting child; it is that one will *be obliged*, life-long, come what may, even if the child is adopted by someone else. Since one cannot stop being a maker of the child, one does not cease to have maker obligation, no matter who is the parent of the child.

On this picture, if abortion is morally permissible it is so not simply because it is permissible to assert one's right to bodily autonomy; but also because it is permissible to assert one's right to autonomy, full stop. And if this is so, then the right to abort does not depend on the location of the foetus.

That right, if we have it, mightn't necessarily be the prevailing right. If a causal account of parental obligation obliges one to make the foetus content with its condition, then, just as I discussed in section two, there will be questions about just what this obligation amounts to. So too in the case of ectogenesis. But it is unclear how ectogenesis will change our judgments about what the obligation to make the foetus content amounts

to. On the face of it, it might seem that the woman's (or man's) right to abort is weaker in ectogenesis, since there is no worry over women's bodily autonomy coming into play. However, as I have argued, the right to decline to take on weighty obligation will be just as salient in this case as in cases of normal gestation. If this right is sufficient to trump competing care obligations towards the foetus, then it is so whether the foetus is in a woman's body, or in a laboratory.

6. Conclusion

I have argued that the standard account of parental obligation assumed in reproductive ethics (a consent account) is implausible as a theory of parental obligation. Further, I have argued that the most plausible account of parental obligation is a bifurcated causal account, on which the maker is obliged to the child in virtue of having caused the child to exist, and thereby has a *pro tanto* obligation to parent the child.

I have then gone on to show that this account of parental obligation has certain surprising results, with respect to reproductive ethics. It seems to imply that men have a right to abort; that gamete donors have maker (but not parental) obligation; and that abortion is permissible in cases of ectogenesis, if it is permissible in standard-gestation cases. However, I have argued that the account does not on its own imply that pregnant women have a duty to gestate, and may even form a plausible foundation for the claim that women have a right to abort.

CONCLUSION

My wide aim in this thesis was to explore *who counts*—whose interests are the concern of morality; toward whom or what do our actions require moral deliberation; who is a moral patient and why—and how much their counting can tell us about morally right action.

To that end, I have explored the problem of marginal humans. According to personhood-bound accounts of moral considerability, persons exhaust the class of fully morally considerable beings. Persons are full rights-bearers; persons have a right to life; when we think about moral decision-making, we take the primary units of concern to be persons. This sort of account is standard in moral philosophy. But on this sort of account, our intuitions about what we owe to human non-persons ('marginal humans') are mysterious. It is a challenge to any personhood-bound account of moral considerability to explain what we owe to marginal humans.

I have taken babies as a case study. They are a particularly clear example of the marginal humans problem, in that we have clear and strong and benevolent intuitions about right treatment of them, and yet they are just as clearly not persons. In Part One of the thesis, I explored what we ought to say about the moral status of babies by looking at the moral significance of birth: in particular, whether birth can change the moral status of the foetus/baby. I argued that the most *prima facie* plausible way to motivate the moral significance of birth—a relational account of moral status—does not work. Relational accounts simply cannot motivate moral considerability claims for non-persons. That we *in*

fact care about a creature is not a reason that we *ought to* care for that creature (even if it may be a reason to suppose that there might be such a reason). I suggested that the moral importance of relationships is better understood as a part of the wider moral context of action, rather than as a feature salient to moral status.

I also explored a variant on a relational account as a way of explaining the moral significance of birth. Jose Louis Bermúdez argues that relationships with persons can change a merely-sentient baby's *intrinsic* features in morally salient ways. Bermúdez argues that babies, but not foetuses, can exercise the capacity for primitive self-awareness, and exercise of this capacity makes one morally considerable. I have argued that Bermúdez's variant relational account of the moral significance of birth, like the relational account, is unsuccessful. Bermúdez does not succeed in proving that babies, but not foetuses, can so exercise this capacity, but rather simply shows that babies, but not foetuses can imitate. Furthermore, his overall theory of moral status is unsuccessful: the Principle of Derived Moral Significance amounts to no theory at all. Reliant as it is on intrinsic features necessary but insufficient for life-valuing, it leads to a regress.

This, then, seemed to leave us with a picture on which neither foetuses nor babies are morally considerable (or anyhow, not fully so), and infanticide is morally permissible if abortion is. So, in chapter three, I replied to an argument for this claim in specific. I argued that, contra

Giubilini and Minerva, sameness of moral status does not imply sameness of the moral quality of death. Because the wider moral context of abortion, on the one hand, and infanticide on the other are saliently different, generalisations across the two acts are invalid.

But then, it seemed as though all of this left us with a very depleted moral picture of babies. In Part Two, then, I focused on what we could say—outside of moral status—about how morality bears on right treatment of babies. I argued in the introduction that we can go some way to explaining what we owe to babies by delineating what special obligations we have to them.

