Abstract

Given the increasing variety of non-traditional family arrangements, together with reproductive technologies and adoption practices, assumptions about what constitutes a family and what constitutes a parent have been called into question. By using adoption as a paradigm example, my thesis examines different concepts of parenthood, what it means to be a parent, and how parental obligations are incurred.

I support a pluralist concept of parenthood, according to which genetics, gestation, or intent to raise a child may each be sufficient to capture who is considered to be a parent in a variety of cases including adoption, contract pregnancy, or gamete donation. Using a pluralist concept of parenthood, I then consider how parental obligations are generated.

While some have argued for a causal account of parental obligation (i.e., parents incur obligations by bringing a child into existence), I favor a voluntarist account. A voluntarist account argues that parental obligations are best understood as generated through consensually and voluntarily taking on the role of parent with the intent, rights, and obligations of raising a child.

I argue that causal accounts fail to provide an adequate explanation of the source of obligations because a) causation is not sufficient and not always necessary to ground obligation, b) causal accounts lead to troubling restrictions on women’s reproductive autonomy, c) causal accounts cannot justify why other factors such as intent are irrelevant, and d) causal accounts have difficulty non-arbitrarily limiting the number of people involved in a causal chain in the creation of a child.

Moreover, I explain why, on the whole, a voluntarist account is preferable. Voluntarism with regard to parental obligations has the following advantages: a) making sense of different
meanings of the term “parent”, b) avoiding the pitfalls of causal accounts, and c) explaining the significance of the parent-child relationship.

Using a voluntarist framework, I then examine the ethical implications for women and men, and for children who are placed for adoption.
Acknowledgements

I would like to dedicate my thesis to my mother, Shahnaz Solaimanpour, who has shown me what a parent should be. None of this would have been possible without her courage, love, unflinching support, and commitment to the pursuit of education. I am truly blessed to have such love in my life and her influence and strength motivates me to be a better person.

I am also deeply grateful for the love and support of my other family members for making the completion of this entire project possible. I would like to thank my sister, Neda Najand. I have looked up to her ever since I can remember, and her fearlessness, perseverance, generosity, and love inspire me every day. I am also grateful to my older brother Nima Najand, for his encouragement throughout this endeavor and his unwavering willingness to challenge me. I am happy to have followed in his footsteps in pursuing graduate school, and have always admired his brilliance and his dedication to academia. I am thankful to my little brother, Nadim Najand, whose gentle love and support is a constant reminder to continue persevering even when times are difficult. I would also like to thank my sister in law, Sunita Chowdhury, and my brother in law, Jacky Chow, for their invaluable support and motivation throughout this journey.

I would like to thank my supervisor, Christine Overall, who has mentored me every single step of the way throughout the PhD program. I am truly indebted to her hard work and consider myself very lucky to have had the opportunity to work closely with such an inspiring academic. My gratitude to Christine cannot be sufficiently captured here, but I wish to thank her for her tireless dedication to my development as an academic, and express how much I admire her as a person as well as a philosopher. Christine’s lessons will continue to resonate throughout my life as I strive to embody her generosity, care, and brilliance in work and life.
I would also like to thank Will Kymlicka, who provided extensive and thoughtful feedback on my thesis. His rigorous and challenging questions helped improved my thesis immensely. Will is an incredible academic and his work and dedication to academia is an inspiration.

My Master’s supervisor, Eike-Henner Kluge, will always be an academic role model for me. I am grateful for having the opportunity to work with him during my time at the University of Victoria and for his continued support throughout my PhD.

I am also indebted to my undergraduate Honours supervisor, Elizabeth Brake. Little did I know that I would be return to her work in my PhD but in fact her work galvanized my entire project. I will carry the lessons I learned from working with Elizabeth as an undergraduate throughout my life.

I’m thankful to my examination committee, Christine Overall, Will Kymlicka, Elisabeth Gedge, Sergio Sismondo, Tracy Trothen, and John Pierce, who provided invaluable feedback and thought provoking questions at my defense.

My work has benefitted greatly from the resolute support of my friends. I am grateful my dear friends (and colleagues) Katherine Wayne and Christine Vidt (Esselmont), with whom I was lucky enough to share my PhD experience. I am grateful for their friendship and encouragement throughout my time at Queen’s and for making my experience at Queen’s one of the most cherished times in my life. I would also like to thank my dear friend, Katherine Legros, whose positive disposition radiates to all those around her. She brought much needed laughter, love, and confidence to my life.

I am thankful for many supportive relationships made possible through the department. I would like to thank the graduate students I met during my time at Queen’s University, many of
whom are my good friends. Many department members at Queen’s have supported me in various
ways throughout my PhD. In addition to the names already mentioned, I would like to thank
Jacqueline Davies, Mark C.R. Smith, Udo Schuklenk, Jon Miller, Judy Vanhooser, and Marilyn
Lavoie for their support throughout my PhD.

Finally, I am grateful to the Department of Philosophy at Queen’s University for the
generous funding that made this project possible, and most importantly, for allowing me the
opportunity to pursue my love of philosophy.
Statement of Originality

I hereby certify that all of the work described within this thesis is the original work of the author.

Any published (or unpublished) ideas and/or techniques from the work of others are fully acknowledged in accordance with the standard referencing practices.

(Nikoo Najand)

(February, 2015)
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Chapter 1

Introduction

The traditional understanding of families and parenthood consists of one man and one woman who each supply half of the genetic material for their offspring (Mahoney 1995, 35-51). However, given the increasing variety of non-traditional family arrangements, together with reproductive technologies and adoption practices, assumptions about what constitutes a family and what constitutes a parent have been called into question.

Questions such as the following have been raised: what does it mean to be a parent and how are different concepts of parenthood best understood? What is a sufficiently inclusive definition of “parent” that can account for the increasing variety of non-traditional family arrangements? Given different concepts of parenthood, how are parental obligations generated? And finally, what are the implications of different accounts of parental obligations?

In this thesis I clarify the ambiguity of the term “parent,” explain how parental obligations are generated, and investigate the implications different accounts of parental obligations have, within a Canadian context. Ultimately, I argue that a voluntarist account provides the best explanation of how special (parental) obligations are incurred and clarifies the ambiguity of the term “parent.” Moreover, a voluntarist account avoids the pitfalls of other accounts and provides a rich understanding of familial relationships.

The central aim of the first part of Chapter 2 is to analyze different concepts of parenthood (genetic, gestational, social, and pluralist) in order to understand which...
concept is most plausible and coheres with the growing variety of non-traditional family arrangements. Understanding the evolving concept of families requires an analysis of how parental obligations are generated. Therefore, in the second part of Chapter 2, I explain two accounts of parental obligations – voluntarist and causal. While some argue that parental obligations are generated by causing the fetus to come into existence (causal accounts of parental obligations), others argue that parental obligations are best understood as generated through consensually and voluntarily developing a relationship with a child with the intent, rights, and obligations of raising the child (voluntarist accounts of parental obligations). I provide reasons for favoring a voluntarist account and consider what voluntarism means for women who place their child for adoption.

Arguing in favor of a voluntarist account of parental obligations for women highlights a related issue regarding what (if any) are the obligations of non-intentional fathers. In the third chapter, I compare the moral obligations (if any) of women who have (partly) caused a fetus to exist, provided half of the genetic material and gestated the baby to place for adoption, to the moral obligations of men who have (partly) caused the fetus to exist and provided half of the genetic material but who choose not to raise the child.¹

After considering the moral obligations of genetic parents, in the fourth chapter, I consider whether adopted children have solid justification to know the identity of their genetic parents. I respond to three criticisms of voluntarism on the basis of possible harmful effects on children and argue that to demand the identity of genetic parents requires further justification.

¹ When I say that someone has “caused” a fetus to exist, I mean that a fetus exists through his/her voluntary and consensual sexual activity and with full knowledge that pregnancy might occur as a result of his/her actions.
In Chapter 5, I consider whether construing parental obligations in voluntarist terms trivializes the deep bonds found within families. I support an argument that suggests voluntarism is not inconsistent with valuing special relationships by appealing to the nature and features of the parent/child relationship itself.

In the sixth and final chapter, I outline existing legislation on adoption in Canada, identify ways in which legislation can be improved, and provide concrete ways to meet the needs of unwanted children, all within a voluntarist framework. Since a voluntarist account of parental obligations requires adequate legislative and social support, it is imperative to identify the shortcomings of current policies in order to provide meaningful support to adoptive families, adopted children, at-risk families, and single-parent families.

My reasons for focusing on the moral obligations of parents who choose adoption stem partly from the abortion debate. I wish to investigate whether placing a child for adoption is morally equivalent to aborting a fetus in terms of parental obligations. Placing a child for adoption is sometimes offered as an alternative to abortion, and while there has been a considerable history of debate regarding the morality of abortion, comparatively less has been said about adoption as an alternative to abortion. Debates regarding women’s reproductive autonomy need to include discussions about parental obligations more generally and discussions about parental obligations involve more than just women. Therefore, an adequate discussion of reproductive autonomy needs to include the obligations of fathers and the effects on children.

2 The use of the word “unwanted” is not meant to imply that such children are disposable or unworthy. I understand that the term “unwanted” carries a heavy negative connotation and I do not mean to use it in that respect. What I mean by “unwanted children” is simply children born to parents who cannot or do not want to raise their biological children themselves.
Furthermore, throughout this thesis, I investigate whether parental obligations might be more demanding (or not) for women who choose adoption rather than opting to abort, since another being exists. Although my focus will not include the abortion debate directly, I nevertheless draw from some of the literature on abortion to better understand what might ground parental obligations.

This thesis contributes to a growing body of literature on parental obligations in several ways. First, this thesis provides an account that reliably and consistently provides a clear foundation of parental obligations and also shows why other accounts are inadequate. Second, this thesis fills in some of the gaps in the literature on parental obligations. As mentioned previously, although there is a rich body of literature on the ethics of abortion, there is relatively less on the possible ethical implications of adoption. This thesis provides one way of understanding parental obligations by using adoption as a paradigm example of how obligations are incurred. Finally, this thesis provides an understanding of parental obligations that benefits both children and parents.
Chapter 2

What it Means to be a Parent and the Moral Obligations of Women

Introduction

Typically, the term “parent” refers to an adult who stands in a special relationship with a child and owes special obligations beyond those that are normally owed to all human beings. However, several authors have recognized that the term “parent” can be used to identify someone who shares genetic material with an offspring, someone who gestates a fetus, and someone who raises a child, and that these may all be different individuals. In discussions about parental obligations, it is important to clarify the various uses of the term “parent” in order to understand who is morally obligated and for what reasons.

In this chapter, I explain different concepts of parenthood, what it means to be a parent, and how parental obligations are incurred. By “parental obligations” I mean those obligations owed to children above and beyond what are commonly owed to any vulnerable child. I will not provide a list detailing the exact kinds of obligations parents owe their children because doing so is not necessary for my argument and I am skeptical that a completely adequate list could be provided. However, at the very basic level, any child ought to be free from harm and neglect, and have adequate food, shelter, healthcare, and education, so “parental obligations” go beyond these minimum requirements.

Furthermore, I take parental obligations to be a unique subtype of special obligations, that go beyond what is normally owed to all humans, and that are owed to

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3 For instance, see Little 1999; Bayne and Kolers 2003; Nordgren 2008; Porter 2012.
specific children by specific adults. Parental obligations involve not only the responsibility to provide for the child and avoid harming the child, but also “entail[] that the parent and child stand in an interlocking relationship that reflects, in part, the values and expectations of their society” (Ettinger 2012, 246). As I will explain in further detail, others have argued that, in addition to developing a relationship, parents are also required to advocate on behalf of their children (Brennan and Noggle 1997).

Moreover, the content of parental obligations is contingent on several factors. What parents are expected to provide depends, in part, on the resources available in any given society and parental obligations are socially constructed to a degree. Although children have certain needs such as the need for food, protection, and care, how and what parents are obligated to provide varies across cultures and throughout history. Given the contingent nature of parental obligations, I do not think that a clear and precise definition can be provided. Therefore, to understand parental obligations requires an understanding of the overall social context in which an individual resides; some parents will face more stringent obligations than others depending, in part, on what kinds of services and resources are available to parents and children. I take parental obligations to involve intentions, actions, emotions, self-conceptions, and relationships within a particular social context.

One could object that arguing that parental obligations are socially constructed leads to relativism about obligations and thereby makes it difficult to criticize harmful parenting or claim that parenting practices have improved or declined over time (Brake 2010, 169). If, as I have suggested, what parents owe to children varies across cultures and over time, then it is problematic to suggest that some parenting practices are worse
than others or that children are owed certain obligations at certain times and not at others. If there is no objective standard of what counts as good parenting or what obligations are owed to children, then parental obligations are determined on an individual basis and therefore, are relative.

Moreover, one could object that there are good reasons to sometimes reject the standards of one’s society when it comes to raising children. For instance, if one lives in an oppressive society that promotes discriminatory practices, then there are good reasons to reject such values when raising children. So if parental obligations are partly socially constructed and what parents owe to children is also a matter of convention, then it seems that parents would be expected to perpetuate the values and expectations of their society, even if those values and expectations are oppressive.

However, as Elizabeth Brake argues, the fact that the content of parental obligations is partly contingent allows for more, rather than less, critique (Brake 2010, 169). She argues “From the standpoint of child welfare, we can ask whether given arrangements best protect children’s interests. From the standpoint of justice, we can ask whether extant arrangements thwart equal opportunity or gender justice or equality for gays and lesbians. From the standpoint of morality, we can evaluate the permissibility of current laws and practices” (Brake 2010, 169).

Even if there are objective standards that can measure the welfare and interests of the child, what parents are expected to provide for their children depends on the kinds of programs and services available to parents in a certain society. Hence, how well or poorly a child flourishes depends not only on what her parents can or are expected to provide but
also on what her society provides. Therefore, the fact that parental obligations do not have a formal definition does not preclude the possibility of change and critique.

With an understanding of the content of parental obligations as contingent, in part one of this chapter I argue in favor of a pluralist concept of parenthood according to which genetics, gestation, and intent to raise a child may all be ways of accurately capturing who is considered to be a parent in a variety of cases including adoption, contract pregnancy, and gamete donation. In part two, I explain two accounts of parental obligations: causal and voluntarist. I focus primarily on illustrating why causal accounts fail to adequately explain the source of parental obligations and I also provide reasons for preferring voluntarism.

I explain that a voluntarist account has the advantages of a) making sense of different meanings of the term “parent,” b) avoiding the pitfalls of causal accounts, and c) explaining the significance of the parent-child relationship. Therefore, parental obligations are best understood as generated through consensually and voluntarily taking on the role of parent with the intent to raise a child and develop a relationship with a child, which includes the rights and obligations attached to raising her. Hence, I will explain how it follows that in some cases, a woman who causes a fetus to exist through voluntarily having sex, who is both the genetic and gestational mother, and who chooses to place the child for adoption does not incur moral obligations towards the child upon birth unless she explicitly or implicitly assumes responsibility.
Part 1: Defining Concepts of Parenthood – Genetic, Gestational, Social, and Pluralist

In the literature on parenthood, philosophers have distinguished among genetic, gestational, social, and pluralist concepts of parenthood (Feldman 1992; Mahoney 1995; Kolers and Bayne 2001; Porter 2012; Ettinger 2012). Each of these definitions of “parent” picks out different relations between adults and children (or potential children) and can result in different moral implications and obligations depending on who is (and is not) considered to be a parent and for what reasons.

Developments in reproductive technologies together with social practices such as adoption and contract pregnancy have shifted views regarding traditional concepts of parenthood. For instance, three-person in vitro fertilization (IVF) is a new reproductive technology developed to help avoid the transfer of heritable mitochondrial diseases by using the genetic information found in three gametes rather than the usual combination of two gametes (Tavare 2012). Technologies like three-person IVF help challenge the common assumption that a fetus is the result of simply two sets of genes. Therefore, because parenthood is not a straightforward but rather a complex relation among various people within a particular historical and social context, it is important to clarify the ambiguity in the use of the term “parent.”

A) Genetic Parenthood

A genetic parent is defined as anyone who supplies the genetic material necessary to create another human being (Kolers and Bayne 2001; Nordgren 2008; Porter 2012). There has been some support in favor of the genetic concept of parenthood, especially in
light of the increased use of DNA paternity testing in court cases to determine obligations (specifically, monetary obligations) in child custody cases (Archard 1995, 91; Fuscaldo 2006, 65). As Avery Kolers and Tim Bayne explain, strong geneticists view the genetic combination of parental DNA in creating children as both a necessary and a sufficient condition to determine parenthood. Kolers and Bayne contrast strong geneticism with sufficiency and necessity geneticism (Kolers and Bayne 2001, 274). Sufficiency geneticists argue that genetic derivation is a sufficient condition to determine parenthood but not a necessary condition and necessity geneticists argue that genetic derivation is a necessary condition but not a sufficient one (Kolers and Bayne 2001, 274).

However, although the importance of genetics with regard to paternity claims may be increasing, a genetic connection alone cannot determine parenthood. Contract pregnancy cases can help illuminate the latter point. Consider, for instance, an ovum fertilized though IVF, then carried to term by a surrogate. In this scenario, all three individuals (the two genetic parents and the surrogate) provide the materials necessary to create the fetus. The genetic parents contribute genetic material but the surrogate also contributes to the development of the fetus and indeed, the fetus is brought to term through her work (Kolers and Bayne 2001, 276). In contract pregnancy cases, there is little justification as to why the genetic material composition of the fetus ought to take precedence over other material composition of the fetus provided by the gestational mother (Kolers and Bayne 2001, 277). Therefore, parenthood cannot be determined solely by genetics.

It could be objected that the genetic composition of the fetus is more metaphysically important than other material composition because genetics individuates
people whereas other material composition does not (Kolers and Bayne 2001, 277).

However, Kolers and Bayne address the issue of genetic individuation in the case of identical twins. Identical twins are formed when one zygote splits into two embryos after fertilization. Bayne and Kolers argue that “individuation is not solely a genetic phenomenon: neither genes nor environment act independently in development or individuation; rather they interact” (Kolers and Bayne 2001, 277, their emphasis). That is, in the case of identical twins, although one set of parental genes contributes to the formation of a particular zygote, two specific individuals result if the pregnancy is carried to term. Therefore, gestation can and does have an effect on the individuation of the fetus and genetic derivation does not necessarily trump the importance of gestation.

Hence, developments in reproductive technology such as IVF and contract pregnancy suggest that genetics alone cannot provide a necessary condition to determine parenthood, as is claimed by strong geneticism. As Kolers and Bayne have argued, genetics may be a sufficient condition to determine parenthood or, to put it more plainly, a genetic connection is one way, among many, to determine parenthood since in many cases, genetic parents are also the ones who also raise the child (Kolers and Bayne 2001, 278).

B) Gestational Parenthood

While some have argued in favor of a genetic concept of parenthood, others have argued for the significance of gestation in determining parenthood. One proponent of the gestational concept of parenthood is Susan Feldman, who argues that in cases of dispute between genetic and gestational parents, gestation ought to take precedence over genetic
ties (Feldman 1992, 99). Specifically, she argues in favor of “the gestational or labor theory, which emphasizes not just genes but also the work, both physical and mental, conscious and automatic, that a nine-month gestation requires” (Feldman 1992, 99).

Feldman further argues that the lack of attention focused on the importance of gestation is partly due to historically problematic views of women as mere carriers of the fetus and the false belief that in fertilization, the work is done mainly by men (Feldman 1992, 99).

Feldman argues that although advances in biology and developments in genetics have reduced the erroneous and problematic view of women as mere fetal carriers, the negative views of women’s role in reproduction contribute to the neglect of gestation as an important aspect of reproduction (Feldman 1992, 100). Feldman concludes that in cases of dispute between genetic and gestational parents, the gestational mother’s rights ought to outweigh those of the genetic parents since her work is more fundamental to the development of the baby. Without the work and contribution of the gestational mother, the fetus could not be brought to term, even if the genetic parents provided the genetic material necessary.

However, while it is important to recognize the significance of the woman who is gestating the fetus as one type of parent, it is not clear that gestation alone can adequately explain parenthood either. Gestation cannot be a necessary condition of parenthood because gestation cannot explain how fathers become parents (Bayne and Kolers 2003). Although gestation alone is not necessary to determine parenthood, some have argued that it may still be a sufficient condition. So, gestation may be one way, among many, of determining parenthood. Again, in cases of contract pregnancy, gestational mothers play
a pivotal role in bringing a fetus into existence and their role in the creation of the fetus establishes their claims to parenthood.⁴

C) The Social Concept of Parent

Pointing to adoption practices, some have argued that parenthood may not be best understood in strictly biological terms (Hill 1991, 354). Rather, biologically unrelated adopted children stand in a special relationship with persons who have assumed the role of parent. In this case, a parent is someone who raises a child and takes care of the child’s needs, both physical and psychological. What is important to parenthood, according to the social concept, is the development of a parent/child relationship. The practice of adoption, together with other non-traditional family arrangements such as those involving same-sex parents, shows that parenthood may be best understood in social terms as a relationship between parents and children (Callahan 1995, 19). As Joan Mahoney argues, what is most important in determining parenthood is neither genetics nor gestation, but rather, the social relationships the child has with the adults who care for and nurture the child (Mahoney 1995, 45).

Mahoney argues for what she calls the “nurturance model of parenthood,” according to which caring relationships determine parenthood (Mahoney 1995, 46). She argues for expanding the traditional definition of parenthood both to serve the interests of the child and to better accord with the dynamic nature of family arrangements (Mahoney

⁴ I understand that there may be cases of dispute between the gestational mother and the contracting parents wherein each party attempts to establish parental rights to raise the child. My intention in using the example of contract pregnancy is not to determine which party ought to be granted custody but to indicate why gestational mothers and genetic parents can both be said to have legitimate claims. So in cases of dispute, other factors, such as the interests of the child, should be taken into consideration.
She stresses the importance of recognizing more than simply genetic parents. Using the examples of stepparents and the lesbian partners of genetic mothers, Mahoney argues that each individual has a kind of relationship with the child and the best way to understand parenting is in relational terms.

The social concept of parent is appealing because the focus is on the parent/child relationship rather than strictly biological factors that would otherwise exclude non-biological parents. Since parenting requires the presence of a certain kind of relationship between adults and children, the social model of parenthood may include people who share genetic material with their offspring, women who have gestated a fetus, and people who adopt genetically unrelated children, as long as there is the characteristic relationship. Therefore, the social concept may include non-biologically-related persons, such as adoptive parents and same-sex parents.