I began in Part Two by arguing that taking babies to be morally considerable on grounds of sentience is uncontroversial. Sentience makes a creature capable of being an experiencer of harm, and this is a reason to take sentient beings into account on any normative theory. Mere sentience cannot motivate a right to life, but it can motivate a claim to moral consideration. This, then, means that merely-sentient beings are such that we can have obligations towards them.

I then went on to discuss what I take to be the most central of the special obligations we might have towards babies: parental obligations. In order to flesh out a picture of what we owe to merely-sentient babies, such that we can explain the strong and unique obligations we have towards them—ones we do not have to non-human sentient non-persons—it is

necessary to give a non-voluntarist account of our obligations towards them. But this is at odds with the standard account of special obligations. So in sections four and five of the introduction to Part Two, I argued that we ought to accept Hardimon's account of non-voluntary role obligations.

In Chapter Four, I argued specifically for a non-voluntarist, causal account of parental obligation, by responding to Brake's criticisms of causal accounts of parental obligation. Brake argues that the socially-constructed nature of parental obligation is at odds with a causal account; and that there is an explanatory gap between causing existence and being so obliged.¹

I argued that, following Archard, we can take account of the social construction of parenthood by separating out the roles of (what I have called) maker and parent.² On this sort of account, the maker of a new human person is obliged in virtue of having caused the person to exist, but only has parental obligation in virtue of becoming a parent. Maker obligation, then, is satisfied just in case the child is well parented, even if this role is not filled by the maker.

Brake argues that a libellous causing model of causal obligation does not fit with our pretheoretical understanding of the scope of parental obligation. Procreative costs, she argues, are outstripped by parental

¹ Brake (2010)

² Archard (2010)

obligation; so, even if causing a child to exist generates a liability, this liability cannot account for what we take ourselves to owe to our children. I argued that liability is not the appropriate way to understand the connection between causing someone to exist and being obliged to them. I took Kant's remarks on parental obligation as a jumping-off point, and argued that causing someone to exist is an instance of morally salient choosing for. Choosing for someone, when it is not an instance of paternalism or autonomy violation, is morally permissible only if one does one's best to make the choice a good one. This, then, can explain why makers are obliged to make their offspring's existence a good one in virtue of having caused them to exist.

In Chapters Five and Six, then, I went on to explore how a bifurcated causal account of parental obligation bears on judgments about reproductive rights. I argued, first, that the account implies that adoption is not a genuine alternative to abortion, since maker obligation cannot be transferred. I then went on to explore how the account bears on a selection of other questions in reproductive ethics: what it means for gamete donors and unwilling fathers, and how the physicality of pregnancy factors in to the morality of abortion, given a presumed right to decline weighty obligation; and I further explored the question of whether maker obligation implies a duty to gestate.

The discussion in Part Two is a fairly thorough account of what this understanding of parental obligations means for morally right treatment of

babies, so far as parents and progenitors are concerned. But of course, this will be merely a slice of the larger picture of obligations to babies. It is a key slice, but all the same merely a slice. Looking forward, much more would need to be said about special obligations to babies in order to motivate the claim that babies are owed significantly different treatment to other sentient non-persons. For example, it seems as though a total stranger who comes across a baby in distress has an obligation to assist the baby, where that same stranger might have no such obligation towards a pigeon or a frog in the same distress.³ Usually, we will describe the obligation to help a stranger baby as something like a general duty of rescue—so, not a special obligation at all. But there is a problem with this account, given the discussion above.

To say that persons, and only persons, are fully morally considerable is just to say that we have a set of (general) obligations towards persons that we do not have towards non-persons, or that is different to the set of obligations we have towards non-persons. On a two-tiered account of moral considerability like the one for which I have argued, it makes sense to say that we have general obligations towards merely sentient creatures; but the two-tieredness of the account just amounts to the claim

³ I am not actually sure that this is true. But it is at least true that we would, in fact, heap greater blame on someone who failed to help a baby than on someone who failed to help a pigeon. And it seems more clearly true if we consider a case in which one is faced with a choice of helping either the baby or the pigeon. Surely we ought to help the baby.

that we have one set of (probably minimal) obligations towards sentient creatures, and a different set of obligations (one that might subsume the sentient-creatures set) towards persons. It seems that a duty of rescue will fit more easily in the set of obligations we have towards persons. Indeed, if it were the case that we had a duty of rescue towards merely sentient creatures, then we would have to say that we are obliged to come to the aid of injured pigeons. This is not so unpalatable a claim; but it leaves the sense that our obligation to the baby is yet stronger unexplained.

We must either explain why the baby has higher moral standing than the pigeon (that is, why we have general obligations towards the baby that are different or stronger than that to the pigeon); or we must suppose that our strong obligation to rescue the baby is something above or outside of general duty. As I argued in Part One, the most promising attempt to show that babies are more morally considerable than non-human animals on a personhood-bound account seems to fail. So, our strong obligation to help the baby ought, on a personhood-bound account, to be explained in terms of a special obligation we have towards it.