However, despite the initial appeal, focusing on the relationship between parents and children broadens the definition of parenthood to a problematic degree. For instance, if a “parent” is anyone who has a caring relationship with a child, it could be argued that teachers, grandparents, nannies, and anyone else who cares for a child at length can be considered parents. Mahoney accepts the possibility that grandparents or nannies might, in some cases, be considered parents if it is in the interests of the child, given the nurturance model of parenthood (Mahoney 1995, 60). She argues that if grandparents or nannies are better able to provide for the child and it is in the child’s interests to be parented by her grandparents or nanny rather than her genetic or gestational parent(s), then there does not appear to be anything morally problematic with accepting an expansion of parenthood.
However, accepting such a broad understanding of parenthood would inevitably lead to disputes among various people who claim to be a child’s parent. In cases of dispute, a relationship-based understanding of parenthood provides no clear indication as to whose claims ought to take precedence and for what reasons. The role of parent carries with it the rights, responsibilities, and obligations a particular adult has towards a child. While it may be true that many people can care for a child, it is not clear that simply caring for or developing a relationship with a child gives rise to parental rights, responsibilities, and obligations.

Moreover, to extend the definition of parenthood to anyone who stands in a caring relationship with a child could broaden the understanding of parent to the point of rendering the term “parent” meaningless. For instance, children who live in group homes would have caring relationships with employees who work at the group home but it would be strange to argue that the employees are the parents of the children who live there. Moreover, it is also strange to suggest that employees are the parents of the children who live in group homes during their shift but then relinquish their parental rights, responsibilities, and obligations once their shift is over. Although the social concept of parent includes a wide variety of people who can be considered parents, defining “parent” solely in social terms leads to problematic conclusions.

D) The Pluralist Concept of Parenthood

Other philosophers, such as Michael Austin, Tim Bayne and Avery Kolers, argue for a pluralist concept of parenthood by rejecting the view that one essential feature –

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5 I am grateful to Sergio Sismondo, Will Kymlicka, and Josephine Nielsen for these points.
genetics or gestation – is both necessary and sufficient to determine parenthood (Bayne and Kolers 2003; Austin 2007). They argue that there is a plurality of ways parenthood can be established (such as through gestation, direct genetic derivation, extended custody, and sometimes intentions to rear and nurture, as in cases of adoption) (Bayne and Kolers 2003; Austin 2007).

The pluralist concept of parenthood also captures those who are considered parents in a wide variety of instances, including cases of adoption. However, the pluralist concept has an added advantage over the social concept because caring relationships are not the sole criterion of parenthood and, therefore, the pluralist concept avoids the problematic implications of a relationship-based understanding. Recall that the social concept only captures those who care for and develop a relationship with a child, so that it does not matter whether the child is biologically related to her caregiver(s). It simply happens that any caregiving relationship may also include biological connections. By contrast, the pluralist concept avoids a purely relationship-based concept by allowing for the inclusion of other kinds of connections as well.

Moreover, a pluralist concept avoids the problems associated with a strictly genetic or gestational concept of parenthood as well. That is, a pluralist concept allows for a multiplicity of ways to define parenthood, and therefore parent/child relationships as well as biological factors may be used to determine parenthood.

However, it could be objected that even if the pluralist concept of parenthood may include more than caring relationships as a way to understand parenthood, a subset of parents, according to the pluralist concept, are still social parents. Therefore, it can be objected that the pluralist concept is subject to the same problems as the social concept.
Those such as nannies and group-home workers who care for a child for an extended period of time and develop a relationship can be considered parents and the pluralist concept of parenthood runs into the same problems I outlined previously.

However, although the pluralist concept also includes social parents as a type of parent, the significant aspect of the pluralist concept is that social relationships are not the sole way of determining parenthood and that also gives rise to obligations, rights, and responsibilities. As I will explain further in subsequent sections, parents have rights, as parents, to raise their children, and in order to override such rights, it must be shown that they are unable to provide adequate care. In cases of disputed custody, the initial parents (genetic, gestational, or adoptive) have the right to raise their child unless it can be shown that they are in some way unfit or unable to parent adequately. That is, the initial parents (genetic, gestational, or adoptive) who decide to raise the child and accept the parental role thereby accept the rights, responsibilities, and obligations that accompany such a role. Any later relationships the child has with caretakers such as nannies do not obliterate the initial parents’ rights unless the initial parents are shown to be unfit to parent.

Even if the same argument can be made for the social concept of parent (i.e., the initial caregivers have defensible rights claims over a child in cases of dispute), the social concept only contingently includes other biological connections as possible ways of determining parenthood. By contrast, the pluralist concept allows for the possibility that biological connections, not just caring relationships, do determine parenthood and so the initial parents may be the genetic or gestational parent with defensible rights-claims.

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6 I will expand on how parents incur role obligations in Chapter 5.
Even in cases of adoption where the adoptive parents have no biological connection to the child they raise, but instead develop, nurture, and maintain a relationship, the adoptive parents have defensible rights-claims that cannot be overridden by, say, a nanny who also takes care of, and develops a relationship with, the child. Caring relationships alone do not determine parenthood because to parent requires the acceptance of and identification with a particular role in addition to the child being eligible to be parented by a particular adult. Therefore, adoptive parents accept the role of parent and the rights, responsibilities, and obligations accompanying that role and unless it can be shown that the adoptive parents are unfit to raise the child, their rights are not infringed upon. Hence, any future caring relationships the child has with others such as nannies do not establish parenthood.

Furthermore, children in group homes or state care still have genetic and gestational parents. What they do not have is a social parent since being a parent requires the acceptance of and identification with a role and the eligibility of the child to be parented by the person who accepts the role. Even if the group home workers have developed deep relationships with the children, the employees would not be considered parents in the sense that social parents are, since the employees are simply fulfilling the obligations they have as a result of occupying a job. Their obligations are not parental role obligations. So, the pluralist concept of parenthood allows for the possibility that there is a plurality of ways to determine parenthood and thereby also avoids the problems associated with a purely relationship-based concept.

Another difficulty that arises with the pluralist concept of parenthood concerns cases where the genetic, gestational, and social parents are all different individuals, and
each seeks custody of the same child. In such cases, a pluralist concept does not necessarily provide a clear answer as to which individual(s) ought to be granted custody and why.

However, while adjudicating child custody cases is often difficult when there is disagreement among the parties involved, courts use factors including the interests of the child to help determine how to distribute parental rights and obligations. Although using a pluralist concept of parenthood may seem to complicate custody battles by including more individuals than a strictly biological concept includes, this expansion of the idea of parenthood to include several individuals may not necessarily be detrimental to the child. In cases of dispute, courts take a variety of factors into consideration to determine the best outcome for the child, so that the guardian of the child is determined by different facts in each case. Thus, the fact that a number of people can claim custody of a child in cases of dispute does not pose an insurmountable problem for the pluralist concept of parenthood.

Part 2: Causal and Voluntarist Accounts of Parental Obligations

Thus far I have outlined different concepts of parenthood and I have favored the pluralist concept. As I have explained, the pluralist concept is appealing because it provides an inclusive concept of parenthood and avoids the problems associated with the other three concepts. However, despite this clarification of the ambiguity in the use of the term “parent” via the pluralist concept, exactly how parental obligations are generated remains an open question. In this section I will explain two accounts of how parental
obligations are incurred – causal and voluntarist – and argue that, on the whole, voluntarist accounts can better explain the source of parental obligations.

Although I am primarily concerned with how parental obligations are incurred, rights and obligations are nevertheless linked. So before examining different accounts of parental obligations, I will briefly explain the relationship between parental rights and obligations as I use these terms.

Some argue that parental obligations give rise to parental rights, although rights and obligations can be separable (Austin 2007, 59). Generally in most cases, it is uncontroversial to say that parents who have obligations to their children also hold rights in order to protect their children’s interests. For instance, in order to adequately meet their obligations, parents require certain rights such as the right to decide which schools to admit their children to or which medical procedures their children will undergo. As Michael Austin argues, “If it is true that parents possess certain obligations, then from a legal perspective the parent must at least initially be given the space to fulfill those obligations” (Austin 2007, 60).

However, there are cases where parents may have obligations to their children but not hold any decision-making power or rights over their child. For instance, parents who abuse or neglect their children may have obligations to their children (primarily financial ones) although they may not hold any decision-making authority or rights in regard to the child. Also, consider cases of children who are conceived as a result of rape. The rapist

7 Of course there are examples where parents make controversial decisions for their children. Further, there is provincial and federal legislation that regulates and protects children’s interests apart from what parents decide is best for their children. However, my point is not that parental rights should be unquestionably accepted but that obligations sometimes require certain rights. I will assume here that parental rights are exercised in the interests of the child although I understand that this is not always the case.
may have financial obligations to any children his actions result in given the circumstances of the child’s existence but he does not hold any decision-making power or rights over the children.

Indeed, Austin argues that obligations are more primary than rights because in order to determine that parents have rights over their children, there needs to be a justification to grant such rights (Austin 2007, 60). As Austin explains, the justification to grant rights is determined by the needs and interests of the child, the child’s capacity to make autonomous decisions, and the obligations of parents. If such a justification is absent, then rights are not granted.

While some, like Austin, have argued that parental rights are justified on the basis of the best interests of children, others have argued that the “best interests” standard is problematic. For instance, Samantha Brennan and Robert Noggle argue that parents hold limited parental rights, independent of the “best interests” standard. Before I explain Brennan and Noggle’s view of parental rights, I will explain why they find the “best interests” standard for use in public policy problematic.

Brennan and Noggle argue that grounding parental rights in terms of the best interests standard results in two serious policy-related problems (Brennan and Noggle 1997). The first is that the best interests standard does not allow for the recognition of children’s rights because it requires judges to determine what is in the interests of the child and assumes that judges have “a standard of well-being by which to assess the children’s interests” (Brennan and Noggle 1997, 18). Even if judges often consult children regarding the children’s interests, the best interests standard does not require that
there be any consultation with children. So, as a policy, the best interests standard fails to protect children’s rights and should not be used ground parental rights.

Another problem with grounding parental rights on the best interests of the child is that maximizing what counts as the “best” interests of the child might mean the removal of children from parents who are providing good care if there are people who could provide even better care (Brennan and Noggle 1997, 18). The best interests standard does not take into account the claims a parents might have to raise a particular child and so could justify the removal of the child (Brennan and Noggle 1997, 18).

Rather than using the best interests standard as a way to understand parental rights, Brennan and Noggle prefer the “parents-as-stewards” model (Brennan and Noggle 1997, 8-17). As they explain, the “parents-as-stewards” model has the advantage of reconciling ordinary beliefs about what parents owe to children with the rights of children themselves. They argue that parents have some limited rights, as parents, although their rights are not absolute and indefinite rights (Brennan and Noggle 1997, 9). Parental rights (or stewardship rights), on their view, have thresholds, and so can be overridden if the child is being harmed or the child’s needs are not being met (Brennan and Noggle 1997, 9). But on the other hand, if the child is not being harmed and her needs are being met, then parental rights are generally not overridden.

The “parents-as-stewards” model gives children full and equal moral consideration and derives parental rights from the fact that children are not capable of exercising their own rights or making informed decisions about their own interests (Brennan and Noggle 1997, 11). Parental rights are required in order to ensure the protection and flourishing of children, until they are able to exercise their own rights and
make decisions on their own behalf. According to Brennan and Noggle, parents not only owe care and protection to their children but also must advocate on behalf of their children’s interests (Brennan and Noggle 1997, 12). So a stewardship model allows for the recognition of a complex set of obligations parents owe their children while at the same time treating children as full moral agents with rights.

Brennan and Noggle’s view of parental rights is closely related to my concerns about parental obligations. Parents, as stewards, are required not only to protect and provide for their children, but also to advocate on their behalf. However, and to borrow from Brennan and Noggle, “the rights of the parent to make decisions for the child are only rights to exercise discretion in fulfilling the duty to promote the interests of the child. Thus, on the stewardship understanding of parenthood, parental rights only extend to deciding how to promote the child’s interests. They do not constitute anything like property rights over the child” (Brennan and Noggle 1997, 13). So I am in agreement with Brennan and Noggle in arguing that parents have limited rights that can be overridden, in order to fulfill the duties that they have to their children. Until children are capable of making their own decisions, parents, as stewards, have rights to promote their children’s interests.

Having explained the link between parental obligations and rights and having explained that parental obligations are partly socially contingent, in what follows, I consider two accounts of how parental obligations are generated.
A) Causal Accounts of Parental Obligations

Although there are slight differences among various causal accounts, they share the view that parental moral obligations are generated by causing the fetus to come into existence (Nelson 1991; Callahan 1992; Prusak 2011; Porter 2012). Proponents of causal accounts argue that any agent who is causally responsible for bringing a fetus into existence assumes responsibility for the resultant vulnerable child. Therefore, according to causal theorists, genetic parents, gestational parents, doctors who provide in vitro fertilization, and gamete donors all incur obligations as a result of their causal role in bringing the child into existence. As Jeffrey Blustein argues, “Causing a helpless and vulnerable being to exist is sufficient, on this [causal] view, for moral responsibility” (Blustein 1997, 79). Proponents of simple causal accounts usually pick out at least two important features of procreation which they argue lead to obligations: one, that the voluntary actions of progenitors create another human being, and two, that the child who is created and brought into the world stands to suffer harms if neglected (Nelson 1991; Blustein, 1997; Bayne 2003).

Lindsey Porter recognizes several problems with simple causal accounts, which she argues can be addressed with a bifurcated causal account (Porter 2012, 63). Porter’s article provides a good summary of simple causal accounts by addressing some of the criticisms of the theory. Moreover, Porter’s account provides a recent attempt to justify causal theories so it will be useful to examine her account in more detail.

She notes that simple causal accounts of parental obligations suffer from the following three main weaknesses. First, simple causal accounts do not provide a strong

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8 For instance, see Porter 2012.
explanation of how adoptive parents incur parental obligations since they are not necessarily directly (or to a sufficient degree) involved in causing a fetus to exist. Second, it is difficult to non-arbitrarily determine or limit the number and significance of those involved in causal chains in the creation of a fetus (especially given reproductive technologies like IVF and gamete donation). Third, simple causal accounts imply a duty to gestate since the pregnant woman is responsible for the existence of the fetus, and the fetus requires her body for its continued existence (so she ought not to have an abortion) (Porter 2012, 66).

In response to these criticisms of simple causal accounts, Porter supports a bifurcated causal account. She notes that the term “parent” can be used to indicate a progenitor (or a “maker” in her terms), but it can also be used to identify someone who is the caretaker of a child and not its progenitor. According to Porter, a causal account needs to take into consideration this bifurcated nature of parenthood.

Although Porter recognizes that parenthood can be bifurcated, she argues that one can never stop being a maker even if one’s child is raised by someone else. Thus, if one procreates, one will always be a parent (in the sense that one will always be the maker of the child), and according to Porter, being a maker always necessarily involves duties. She explains that “one parents because one is obliged to parent. One is obliged to parent in virtue of being the child’s maker…. What we usually think of as parental obligation is, indeed, maker obligation” (Porter 2012, 70). What makes her account bifurcated is the recognition that parents are makers and are necessarily involved in the causal chain (and

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9 Through voluntary sexual intercourse, thus excluding fetuses conceived through rape.
hence, incur obligations) but that raising the child can be a role someone other than the
maker can take on.\(^{10}\)

As Porter argues, makers have *prima facie* obligations to the wellbeing of the
child but that does not mean that they cannot relinquish their obligations to others who
might take up the caretaking duties (Porter 2012, 71). Therefore, Porter’s bifurcated
causal account explains how adoptive parents acquire parental obligations even though
they are not necessarily involved in creating a child, since the role of parent can be
assumed by others rather than the makers.\(^{11}\)

Further, Porter claims that a bifurcated account can make sense of a seemingly
problematic conclusion generated by simple causal accounts. One problem with using a
simple causal account to ground parental obligations is that anyone who is involved to a
sufficient degree in the causal chain of events in the fertilization of an ovum (that
subsequently becomes a child) will incur parental obligations as a result of her actions
(Nelson 1991, 57; Porter 2012, 73). The implication of this view is that doctors who
provide IVF treatments (and other assisted reproductive services) and gamete donors
incur obligations.

However, since Porter supports a bifurcated account, doctors who provide IVF
and gamete donors are makers, but what they are obliged to do is to “‘make the child

\(^{10}\) It can be objected that Porter’s exact definition of a “maker” is ambiguous: Does she mean that makers
are those who supply genetic material, those involved in fertilizing an ovum, or those who gestate a fetus? If by “maker” she means those who supply genetic material or those who gestate a fetus, then her account
essentially turns into a straightforward biological explanation of parental obligation (which both she and I
reject). If, on the other hand, by “maker” she means those involved in fertilizing an ovum, then her account
sounds suspiciously like a simple causal account (which is also problematic). I will have more to say about
the problem of ambiguity in her use of the term “maker” in my criticisms of causal accounts. For now, I
will grant that makers and parents are separable and that her account is a bifurcated version of simple
causal accounts.

\(^{11}\) Again, the distinction Porter makes between her bifurcated account and simple causal accounts is not
clear because proponents of simple causal accounts also argue that parental obligations can be relinquished.
For instance, see Bayne and Kolers 2003, 239.
content with her condition so far as one can’” (Immanuel Kant, cited in Porter 2012, 70). Therefore, doctors who provide IVF and gamete donors are not parents since the parental role will be taken up by someone else. Porter clarifies, “One who fulfills 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 concerns” (Porter 2012, 70).¹²

She argues that gamete donors are makers, and hence, obligated to ensure that the “child’s existence is not a misfortune for her,” but that there is no reason to suppose that the child cannot be suitably raised by others (Porter 2012, 73). So, as Porter argues, gamete donors are makers (and thereby obligated for life) but what they are obligated to is to ensure that their genetic child is suitably cared for; hence, gamete donors are not parents (in the social, non-biological sense).¹³ She argues that the same argument can be extended to doctors who provide reproductive services such as IVF – i.e., they are makers but not parents in the social sense (Porter 2012, 73).

Finally, Porter addresses the issue that simple causal accounts imply a duty to gestate (Porter 2012, 73). If a fetus exists due to voluntary sexual intercourse, and if a pregnant woman has obligations to a fetus, then it might follow that a pregnant woman has a duty to gestate since it may be in the fetus’s interest not to be aborted (Porter 2012, 73). However, she argues that a bifurcated account “does not preclude a duty to gestate, ¹² There is still some ambiguity in Porter’s explanation here, or at the very least, her explanation is not doing the work she intends. Her bifurcated account suggests that doctors who provide IVF are makers, and hence, incur obligations for life (although they are not parents). But accepting this implication leads to the same problematic conclusion yielded by simple causal accounts. The question still remains as to how to non-arbitrarily limit or determine the significance of those involved in the causal chain of events that results in the creation of a fetus. ¹³ Once again, Porter’s departure from simple causal accounts is not immediately clear. For instance, Bayne (2003) makes a similar argument that gamete donors can transfer parental responsibilities.
but also does not imply one” (Porter 2012, 73). Porter argues that “it will follow from a bifurcated causal account of parenthood that the pregnant woman is obliged towards the foetus in the same way she is obliged towards any child she causes to exist: she is obliged to make the foetus’s existence not a misfortune” (Porter 2012, 73). So, a pregnant woman does not necessarily have a duty to gestate because for something to be a misfortune requires an agent who is self-aware and aware of her persistence through time (Porter 2012, 73). Therefore, as Porter argues, a bifurcated causal account does not necessarily imply a duty to gestate (although it does not preclude one either), as do other simple causal accounts.

To summarize, causal accounts share the view that the causes for which a fetus exists are of moral importance for generating obligations. However, as stated previously, grounding parental obligations on a simple causal story leads to some problematic conclusions. Porter attempts to address these problems by noting that a “parent” can be a maker or one who raises a child and that any good theory of parental obligations needs to take this bifurcated nature of parenthood into account. According to Porter, parental obligations arise from who the makers are and makers can never relinquish, once and for all, obligations they incur as a result of their voluntary actions.

A Paradigm Case

Before raising some questions about both simple and bifurcated causal accounts, I will present a case that can be used as a paradigm to illustrate why causal accounts fail to ground obligations.
Suppose a sexually active, heterosexual woman goes to speak to her doctor about reliable birth control methods. Since she wants to have sex but avoid pregnancy, she carefully considers her options and chooses to take oral birth control pills under her doctor’s guidance. Given the efficacy and reliability of birth control pills, she decides that pregnancy is a small risk and she voluntarily and consensually has heterosexual sexual intercourse. Her partner, wishing to avoid impregnating her, wears a condom as a backup method of contraception.

Despite all the reasonable measures taken to avoid the situation, she nevertheless becomes pregnant. Neither her intention nor her partner’s, before, during, or after sexual intercourse, was to become parents in any sense of the term (genetic, gestational, or social). After learning of the pregnancy, they deliberate carefully about their options and decide that since abortion can be a difficult procedure to undergo (both psychologically and physically), she will carry the fetus to term and place the child for adoption upon birth.

The significant aspect of this example is that even though the couple was aware of the slim possibility that pregnancy might occur as a result of sexual intercourse, they tried to minimize risks by using contraceptives. The use of contraceptives and the decision to place the child for adoption indicate their intention to avoid becoming parents (in the social, non-biological sense). One underlying implication of this paradigm case is that one may not be morally responsible for every outcome of an action even knowing the risks associated with a certain activity, if one takes reasonable measures and acts responsibly to avoid a certain outcome.
Although many real-life sexual interactions between individuals may not be as clear-cut, and sexual intercourse occurs in a wide variety of situations, as I will explain further, this case illustrates why it is unjustifiable to ground parental obligations in causal terms alone.

Criticisms of Porter’s Bifurcated Causal Account

Although causal accounts of parental obligations may seem plausible, there are problems with accounts that ground parental obligations in causal terms. Aside from the issues that Porter addresses in her article, and even granting her distinction between makers and parents, there are further questions that can be raised.

One problem with causal accounts is that there is no definitive link between causing an event (or a being a maker) and moral obligations. Despite Porter’s defense, causal accounts cannot always adequately link causation with moral responsibility. Proponents of causal accounts argue that causing a state of affairs entails moral responsibility for that state of affairs. However, the exact reason as to why other exculpatory factors such as intent are irrelevant to a causal theory is left unexplained. Elizabeth Brake raises similar concerns by arguing that causal accounts conflate causal responsibility with moral responsibility (Brake 2005, 59-60). Strict moral responsibility of this sort is not only problematic but also unjustifiable.