One possible avenue for giving such an explanation would be to expand our understanding of moral roles—for example, to give an account on which ‘bystander’, and the like, are understood as morally salient roles. This will not, on its own, address the worry over injured babies and pigeons—why are we not bystanders to the agony of the pigeon?—but it

is, I suspect, the sort of framework one would need to work within in order to arrive at an account of what we owe to babies via special obligations.

I have argued, then, that given a personhood-bound account of moral status, babies should be understood as at least minimally morally considerable on grounds of sentience. I have further argued that the strong obligations we have towards babies are best understood as special obligations. I have argued that (at least some of) the special obligations we have towards babies are non-voluntary, and that parental obligation, in particular, should be understood as non-voluntary and causally-generated. I have argued that, contrary to appearances, a causal account of parental obligation does not imply that abortion is morally impermissible; nor that gamete donors are parents. Finally, I have suggested that further inquiry into the nature of our special obligations to babies might require a broader understanding of morally salient roles.

References

Archard (2010) 'The Obligations and Responsibilities of Parenthood', in Archard and Benatar (2010): 103-127.

Archard and Benatar (2010), *Procreation and Parenthood: the Ethics of Bearing and Rearing Children*, Oxford: Oxford University Press.

Archard and Macleod (2002), *The Moral and Political Status of Children*, Oxford: Oxford University Press.

Aristotle (1999) *Nicomachean Ethics* (Ross, W.D. trans.) Kitchener, ON: Batoche Books.

Austin, M (2007) *Conceptions of Parenthood*, Burlington, VT: Ashgate Publishing.

Bayne, T (2003), 'Gamete Donation and Parental Responsibility', *Journal of Applied Philosophy* 20,1: 77-87.

Bayne, T and Kolers (2003) 'Towards a Pluralist Account of Parenthood', *Bioethics* 17,3: 221-242.

BBC Online (2007), 'Woman Loses Final Embryo Appeal', accessed 30.07.12 from <http://news.bbc.co.uk/1/hi/health/6530295.stm> .

References

- Benatar, D (1999), 'The Unbearable Lightness of Bringing into Being', *Journal of Applied Philosophy* 16,2: 173-180.
- Bermúdez, JL. (1996) 'The Moral Significance of Birth', *Ethics*, 106, 2: 378-403.
- Blustein, J (1997) 'Procreation and Parental Responsibility', *Journal of Social Philosophy* 28, 2: 79-86.
- Brake, E (2005) 'Fatherhood and Child Support: Do men have a right to choose?', *Journal of Applied Philosophy* 22,1: 55-73.
- Brake, E (2010) 'Willing Parents: A Voluntarist Account of Parental Role Obligation', in Archard and Benatar (2010): 151-177.
- Chappell, T. (2011) 'On the Very Idea of Criteria for Personhood', *Southern Journal of Philosophy* 49, 1: 1-27.
- Dale (1984) 'INUS Conditions', *Analysis* 44: 186-188.
- Denise (1984), 'On the Nature of INUS Conditionality', *Analysis* 44: 49-52.
- English, J. (1994)'Abortion: Beyond the Personhood Argument', in L. Pojman, ed., *The Abortion Controversy: A Reader* (Boston: Jones and

Bartlett Publishers): 315-323.

Finnis, J (1994), 'Abortion and Healthcare Ethics', from Gillon (ed.)

Principles of Healthcare Ethics, Chichester: John Wiley.

Fox, MA. (2002) 'The Moral Community', in H LaFollette, ed. *Ethics in*

Practice, Oxford: Blackwell.

Frey, RG (2002), 'Moral Standing, the Value of Lives, and Speciesism', in

Ethics in Practice as above.

Gheaus, A (2011), 'The Right to Parent One's Biological Baby', *Journal of*

Political Philosophy, doi: 10.1111/j.1467-9760.2011.00402.x (Article first published online: 27 APR 2011).

Giubilini and Minerva (2012) 'After-birth abortion: why should the baby

live?', *Journal of Medical Ethics* (online early view: 23 Feb).

Hardimon, M (1994) 'Role Obligations', *Journal of Philosophy* 91,7: 333-

363.

Harman, E (2003) 'The Potentiality Problem', *Philosophical Studies* 114

(1-2): 173 - 198.

Harris, J (1984) *The Value of Life: An Introduction to Medical Ethics*,

References

London: Routledge.

Hrdy, SB (2000) *Mother Nature*, London: Vintage.

Hursthouse, R (1987) *Beginning Lives*, Oxford: Blackwell.

Jeske, D (1998) 'Families, Friends, and Special Obligations', *Canadian Journal of Philosophy* 28,4: 527-556.