In her initial response to the issue, Porter quotes James Lindemann Nelson and Bernard Williams to argue that even in cases where an individual who caused an event is not blameworthy (for instance, a diligent driver who is involved in a fatal accident), the individual nevertheless stands in a special relation to the event such that she incurs
obligations (Porter 2012, 67). However, the link between causation and moral responsibility is left unexplained. What matters, in assigning moral responsibility, is not only that a person caused an event but the reasons that she caused the event (taking into consideration factors such as intent). For instance, a driver who is involved in an accident and damages someone else’s veranda would be morally at fault if the accident she caused was due to negligence, impaired driving, or intent to cause damage. If, on the other hand, she took reasonable precautions but unfortunately caused an accident that damaged someone’s veranda, then it seems unjustifiable to hold her morally responsible. She may be responsible for notifying the police and insurance agency in order to ensure that the accident is reported and the damage fixed, but her responsibility does not require her to pay for or fix the damage herself. The salient point is not that she caused an event that morally obligates her, but rather that she is morally obligated as a result of other factors, such as her intent.

Similarly, if the existence of a fetus is dependent on a causal chain of events such that a woman tried to avoid pregnancy, never consented to being pregnant (even though she did consent to sex), and the fetus exists in spite of her intentions and actions, then it seems unjustifiable to demand parental obligations from her. Causation may sometimes be a necessary condition for moral responsibility but it certainly cannot be a sufficient one.\(^\text{14}\) What justifies holding someone morally accountable is not only that she was

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\(^{14}\) Causation may not always be a necessary condition for moral responsibility either. An individual may be morally responsible for events that she had no part in causing. Peter Singer’s drowning child thought experiment provides a good example of such a situation. In the thought experiment, Singer argues that if you were to happen upon a child who was drowning in a shallow lake, then you ought to save the child when there is little cost or risk to yourself. See Singer 1972 for further details. In a similar vein, Diane Jeske argues that there are various *prima facie* natural duties that include refraining from harming others but also aiding others when “causally and epistemically positioned to do so…” (Jeske 2001, 23-24). According to Jeske, natural duties arise from some intrinsic feature of an individual (such as rationality or
involved in causing an event, but the *reasons*\(^{15}\) that the event occurred, and neither simple nor bifurcated accounts can make sense of certain cases of accidental and unwanted pregnancy, such as the paradigm case I explained previously.

The actions and intentions of individuals matter in a number of cases when determining parental obligations. Porter, Nelson, and Callahan all argue that in cases *other than* rape, coercion, or force, causation implies obligation. However, excluding cases of rape, coercion, and force in causal accounts suggests that intentions are sometimes important when determining parental obligations. As Nellie Wieland argues, in addition to standard unusual cases (e.g., cases of rape), there are a number of other cases that could be included, such as “cases where contraception is used but fails, where no contraception is available, where safe abortion is not available, or where power and legal structures are such that parents (typically mothers) have diminished control over their reproductive lives. But such cases would no longer be unusual…” (Wieland 2011, 256). Wieland argues that intentions must have something to do with parental obligations if even proponents of causal accounts want to exclude certain cases (Wieland 2011, 256). Therefore, if intention matters in some cases, it can be argued that intention is an important factor in determining parental obligations. If intention is important in determining obligations in certain cases, then parental obligations *cannot* simply rest on causation alone and distinguishing makers from parents does nothing to address these issues.

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\(^{15}\) By “reasons” I mean the conditions typically used to determine liability, which include (but are not limited to) mental elements such as intent, negligence, and recklessness, in addition to the circumstances surrounding the event.
Furthermore, both Nelson and Porter argue that there is no way to relinquish, once and for all, the obligations a maker has towards her child, even if the child is adopted by others who willingly consent to raise the child (Nelson 1991; Porter 2012, 71). Porter and Nelson claim that the act of creating a child makes a person permanently morally obligated towards that child. Nelson and Porter are both careful to say that children may be adopted by others and parental responsibilities thereby transferred, but if it turns out that the adoptive parents, for whatever reason, renege on their agreement, it would be up to the genetic parents (or in Porter’s words, the makers) to ensure the child’s wellbeing. However, it is not obvious why *makers* have special obligations towards the child rather than the adoptive parents who consented to raise the child. Adoptive parents who knowingly and willingly agreed to act as parents to a child are required to suitably parent the child or find alternative arrangements should they find or decide that they are unable to do so themselves.

Porter outlines what she takes to be clear cases of maker obligations, even after the child is adopted by others, such as the following: the birth child needs an organ, or is abused in her adoptive home, or is unhappy (Porter 2012, 72). She argues, “These troubles are the maker’s concern, and they will always be” (Porter 2012, 72). However, a question can be raised as to why Porter claims that *makers* have particular obligations towards the child. For instance, if *anyone* were to find out that a child is suffering abuse, that person would have an obligation to act.\(^{16}\) There ought to be adequate collective

\(^{16}\) In fact, in Canada, every citizen has a duty to report suspected or known child abuse (Canadian Child Welfare Research Portal 2011).
duties towards the wellbeing of children in society that include access to safe, effective, and supportive care for abused children.\(^{17}\)

Furthermore, Porter leaves open the question of why the adoptive parents who initially volunteered to act as parents would not be held responsible. It seems that individuals who consensually and voluntarily take on a particular role, knowing the significance of the relationship and the obligations they have accepted, ought to be held responsible and therefore it is the parents who adopt and renege on their obligations who would be liable for their actions. The troubles would belong to the adoptive parents who signed on for the role and not the makers, as Porter claims. The fact that the role of parent is the result of a conscious choice for the adoptive parents makes the obligation more significant than it would be for certain accidental and unwanted pregnancies.

Further, Porter’s explanation of the role of gamete donors and doctors who perform IVF can be questioned. Recall that Porter argues that gamete donors are makers and hence morally obligated, but they are simply obligated to ensure that the baby is well cared for, and of course caring for the baby can be done by someone other than the maker. She explains that the same argument can be extended to doctors who provide IVF; that is, doctors may be makers but the obligation they incur is to ensure that the resulting child is suitably cared for by others.

However, Porter’s explanation of the obligations of gamete donors and doctors who provide IVF obfuscates exactly what her definition of a “maker” is and how her argument is different from simple causal accounts. In the case of gamete donors, it seems that her definition of a “maker” is someone who supplies half of the genetic material

\(^{17}\) I am assuming the existence of social programs such as adequate foster care and improved adoption practices that I do not defend in this chapter.
necessary for the creation of a fetus. However, in the case of doctors who provide IVF, the definition of a “maker” seems to be someone who physically fertilizes an ovum (other than via sexual intercourse). Porter equivocates on what she means by “maker” and it is unclear how the use of the term “maker” is consistently applied both to gamete donors and to doctors who provide IVF. Makers are necessarily causal agents and it can be argued that the conclusions she draws in her bifurcated account regarding gamete donors and doctors who provide IVF are just as problematic as the conclusions implied by simple causal accounts; indeed, the distinction she wishes to draw is unsuccessful.

Porter’s account runs into further problems, given the ambiguity in her definition of a “maker,” in light of advancements in reproductive technology. Recently, the development and use of three-person IVF has been offered as a way of avoiding the inheritance of certain mitochondrial diseases. There are a few ways this procedure could be performed, with some techniques being more controversial than others (Ghosh 2011). In essence, an ovum containing the mitochondrial DNA from an entirely different, donated ovum is fertilized through IVF. Once the fertilized ovum reaches a certain developmental stage, the embryo is transferred into a woman’s uterus and if implantation occurs, she can proceed with the pregnancy by carrying the fetus to term. The resulting child would then have three genetic parents and would also avoid inheriting the disorder that would otherwise have been passed on through the original mother’s mitochondrial DNA (Kelland 2011).

Now suppose that three-person IVF with donated gametes is used to create an embryo and a surrogate mother agrees to gestate the fetus. Then upon birth, the resultant child is adopted and raised by different parents. In this scenario, there could be at least
five different individuals who could be said to be the “makers” of the child (the three gamete donors, the doctor who performed IVF, and the gestational mother). This scenario helps illustrate some difficulties in using a causal account to ground obligations because the role of each “maker” differs and causal accounts cannot provide a satisfactory justification for requiring obligations from each individual. For instance, it is not clear why donating genetic material, fertilizing an ovum, and gestating a fetus are morally equivalent actions. Further, there are metaphysical problems that arise for causal accounts with the use of three-person IVF since it is not clear how much genetic material is necessary in order to be considered a fundamental contributor to the creation of the fetus.

Causal theorists could argue that the donated mitochondrial DNA is sufficient to ground obligations and so both ovum donors and the sperm donor incur obligations. However, if the genetic contribution from each donor gets incrementally smaller, then it is not clear at what point a person who donates genetic material would incur obligations. Arguably, some genetic material is shared with all of humanity. So the amount of genetic material that is necessary in order to generate obligations poses a further problem for the causal theorists.

To complicate matters even further, if it turns out that the adoptive parents decide that they cannot raise the child themselves, then Porter’s ambiguous use of “maker” is useless in identifying who is obligated to the child given the number of people involved and the radical differences in the actions of each individual. The question still remains as to how to non-arbitrarily limit or determine the number of causal agents involved. Porter’s bifurcated account is plagued by the same problems that make simple causal accounts difficult to accept, and that she tried to address.
Porter could respond by arguing that every individual in the three-person IVF example incurs obligations for his or her contribution to the creation of the child. She could say that it makes no difference if their roles differ; their actions contribute to the existence of a vulnerable being, and therefore, they incur obligations. The doctor who provides IVF, the gamete donors, and the gestational mother contribute to the creation of the fetus and are thereby obligated to ensure the child is parented although raising the child can be done by others. Then, if the adoptive parents renge on their obligations, the responsibility falls back on the makers of the child.

However, while it is true that each individual in the three-parent IVF scenario contributes towards the creation of the fetus (with the exception of the adoptive parents), it is not clear why each individual’s role obliges her or him. The doctor who provides IVF is carrying out her role as a physician by providing a legal treatment sought out by the contracting parents. If she does incur obligations, the same could be said for doctors who provide fertility drugs, or agencies that provide family planning, or governmental programs that provide tax incentives for having children. Given the pro-natalist nature of Canadian society, there may be many causes for or ways to contribute to the existence of a fetus. But if the overall causal context includes such a wide range of people, then causal accounts lose the advantage of specifying particular individuals who can be held responsible for the creation of a child.

Furthermore, it is not clear why the gamete donors incur obligations since the donors provide their gametes on the condition that their gametes will be used to create a child whom they will not be responsible for raising. Similarly, the gestational mother agrees to carry the fetus to term with the understanding that she will not incur obligations
upon birth. Although the three gamete donors and the gestational mother contribute to the creation of a child, they do so conditionally. If the conditions are not met, then the fetus would not exist. So to demand obligations from the gestational mother and gamete donors despite a prior agreement that absolves them of obligations is unjustified.

The only people in the three-parent IVF scenario who intentionally and clearly accept obligations are the adoptive parents – that is, the only people who were not involved in creating the fetus and whom Porter’s bifurcated account initially excludes from responsibility. Recall that she argues that makers are obligated, come what may, for the wellbeing of the child and if the child suffers in her adoptive home, her makers are responsible. However, in the example of three-person IVF, they are the only ones who accept obligations.

Moreover, even if Porter’s argument is granted, i.e., that parental obligations are maker obligations, consider the following example as another way to highlight some further problems with her position. Suppose a diligent person tries her best to avoid catching an illness by getting regular check-ups, washing her hands regularly and thoroughly, avoiding contact with other sick people, maintaining a healthy diet and lifestyle, and, generally, performing what is within her power to avoid getting sick. Unfortunately, she contracts an illness that requires a prescription for antibiotics. She takes the full round of antibiotics, under her doctor’s instructions, carefully until the antibiotics are finished. However, the bacteria are not entirely wiped out and evolve into a new and untreatable strain, which she then unintentionally spreads to others.

Remember that Porter argues that progenitors have special obligations because through their actions; they are the makers of the fetus. Notice that in my example, the
relevant characteristics of (some) makers of babies and makers of drug resistant bacteria are the same; that is, the existence of the fetus and of the bacterium (x) is dependent on a causal chain of actions such that both tried to avoid x, both never consented to x, and x exists in spite of the person’s intentions. Just as it would be strange to blame or demand special obligations from the maker of drug-resistant bacteria, so also it would be strange to blame or demand obligations from (at least some) makers of fetuses.

Although there are similarities between the example I provided and the case of the unwanted baby, there is also a major difference. It could be objected that the difference between the bacterium example and the unwanted baby example is that a fetus will develop into a baby and stands to suffer harms if neglected whereas a bacterium will not and does not. So, according to Porter’s account, because a needy person now exists due to one’s unintended actions, one owes that needy person something. But I argue that the fact that a needy person exists because of your unintended actions does not necessarily obligate you, given other exculpatory or countervailing factors. The point I wish to make here is *not* that bacteria are relevantly like babies, but rather that being a maker of something does not necessarily entail moral responsibility for it. What matters, ethically, are the reasons that something was made, and to deny that other factors matter requires further explanation. The burden of proof is on causal theorists to explain why other factors are irrelevant. Causal accounts cannot provide an adequate response to the paradigm case I outlined previously (or to the additional cases outlined by Wieland), and, therefore, they fail as an adequate explanation of how parental obligations arise.

One could object that in the case of the accidental creation of untreatable bacteria, the individual who creates the bacteria does not do so knowingly whereas (most) women
eventually do know they are pregnant in cases of accidental and unwanted pregnancy. Therefore, women who know they are pregnant (even if they used protection) and carry the fetus to term incur obligations whereas individuals who create untreatable bacteria should not be held responsible, if they do so unknowingly.

However, suppose a woman has protected sex that results in a pregnancy that she is unaware of until the time of birth. Although cases of unknown pregnancies are rare and extreme, they are analogous to the case of the creation of untreatable bacteria. In both cases, the individuals involved tried to avoid the situation and created something unknowingly. Therefore, it seems unjustified to argue that they have incurred obligations.

One could respond that cases of unknown pregnancies are rare and difficult to verify, and may only account for a tiny percentage of unwanted pregnancies. In most cases, women who have protected sex that results in pregnancy know that they are pregnant. Therefore, the objection still stands: that is, women who carry a fetus to term, despite taking preventative measures prior to getting pregnant, incur obligations as a result of their choice not to get an abortion or take the morning-after pill upon learning of the pregnancy.

However, as I have suggested earlier, although women who carry a fetus to term may have duties to ensure that the child born is not harmed and is placed for adoption, these types of obligations are not parental obligations. I contend that parental obligations are special sorts of obligations that go beyond ensuring that a child is not harmed and is placed for adoption.\(^{18}\) Parental obligations are a subset of special moral obligations that can rightfully only be expected from particular individuals and are unique in the sense

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\(^{18}\) I will have more to say about duties owed to all beings in contrast to special parental obligations owed to children in the following sections.
that it would be strange to say that everyone has the same obligations to a child. For instance, my mother has obligations to me that I cannot rightfully expect from anyone else. Therefore, if a woman accidentally conceives, brings the fetus to term knowingly and chooses not to get an abortion, then places the child for adoption upon birth, her obligations are to ensure that the child is not harmed by surrendering the child to an adoption agency. Her obligations are not unique in the same way that parental obligations are unique because anyone would be expected to surrender a child to an appropriate agency given that the child is vulnerable and will suffer otherwise.

It seems that the motivation behind support for causal accounts is concern for the child’s wellbeing and an uneasiness about parents (particularly fathers) abandoning their genetic children. The assumption is that using a causal theory to ground parental obligations recognizes the wellbeing of children and focuses on the actions of progenitors by holding progenitors responsible for any children they may bring into existence. While I agree that people ought to take procreation seriously and responsibly and I share the concern for the wellbeing of children, I do not think that a causal account of parental responsibility adequately explains the source of obligations, or that it has been shown to be in the child’s interests to hold biological parents responsible.

Causal accounts amount to arguing that progenitors are morally responsible whether they do or do not use appropriate contraceptive precautions because the intentions of individuals are irrelevant. Strict responsibility of this sort is especially

19 For instance, Nelson argues, “the widespread practice of fathers’ abandoning children to the mothers’ sole care is not simply a matter of what a man may choose to do, but is morally blameworthy” (Nelson 1991, 54). Or, as Callahan argues, “But it is hard to see why, in our world, where the problem of feckless and irresponsible male procreators is far more of a social crisis, society lets that one pass” (Callahan 1992, 741).
problematic for women because it forces a woman to choose between either abstaining from heterosexual sex altogether or, if she does have sex and becomes pregnant, undergoing an abortion (which can be an invasive procedure she may not wish to undergo). To limit women’s reproductive autonomy by placing such a restriction on her choices is troubling.

Moreover, there is something inconsistent about upholding a woman’s right to abortion based on her right to her bodily integrity while at the same time using a causal account to ground parental obligations. If a woman has the right to abortion because only she ought to decide what happens to her body, then it follows that she ought to have the option not to abort as well. However, given a causal grounding of parental obligations, if she brings the fetus to term, she can never relinquish her parental obligations despite everything she may have done previously in order to avoid getting pregnant. So not only do causal accounts fail to ground obligations, but they lead to troubling restrictions on the reproductive autonomy of women in particular.

B) A Voluntarist Account of Parental Obligations

Supporters of voluntarist accounts argue that what grounds parental obligations is voluntarily assuming or consenting to developing a particular relationship with a child (Thomson 1971; O’Neill 1979, Brake 2005, Brake 2010). In her hugely influential paper, “A Defense of Abortion,” Judith Jarvis Thomson uses a voluntarist account in

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20 Interestingly, Porter accepts what I think is one troubling implication of her view: the reduction of a woman’s choices to either abortion or obligation, in cases of an accidental and unwanted pregnancy, even if she tried to avoid the situation (See Porter 2012, 76). However, Porter does not address this implication in any detail.

21 Voluntarist accounts are sometimes referred to as intentionalist or consent accounts. See Bayne and Kolers 2003 and Porter 2012 respectively. The terms generally share the idea that parental obligations are generated by the voluntary assumption of the obligations and responsibilities of being a parent.
discussing abortion (Thomson 1971). However, her arguments are just as applicable to
the moral obligations of women who choose to place their genetic children for adoption.
Through the use of a number of thought experiments, Thomson explains that a fetus does
not have the right to the use of a woman’s body unless the woman grants it such a right
(Thomson 1971). Underlying her argument in favor of abortion is a voluntarist account of
parental obligations:

Surely we do not have any … ‘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. They may wish to assume responsibility for it, or they may
not wish to. And I am suggesting that if assuming responsibility for it would require large sacrifices, then they may refuse
(Thomson 1971, 65).

As the quotation from Thomson suggests, parental obligations can be explicitly or
implicitly assumed. Explicit assumption of the role of parent is most clearly illustrated in
the practice of adoption. Adoption agreements can vary in the details but the general idea
is that the adoptive parents indicate their desire to become parents (in the social, not
necessarily biological sense) to a (sometimes) genetically unrelated child. They agree to
undertake all that is required to be a parent, including the obligations and rights that come
along with the role, and to develop a particular relationship with a child. Adoption is a

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22 I say “sometimes genetically unrelated child” because there are cases where children are adopted by relatives.
straightforward example of the explicit assumption of obligations that issue from being a (social) parent.

Implicit assumption of the role of parent is slightly more complicated. Parents can implicitly accept the obligations and responsibilities in the situation that Thomson explained: If a woman becomes pregnant, carries the fetus to term and does not place the child for adoption but rather takes the child home, she has implicitly agreed to undertake the responsibilities associated with being a parent to the child and to develop a relationship with the child.

However, it can be objected that implicit consent to parent occurs at the time of consensual sex. That is, since pregnancy is a risk associated with heterosexual sexual activity, then by willingly engaging in sexual intercourse (and knowing the risks associated with such an activity), couples consent to being responsible for a child should pregnancy occur and be brought to term. The objection is that people who knowingly and willingly engage in risky activities thereby accept responsibility for the consequences of that behavior and, therefore, people should be held liable for their procreative actions.

This objection is best refuted by Thomson herself. She argues that there is a difference between consenting to heterosexual intercourse and assuming responsibility for every possible consequence of that action, even if sex sometimes leads to pregnancy and women willingly engage in sex (Thomson 1971, 58-59). Thomson draws an analogy between voluntarily opening screen-covered windows (knowing that “people seeds” could float into your house and take root in your carpet and upholstery), and safe, consensual sex (Thomson 1971, 59). She argues that “despite the fact that you voluntarily opened your windows, you knowingly kept carpets and upholstered furniture, and you
knew that screens were sometimes defective,” it would be unjustified to expect you to allow the people who result from the seeds that take root the use of your house (Thomson 1971, 59). Similarly, it would be unjustified to expect a woman to allow a fetus the use of her body after she voluntarily has protected intercourse.

A further objection that could be raised against the voluntarist account of parental obligation that I support is to note that bringing a child to term involves not just one choice (that is, consent to sex), but a series of choices and that there are several points at which a woman can avoid responsibility by terminating the pregnancy. For instance, she could take the morning-after pill or seek an abortion if she finds out she is pregnant after protected sex. Therefore, it is not simply consent to sex by itself that results in obligations, but consent to sex in addition to all of the other choices a woman makes until the time she delivers the baby.

However, although I agree that sex, pregnancy, and the delivery of a child involve a series of choices, what I find troubling is the limitation of women’s reproductive choices in particular. In one of my criticisms of causal accounts of parental obligations, I raised the concern that causal accounts require that a woman have an abortion (which is an invasive procedure she may not want to undergo) in order to avoid parental obligations. Similarly, I find it troubling that women would be required to take the morning-after pill against their desires in order to avoid incurring obligations if their actions prior to becoming pregnant were responsible. I contend that if a woman has protected sex that results in a known pregnancy and she does not take the morning-after pill or get an abortion, but rather, carries the fetus to term to place for adoption, she does not incur parental obligations. If a woman should be entitled to decide what happens to
her body, what she ingests, and what procedures she will undergo, then limiting her
choices in the case of pregnancy requires further justification.

Furthermore, although it is true that consent to sex that leads to a pregnancy
carried to term involves not just one, but a series of choices, it is problematic to view the
actions of individuals within such a limited context from conception to birth. To
adequately understand the conditions under which the pregnancy occurred would require
an explanation of the overall context of an individual’s actions. Carrying a fetus to term
rather than getting an abortion does not imply the acceptance of obligations upon birth if
the context in which the pregnancy occurred in the first place was accidental and
occurred despite responsible contraceptive use.

Similarly, a woman who is being pressured into having sex even though she does
not want to have sex and is resisting but eventually “gives in” and asks the rapist to wear
a condom (in order to negotiate her own safety), is not consenting to sex at that moment;
she is being raped. So, in order to understand consent, the overall context in which an
event occurs needs to be taken into consideration rather than focusing on isolated
instances of consent or a viewing consent too narrowly. Therefore, the criticism of
voluntarism that suggests that a woman accepts responsibility to any resultant child by
not only consenting to sex, but also including all of the choices she makes until the time
of birth, leads to troubling conclusions. By not taking the morning-after pill and by not
getting an abortion she is not thereby consenting to accepting responsibility for the child
once it is born if her actions leading up to conception in the first place were responsible. I
do not mean to imply that consent is static and can never change over the course of an
event. Rather, I mean to draw attention to the importance of the overall context in
understanding consent, instead of focusing on a narrow view of consent issuing from conception to birth.

So, extending Thomson’s argument beyond a woman’s right to an abortion implies that if reasonable preventative measures are taken, one cannot be held responsible for every possible consequence of one’s action and, therefore, consent to sex does not imply tacit responsibility for a child who may result. Hence, it follows that parental obligations are incurred by those who explicitly or implicitly consent to becoming a parent and they are thereby required to provide for the children for whom they assume responsibility.

Other voluntarist accounts of parental obligations use variations of the same basic argument provided by Thomson. For example, Onora O’Neill provides a weak version of voluntarism by arguing that voluntarily taking on obligations is a sufficient condition in incurring parental obligations (O’Neill 1979). She provides a weak version of voluntarism because she leaves open the possibility of incurring obligations in a variety of other ways. Others, such as Elizabeth Brake, argue for a stronger version of voluntarism than O’Neill’s. Brake argues that voluntary acceptance is a necessary condition but not a sufficient one (Brake 2010, 152). According to Brake, voluntary acceptance of obligations is not sufficient because not only do parents have to accept the obligations, but they must also be able to fulfill their obligations and the child must be “eligible to be parented by them” (Brake 2010, 152).

My own view is more similar to Brake’s version of voluntarism than O’Neill’s. I agree that voluntary acceptance of obligations is a necessary but not a sufficient condition for incurring parental obligations. My own view expands on Brake’s work because, as I
have explained, not only is the consensual and voluntary undertaking of obligations necessary to ground parental obligations, but it must be done under certain conditions. Although I will specify the conditions in more detail in subsequent sections, some of those conditions require that individuals make well-informed, responsible decisions about appropriate contraceptive use and with the consent of both parties involved.

So, a voluntarist theory not only explains the source of obligations, but can also account for various types of parents. As explained by Porter (among others), since the term “parent” is ambiguous and can be used to refer to someone who supplies genetic material, a woman who gestates a fetus, or someone who agrees to raise a child, then a proper account of parental obligations needs to define who a parent is in order to adequately delineate the responsibilities of particular individuals. A voluntarist foundation better accords with a multifaceted concept of parent because it allows for the possibility that a genetic parent may not be the social parent and the same can be said for the gestational parent.

One could argue that my disagreement with causal accounts concerns the extent of obligations, rather than the existence of obligations for certain individuals. It could be objected that progenitors are assuming responsibility for the child by placing her for adoption in order to ensure that she is cared for if the genetic parents feel they cannot, or do not want, to raise the child themselves. Moreover, the fact that they did not abandon the child upon birth or throw her into the garbage indicates that they have some responsibility and, hence, the argument that I support is not so much about the existence

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23 Note that Porter remains silent on the question of the obligations of gestational mothers. It can be assumed, given her bifurcated causal account, that she would argue that gestational mothers are makers and hence incur obligations.
of obligations as it is about the extent of obligations. Whereas proponents of causal accounts argue that causal agents or makers are obligated, come what may, to any child they bring into existence (Porter 2012, 71), it may appear that I am simply arguing that there are minimal obligations, which can be relinquished.

However, I think it would be a mistake to read the argument that I have been supporting as simply a disagreement about the extent of parental obligations. One reason is that if parental obligations are obligations that are owed above and beyond what is owed to any vulnerable child, then the disagreement is not about the extent of parental obligations but about the existence of special obligations for certain individuals. The fact that the genetic parents did not abandon the child upon birth but rather placed the child for adoption does not imply that they do have parental obligations but that everyone has obligations not to abandon or neglect vulnerable beings. Whether the vulnerable child placed for adoption is genetically related to the parents, whether the parents caused the child’s existence, and whether the woman gestated and gave birth to the child are all irrelevant to minimal obligations towards a vulnerable being. Anyone would have an obligation to ensure that a vulnerable child is not harmed.\(^{24}\) So although there are obligations to vulnerable beings, parental obligations (i.e., those obligations beyond what is owed to any child) are best attributed to those who have voluntarily taken them on.

Moreover, as I mentioned previously, the content of parental obligations is contingent on a particular social context and it is socially constructed, so my use of the term “parental obligations” entails a rich notion of obligations that go beyond minimal obligations. As I have indicated previously, I follow Brennan and Noggle in asserting that

parents have obligations to protect, provide, and advocate for their children and I follow Ettinger, Mahoney, and Brake in asserting that parental obligations entail a particular kind of relationship.

Therefore, given the contingent nature of parental obligations and the fact that “parental obligations” go beyond minimum requirements to protect and provide for children, it follows that my disagreement with causal accounts is not merely regarding the extent of obligations.

However, in response, one could argue that the obligations a stranger has to a child and the obligations a (genetic or gestational) parent has differ. If a stranger were to happen to find an abandoned infant, she might be required to take the infant to the hospital, fill out a police report, or contact child welfare. By contrast, the genetic parents have an obligation to ensure that the child is adopted into a safe and loving home should they decide that they do not want to raise the child themselves. So again, it seems that my disagreement appears to be about the extent of obligations since I am not arguing that there are absolutely no obligations or that parents can abandon their children upon birth.

However, again, I think the disagreement is not about the extent of obligations but rather the existence of special obligations. Parents may choose to place a child for adoption but what they are obligated to ensure is not that the child is adopted but that the adoption agency is safe, effective, and trustworthy. Finding suitable parents to raise the child is not necessarily the responsibility of the genetic parents if there are adequate services that perform those functions. Moreover, there are collective duties of
responsibility that may meet the needs of children; the responsibility that individuals have is to ensure that there are adequate services available.\textsuperscript{25}

Furthermore, even if my disagreement with causal accounts is about the extent of obligations, causal accounts lead to an impoverished view of parenthood (Brake 2010, 157). As I explained previously and as Brake clarifies, “Obligations issuing from moral responsibility for causing a child’s neediness by bringing it into being are not equivalent to parental obligations” (Brake 2010, 157). So even if I grant that the disagreement between my support of voluntarism and causal accounts is about the extent of obligations, minimal obligations, such as financial contributions, are not the same as the parental obligations that I outlined previously. Although parental obligations vary across time and place, I take it as fairly uncontroversial to say that parents should typically do more than simply prevent harm to their children and provide for their most basic needs.

There is a further objection that can be raised against voluntarist accounts of parental obligations. The objection is that if consent or intent is what grounds parental obligations and if obligations sometimes give rise to rights-claims, then it could be argued that a rapist, who intends to impregnate his victim, has defensible rights-claims towards the child should the resulting pregnancy be brought to term (Austin 2007, 57). Furthermore, if consent or intent grounds obligations, then it could be argued that a rapist who does not intend to impregnate his victim but nevertheless impregnates her would not incur obligations to or rights-claims over any resulting child.

\textsuperscript{25} I will expand on this point in the section on collective responsibility.
These claims are troubling, and if voluntarism leads to these results, then there is good reason to reevaluate the justification for grounding parental obligations on consent. However, I do think voluntarism has resources to resist these problematic conclusions.

In the first scenario, in which the rapist intends to impregnate his victim, it could be argued that the rapist does indeed incur obligations towards the child (although strictly financial obligations) as a result of his actions. However, the rapist does not hold a defensible rights-claim over the child since the very act of bringing the child into existence was done by rape. As noted previously, obligations sometimes give rise to rights, but they need not. Parental rights have thresholds and can be overridden, and raping a woman raises legitimate concerns. The rapist carried out his intentions by assaulting another individual and thereby incurred obligations to compensate the woman and child as a result and nullified his rights-claims over the child. According to the voluntarist account I think is most plausible, the intention to create a child may be a necessary although not a sufficient condition for incurring responsibilities that will then sometimes give rise to rights-claims.

In the second scenario, it seems that a strict adherence to voluntarism would imply that the rapist who does not intend to impregnate his victim would not incur obligations. However, once again it is important to recognize the overall context in which the pregnancy occurred. The assaultive actions of the rapist would entail that he incurs obligations as a result of his actions despite his intent to avoid impregnating his victim. Therefore, a rapist is liable for the consequences of his actions and would thereby be liable both to the victim for the harms he inflicted on her and to compensate for any children that his wrongful actions bring into existence. His intent to avoid impregnating
his victim is irrelevant given the overall context in which the pregnancy occurred, and therefore he is liable. A criminal is responsible for the consequences of a crime, whether intended or not, because of the way the consequences came about.

Similarly, a burglar would be responsible if he broke into a home with the intention of stealing something of value and also injured the homeowner unintentionally while he committed his crime. The assault on the homeowner was a byproduct of the original intended crime itself and even if the burglar tried to avoid harming the homeowner, the burglar would be responsible for assaulting the homeowner in addition to burglarizing her home. The fact that the burglar never intended to harm the homeowner is irrelevant in incurring responsibility because he entered the home without consent and the assault on the homeowner would never have occurred if the burglar had not broken into her home. Similarly, the rapist is responsible for his assault on the victim and responsible (financially only) to the child since the child would not exist if not for his actions.

It can be objected that perhaps the rapist owes compensation to the victim but not to the child if he took care to avoid impregnating the victim. Recall that I argued that people ought to be held responsible for the foreseeable consequences of their actions if they fail to act responsibly. I further argued that the use of contraceptives during heterosexual intercourse is one component of acting responsibly, and I made a comparison to a diligent driver who is involved in an unavoidable accident. The criticism is that it follows from the logic of voluntarism that a rapist avoids liability for a child who is conceived through rape with the use of contraceptives in the same way that he would
avoid liability if he were driving home responsibly from the rape and was involved in an accident.

It seems that, following my support for voluntarism, I have two options in response to this objection. If I argue that individuals cannot be held responsible for all of the consequences of their actions, as in the case of the diligent driver, then I would have to concede that the rapist is not responsible for the resultant child if he used a condom. But on the other hand, if I want to say that he is responsible for the resulting child (despite using contraceptives) due to his assault on the victim (as I tried to argue previously), then I would also have to say that the diligent driver is responsible for the accident. If he is not responsible for every effect of his actions, assuming he tried to minimize risks, then he is not responsible for the child. But on the other hand, if he is responsible for the child, then he is also responsible for the accident. So, if I want to argue both that he incurs financial obligations to the child and that he is not responsible for the accident (assuming he was a diligent driver), then there seems to be a contradiction in my reasoning.  

However, there are two interconnected ways in which the previous objection could be addressed that would allow for a voluntarist account to reach the conclusion both that the rapist incurs obligations to the child and that he is not responsible for the car accident. First, since intercourse and conception are so intimately linked, a rapist is liable for compensation to the victim and the child because the fetus would not exist if not for his actions. I do not mean to suggest that the rapist owes compensation because the child is necessarily harmed by coming into existence. What I mean to argue is that given that

26 I am grateful to Will Kymlicka for raising this objection.
the rapist harmed the mother and by his very same actions, created a needy child, he incurs obligations. It is true that the rapist used a condom to avoid impregnating the victim and the victim could have obtained an abortion upon learning she was pregnant. But these conditions, in this case, do not abrogate his responsibility. Although this line of reasoning sounds similar to a causal account of parental obligation, it need not be. The relevant point, for the voluntarist, is not that he caused the fetus to exist but that he did it in a particular way, i.e., through rape.

A second voluntarist response is an extension of the first response. What is important for my version of voluntarism is not the existence of the fetus, but the reasons for its existence. So the fact that the fetus exists as a result of rape, even with the use of a condom, is important. Heterosexual intercourse involves two people and the consent of both parties is necessary. Therefore, given that conception, in the previous example, occurred as a result of rape (i.e., without the consent of the victim), compensation is owed to both victim and child. Although one requirement for what it means to “act responsibly” is to use contraception, using contraception is not the only requirement. Acting responsibly in any sexual encounter requires the consent of everyone involved. Therefore, in cases of rape that result in a pregnancy carried to term, the rapist incurs obligations for his irresponsible (to say the least!) actions.

Now that I have established that the rapist who uses protection incurs obligations for his actions, the fact that he was involved in a car accident that he was not responsible for causing can be evaluated independently of the rape. Since it was a separate incident, separate factors need to be taken into account. However, the same reasoning can be used to judge both incidents. The rape was an act forced upon another without consent and
suppose the car accident was an unavoidable collision. Notice that in both cases, what
determines responsibility are the reasons the incidents occurred rather than only the
occurrence of the event itself.

**Conclusion**

I have argued that causal accounts fail to ground parental obligations and that
voluntarism is preferable. It follows, then, that in certain cases, women who are genetic
and gestational mothers and who choose to place their child for adoption do not have any
further moral obligations to the child once it is born. Causal chains fail to generate
parental obligations mainly because causal responsibility does not imply moral
responsibility in all cases where pregnancy occurs.

As I have explained, the voluntarist account that I support in this chapter requires
several qualifications. Intentions and consent matter when assigning parental obligations
and I understand parental obligations as special obligations that differ from natural duties
that are owed to all humans. The exact content of parental obligations is partly
contingent on time and place and socially constructed to a degree, and so a precise
definition cannot be provided, but parental obligations are more than minimal obligations
to protect and provide for children. Moreover, individuals have a duty to act responsibly
and if they fail to do so, then they are responsible for their actions. In subsequent
chapters, I will provide a more detailed account of voluntarism by explaining other
conditions and also respond to further possible criticisms.

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27 For a discussion on natural special obligations and natural duties, see Jeske 2014.
My aim in this chapter is to provide an alternative to the foundation of parental obligations on a strict causal account by demonstrating the failure of causal accounts and upholding voluntarism. Causal accounts fail to provide an adequate understanding of the incurrence of parental obligations particularly in the types of cases I outlined. As I will explain in subsequent chapters, if the aim is to have responsible, caring, and consenting parents raise children, then support for a causal account of parental obligations remains unjustified.
Chapter 3

Genetic Fathers and Parental Obligations

Introduction

In Chapter 2, I argued that given certain conditions, women who are both the genetic and gestational mother of their child do not incur parental obligations towards the baby after birth unless they implicitly or explicitly assume responsibility. The issue I explore in this chapter is whether, given a commitment to gender equality, the same argument can be extended to men: that is, whether, given certain conditions, men who are the genetic father of a child (via either gamete donation or voluntary sexual intercourse) would incur parental obligations if they do not implicitly or explicitly assume responsibility.

I will consider the following as the paradigmatic case of non-intentional fathers. Suppose a sexually active man has voluntary and consensual sexual intercourse with a woman while using appropriate and effective contraceptives. He consents to sex but never intends or consents to raise any possible child should an accidental pregnancy occur and he makes his intentions clear to his partner. Despite the preventative measures the couple take, his partner becomes pregnant and after deliberation, she decides that she will carry the fetus to term.

I recognize that many sexual encounters resulting in pregnancy are far from the paradigm case I have outlined and the situation is further complicated by what it means to

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28 The term “non-intentional” rather than “unintentional” better captures the types of cases I consider because a pregnancy can be unintentional but the genetic parents might still welcome the unplanned pregnancy and want to raise the child themselves. However, in the cases that I am concerned with, the creation of the fetus is unintentional and the genetic (and for women, gestational) parents never intend to raise the child themselves.
take “reasonable measures to protect against pregnancy.” However, it is important to isolate the conditions that give rise to obligations and to determine their justificatory framework. Therefore, although encounters between individuals are dynamic and diverse, it is nevertheless important to understand the conditions that result in incurring particular duties.

In this scenario, if there is a commitment to gender equality in terms of equal rights and obligations, then it seems that grounding parental obligations on consent or intent implies that he does not incur parental obligations towards the child upon birth, should his partner decide to carry the fetus to term.

In the case of any pregnancy, there are four possible outcomes. One outcome is that the pregnant woman decides to have an abortion, in which case no parental obligations are incurred by the genetic mother or the father. Another outcome is that both the genetic parents intend to raise the child, in which case they implicitly or explicitly indicate their desire to do so and, therefore, parental obligations are incurred by both parents. Another outcome is that neither the genetic mother nor the genetic father intends to raise the child and they agree to place the child for adoption, in which case either no parental obligations are incurred (given a voluntarist account) or parental

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29 For instance, some forms of contraceptives are more reliable than others. However, rather than using a sliding scale of contraceptive efficacy and responsibility, I will understand “reasonable measures” as referring to what are generally acknowledged to be safe, effective, and available contraceptives.

30 For the sake of simplicity, I am assuming that genetic and gestational mothers are one and the same and that there is one genetic father.

31 I will not defend the moral permissibility of abortion and I take it as given that abortion is permissible.

32 Either causal or voluntarist accounts can explain the source of obligations in this scenario (although I clearly prefer voluntarist accounts).

33 Using the rich understanding of parental obligations I outlined in the second chapter.
obligations are transferred\textsuperscript{34} (given a causal account). The final outcome is that the mother brings the fetus to term and only one parent intends to raise the child by him- or herself.\textsuperscript{35} This last outcome may result in conflicts between the couple and there could be significant burdens for the parent who intends to raise the child alone. In cases where only one parent intends to raise the child, a question that arises is whether (and to what extent) the other parent incurs obligations and why.

In exploring the aforementioned issues, I will divide Chapter 3 into two main parts. In part one, I consider one possible implication of the voluntarist view I support and I argue that it is an unfair criticism of the specific cases that I consider. I will also explain whether the argument made in Chapter 2 can be extended to men, and outline some objections to “fathers’ rights” arguments.

In the second part, following Elizabeth Brake, I agree that in very specific cases, it is unfair to hold non-intentional fathers responsible, the same as it would be to hold non-intentional mothers responsible. However, as I will detail further in Chapters 4 and 6, there may be overriding considerations in non-ideal situations that may necessitate some contributions to children by non-intentional parents. The voluntarist account that I favor in no way justifies the behavior of so called “deadbeat dads,” and I will explain why in the following section.

\textsuperscript{34} For some causal theorists like Porter, the transfer of obligations may be temporary. If the adoptive parents renege on their promise, the responsibility for the child falls back on the makers.

\textsuperscript{35} However, although I say “him- or herself”, it is important to note that single parent households are typically female-headed. I will have more to say on the issue of single mothers in the section entitled “The Case of ‘Deadbeat Dads’”
Part 1: The Case of “Deadbeat Dads”

One objection to a voluntarist approach to parental obligations is that it could result in single mothers facing greater difficulties by allowing genetic fathers to walk away from their responsibilities. The criticism is that voluntarism might provide a justification for men who claim they have no parental responsibilities if they did not intend to raise their genetically-related children. Hence, voluntarism might provide a justification for so called “deadbeat dads.” I think this is a serious objection to voluntarism and before I address the case of deadbeat dads, it is important to keep in mind the types of cases with which I am concerned.

By supporting a voluntarist account of parental obligations I am not, under any circumstances, advocating that the lives of single mothers be made more difficult. There are sobering statistics that show the difficulties that single mothers face. For instance, in Canada in 2006 there were 3.9 million mothers (including adoptive, biological and stepmothers) with children under the age of 18 (Statistics Canada 2011). Of those 3.9 million, 1,132, 290 were single mothers (Statistics Canada 2011). Further, single female-headed households in Canada reported an income of $39,800, compared to $65,000 reported by single fathers (Williams 2010, 9). Thus, lone-parent female-headed households are more likely to have a low income than are lone-parent male-headed households (Williams 2010, 21). As rates of divorce increase, single mothers find themselves and their dependent children in increasingly difficult situations. Moreover, there is a sizable ‘family gap’ in earnings between women with and women without children, and the family gap increases as the number of children increases (Zang 2009, 36).

36 The family gap is also referred to as the “child penalty” or “motherhood earnings gap”.

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What these statistics show is that women continue to face difficulties when raising children, especially as single mothers.\textsuperscript{37}

Therefore, given the statistics on the current socio-economic status of single mothers, one argument that could be made against the voluntarist approach I support is that it might justify men getting off scot-free and women bearing the brunt of the burden by going through an abortion, carrying a fetus to term and placing the child for adoption, or raising the child herself.\textsuperscript{38} There might very well be cases where men falsely claim to have taken reasonable measures to protect against pregnancy, or fail to make their intention not to have children clear, and nevertheless impregnate their partner through voluntary intercourse, only to leave the pregnant woman and the baby stranded once the pregnancy becomes known. Even more malicious cases could be imagined, where a man intends to impregnate his partner (unknown to her) and intentionally thwarts her attempts to use contraceptives (such as by damaging condoms), only to leave the pregnant woman once her pregnancy comes to light and claim he never intended to raise a child or be a father. These cases are troubling and, I think, malicious not only to the mother, but also to the resulting child.

However, although I recognize the gravity of the issues that single mothers and children face within a patriarchal society, the conclusion that a voluntarist approach leads to men getting off scot-free is a mistake and unfair to the specific cases I am considering. Again, I want to reiterate that the point of this chapter is not to make life easier for so-

\textsuperscript{37} I will leave aside any explanation as to the reasons women experience such hardships since it is beyond the scope this chapter.
\textsuperscript{38} For instance, Claudia Mills makes these types of criticisms. See Mills 2001.
called “deadbeat dads,” but to consider whether gender neutrality with respect to parental obligations can be extended to non-intentional fathers in particular cases.

Although there may be several ways that “deadbeat dads” can be understood, I understand the term in the following ways. Deadbeat dads could refer to men who have made promises to raise children, which they did not keep. Or, it could refer to men who fail to use effective contraceptives and neglected their responsibilities as a result of their recklessness behavior. Or, it could refer to men who renege on their initial promise to raise children whom they had assumed responsibility for. What these cases have in common are instances of men who have lied, or acted irresponsibly, or neglected their voluntarily assumed obligations. So when I use the term “deadbeat dad,” I am referring to such men.