Kant (1991) *The Metaphysics of Morals* (Gregor, M. trans.) Cambridge: Cambridge University Press.

Kant (1991) *The Metaphysics of Morals* (Gregor, M trans.) Cambridge: Cambridge University Press.

_____(1997) *Groundwork of the Metaphysics of Morals* (Gregor, M. trans.) Cambridge: Cambridge University Press.

Kittay, E.F. (2005) 'At the Margins of Moral Personhood', *Ethics* 116: 100-131.

Krulwich, R. (2012) 'Six-Legged Giant Finds Secret Hideaway, Hides for 80 Years', National Public Radio News Online
<http://www.npr.org/blogs/krulwich/2012/02/24/147367644/six-legged-giant-finds-secret-hideaway-hides-for-80-years> (accessed 09.03.2012).

- LaFollette, H and N Shanks (1996), "The Origin of Speciesism", *Philosophy* 71: 41-61.
- Lewis, D (1973) 'Causation', *Journal of Philosophy* 70,17: 556-567.
- Little (1999), 'Abortion, Intimacy, and the Duty to Gestate', *Ethical Theory and Moral Practice* 2: 295-312.
- Mackie, JL (1965) 'Causes and Conditions', *American Philosophical Quarterly* 2,4: 245-264.
- Marquis, D (1989), 'Why Abortion is Immoral', *The Journal of Philosophy* 86,4: 183-202.
- McMahan, J (2002), *The Ethics of Killing: Problems at the margins of life*, New York: Oxford University Press.
- _____(2005), 'Our Fellow Creatures', *Journal of Ethics* 9: 353-380.
- Meltzoff and Moore (1977) 'Imitation of Facial and Manual Gestures by Human Neonates', *Science* 198,4312:75-78.
- Narveson (1988) *The Libertarian Idea*, Philadelphia: Temple University Press.

References

Nelson, JL (1991) 'Parental Obligation and the Ethics of Surrogacy: A causal perspective', *Public Affairs Quarterly* 5,1: 49-61.

Nussbaum, M. *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard 2006).

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

_____(1988), 'Children's Rights and Children's Lives', *Ethics* 98,3: 445-463.

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

Post, S. (1993), 'The Emergence of Species Impartiality: A Medical Critique of Biocentrism', *Perspectives in Biology and Medicine* 36,2: 289-300.

Priddel D, Carlile N, Humphrey M, et al. (2003) 'Rediscovery of the "extinct" Lord Howe Island stick insect (*Dryococelus australis* (Montrouzier))(Phasmatodea) and recommendations for its conservation', *Biodiversity and Conservation* 12:1391-1403.

Rachels, J. 'Active and Passive Euthanasia', *New England Journal of Medicine*, 292 (1975): 78-80.

Rawls, J (1971), *A Theory of Justice*, Cambridge, Mass: the Belknap Press of Harvard University Press.

Ross, WD (1930), *The Right and the Good*, Oxford: Clarendon Press.

Singer, P. (1975) *Animal Liberation*, NY, NY: Avon.

___ (2006), 'All Animals Are Equal' in *Bioethics: an Anthology*, Singer and Kuhse, eds. (Oxford and Malden: Blackwell).

Sinnott-Armstrong, W (1997), 'You Can't Lose What You Ain't Never Had: a reply to Marquis on abortion', *Philosophical Studies*, 96: 59-72.

Steinbock, B. (1978) 'Speciesism and the Idea of Equality', *Philosophy*, 53,204: 247-256.

___ (1992), *Life Before Birth: The moral and legal status of embryos and fetuses*, New York: Oxford University Press.

Thomson, JJ. (1971) 'A Defence of Abortion'. *Philosophy and Public Affairs* 1,1: 47-66.

References

Tooley, M. (1972) 'Abortion and Infanticide', *Philosophy and Public Affairs* 2,1: 37-65.

____ (1983) *Abortion and Infanticide*, Oxford: Clarendon.

Warren, MA (1989) 'The Moral Significance of Birth', *Hypatia* 4,3: 46-65.

____(1996) 'On the Moral and Legal Status of Abortion', from *Biomedical Ethics*. 4th ed. T.A. Mappes and D. DeGrazia (eds.) New York: McGraw-Hill. pp. 434-440.

____(1997) *Moral Status: Obligations to Persons and Other Living Things*, New York: Oxford University Press.

Wertheimer, R (1971), 'Understanding the Abortion Argument', *Philosophy and Public Affairs* 1,1: 67-95.

Wieland, N (2011) 'Parental Obligation', *Utilitas* 23,3: 249-267.

Williams, B (1981) *Moral Luck*, Cambridge: Cambridge University Press.

Wood (1998) 'Kant on Duties Regarding Nonrational Nature', Proceedings of the Aristotelian Society Supplement, Volume LXXII.