My primary concern in Chapter 2 was to extend reproductive autonomy for women by arguing that parental obligations are not grounded on causal chains. My concern in this chapter is whether consistency requires that the same argument be extended to men. I argue that a voluntarist approach is entirely consistent with the argument that deadbeat dads have done something morally wrong and ought to be held responsible for their actions. However, in the case of non-intentional fathers, it not as clear what (if any) moral obligations men have incurred and why.

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39 I should note that it is not only men who can be “deadbeat parents” although the term is most often associated with men and it is often racialized (although I will not address the racial aspects associated with this term here).
Part 2: The Case of Non-Intentional Fathers

One argument on the topic of fathers’ obligations is offered by Stephen Hales, who explains that fathers do not have an absolute obligation to provide child support payments (Hales 1996, 5).  He supports his claim on the grounds that it would be inconsistent to simultaneously hold the following three principles: 1) that women have a unilateral moral right to get an abortion, 2) that men and women should have equal moral rights and obligations, and 3) that parents have a moral duty to provide for their children once the child is born (Hales 1996, 6). Hales argues that since men cannot (and should not) have the right to decide whether a woman has an abortion or not, and given a general commitment to gender equality in terms of rights and obligations, it follows that there is a tension between principles 1) and 2), and fathers are unjustly held responsible given that men’s “right to abort” (that is, avoid future obligations) is not realizable (Hales 1996, 9).

Hales argues that a woman’s right to abort absolves her from future care for the child but men do not and cannot exercise that same right (Hales 1996, 7). He recognizes that biology prevents men and women from having identical means to exercise their rights with regard to abortion, and he supports “attempt[s] to achieve equal opportunity to exercise rights as much as possible” (Hales, 1996, 9). Specifically, he argues that genetic fathers should have a mechanism to exercise the right to avoid future responsibilities (Hales 1996, 11).

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40 Keith Pavlischek makes similar arguments. See Pavlisheck 1998 for more details.
41 It could be objected that there is always a risk (for both men and women) for pregnancy to occur during voluntary heterosexual intercourse so men can avoid future responsibilities by being more careful about using protection, or avoiding sexual activity all together. Therefore, one can be committed to gender neutrality by arguing that men have the same level of responsibility as women have in avoiding conception. I will expand on this issue in subsequent sections.
Hales argues that in order to achieve consistency among the three principles he puts forth, genetic fathers ought to have the right to refuse fatherhood during the time that women have to permissibly obtain an abortion (Hales 1996, 12). He recognizes that refusing to parent is not nearly as difficult as getting an abortion, and to remedy this difference in burdens, he suggests that there ought to be a written contract with sufficient (mainly financial) penalties for the unwilling father to offset the cost (in a broad sense) for the woman to terminate her pregnancy (Hales 1996, 12). Hales concludes that consistency and a commitment to neutrality require the recognition that in some cases, men have the right to opt out of parental obligations. Hales grounds his position on the argument that intentions and desires matter for both the genetic father and the genetic mother, and if women have the right to avoid future obligations via abortion, then men ought to have a similar right to avoid future obligations by refusal to further support the child (Hales 1996, 24).

Although the position that Hales supports and the voluntarist approach I explained in Chapter 2 share the underlying claim that intentions and desires help determine parental moral obligations, some of the claims in the two arguments differ. For instance, in Hales’s original formulation, he argues for his position based on an apparent tension among the three principles that he stipulates. However, Hales does not defend the third principle when he originally explains the problem of inconsistency. Even though Hales is committed to the idea that the intentions and desires of the genetic parents have moral significance when determining parental obligations, the kind of obligations biological

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42 Some have questioned whether there is any way to compare the physical contribution made by the mother to financial costs of the father. Although I will not go into detail regarding the issue of burdens to the mother and father, see Beckwith 1998, Boonin-Vail 1998, and Mills 2001 for more detail.
parents have to their children after birth is an open question. If the third principle is revised in Hales’s original formulation, then there does not appear to be an inconsistency between the first and second principle. Biological parents may have a duty to ensure that adequate services exist to meet the needs of children, but parental obligations do not necessarily follow if they put their child up for adoption.

Further, one can argue that women have an absolute right to decide whether or not to get an abortion and still defend gender neutrality in terms of rights and obligations by arguing that neither the mother nor the father have further moral obligations (given specific conditions are met) to their child upon birth. Although a voluntarist account and the solution that Hales considers share some similarities, it is unfortunate that he does not expand on the reasons that he does not seriously consider alternatives or revisions to principle 3. A revision of the third principle seems to be the logical conclusion of his argument, given his implicit grounding of parental obligations in voluntarist terms.

Other philosophers who have written on the issue of men’s obligations with regard to child support include Elizabeth Brake, who considers the situation of unwilling fathers who unintentionally impregnate their partner despite taking preventative measures. She draws two conclusions: first, that in certain circumstances, involuntary fathers do not incur parental obligations, and second, that in some cases, men should not be required to pay child support for their genetically-related children (Brake 2005, 55).

In arguing for the first conclusion, Brake begins by supporting Judith Jarvis Thomson’s argument that a woman who has consented to sex is not obligated to allow a fetus to use her body for its continued existence unless the woman grants the fetus the

43 Or non-voluntary, in my terms.
right (Brake 2005, 56). Brake also supports a voluntarist account of moral responsibility with regard to women’s reproductive choices and she extends the argument to men. Specifically, she argues that “if women’s partial responsibility does not obligate them to support a fetus, then men’s partial responsibility for pregnancy does not obligate them to support a resulting child” (Brake 2005, 56).

Brake argues that if men incur moral obligations in cases where contraceptive failure results in pregnancy, the obligation is to the mother (and only indirectly to the child) to share in the cost of an abortion or other related costs but obligations do not extend to child support throughout the child’s life (Brake 2005, 63). Specifically, she states, “Pregnancy … is a proximate effect of sex; childbirth is determined by further steps, the woman’s choice. While the father might be obligated to share the costs immediately incurred as a result of sex, his responsibility comes to an end when she gives birth. If the choice to bear and keep the child is solely the mother’s, the moral responsibility for its existence seems to be hers alone” (Brake 2005, 63). So, as Brake argues, men’s obligations in cases of contraceptive failure are to the pregnant woman for the duration of the pregnancy, or to share in the costs of an abortion, but his obligations do not necessarily extend beyond birth should she decide to carry the fetus to term.

One objection to Brake’s argument is that if the genetic father bears no further obligations, the cost of raising the child (in a broad sense) would fall squarely on the woman’s shoulders. Should she not be in a position to raise a child on her own, then it seems her only options are to place a child for adoption or to have an abortion, and hence,

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44 It can be objected that the obligation for women to support a fetus against her will would require a violation of their bodily integrity but the same is not true for men. I will address the difference in reproductive burdens in the following section, “Asymmetry and Gender Neutrality.”
reduce her actual choices and her option to raise her child. However, instead of holding non-intentional fathers responsible, there may be other ways to provide for single mothers and meet the needs of children. Moreover, to defend the position that men do have obligations towards the child after birth seems to require some kind of adherence to a causal account of parental obligation and as I have already argued, causal chains, on their own, fail to generate moral responsibility.

It could be further objected that there is always a risk of pregnancy when engaging in heterosexual intercourse for both men and women. Therefore, competent, fertile adults who consensually have sex always run the risk of pregnancy. Hence, they are responsible for the fetus’s existence given their voluntary participation in a risky activity. Should pregnancy occur, a woman has a right to her own body and so she has the right to obtain an abortion should she choose to do so, but the same cannot be said for men. Given men’s competent, voluntary choices, they are responsible for any children they may beget, should the woman decide to carry the fetus to term. Therefore, a commitment to gender neutrality requires that competent men’s choice to have sexual intercourse be voluntary and they take measures to protect themselves against impregnating their partner. However, should a pregnancy occur and the fetus be brought to term, men would be responsible given their initial voluntary, consensual actions that led to pregnancy.

One defect of arguments that ground paternal responsibility at conception is that, yet again, moral responsibility is determined in strict causal terms, an implication that is unacceptable. It is true that there is a risk of pregnancy any time one engages in

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45 More on this in Chapters 4 and 5.
heterosexual activity. However, as Thomson suggests, consenting to sex is not the same as consenting to being pregnant or consenting to being a parent (Thomson 1971, 59-66). Voluntarily opening a window is not the same as consenting to allowing people-seeds into your home. To extend this argument to men implies that voluntarily having sex does not necessarily result in obligations, given other countervailing considerations.

Moreover, there are risks associated with many activities that people undertake and an adherence to a strict causal liability model of responsibility is unjustified for many activities. For instance, whenever anyone drives a car, they knowingly take the risk of possibly causing serious injury, even death, to others. If a driver has a clean driving record, keeps her car in good condition, follows the rules of the road and generally ensures that she has done everything within her power to avoid an accident but nevertheless something happens (for reasons outside of her control), it would be unjustified to hold her morally responsible. Therefore, strict liability cannot explain the source of responsibility for many activities people willingly undertake and it cannot explain the source of responsibility for parents who knowingly and consensually have sex, given other countervailing moral considerations.

Brake argues for her second conclusion – that some men should not be compelled to pay child support – by making an argument that is in some ways similar to that of Hales. She argues that women’s (rightfully) unilateral ability to choose to abort and thereby avoid future responsibility for the child creates an asymmetry in terms of rights and obligations between men and women, which is a violation of the principle of equality between men and women (Brake 2005, 63). She argues, “Allowing the woman to make the abortion decision is justified by her right to control her body. But allowing women,
but not men, to avoid the costs of parenthood is not justified by different reproductive roles” (Brake 2005, 64). She argues that in some cases, child support payments from non-intentional fathers may be an unacceptably high cost that they would not be able to meet without great sacrifice, if at all, and so they would be an unjustified burden (Brake 2005, 65). If non-intentional fathers take measures to prevent impregnating their partners, and if the cost of child support payments would be unacceptably high, then given certain constraints, it would be unjustified to expect child support payments.

As I have outlined, the conclusions that both Brake and Hales draw depend on a voluntarist account of parental obligations, according to which intentions, desires, and actions of parents help determine responsibility to their offspring. Consequently, supporting progenitors’ reproductive autonomy ultimately requires acceptance of voluntarism and, as I have already shown, competing accounts (such as simple and bifurcated causal accounts) lead to troubling restrictions on reproductive autonomy (particularly for women). Before I return to the question of “father’s rights,” I will outline two further challenges to the voluntarist view that I support.

As I have explained so far, challenges to the argument that, in certain cases, non-intentional fathers do not incur obligations could take several forms. Some critics of voluntarism support, in one way or another, a causal account of responsibility, and as I have already argued, causation alone is not sufficient, nor is it always necessary, to ground obligations. Other critics could argue that even if it is unfair to hold non-intentional parents responsible, the needs of the child outweigh the cost to the genetic

\footnote{It can be objected that the needs of the child outweigh the burden on the genetic father and, therefore, obligatory child support payments are justified. I will have more to say on this issue in Chapter 4.}

\footnote{See Chapter 2, Part 2.}
parent, especially in non-ideal circumstances. I will have more to say on the topic of children’s needs and what parents owe to their children in Chapters 4 and 6. In the next section, I consider two further challenges to the case of non-intentional fathers: the unequal distribution of reproductive demands on men and women, and the recognition of an oppressive patriarchal social structure.

**Asymmetry and Gender Neutrality**

Although Hales and Brake have argued in support of non-intentional fathers’ right to refuse child support, there has been some hesitation to extend the “right to choose” to genetic fathers (for instance, see Overall 1993; Shanley 1995; Mills 2001; Overall 2012). There are two main objections: the first is the recognition of differences in reproductive demands on men and women, which may justify differential treatment. The second objection is the recognition of an oppressive social structure limiting women’s choices, such that women will bear the burden for abortion, or gestation and childcare, should they decide to raise the child themselves.

On the topic of unwed fathers’ rights and obligations to their genetic children, Mary Shanley argues that the understanding of gender neutrality that supports fathers’ rights on the basis of a genetic connection is mistaken and acts to diminish the mother’s decision-making authority (Shanley 1995, 74). Recall that I previously argued that parental rights sometimes arise from obligations, although not always. And as Brennan and Noggle argue, parents have *limited* rights, so it remains an open question as to what (if any) are the rights of unwed father and how they are justified. The discussion

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48 Although both have different reasons for their views.
regarding fathers’ rights and obligations is Shanley’s main concern; it is therefore important to bear the relationship between rights and obligations in mind.

Among others, Shanley uses the case of *Baby Girl Clausen* to raise important questions with regard to an unwed father’s custody rights to his genetic child. To briefly summarize the case, the genetic mother of a baby girl placed the child for adoption shortly after birth and informed the genetic father only after the adoption had already taken place (Shanley 1995, 74). The genetic father then initiated proceedings to claim custody of the infant. After two years of litigation, the child was given to the genetic father’s custody because it was deemed that his parental rights were never properly terminated and he was not shown to be unfit to care for the child (Shanley 1995, 74). One central question that arose in the case was the attempt to determine “the basis and nature of an unwed biological father’s right to veto an adoption decision of an unwed mother” (Shanley 1995, 75). The underlying question, as Shanley explains, is what determines anyone’s claim to parental rights (Shanley 1995, 75).

She argues that laws and social policy on parental rights must strike a balance between, on the one hand, avoiding false gender neutrality that treats men and women identically despite their different biological experiences, and on the other hand, avoiding the reinforcement of gender stereotypes and perpetuating male privilege (Shanley 1995, 75-76). She advocates policies that “ground parental claims in a mixture of genetic relationships, assumptions of responsibility and provision of care to the child (including gestation) … [and] recognize[s] the complexity of the sexual, genetic, biological, economic, and social relationships between adults and among adults and children that are involved in human reproductive activity” (Shanley 1995, 76).
Shanley explains that arguments in favor of unwed fathers’ right to custody of a child whom the mother wishes to have adopted do not recognize the patriarchal historical roots of family laws and policies, which have privileged men at the expense of women’s and children’s rights (Shanley 1995, 77). Shanley’s solution is to advocate policies on parental rights that recognize both biological ties and nurturance (even prior to the birth of the child), so that unwed fathers are required to initiate the assumption of responsibility for the child rather than be granted custody based solely on biological ties (Shanley 1995, 88). She summarizes her view as follows:

> My proposal that an unwed biological father have an opportunity to establish through his behavior his intention to parent his offspring tries to minimize the legal effects of biological asymmetry without ignoring altogether the relevance of sexual difference. I assume that an unwed biological mother has demonstrated a parental relationship with her newborn by virtue of having carried the fetus to term, while an unwed biological father may be required to show actual involvement with prenatal life if he wishes to have custody of the child. The model or norm of ‘parent’ in this case, therefore, is established not by the male who awaits the appearance of the child after birth, but by the pregnant woman (Shanley 1995, 91).

Shanley makes a number of important points with regard to the proper understanding of parental rights and obligations. She challenges the historically patriarchal roots that gave rise to paternal rights based simply on genetics and she advocates a more all-encompassing understanding of parenting that recognizes the reproductive labor of women.

Although Shanley considers cases of fathers who want to establish a relationship with their genetically related child and my concern in this chapter considers cases of fathers who do not want to establish a relationship with their genetically related child, we both recognize that intentions of the father are morally significant. As Shanley argues,
unwed fathers ought to make their intent to raise their genetically related child known and also initiate steps to establish a relationship (even prior to birth) in order to lay rights-claims of parenthood once the child is born. And as I have explained, the intention of the genetic father should play a role in determining what, if any, obligations the genetic father may incur. So, the voluntarist argument that I support is consistent with this general argument that men ought to make their intention known.

However, our views part ways on considerations of whether different reproductive demands between men and women may justify differential treatment. As Shanley explains, the act of gestating a fetus to term establishes a mother’s relationship with the fetus and thereby gives her greater decision-making authority.\(^49\) Therefore, according to Shanley, differences in reproductive burdens may justify differential treatment of men and women given that pregnancy and childbirth are radically different than paying child support. If differential treatment of men and women is justified based on morally significant differences in reproductive burdens, then the argument that unwilling fathers should not be required to pay child support (or otherwise support their genetically related children) based on the principle of gender neutrality may be unjustified. Carrying a fetus to term requires fundamentally different burdens than does financial support from the genetic father and therefore men incur obligations and hold weaker rights claims (if any).\(^50\)

As Brake recognizes, mandatory child support payments from non-intentional fathers do not violate autonomy in the same way that a forced pregnancy would violate a woman’s autonomy with respect to her own body. However, she argues that differences

\(^{49}\) Unless the genetic father attempts to establish a relationship prior to the birth of the baby.

\(^{50}\) For further discussion on this issue, see Mills 2001.
in reproductive burdens may not make a significant *moral* difference when considering the rights of non-intentional fathers (Brake 2005, 64). She explains, “If parents have incurred a responsibility to support, the mode of support should not make a difference…. The difference in burdens is relevant to duties of charity, but the existence of a right does not depend on how easy it is to honour” (Brake 2005, 64-65). Brake states that her argument does not need to show that mandatory child support payments are as burdensome as pregnancy but rather that “for some men, the costs imposed by mandatory child support are, if not comparable to the burdens of an unwanted pregnancy, unacceptably high” (Brake 2005, 66).

Obviously, given differences in reproductive demands, there is no way men can bear the same burden that women face by carrying a fetus to term. In the types of cases that I am primarily interested in, and assuming the existence of adequate social support, I agree with Brake and Hales that it would be unfair to demand support from non-intentional fathers. If a woman decides to carry the fetus to term, knowing (prior to having sex) that her partner does not want to be a father (genetic or social) and he takes reasonable measures to avoid impregnating his partner, then the non-intentional father ought to help cover the costs associated with pregnancy (if there is otherwise no social support or healthcare for the pregnant woman).

However, his obligations do not necessarily extend beyond that, assuming specific conditions have been met (i.e., that he acted responsibly). The mother can put the child up for adoption should she decide she will carry the fetus to term and does not wish to raise the child and wants to absolve herself of responsibility or she can raise the child herself. If she decides to raise the child herself, it is important to provide adequate social
support in order to assist the mother in fulfilling her obligations and meeting the needs of her child.

Other philosophers who have written on the topic of fathers’ rights include Christine Overall, who takes a different approach than Shanley, Brake, or Hales. She argues that reproductive freedom for men is not comparable to reproductive freedom for women (due to differences in biological roles) and hence, differential treatment may be justified (Overall 1993, 86; Overall 2012, 12). In essence, she argues that reproductive roles are drastically different in quality and quantity so that gender equality does not entail sameness of treatment (Overall 2012, 41). In examining the limits to the rights of non-intentional fathers, Overall concludes that “Men who want to control their sperm should be careful where they put it. … Men are entitled to exercise reproductive choice at the time that sperm leaves their body and is conveyed to another location … but there are no grounds for extending male reproductive freedom beyond this point” (Overall 1993, 86).

She argues that respecting men’s reproductive rights requires that sexual activity be genuinely autonomous (and sperm donation be voluntary), informed, and free (Overall 1993, 86; Overall 2012, 43). According to Overall, if men do not want to have children, they ought to be more diligent in using protection but their reproductive rights end upon (voluntary) ejaculation.

There are some points of convergence between Overall’s argument and the voluntarist account I support. For instance, we both agree that it is important that men take reasonable measures to prevent impregnating their partner if pregnancy is not the intent of the sexual encounter between the two. Moreover, we both agree that there are
wider societal obligations to provide more support for children and single parents. However, our views diverge on several points. Before explaining some reservations about Overall’s view, it will be helpful to provide a brief summary of some of her arguments.

Overall considers cases of dispute between parents and uses an example of purloined sperm to help draw her conclusions (Overall 2012, 37). In the example, suppose that a man and woman have protected intercourse using a condom. Then suppose the woman takes the used condom, unbeknownst to the man, and inseminates herself with the man’s sperm without the man’s knowledge or consent. Overall argues that the man ought to be held responsible for the resultant child despite the fact that he used protection to try and avoid impregnating his partner and despite the fact that the insemination was the result of deception (Overall 2012, 41). According to Overall, “the child’s interests in being well supported and cared for must trump the inseminator’s interests in not being a parent” (Overall 2012, 42).

So obligations are incurred in cases where free, autonomous, and informed sex results in a baby because the baby (and single mothers) may suffer if men are not held responsible for the results of their actions. Since there is always a risk of pregnancy when engaging in heterosexual intercourse between two fertile individuals, men (as well as women) must accept the consequences of these risks, even if they use protection.

However, there are several problems with Overall’s position that make her argument difficult to accept. One problem with Overall’s argument is that she draws her conclusions by implicitly relying on a causal account of parental obligations. But even if the causal underpinning is granted, there are further criticisms that can be raised.
Recall that in the case of purloined sperm, Overall argues that the genetic father incurs obligations as a result of his consensual sexual activity, knowing the risks of heterosexual sex, even with the use of protection. However, Overall makes an exception in the case of donated gametes because men who donate gametes have explicitly indicated that they do not intend to raise the child and the sperm is provided with the understanding that whoever uses the sperm to fertilize an ovum will not demand financial (or other) obligations from the donor (Overall 2012, 43). However, suppose that the purloined sperm example is similar. That is, suppose that prior to the sexual encounter, the couple explicitly agree that the man does not intend to be a father and the couple proceeds to have protected sex. Then despite the prior agreement and his use of a condom, the woman uses the sperm collected in the condom to impregnate herself and brings the fetus to term.

It would seem that consistency would require that Overall accept that if the man, in the purloined sperm example, had explicitly stated his desire not to be a father, then he would not incur obligations, even if the child and mother stand to suffer if he is absolved of his responsibilities, similar to the case of donated gametes. Although I understand that sexual encounters rarely (if ever) occur this way, the criticism helps to clarify one issue with Overall’s argument. More specifically, Overall’s argument depends, not simply on causation, but on causation that leads to the creation of a vulnerable being, without explicit prior agreement to avoid obligations (such as exists in the case of donated gametes). However, as I previously argued, causation cannot ground obligations, needs may be met in other ways, and it is not only in cases of donated gametes that men can make their intentions known.
For instance, it can be argued that the fact that the man uses a condom implies a prior understanding that he wishes to avoid impregnating his partner and obligations to a child should a pregnancy occur. Other than abstaining from heterosexual intercourse altogether, there is no more a reasonable person can do other than use safe, effective contraceptives to avoid pregnancy during a consensual sexual encounter. So it can be argued that the use of contraception is evidence of his desire to avoid becoming a father, and although not as explicit as a written contract, still fairly similar to the example of donated gametes for which Overall makes an exception.

Overall might object to my criticism by pointing out that “no contraceptive is foolproof” and, therefore, men (and women) run the risk of pregnancy every time they have sex (Overall 2012, 45). Hence, by taking known risks, individuals can be held responsible, even if they took measures to minimize risks. However, there are risks in all kinds of activities that people undertake. To return to the example of the diligent driver that I mentioned previously, every time a person drives, she takes the risk of harming others. If she ensures that she takes reasonable measures to mitigate the possibility of harm as far as she can, then to hold her responsible would require further justification.

Overall might further object that while it is true that there are risks in all kinds of activities, sex is a special kind of activity in that it can lead to the creation of a vulnerable being who requires financial and other support. Therefore, men who have sex consensually, given their actions, run the risk of creating a vulnerable human being and thereby incur obligations. However, as I explained previously in my criticisms of causal accounts, the fact that a needy person exists due to your actions does not necessarily

51 And as I will explain further in my criticisms of Seana Shiffrin’s paper.
obligate you, if the causal basis of assigning obligations is rejected. Moreover, if Overall does take this approach (i.e., that obligations are incurred through voluntary actions that result in the creation of a vulnerable being), then she cannot make an exception for gamete donors. Gamete donors provide gametes knowing their genetic material will be used to create a vulnerable human being. So their voluntary actions to donate gametes results in a vulnerable being and therefore, Overall cannot make an exception in such cases.

Overall’s argument essentially entails that individuals ought to be held responsible not only for the consequences of their intended and unintended actions but also for the consequences of unintended actions that they actively tried to avoid, if there is a vulnerable being created as a result of those actions. To argue for such a high standard of responsibility requires further justification, especially if there are other ways to meet the needs of vulnerable people.

One further criticism of Overall’s argument is that there are ways to create vulnerable beings other than through sex and gamete donation. Theoretically, adult cells can be used in order to clone an individual (Steinbock et al. 2003, 631). Adult cells can be fused with an enucleated, unfertilized egg in order to create a blastocyst (Cyranoski 2013, 497). A blastocyst can eventually develop into an embryo that can then be implanted in a woman’s uterus and carried to term. Furthermore, adult cells can be collected from tissue such as skin or blood (Cyranoski 2013, 497). Therefore, if Overall is committed to the argument that sperm can be used, through deception, without knowledge or consent, to create a baby and thereby create obligations, then it seems the same conclusion should be reached in this scenario. That is, if the skin or blood cells of
individuals of either sex can be used to create a life that will be needy and require support, those individuals, too, would incur obligations.

Although the scientific basis of this thought experiment is still imprecise and it is questionable whether such a scenario could ever occur, it could still have implications for Overall’s view. If, as in Overall’s example of the purloined sperm, men use contraceptives but nevertheless incur obligations as a result of their initial consent to sexual activity, then it seems the same conclusion would have to be granted in the case of cloning. However, it seems like a *reductio ad absurdum* to require men (and women) to be responsible for what someone else does with their skin or blood cells that were collected without their knowledge or consent for purposes that they never intended and even tried to avoid. That means that every time an individual leaves her house, donates blood, invites guests to her home, or in any way allows for the possibility of collecting her skin and blood cells that can be used, without her consent or knowledge, to create a vulnerable human being, she would be held responsible for the being.

So, if, as Overall argues in the example of purloined sperm, the creation of life through voluntary sexual intercourse makes the “inseminator” responsible for the resultant child despite his prior actions and intentions, then the creation of life through cloning would also make the genetic contributors responsible.

However, while I agree that creating a life that could suffer, without adequate support, is morally important, it is not clear why the genetic contributors would be responsible. In both the example of purloined sperm and cloning, genetic material is taken without consent or knowledge and, through deception, used to create a vulnerable being. The intention of the individuals whose genetic material was used for deceitful
purposes was not to create a life that would suffer. In fact, the intention of the individuals whose genetic material was used for deceitful purpose was to actively avoid such a situation. Whereas the intention of the deceiver was to create a life that would suffer. The fact that a vulnerable child exists is due to the intended and purposeful actions of the deceiver and therefore, the responsibility for the child’s suffering falls squarely on the deceiver’s shoulders.

Finally, Overall’s argument may have the unintended consequence that Porter accepts in her paper. That is, relying on a causal account to ground obligations reduces a woman’s choice in situations in which she finds herself pregnant and unwilling to raise the child to either get an abortion or assume obligation. As I mentioned previously, I find this conclusion troubling and unavoidable given a causal theory.

Given that it has not been shown that men incur obligations if they take care to avoid impregnating their partner, I will return to the question of asymmetry as explained by Shanley and Overall. If the causal underpinning of the argument is rejected and the hardships faced by children and single mothers can be addressed in other ways, then the asymmetry of reproductive burdens alone cannot explain why men incur obligations and women do not after birth. The ability to carry a fetus to term does not obliterate another’s rights if certain criteria (such as acting responsibly) are met. As Brake suggests, perhaps the difference in burdens, while important, does not necessarily justify differences in responsibilities or rights.

The concern motivating arguments in support of causal accounts of parental obligations is for the wellbeing of the child and of single parents (usually mothers). If, in

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52 Although Overall, unlike Porter, allows for the transfer of obligations.
certain situations, parents do not have moral obligations to their genetic children unless they accept responsibility, questions arise about the wellbeing (economic or otherwise) of the resultant child. Unlike abortion, adoption poses further questions about children’s wellbeing since a new being exists who would suffer harms if neglected. However, as I explain in further detail in Chapters 4 and 6, the needs of children and single parents may be met by recognizing collective responsibilities, improving social programs, and providing better resources for children and parents, rather than holding individuals responsible.

Non-Intentional Fathers and Obligations

Given the preceding discussion on gender neutrality and obligations, I will return to the issue of non-intentional fathers’ obligations. First, it is important to recognize the social context when taking into consideration the obligations that fathers may have towards their genetic children. As the statistics on single, female-headed households in Canada show, women often suffer the brunt – physical, emotional, and finical – of bearing and raising children. There is certainly much more work that needs to be done to address economic, social, political, and cultural inequalities between men and women in Canada.

However, to argue that men have not incurred parental obligations in very specific circumstances does not disregard the hardships that women face in a patriarchal society. The two concerns are not mutually exclusive or inconsistent. One can argue for the recognition of women’s oppression within a patriarchal society and promote efforts to eradicate oppression by arguing that one way to meet the needs of single mothers is to
provide substantive social support and expand existing services. Therefore, a voluntarist account is sensitive to the two criticisms I mentioned previously. That is, differences in reproductive burdens do not necessarily obliterate another’s rights, given adequate support is available. Further, voluntarism is sensitive to the plight of women within a patriarchal society since the two concerns are not inconsistent.

It is also important to keep in mind that the kinds of cases that I am considering of non-intentional fathers are qualified by several conditions. In order for non-intentional fathers to establish that they have not incurred obligations, they would be required to show they used effective preventative contraceptives and did not intend to impregnate their partner. In law, I understand that establishing liability is a complicated matter in many cases of dispute (not only in family law) and courts need to take into account not just the occurrence of a particular event itself, but mental factors such as negligence, intent, and recklessness. Therefore, in order to establish legal liability, I am assuming a fair and just judicial process. Hence, in cases of dispute, the onus is on those individuals (both men and women) to show that they acted responsibly.

Although I am primarily interested in the ethical obligations of non-intentional parents, ethical obligations are not entirely divorced from legal obligations. Determining the ethical and legal responsibility of non-intentional parents is related in several ways. For instance, if non-intentional parents fail to act responsibly and, by their actions, create a life that will have needs, then the ethical responsibility the genetic parents have incurred requires that they contribute financially (or in other ways) to the child they created by their reckless actions. Legal liability is thereby connected to the ethical
requirement to compensate for irresponsible actions. Therefore, in the following paragraphs, I will address both the possible legal and ethical implications of voluntarism.

One could object that the kinds of evidence necessary to avoid responsibility would be impractical, if not impossible, to collect in order to develop the kind of social and legal policy necessary for voluntarism to be successful. The objection to my proposal is that trying to establish that effective contraceptives were used and that intention was absent during a sexual encounter would be difficult (if not impossible) to prove or enforce. For instance, suppose that a couple had protected sexual intercourse but the contraceptives failed and the woman only found out she was pregnant a few months after the encounter. In this scenario, how could it be shown, long after the encounter, that a condom was used and that the man’s intention to have a child was absent?

Of course it would be difficult (although I do not think it would be impossible) to determine intent or show that effective contraceptives were used during a sexual encounter. However, as I mentioned previously, establishing intent can be difficult in many cases concerning liability. Determining liability in this instance is not entirely different from determining intent in many other cases.

For instance, if an individual is involved in a motor vehicle accident and there is damage to someone else’s property, there are a number of factors that must be taken into consideration in order to establish liability. Evidence is collected and the driver is questioned. If the evidence shows that the driver was negligent or reckless, the driver is responsible. Similarly, if there is enough evidence to show that a child was the result of recklessness or negligence, then the genetic parents incur some responsibility.
If, on the other hand, direct adequate evidence cannot be produced and courts need to rely on the testimony of the parties in dispute, such cases require the collection of a number of corroborating pieces of evidence in order to establish adequate circumstantial evidence. However, while it is more difficult to determine liability based on circumstantial evidence, this situation is not entirely different from other cases of disputed liability. Moreover, as I will explain in subsequent chapters, in non-ideal circumstances and in the absence of adequate social support for single parents and children, I assume that courts will take the interests of the child into consideration when determining what kinds of contributions non-intentional fathers (and mothers) must make.

**Conclusion**

Justifying parental obligations in voluntarist terms implies the conclusions drawn in Chapter 2 – that in certain cases, abortion and adoption may be morally equivalent in terms of relieving a woman of further parental obligations. Further, a commitment to gender equality forces the recognition that in some cases, non-intentional fathers may also not incur parental obligations. The obligations that men incur are to share in the cost of abortion or the costs of supporting the pregnant woman during her pregnancy. To argue that men incur obligations beyond birth can be justified in causal terms, but, as I have argued, causal accounts of parental obligation are indefensible.

Single mothers (and single fathers, for that matter) ought to have effective, reliable ways of meeting the demands of raising children on their own. Even given the differences in reproductive roles between men and women and a commitment to gender
neutrality, to extend the moral obligations of non-willing parents (men or women) is difficult to support without falling back on causal arguments or undermining the practice of adoption all together.
Chapter 4

The Moral Claims of Adopted Children

Introduction

Thus far, I have argued that progenitors’ intentions, desires, and actions, all of which are factors more important than mere causation, matter ethically to the proper grounding of parental obligations. Parents incur obligations if they voluntarily (implicitly or explicitly) consent to taking on the role of parent with the rights, obligations, and responsibilities associated with the role. And as I have mentioned previously, adoption provides a paradigmatic example of the explicit assumption of parental obligations.

Naturally, using a voluntarist account to ground parental obligations raises important questions about the welfare and needs of unwanted children. If, after an accidental and unwanted pregnancy brought to term, neither genetic parent wishes to raise the child, the welfare and life of the child could be at stake. Proponents of causal accounts of parental obligations argue that parents have prima facie obligations for any children they bring into existence, but a strict adherence to voluntarism seems to deny this conclusion. Therefore, any adequate voluntarist account would have to provide a response to the possibility of harm to children. In this chapter, I discuss what a voluntarist approach may imply for unwanted children and whether there is a way to both address the needs of children and retain voluntarism.

To that end, I address the following three issues that adopted children face: 1) whether knowledge of the genetic parent’s identity is necessary for the adopted child’s health concerns; 2) whether the adopted child stands to suffer great harms if the genetic parents do not attend to her needs; and 3) whether knowledge of the genetic parent is
essential to the formation of the personal identity of the child. I argue that voluntarism with regard to parental obligations has the resources to address 1) by appealing to scientific advancements in genetic testing and by clarifying genetic risks; to address 2) by appealing to collective or shared responsibilities; and to address 3) by arguing that the formation of personal identity need not be reduced to knowledge of genetic or family history alone.

1) Health Concerns

One objection expressed by adopted children (or children born from donated gametes) concerns the absence of sufficient genetic information or family history about diseases and other health conditions. Unlike children who are raised by their genetic parents, adopted children may not have access to family history or genetic information regarding potential genetically-linked disorders. If parents who place their genetic children for adoption were to learn that one or both parent are carriers of a genetic disorder or that they have a family history for a certain disease that they might have passed to their child, then it might be justifiable to argue that adopted children ought to be provided with the identity of their genetic parents for their own health concerns. The possibility of harm to offspring (at least for genetic disorders that place children at a high risk of inheriting the faulty gene(s)), may provide an ethical imperative for parents to inform their genetic children and provide any known family history for a disease.

However, while genetics may play a role in disease transmission, it is important to clarify the kinds of risks associated with genetic disorders. Some have argued that scientific developments in genetics have created a “genetic imperative,” that is, a drive to
find genetic markers as *causes* for an increasing variety of disorders (Hacking 2006, 89). As Ian Hacking and Jesse Prinz explain, the attempt to find a genetic cause for various disorders has resulted in an overestimation of the importance of genetics and an underestimation of the importance of multiple other factors. Hacking argues that while there have been some remarkable breakthroughs in identifying genetic disorders (for instance, Down syndrome), disease genetics more commonly identifies *risk factors* rather than causes (Hacking 2006, 90). Although some diseases like Down syndrome have a clear and direct genetic link, it has been argued that future correlations between genetic information and expressions of disability or illness will not be localized on a single chromosome, but will be multifactorial (Hacking 2006, 90). Rather than a single gene coding for a particular disease, multiple genes and interactions among them contribute to the expression of a disease.

Moreover, genetic markers only partly help determine risk factors for a disease or disorder; the interaction of genes with other genes, the environment, and other biological triggers may explain the manifestation of a particular disorder or disease. Being genetically predisposed to a particular disease does not necessarily mean that the disease will manifest in an individual, nor does not being genetically predisposed to a disease

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53 Of course, some genetic disorders do cause disease: as mentioned before, trisomy 21 results in Down syndrome. However, Hacking explains that such cases are rare and “what we should expect to see is not a gene *for* any of these disorders [Alzheimer’s disease and autism] but many genes on numerous sites that increase the probability of the disorder appearing at some point. Some of these sites may contribute to several disorders while each disorder may require in addition its own unique sites. Or maybe the genetic conjectures just will not pan out. In any case, we anticipate not determinism but risk factors, or worse, multifactorial risk” (Hacking 2006, 91, his emphasis). Hacking’s statement can be read in two ways. One way is to see it as a claim about the futility of genetic determinism and the recognition of the complexity of the ways genes work. The second way to read it is as a call to learn even more about genetics. The point that Hacking is making is not that all research into the genetic causes of disease is pointless but that there are serious epistemic limits to what can be determined before the onset of a disease or what causes a disease.
mean that an individual is safe from getting a disease that may also have a genetic link (Prinz 2012, 26).\footnote{It is important to note that Prinz is not claiming that genes have no effect. His aim is to cast doubt on the importance that has been placed on genetic factors as explanations of behavior and other traits.}

All this is \textit{not} to suggest that genes make \textit{no} contribution to the manifestation of a disease, but rather that the sole cause of a disease often cannot be attributed to genes alone. As Philip Kitcher has recognized, there are important benefits that remain possible with the further development of genetic screening in understanding diseases’ transmission and management (Kitcher 1994). Kitcher argues that technological advancements and the refinement of genetic screening processes could prove to be beneficial for diseases that are treatable, manageable, and preventable (to the extent that they are preventable). However, he also notes that “significant knowledge about the molecular basis of a disease is compatible with profound ignorance about how to cope with it” (Kitcher 1994, 316). That is, even if technology could be refined and improved to find genetic contributors to disease, it is not always clear how to manage and treat a disease, other than to provide the usual advice to eat well and exercise. He states that even if genetic screening is improved, “in the majority of instances, there is no \textit{medical} benefit that comes from foreknowledge” (Kitcher 1994, 317, his emphasis). Knowing that one has a predisposition to developing some kind of cancer does not necessarily provide a medical benefit to that individual. Moreover, the advice offered in response to such information is to maintain a healthy lifestyle, but that’s just good advice for anyone to follow, not merely those who are predisposed to certain kinds of cancer.

What Prinz and Hacking suggest is that although genes are inherited, this should not be confused with the \textit{causation} of traits (a gene might be heritable yet not be the
cause of a disease). This confusion between heritable traits and causation may overestimate the importance of genetics and underestimate the importance of numerous other variables.

Given the preceding discussion of genetic risk factors for disease, the issue adopted children face because of a lack of genetic information and family history may not be as imminently problematic as it appears. An individual can be genetically predisposed to and have a family history for a disorder and yet not exhibit signs or symptoms of the disorder itself. Environmental factors, in addition to other genetic markers, may explain the onset of a disease much more clearly than heritable genetic information. Therefore, given the variety of unknown factors that may contribute to the manifestation of a disease, there does not appear to be a moral imperative for parents to reveal their identity should the parents discover they have a genetic disorder. At best, an argument could be made to support a system where parents may anonymously provide information to the adoption agency\textsuperscript{55} if they find out they are carriers of a genetic disorder so that their genetic children may have access to that information (should the children wish to know). However, there appears to be little justification to provide the identity of the genetic parents in cases of adoption,\textsuperscript{56} since the identity of the parents is not necessary to address the health concerns of the child.\textsuperscript{57}

Making the concession that parents should anonymously disclose health information does not contradict my previous discussion about the limits to which genetic

\textsuperscript{55} Indeed, as I will explain in further detail in Chapter 6, in each Canadian province and territory, adoptees have access to non-identifying health information.

\textsuperscript{56} Pratten v. British Columbia (Attorney General). 2012 BCCA makes this type of argument.

\textsuperscript{57} I understand that some genetic disorders are so rare, or a population is so small, that children who inherit the disorder may be able to determine the identity of their parents, even when the identity of the parents is not disclosed. Given the nature of genetics, it may be a possibility that can never be ruled out.
information can provide to explain causes for diseases. It is not a contradiction because I did not claim that family history never provides information about inherited disease but rather, that genetic information is over emphasized as a cause for a disorder. Furthermore, I support anonymous disclosure since identity is not necessary for health information.

Further, it is important to keep in mind that the adopted child can have genetic screening done herself in order to gather information regarding genetic predispositions for diseases. There are already some genetic tests that are done at birth, particularly for treatable disorders such as Phenylketonuria (PKU) (Blau et al 2010, 1420). And a person does not require her genetic parents’ identity, medical information, or family history to determine her own genetic predisposition for known diseases. Individual genetic screening is not a burden that only adopted children need to bear, since children who are raised by their biological parents may not have knowledge of their parents’ genetic predispositions or knowledge of their family history. Furthermore, children (whether adopted or not) may wish to have individual genetic screening done despite having (or not having) access to family history because some genetic disorders are recessive and may not have appeared in one’s known family yet. Therefore, individual genetic screening is not a burden that only adopted children need to bear due to a lack of information about their biological parents.

However, given the prohibitive cost of genetic screening, it may be unreasonable to expect individuals to pay for genetic screening out of pocket, or to screen for all known diseases. Doctors often rely on family history and genetic information gathered from parents to determine possible risk factors for children. Therefore, parents who place their child for adoption may have a prima facie duty to inform the adoption agency (or
some other third party) anonymously of any relevant information they may have gathered. The likelihood of passing on a genetic disorder that could be harmful to their offspring and the possibility of their offspring also having children, together with the prohibitive cost of screening, may necessitate the need for disclosure.

However, as technological advances are made in the area of genetic screening and associated costs decrease, thereby allowing individuals to obtain screening, the prima facie duty of parents carries less weight. The situation of gamete donation is slightly different since genetic screening can be done on the gametes or zygote prior to fertilization and implantation. However, again, given the prohibitive costs of technology such as preimplantation genetic diagnosis, information is often gathered from gamete donors themselves.

It would be difficult to support the argument that parents have an obligation to provide information non-anonymously, given the importance and value of personal autonomy and the right to privacy (even if a right to privacy can be overridden in cases of severe or imminent harm to others and so is not an absolute right). However, in the case of adopted children, the parent with a heritable disease has already procreated and the child has been brought to term and placed for adoption. If there is an ethical imperative to disclose genetic information to one’s offspring, it should be possible to be done anonymously; to require more than this would endanger the individual’s right to confidential healthcare information and violate her right to privacy.

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58 It can be argued that parents have an ethical duty to screen for genetically heritable diseases before they have children (for arguments in this vein, see Savulescu 2001; Purdy 2004; Savulescu 2007; Savulescu and Kahane 2009). This argument might have more weight if testing were affordable, accessible, available to everyone and safe.
Therefore, given the multifactorial nature of many diseases, the epistemic limits about the causes of disease, advances in genetic testing, and the importance of personal autonomy, there appears to be little ethical justification to demand the revelation of the identity of parents to adopted children for health concerns. If parents wish to inform their genetic offspring of possible health concerns, they ought to be able to provide the information anonymously should the child inquire about possible genetic predispositions.  

2) Harm to Children

By far the most serious problem with a voluntarist approach to parental obligations is the possibility of harm to children. If neither genetic parent intends to raise their child (or if one intends to raise the child on her own without adequate support, financial or otherwise), then questions naturally arise regarding the welfare of the child. It can be argued that the needs of the child outweigh the genetic parents’ intentions or desires, such that the genetic parents should be required to provide for the child either financially or in other ways.  

However, while it is true that children can suffer grave harm and possibly death if neglected, it is not true that genetic parents are the only ones who can provide for the needs of the child or are solely responsible for harm that the child might suffer. A case can be made for collective duties of beneficence for vulnerable people (among whom are unwanted children), which are required of all citizens rather than any one person in particular. Therefore, a just society ought to have an adequate social structure to meet the

59 It is important to note that the child may not want to know which diseases she may have inherited.  
60 Indeed, some have argued along these lines. See Mills 2001.
needs of vulnerable individuals. Before providing support for collective duties, I will explain in more detail one argument that has had much impact in support of individualistic harm-based approaches.

An Individualistic Harm-Based Approach to Parental Responsibility

Seana Shiffrin argues that in every case of procreation (through either voluntary sexual intercourse or the use of reproductive technology) that results in a pregnancy carried to term, biological parents incur obligations towards the child, and, more importantly, that parents are liable for any harm that may befall the child after birth (Shiffrin 1999, 136-141). According to Shiffrin, all children have cause for action against their parents, even if they are unlikely to take action because of psychological and societal factors and because courts can filter out frivolous claims on an individual basis (Shiffrin 1999, 141-142).

Shiffrin argues that coming into existence creates significant risks and burdens for every child and, given the asymmetry of harms and benefits, children have grounds to lay claims against their genetic parents for their actions. She adds that it is irrelevant whether or not the biological parents took care to avoid pregnancy; liability is incurred in every case and not just in special cases where parents are negligent or abusive (Shiffrin 1999, 135-136). She argues for her position by explaining that there is an asymmetry between harms and benefits, such that harms caused are not simply negated by benefits, even if an individual is benefitted overall (Shiffrin 1999, 117-131). Therefore, biological parents, in creating a child who will suffer harms, ought to be held responsible. The responsibility

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David Benatar makes a similar argument. See Chapter 2 in Benatar 2006.
in creating a life that will suffer cannot be negated even in cases where the child’s life is beneficial overall.

On Shiffrin’s view, in cases where parents place their child for adoption, the genetic parents are still liable for damages because they “perform[ed] a morally mixed act by imposing the risks, burdens and benefits of human existence on their children…” (Shiffrin 1999, 143). It follows, according to Shiffrin, that adoptive parents are not liable for harms of harms to the child, since adoptive parents attend to the needs of the existent child and, having not created the child, they did not impose involuntary risks and burdens on her (Shiffrin 1999, 143).

Criticisms of a Harm-Based Approach

My first criticism regarding Shiffrin’s approach is not about the theoretical point that she highlights but rather about the implications of her view. Shiffrin argues that having a life worth living cannot outweigh the involuntary imposition of harms. Or to put it more plainly, having a good life is irrelevant when considering the imposition of unconsented-to harms. Therefore, biological parents are responsible for imposing harms by creating the child, even if the child’s life is beneficial overall.

I agree with Shiffrin’s general argument that biological parents create a child who will suffer harms that, by the very nature of creating a child, cannot be consented to. I also concede that it is true that any and every life brought into existence will suffer some harms, simply from living.

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62 Of course, the adoptive parents would still be responsible for harms that the child suffers as a result of their (that is, the adoptive parents’) actions such as abuse or neglect.
However, my question for Shiffrin’s approach is precisely about where the responsibility for harms lies. If it is accepted that biological parents are morally and legally responsible for the harms their genetic children suffer as a result of the parents’ actions in bringing the children into existence, that means the central focus of responsibility, on Shiffrin’s view, is the biological parents. However, what is important is not only the creation of a being who will suffer, but the nature and types of harms that the being will suffer. So the proper focus for moral concern is how well a child lives, what resources are available for her, and how well she is able to cope with and manage hardships.\(^63\) That is, the fact that a being brought into existence is fated to suffer some harms is not as important as the types and nature of the harms she suffers and how she is able to manage them, and it is the parents who raise her who carry the responsibility for these matters. Thus, the responsibility for harms falls on more than simply the genetic parents. The society that one lives in, the resources that are available to parents and children, and the social dynamics between individuals all contribute to the ways that harm is experienced and managed by any individual.

It is important to add that creating a life results in more than simply a sentient being who can experience harms and benefits. Creating a life also creates a kind of relationship that, again, is involuntary for the child. There is no asocial way to create a child and therefore the creation of life is necessarily relational. That is not to say that the relationship will always be a good one or that either party is required to maintain it – there could be good reasons for ending the relationship. Creating a child leaves one open

\(^63\) I am grateful to Katherine Wayne for discussions on this point.
to the possibility of developing the relationship further. So, creating a life produces a being who both can suffer and stands in a kind of relationship with other(s).

However, there are many situations and relationships in other aspects of life where the creation of something without consent allows for the experience of harms. What matters is what is done within the relationship that is the moral focus of responsibility. Therefore, the creation of a child who will have relationships with others is not as important as what is done within those relationships, whether they were consented to or not.

For example, suppose two individuals get married. While the union of the two individuals may\(^{64}\) be consensual, the connections among their family members who now stand in relation to each other as in-laws are involuntary. The creation of unconsented-to relationships, in this case as in others, also creates the possibly of suffering harms. What is important, in the evaluation of harms, is not only the creation of the unconsented-to relationship itself but what is done within the relationship. Similarly, what is important is not only the creation of a sentient child who will suffer but the nature of the relationships she has with those who raise her.

Therefore, it is the social parents who are responsible for the prevention and avoidance of harms to their child (to the extent that they are preventable and avoidable), and for providing the resources and abilities that will allow a child to cope with hardships in life as they arise. However, these responsibilities arise as a result of a life being lived, not just being brought into existence. Therefore, it is the content of experiences and the

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\(^{64}\) I say “may be” consensual to exclude cases of arranged marriages.
kinds of relationships formed that matter in the evaluations of harms, and hence, responsibility for harms falls primarily on those who raise the child.

My second criticism of Shiffrin’s harm-based approach depends on the distinction between causal and voluntarist accounts of parental obligation. Shiffrin’s argument is based on a causal understanding of parental obligations (Shiffrin 1999, 137-138) and is therefore subject to the pitfalls of causal accounts discussed in Chapter 2. What is important to note is that in a footnote, Shiffrin recognizes the fact that the neediness of the child alone does not necessarily ground obligations of the biological parents (Shiffrin 1999, 140). Therefore, for Shiffrin’s argument to succeed, the child’s neediness in addition to the actions of the biological parents who caused its existence creates the obligations parents have. However, if the causal underpinning of Shiffrin’s account is rejected, then even by her own admission, it follows that biological parents are not necessarily individually morally responsible for the fact that the child is needy.

The significance of my criticisms of Shiffrin’s arguments to cases of adoption is that the responsibility for harms falls largely upon the adoptive parents rather than the biological parents. If, as I have tried to argue, a proper understanding of harms requires more than simply the fact of possible unconsented-to harms in the creation of life or relationships, it follows that how a child is raised and what happens within the parent/child relationship are centrally important in understanding who is responsible for harms. Moreover, the responsibility to provide for a child’s needs, to protect her from harm (to the extent that she can be protected), and to provide her with the resources necessary to cope with harm involve more than the social parents. What the social parents can (or are expected to) provide depends partly on what kinds of resources are available
to them in the society in which they live. Therefore, the responsibility for harms requires a broader scope of analysis and involves more than just the genetic or adoptive parents.

Shiffrin’s individualistic harm-based approach focusing on the actions of the biological parents does not address the nature and types of harms that beings may suffer. Moreover, she has not shown that the creation of a child, rather than how the child is raised, is what is centrally important in determining responsibility. Lastly, her argument hinges on a causal understanding of parental obligations, which she does not thoroughly defend and which I have previously shown is deeply problematic. So, responsibility for harms requires a broader analysis and depends, in part, on a particular social structure.

Alternatives to an Individualistic Harm-Based Approach – Collective Responsibilities

Of course, it is important to attend to the needs of children should acceptance of a voluntarist account imply that, in some cases, there will be unwanted children who stand to suffer great harms if neglected. As I have briefly mentioned in previous chapters (and as I detail further in Chapter 6), there may be better alternatives to provide for the needs of children than holding non-intentional parents responsible for the unintended consequences of their actions, irrespective of their prior desires and actions. Although I give more concrete suggestions in Chapter 6, here I provide some provisional ideas and a framework from which to build in this section.

In a just and functional society, citizens have general duties of beneficence towards needy people (unwanted children among them). The concept of collective responsibilities provides a framework from which to address the needs of unwanted
children. In order to establish that collectives or groups of people can be held responsible, it is important to explain briefly how collectives can act intentionally. Since moral responsibility is typically attributed to individual agents who perform conscious intentional actions, it seems strange to say that a collective can act intentionally and be responsible for actions (Isaacs 2011, 23).

However, some have argued that intentional action and moral responsibility can be attributed not only to individuals but also to groups of people or collectives. The concept of collective responsibility raises important questions about the plausibility of attributing responsibility to groups rather than the individuals within groups (Smiley 2011). I will address some criticisms of the use of the concept of collective responsibility for my own purposes, but first, I will briefly explain one account, provided by Tracy Isaacs, of how collectives can be said to incur responsibilities. Isaacs summarizes the literature on collective responsibility well and her work provides a current and accurate interpretation of responsibility.

Isaacs provides a defense of moral responsibility both at the collective and at the individual level (Isaacs 2011, 54). Isaacs defends her position by describing different types of collectives, ranging from highly structured organizations, to collectives organized around a shared common goal, to collections of people with shared characteristics (Isaacs 2011, 24-41). Organizations, according to Isaacs, provide the best and least controversial example of sites of collective agency and responsibility (Isaacs 2011, 24). According to Isaacs, collective responsibility is not merely the sum of the

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65 I will not provide a full-fledged defense of the existence of collective responsibility, although I do think one can be provided (for instance, see Isaacs 2011). I mention collective responsibility mainly as a possible solution to some criticisms of voluntarism.

66 For instance, see Bratman 2006, Copp 2006, Isaacs 2011.
responsibility of the individuals within a group, but collectives as a group can be said to be responsible and act intentionally (Isaacs 2011, 54).

Organizations have an intentional structure that allows for intentional action and they therefore count as moral agents (Isaacs 2011, 27). According to Isaacs, organizations have structures “in which the organizational roles and authority structures are outlined and the organization’s policy – including its mission and goals, as well as procedures for making organizational decisions for the organization taking action – is articulated” (Isaacs 2011, 28-29). Organizations with clearly delineated positions, roles, goals, and procedures can act intentionally towards some goal. Each individual within an organization need not adhere to the overarching goals of the collective; simply by carrying out their roles, individuals within an organization contribute towards the intentional actions of the collective (Isaacs 2011, 30-31). Individuals within an organization can determine what the overarching goals of the collective will be and aim towards those goals, even if not everyone who fulfills their roles holds the same views.

For my purposes, nations and states fit into what Isaacs refers to as organizations and so provide clear examples of sites of collective responsibility. Nations and states have clear organizational and intentional structures and so can act intentionally. One overarching shared goal is (or should be) addressing the needs of vulnerable people who are at risk of harm through no fault of their own. Collective responsibilities require that there be proper services and resources in place and that the improvement of existing services be undertaken. Children born to unwilling parents clearly have made no choice to be in such a situation (indeed, no child ever chooses to be born) and, therefore, there are collective responsibilities towards unwanted children. These collective
responsibilities can be executed by ensuring that there is adequate social support for
vulnerable populations. Parental obligations, however, can only be taken on by
individuals because only individuals can develop a parent/child relationship. Recall that
in Chapter 2, I argued that while there are different concepts of “parent,” what is
necessary for parenthood is a particular kind of relationship between an adult and a child.
Relationships must be between individuals, but support can be provided by individuals or
by the state.

Moreover, given that parental obligations are socially constructed, what parents
are required to provide in order to protect, advocate for, and contribute to the flourishing
of the child depends on the society in which they are born. Obviously, children have
needs that ought to be met and they require care and attention. However, how these needs
are met and by whom they are met is partly contingent on the society in which they live.
Additionally, Brake argues that since the needs of children cannot be compiled into a
finite list, what children need will vary depending on which society they were born in
(Brake 2010, 166). She argues, “Causing a child to exist causes it to be in need of food,
shelter, and so on, to survive; but society causes it to need parental assistance with
homework and a high-school education to be eligible for much employment” (Brake
2010, 166). Therefore, the fact that children have needs that ought to be met is not the
responsibility of the genetic parents alone since the services available to parents and
children help determine what parents can or ought to provide.

Indeed, others have argued that a society that allows children to come into
existence shares responsibility for their wellbeing (Kluge 1992, 305-306). Eike Henner-Kluge has argued that the fact that parents live in a society that allows for the possibility
of children being born (and indeed, many societies encourage people to have children) and the fact that children have socially-grounded rights imply that there are shared positive duties to provide for the needs of children.⁶⁷ Given the overall social context that encourages procreation, in addition to the intentional character of a nation, there are collective responsibilities to provide for the needs of children. However, these duties to provide support for, and assistance to, vulnerable others are not parental obligations, as I have been using the term.

Voluntarism and Collective Responsibility: Resolving the Tension

One objection that can be raised to my use of collective responsibility as a way to meet the needs of unwanted children is that the justification of collective responsibilities contradicts the logic of voluntarism.⁶⁸ Many obligations that an individual has, simply in virtue of being born in a particular country, go beyond what is owed to any human being (i.e., they are special obligations), and they are incurred involuntarily. Therefore, if voluntarism requires the voluntary (tacit or explicit) acceptance of parental obligations at the individual level, then it seems inconsistent to suggest that citizens have involuntary special obligations to ensure that adequate social programs for vulnerable populations are available, simply in virtue of being born into a particular country.

In order to answer this objection, I need to reconcile the apparent inconsistency of arguing for the voluntary acceptance of parental (i.e., special) obligations and the involuntary incurrence of collective (i.e., special) obligations. Both are special

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⁶⁷ Tim Bayne makes a similar argument. See Bayne 2003, 84-85.
⁶⁸ I am grateful to Will Kymlicka for raising this objection.
obligations that go beyond what is owed to every human being, but, as I have argued, both are incurred differently.

In response to this objection, I will refer back to Isaacs’s work. Recall that Isaacs provides an understanding of obligations both at the individual and at the collective level and the least controversial collectives are highly structured organizations, including nations. One important feature of Isaacs’s view is that each individual within an organization need not share the same overall goals and intentions as the organization itself in order to contribute to the intentional actions of the organization (Isaacs 2011, 29). Moreover, some actions that can be performed by individuals may also be performed by collectives.

So, while the decision to parent a child is taken by particular people at an individual level and parental obligations are grounded on voluntary choice, funding high-quality childcare is a collective responsibility that is necessary in a given society that allows and encourages individuals to procreate. It is not necessarily inconsistent to argue that certain special obligations are incurred voluntarily at an individual level and other special obligations are incurred involuntarily at a collective level.

A subset of special obligations, such as parental obligations, can only be held between individuals who cultivate a kind of relationship. Since a parent/child relationship can only be between individuals, the incurrence of parental obligations is best grounded in voluntary terms. However, the involuntary obligations one has (including obligations to vulnerable populations) as a result of being born into a particular country are not agent-relative as parental obligations are. The incurrence of obligations one has as a citizen may not be justified in voluntary terms and although I cannot provide an adequate
explanation of the incurrence of such obligations here, I think that most people would agree that there are such obligations (Dagger and Lefkowitz 2014). Therefore, the provision of support through high quality day care can be provided collectively and parental obligations are provided by individuals.

In this way, I can reconcile the seeming tension between the voluntary assumption of parental obligations and the involuntary incurrence of collective responsibilities because parental obligations and the provision of support can be separable. The fact that parental obligations are chosen and necessarily relational means that such obligations can only exist between individuals whereas funding social programs and protections for vulnerable citizens is not necessarily agent-relative. In an ideal scenario, parents (not necessarily biologically related parents) would voluntarily assume responsibility for children and develop a relationship and bond with them, while also protecting and providing for them. However, this is not always achieved and therefore, collective responsibilities are necessary to provide adequate support for children in such situations.

Another objection to my use of collective responsibilities in this context is that given the historical and continued underfunding of social services, it seems unlikely that governments will implement the kinds of programs necessary to adequately support unwanted children. The objection is that even if the voluntarist argument for better programs is accepted, it is still unlikely that adequate support will be provided. If this objection is successful, voluntarism must be rejected, given the risk of harm, although there is no need to abandon attempts to provide better services to those in need. The responsibility falls primarily on specific individuals (i.e., the genetic parents).

69 Of course, proponents of causal and voluntarist accounts disagree about when the choices of parents are exercised.
However, while the objection regarding the practicality of better services is an important one, I do not think that it defeats the argument that I am supporting. One reason is that, at least in Canada, there are already social programs in place to help unwanted children and so the groundwork has already been provided for services such as adoption agencies. If the motivation behind such services is adhered to (namely, addressing the needs of vulnerable people), then it might provide stronger reasons to support investment in such programs.

I concede that the types of suggestions I support are entirely possible using both causal and voluntarist approach to parental obligation. However, despite the fact that causal accounts of parental obligations currently predominate in Canada, the needs of children and single parents (particularly women) continue to be unmet. Instead of holding individuals responsible, the focus ought to be on improving social services so that single parents and unwanted children have access to substantial resources rather than relying on those (men or women) who do not wish to parent.

In certain cases, for both men and women, not only is it unfair to expect parental obligations from individuals, but it is not clear that requiring care from genetic parents, on the sole basis that they caused a child’s existence, is the most advantageous way to provide an environment that will allow children to flourish. Therefore, addressing the objection that children may be harmed by accepting a voluntarist approach would require a revision of the way responsibility is viewed. As the discussion of collective responsibilities suggests, citizens have a duty to provide aid to needy people, and

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70 As partly evidenced by the increasing use of genetics for paternity testing to determine financial obligations towards genetic children.
71 See “The Case of ‘Deadbeat Dads’” in Chapter 3.
improving or adding the types of programs I will detail in subsequent chapters may prove to be a better alternative than what is in place now.

3) Is Knowledge of Parental Identity Necessary for the Formation of an Individual’s Personal Identity?

In Chapter 2, I outlined the genetic concept of parenthood, according to which a parent is anyone who supplies the genetic material necessary to create another human (Kolers and Bayne 2001; Nordgren 2008; Porter 2012). Although the genetic concept of parenthood has gained popularity, I argued that genetics alone does not provide a complete understanding of parenthood. The question to be addressed in this section is whether it is ethically required that the identity of parents who place children for adoption (or who donate gametes) be disclosed to their offspring to support the development of the child’s own identity. I argue that a genetic answer to the question of identity is conceptually mistaken and unnecessarily reductionist; it has wide-reaching negative implications and, therefore, there is no ethical requirement for parents who place children for adoption (or for gamete donors) to disclose their identity to their offspring.

Questions regarding personal identity in philosophy are concerned with what feature(s) of an individual persist and how best to understand how an individual survives through time. However, I will not focus on the classical “personal identity” debate but on a related notion of identity – one that is formed through an individual’s experiences in a particular context. Ultimately, I conclude that there is much more to identity than simply genetics. Hence, adopted children cannot demand the identity of their genetic parents.
One common problem voiced by adopted children or children born as a result of donated gametes\textsuperscript{72} is lingering questions about their identity.\textsuperscript{73} Not knowing the identity of their genetic parents, adopted children feel as though they are missing fundamental information regarding who they are as individuals. Moreover, since the mapping of the human genome, genetics has been increasingly valued by some scientists, who stress the importance of genes in determining identity.\textsuperscript{74}

It is important to disentangle various possible claims made by adopted children when they argue that the identity of their genetic parents is necessary for a proper understanding of their own identity. One possibility is that adopted children feel that their identity is an expression of genotypic and phenotypic causes about which they do not have information. The argument might be that the identity of any child is the result of a very specific combination of DNA under particular conditions, and had a different egg and sperm unified, then a different person would exist. Therefore, adopted children’s identity is shaped by the specific gametes that gave rise to their existence and the conditions of their conception. So to fully understand their identity, they would require knowledge of their genetic parents.

However, while it is undeniably true that a specific person would not exist had it not been for the fusion of a \textit{particular} sperm with a \textit{particular} egg, what is less clear is that this fusion entirely determines identity. Genetic makeup is not both a necessary and a sufficient condition determining identity. Who a person is involves more than simply the genetic material required to initiate the creation of a fetus and identity is a complex

\textsuperscript{72} I will refer to both adopted children and children born from donated gametes as “adopted children” for the sake of simplicity and because the following arguments work for both.

\textsuperscript{73} For instance, see Pratten v. British Columbia (Attorney General) 3) 2012 BCCA 480.

\textsuperscript{74} For instance, see Paabo 2001.
interaction of genes and the environment (Hacking 2006, 82). As Hacking argues, it is important to realize that “everything is not in our genes…” (Hacking 2006, 82, his emphasis).

For instance, the environment to which the fetus and gestational mother are exposed can have a profound effect on the development of the fetus and thereby alter the identity of the resultant child in important ways. For example, suppose the gestational mother is exposed to a substance or event that has a harmful effect on her developing fetus, such that the baby is born with a disability. The identity of the resultant child (who the child is) would be fundamentally altered even though the child would have the same combination of DNA from her genetic parents. A child born with a disability would live a very different life had she not become disabled in utero, even if she is genetically the same individual. The lived experience of the child born with a disability is different from the experiences she would have had if she had not been exposed to the harmful event or substance. Since she would have been born either way (that is, she would have been born either with or without a disability), her experience as an individual growing up with a disability is significant to her identity formation.

Or to modify the example slightly, suppose that rather than being born with a disability, an individual lost her right arm at age nine and adapted to living her life without the use of her arm. In both instances, the genetic makeup of the child remains the same, but seems less important to the formation of her identity than her lived experiences. Arguably, the lived experience of an individual is more significant to the formation of an identity (or who a person is) than only genetics. Therefore, the argument that adopted
children have a moral claim to know the identity of their genetic parents for identity formation requires further justification.

It could be objected that the example I provided about a pregnant woman exposed to a harmful substance or event that results in a disabled child actually provides a good reason to know who one’s mother was. That is, a disabled adoptee would want to know how she sustained her disability in utero and therefore knowledge of her biological mother is necessary.

However, even if the disabled adoptee wanted to know the circumstances that led to her becoming disabled in utero, it is still not clear why the identity of the genetic mother is necessary. An event can be explained without reference to the identity of the mother. For example, suppose a pregnant woman who is 27 weeks along in her pregnancy causes a car accident which results in the baby being born prematurely with severe prenatal mental and physical handicaps. Explaining the event that resulted in the prenatal injuries the child sustained does not require the identity of the mother. Moreover, in cases of disabled children born as a result of contract pregnancy with a donated ovum, it is not clear whether the disabled adopted children would require the identity of their genetic or gestational mother. It would be difficult to determine which factors (genetic or gestation) provided greater contribution to the children’s identity. Therefore, the example of an adopted child harmed in utero does not undermine my point since it does not provide a reason to reveal the identity of the mother.

If the argument that I have been supporting regarding the recognition of the complexity of identity is accepted, it could be objected that everything that occurs in our

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I am referring to parts of an actual Canadian case to help explain my argument even though the case was not about adoption. See Dobson (Litigation Guardian of) v. Dobson for details.
lives, from the most insignificant and mundane to the most transformative, would have an impact on who we are. It would seem ridiculous to suggest that stubbing my toe at age three had an impact on the formation of my personal identity. However, while it is true that many seemingly insignificant details of our lives have no (or very little) impact on our personal identity, it is also undeniable that more significant events do have an impact on who we are. Therefore, rather than focus on the small, seemingly insignificant, isolated details of an individual’s life, it is important to recognize the cumulative totality and complexity of identity formation.

Additionally, Charlotte Witt argues against genetic essentialism (the idea that genetics fully determines a person’s identity) by explaining that “even if the necessity of origins were true [if it were true that a person originates from a particular sperm and egg], it would not entail genetic essentialism, because what is at issue for adoptees is their identity as persons – and to be a person requires self-understanding” (Witt 2004, 138). According to Witt, identity requires self-understanding and self-understanding requires recognizing particular relations among individuals in various contexts (Witt 2004, 138). Therefore, identity is not only determined by biological facts. A particular genetic composition may provide a necessary condition for identity formation although self-understanding in the particular context in which one lives allows for the cultivation and formation of an identity.

In the case of adoption, Witt argues that it can be possible to imagine an individual’s genetic identity remaining the same and yet the individual becoming an entirely different sort of person depending on differences in the individual’s life history (Witt 2004, 140). She argues, “The contingent fact of adoption might be much more
significant to a person’s identity than a genetic predisposition to develop flat feet” (Witt 2004, 141). It is important to note that Witt is not arguing that genetic composition can never provide information for identity formation. Her argument, rather, is that identity is far more complicated, and is contingent on a wide variety of life circumstances, histories, relationships, and situations; it cannot be reduced simply to genetic identity or some brute biological fact.

Kimberly Leighton, herself an adopted child as well as a philosopher, provides valuable insights into her own identity formation. According to Leighton, her identity as an adopted child is not defined by what she does not know, but rather by what she does know (Leighton 2004, 147). She argues,

> While having been adopted left the meaning of my identity open, it was not the case that the act(s) of adoption left me without an identity, left me missing something, or in a position in which something was hidden from me. My concern with my identity has thus not been defined by attempts at resolving some particular ‘identity issues’ or overcoming some senses of loss or inadequacy. But rather, because adoption involves social, cultural, and historical events, and because taking having-been-adopted as the basis for an identity necessarily evokes the idea that social practices are intimately involved in one’s own identity, my concern with my identity as adopted has propelled me to think about the ways in which identity in general is more than either essence or construct (Leighton 2004, 147, her emphasis).

What Leighton’s experience shows is not that every adopted child will view identity in the same way she does or that every adopted child will give the same consideration to the issue of identity as she does. I do not mean to generalize about adopted identity based solely on her account. What Leighton’s account does show is that identity need not be based on genetic history and it can be the case that not everything is lost by not knowing the identity of one’s genetic parents.
One could object that the argument I have been supporting actually undermines the point that I wish to make. That is, if identity is not reducible to genetics and is instead contingent on a variety of factors, then what adopted children are searching for is not just the genetic identity of their parents, but the history and overall context that comes along with the identity of their parents. The objection is not that genetics entirely determines identity but that genetics provides information leading to knowledge of the lived experience and history of parents, which in turn provide information for their children’s identity.

However, even though I have argued that identity is complex and irreducible to mere genetics, this does not necessarily undermine my claim that adopted children do not have a moral claim to know the identity of their genetic parents. Family history may be incomplete or absent even in cases where children are raised by their biological parents, so there does not appear to be a special claim that only adopted children can make. Again, my point is not that a familial history cannot help shape an individual’s identity but rather that the absence of some information does not necessarily preclude forming a healthy identity.

Moreover, the claim that in order to adequately form an identity, an individual ought to be provided access to information about others to whom she is related to would have far-reaching implications for a number of individuals, not just the adopted child and the genetic parents. The nature of genetics is such that any information gathered about oneself affects not only one individual but also those to whom one is related. There are a number of people (including aunts, uncles, cousins, nieces, nephews, etc.), other than the genetic parents and adopted child, who could be affected by the release of identifying
information, and to impose burdens on the lives of other people would require further justification.

Moreover, not only would the requirement to know one’s past have far-reaching implications for any possible relatives of the child, but also it is not clear how such a right might be upheld and enforced. Upholding and enforcing a right to know one’s past could require that information about everyone to whom someone is related be released, and the dissemination of personal information on such a grand scale would inevitably conflict with the right to privacy. Limiting the “right to know one’s past” to only providing information about one’s genetic parents would be an arbitrary limit and difficult to ensure given the nature of genetics. It would be an arbitrary limit because the “right to know one’s past” involves more than just the genetic parents and adopted child. Therefore, the argument supporting the right to know one’s past does not provide a compelling reason to release identifying information that an adopted child may seek for the purpose of identity formation.

One way to address the adopted children’s claims is on a case-by-case basis, such that the individuals involved are consulted by the adoption agency on the best way to proceed. If all parties agree to the release of identifying information, there is nothing morally problematic in providing such information. As I will explain in Chapter 6, a similar case-by-case process already exists in Canada.

Further objections, provided by philosopher David Velleman, can be raised to the view of identity that I have been supporting. Velleman argues that knowing one’s biological ties is necessary not only to gain self-knowledge but also to provide meaning for one’s life (Velleman 2005, 357). According to Velleman, children who are born from
donated gametes and certain adoptees have no access to their past and support for anonymous gamete donation has created a new, troubling ideology that implies that “these children will have families in the only sense that matters, or at least in a sense that is good enough” (Velleman 2005, 360).

Velleman argues that it is morally problematic to donate gametes anonymously or to place children for adoption without any access to their biological families because it denies the children meaningful lives (Velleman 2005 361). Velleman claims that children would ideally be parented by their biological parents, have full access to information about their family’s past, and maintain relationships with their relatives, and to do otherwise is harmful to the child (Velleman 2005, 361). Velleman’s view is not simply that individuals are doing something morally wrong by anonymously donating gametes but also that children born as a result of anonymously donated gametes are disadvantaged (Velleman 2005, 365). He continues, “Not knowing any biological relatives must be like wandering in a world without reflective surfaces, permanently self-blind” (Velleman 2005, 368). According to Velleman, children not only inherit their appearance from their parents and relatives but also certain traits that help form a sense of self and identity (Velleman 2005, 368-377).

Velleman’s argument is based on the needs of the child rather than the rights of the parents. He argues that, because children are harmed by being cut off from their history and contact with parents and relatives, anonymous gamete donation and closed adoptions are morally objectionable. From this premise, Sally Haslanger clarifies that Velleman has the following three goals: to show that knowledge of one’s biological
parents is necessary a) to form a sense of self, b) to form an identity, and c) to gain self-knowledge (Haslanger 2012, 162).

Although Velleman is right to claim that knowing one’s family history can provide meaning and contribute to the formation of an individual’s identity, his argument is difficult to accept for a number of reasons. Haslanger argues that Velleman’s position implies that any non-heterosexual family arrangement is less desirable (Haslanger 2012, 159). She explains that Velleman’s argument entails that “the moral default is that a child should be raised by the two individuals from whose gametes he or she resulted” (Haslanger 2012, 159). Therefore, single parenthood and gay and lesbian parenthood would be morally problematic.

In addition to exposing Velleman’s bias in favor of heterosexual couples, Haslanger criticizes the three goals she identified in Velleman’s work. Recall that Velleman argues that in most cases, children ought to be raised by their biological parents in order to gain a sense of self. However, Haslanger argues that in order to have a sense of self, it is necessary for children to have sufficient self-knowledge in order to gain stability. According to Haslanger, “What is crucial is for children to have sufficient self-knowledge in order to gain a stable self, for a stable self seems to be a necessary condition for human life” (Haslanger 2012, 162). Moreover, the capacity to gain self-knowledge is acquired by living as an embodied being. That is, “A capacity for such self-knowledge (reflecting a body awareness, a basic sense of myself as in this body) is an important achievement that only a few species are capable of…” (Haslanger 2012, 162, her emphasis). So according to Haslanger, a stable self is necessary for identity formation and stability requires self-awareness that can be gained from bodily awareness.
Haslanger also criticizes Velleman’s second goal, that knowledge of one’s biological parents is necessary to form an identity, by drawing on examples of interracial adoption. She cites evidence showing that the development of identities of Black children adopted by white families is no different than the development of identities of children adopted by same-race families (Haslanger 2012, 163, 171). Therefore, as evidence shows, identity formation, according to Haslanger, need not depend on knowledge about or contact with one’s biological parents.

Moreover, Haslanger argues that although one should not be deprived of the “social bases for healthy selves and identities,” “[o]ne cannot provide someone a self or identity” because “what counts as a healthy identity and what resources are needed for forming such an identity are culturally specific … . Because there are indefinite ways of organizing ourselves, there will be variations in what is owed to individuals who are engaged in identity formation” (Haslanger 2012, 167). Given the contingent nature of identity formation, and the fact that some narratives about identity (such as current gender and race narratives) are morally problematic, a set of necessary conditions that are required for healthy identity formation for any individual cannot be established (Haslanger 2012, 167-168).

Therefore, Velleman’s argument does not justify the moral impermissibility of gamete donation and closed adoption because evidence shows that having a healthy sense of self, developing an identity, and gaining self-knowledge are possible for adopted children who have no contact with their biological parents or relatives. Moreover, he has not shown that children raised without access to their biological parents, blood relatives, or family history have a less meaningful life as a result of the conditions of their
adoption. In fact, adoption may provide the stability and permanency needed to form a healthy sense of self and identity.

I do not mean to trivialize the hardships connected to the search for identity that adopted children face; they may be extremely difficult and have a profound impact. However, questions about identity are not reducible to genetics alone and may be better answered in other ways. Identity formation, as Witt, Leighton, and Haslanger argue, is far more complex than a focus on genetics would suggest.

While it may be true that a specific combination of genes from an individual’s parents creates a unique person, identity formation is contingent on a wide range of factors such as relationships, relations to places and time, a fair amount of circumstantial luck (for example, where and when one is born), etc. Therefore, adopted children have little justification to demand the identities of their genetic parents by arguing that genetics is essential to the formation of their own identity. Genetics does play a role in identity formation; no one is denying that. What is questionable is the extent and importance of genetics to identity, and as I have been suggesting, the importance of genetics is overstated. Identity formation requires more than simply genetics; it also requires self-understanding and it develops over time. So, identity formation does not necessarily rest on who a person’s genetic parents are.

**Conclusion**

In this chapter I surveyed three criticisms of voluntarist accounts of parental obligations and argued that voluntarism has resources to answer these criticisms. The three criticisms that I considered all focus on possible negative effects on the adopted
child as a result of the genetic parents’ actions. These criticisms suggest that parents have some responsibility to their genetic children despite any exculpatory factors. However, as I explained, health claims based on genetics misrepresent the scientific information about heritable diseases by overemphasizing genetics and underestimating various other factors. Moreover, the possibility of harm to unwanted children may best be addressed in other ways than holding non-intentional parents responsible. Finally, identity formation is far too complex to be reducible to genetics alone.

As I have shown, it remains difficult to defend the position that adopted children have legitimate claims against their genetic parents. However, this position does not imply that there ought to be no consideration given to the needs of adopted children – and I hope that is not how I am interpreted. There are strong reasons to support individuals in need who are born into a difficult situation through no fault of their own. What ought to be in place are substantial social programs to provide institutional support for adopted children and adoptive families.
Chapter 5
Voluntarism, Obligations, and Relationships

Introduction

In previous chapters, I supported a voluntarist account of parental obligations, and argued that non-intentional parents do not incur obligations in certain cases. In this chapter, I examine whether a voluntarist account coheres with the obligations family members have towards one another. I will argue that voluntarism and the sense of duty family members have towards one another are compatible in a way that still provides a meaningful and rich understanding of familial relationships.

Even if voluntarism (on the whole) can explain the source of obligations better than causal accounts can, questions can be raised regarding how voluntarism coheres with the types of relationships and the deep bonds individuals have within families. One criticism is that voluntarism requires explicit or implicit consent in order to generate obligations and such consent seems to trivialize the relationship between parents and children. Indeed, some have argued that voluntarism may reduce interactions among people to a contractual framework, and that this framework does not cohere with the kinds of interactions found in intimate relationships such as within the family (Hardimon 1994, 343).

In this chapter, I review literature on parental obligations and argue that voluntarism can provide a rich and meaningful understanding of family relationships. I begin by summarizing arguments by Bernard Prusak, in order to clarify the problem. Then I provide two possible responses: one by Michael Hardimon and the other by Diane
Jeske. I argue that applying Jeske’s analysis to parental obligations can address the apparent tension between voluntarism and special relationships within the family.

Voluntarism and Relationships

In order to respond to the criticism that voluntarism trivializes family relationships, it is important to understand how intimate relationships are formed, maintained, and valued.

Bernard Prusak argues that to conceive a child with the intention of placing her for adoption is morally wrong because parents have special obligations to love and care for their child, which can only be rightfully expected from the parent. According to Prusak, parents are in a unique position to provide important goods and parents incur these obligations by bringing the child into existence (Prusak 2010, 43). Therefore, according to Prusak, parents who conceive a child with the intention of placing the child for adoption have already failed in their moral obligations. He argues that in some cases, it may be permissible for parents who cannot provide for their genetic child to choose adoption and thereby transfer their obligations. However, they have already failed to meet their duties in such cases. He continues by paraphrasing Rousseau: “he or she who cannot fulfill the duties of a parent has no moral right to become one” (Prusak 2010, 43).

Although I agree with Prusak’s general claim – that parents do (and should) provide unique love and care to their children – there are some gaps in his argument that are left unexplained, such that his conclusion does not necessarily follow. For instance, he does not justify why moral obligations are incurred by bringing a child into existence

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76 The way parents provide goods like love will vary but that is not Prusak’s central point.
rather than taking on childcare responsibilities. Further, he does not explain how different concepts of parenthood may imply different obligations. For instance, in some cases, the gestational mother is neither the genetic mother nor the person who raises the child, and these different parenthood roles may have implications for Prusak’s view.

Moreover, Prusak’s view implies that adoption is a second-best option and that it would be preferable for parents to either not have a child, or to raise the child themselves. However, although parents do have special obligations towards their children that are unique and that only a parent can fulfill, what is not clear is why Prusak supposes that only the *genetic* parent can fulfill the parental role. In certain cases, if there are loving, caring, and responsible adoptive families willing to raise a child, then the intention to place a child for adoption may be preferable to requiring the genetic parents to rear her themselves.

Furthermore, Prusak’s argument requires heavier burdens for the pregnant woman since it requires her to obtain an abortion if she finds herself pregnant and unwilling to raise the child herself. It is not enough, on Prusak’s view, for the pregnant woman to place the child in a facility that ensures the child will be adopted into a suitable and loving home. According to Prusak, intending to place a child for adoption is already a moral failure if the woman can, but does not want, to raise the child herself. Therefore, in order to act ethically, on Prusak’s view, the pregnant woman must get an abortion, or raise the child herself. However, Prusak has not provided a solid justification for the moral impermissibility of intending to place children for adoption.

\[^{77}\text{He seems to implicitly endorse a causal account of moral responsibility.}\]
Furthermore, Prusak’s view favors heterosexual couples over gay, lesbian, adoptive, or single parenthood. Since he argues that it is preferable for progenitors to raise their children when they are in a position to do so, his view implies that the progenitors who create the child ought to raise the child. Therefore, his view unjustifiably privileges heterosexual couples.

Finally, Prusak’s view encounters additional difficulties in cases of contract pregnancy. Suppose a heterosexual couple intends to use IVF to fertilize the ovum of a surrogate with the sperm of the commissioning man. Further, suppose that it is agreed by all parties involved that the commissioning man’s spouse will adopt the child upon birth and the commissioning couple will raise the child themselves. Prusak’s view implies that even this scenario is problematic because the intention of the individuals involved prior to conception was to place the child for adoption. However, it is not clear why this scenario would be problematic. If all parties agree that the child will be adopted upon birth and the child is going to be raised by loving, caring, and responsible parents, then it is unjustified to claim that the intention to place a child for adoption is morally problematic.  

Although Prusak attempts to explain the significance of parental duties, his argument is underdeveloped. However, despite Prusak’s failed argument, there are still important questions regarding what parents owe to their children and why.

Michael Hardimon takes up the task of explaining the obligations people have as occupants of certain social roles such as citizen, parent, child, etc. (Hardimon 1994, 333).

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78 I understand that there are additional ethical criticisms that can be raised against the practice of contract pregnancy. However, I will not address these criticisms in this thesis since doing so is not necessary for my argument. My point is simply that intending to place a child for adoption is not necessarily a moral failure.
Hardimon focuses on institutional role obligations – specifically, the political, familial, and occupational roles that people occupy. Further, he distinguishes between, for example, the biological relation of sister and the institutional role of sister. Institutional roles carry rights, responsibilities, and obligations that a person who occupies the role is expected to fulfill, whereas biological relations are simply given (Hardimon 1994, 334). Hardimon classifies families as institutions because families have “rules that define offices and positions, which can be occupied by different individuals at different times … [Further,] institutions are self-producing structures, each with a life of its own…” (Hardimon 1994, 335). As Hardimon explains, family members have institutional roles and specific obligations are attached to those in the position of parent and other members in the family.

Moreover, institutional roles, according to Hardimon, can be contractual or non-contractual. Contractual roles have obligations that an individual voluntarily takes on and non-contractual roles have obligations that are expected of an individual even when she has not explicitly accepted the role. Examples of non-contractual role obligations occur in the family and include obligations children have towards their parents and siblings. Although Hardimon does not specify the kinds of obligations that parents and children have, he does state that few of us would deny that there are non-contractual obligations (Hardimon 1994, 342).

A conflict arises between, on the one hand, conceding that there are non-contractual moral obligations and, on the other hand, arguing that role obligations typically arise from accepting a particular role along with the rights, responsibilities, and obligations attached to the role (or what Hardimon refers to as the volunteer principle)
Either rejecting the volunteer principle or arguing that there are no non-contractual obligations creates tension between two commonly held intuitions. One intuition is about how people conceive of themselves within families and the other is about how institutional role obligations are typically incurred. Rejecting the volunteer principle conflicts with the intuition that role obligations are typically incurred by individuals who voluntarily take them on. On the other hand, arguing that there are no non-contractual obligations conflicts with the way that people conceive of themselves within families. So, as Hardimon argues, supporting both the volunteer principle and the belief that there are non-contractual obligations creates a tension between two common intuitions.

One solution to the apparent tension between the volunteer principle and the existence of non-contractual obligations that Hardimon offers is that one can be born into a social role that was not chosen but that may be acceptable upon reflection (Hardimon 1994, 348). Hardimon argues in favor of reflective acceptability because it may reconcile the sometimes conflicting intuitions about the volunteer principle and the existence of non-contractual moral obligations. The volunteer principle, Hardimon argues, is most fitting for civil society, in which obligations are incurred by actual choice, but when it comes to institutions such as the family, reflective acceptability may provide a better way to make sense of non-chosen moral obligations (Hardimon 1994, 353).

Moreover, he argues that family life is unique because it is not chosen: “The wish for a wholly contractual social world reflects a failure to accept our social nature, the fact that an important component of our ethical identity is shaped by the social arrangements into which we are born” (Hardimon 1994, 353). He argues that there is a sense of duty
involved in a family that is a result of un-chosen circumstance – in the sense that children do not choose their parents and parents do not choose (for the most part) their children.\footnote{There is a slight ambiguity in Hardimon’s argument because it is unclear what he means by “choice.” Even within a family, it can be argued that spouses choose each other and parents choose whether or not to have children. And they sometimes even choose what kind of children to have. Choice is also evident in adoption. So while children may not be able to choose their parents, parents have some control over their offspring. I will say more on this in my discussion of Diane Jeske.}

Applying questions about what parents owe to their children and why, and the explanation of role obligations provided by Hardimon to the practice of adoption, the question that I am concerned with is what it means to be in the role of a parent and whether a voluntarist account can provide a rich understanding of role obligations within the family. Hardimon provides one explanation of how special obligations arise and although his view is not voluntarist, it is worth considering whether his account can be used to reconcile the tension between voluntarism and special relationships. That is, can parental obligations be understood as role obligations that are acceptable upon reflection?

Recall that according to Hardimon, it is sometimes tacit, rather than always explicit, acceptance of a role that gives rise to obligations.

Brake, appealing to Hardimon’s view, argues in favor of the legitimacy of tacit voluntary acceptance of social roles that carry rights, duties, and obligations (Brake 2010, 170). She explains, “[V]oluntary acceptance has to involve awareness of the role and its obligations and that what one is doing amounts to entering it, and, further, that one wishes, or intends, or at least believes oneself to be thereby taking on the role” (Brake 2019, 170). Using Brake’s analysis in relation to parental obligations requires that individuals understand that parents have particular responsibilities to children within a particular social context. Further, that when one decides to raise a child, one is committed
to fulfilling her role obligations as a parent and thereby accepting the demands and rights that are associated with occupying a parental role.

Similar to Hardimon’s view, Brake argues that parents can tacitly accept the role of parent, knowing what obligations that role entails and thereby incurring obligations without an explicit contract such as is found in the acceptance of other social roles. Tacit acceptance of parental roles occurs when biological parents raise their genetic children, whereas parents who adopt explicitly accept the role and associated obligations.

Thus, Hardimon’s thesis regarding tacit acceptance of role obligations can be modified in voluntarist terms in the way that Brake suggests. I agree with Hardimon that role obligations are one central aspect of moral life and that recognizing, acting on, and identifying with roles is important. My suggestion is not that there are no role obligations between parents and children, but rather, that role obligations of parents should be voluntarily undertaken and not merely contractual in a way that seems to strip meaning from the concept of parent by laying out the obligations family members owe to each other in a contractual manner. As I will explain further in my discussion of Jeske’s view, rather than using a contractual framework to understand parental obligations, appealing to the features of the parent/child relationship itself provides a better understanding of familial obligations.

One of Hardimon’s concerns is that rejecting non-contractual role obligations (or claiming that all obligations ought to follow the volunteer principle) would imply that there are no obligations of parents to children or children to parents. However, there may be ways to resist his worry. It could be argued that in most cases, parents accept role obligations tacitly and in cases of adoption, the parents who adopt a child explicitly state
their intention to accept the role obligations of parents. Further, genetic and gestational
parents of children to be adopted explicitly state their desire not to assume the role
obligations of parent (in the social, non-genetic sense). So to clarify, parental obligations
can be understood as role obligations that are either explicitly or tacitly accepted.

Given Hardimon’s arguments on role obligations, the practice of adoption raises
questions about what a family is, what kinds of moral obligations parents owe to their
children, and how they incur these obligations. Hardimon explains not only that role
obligations are sometimes incurred tacitly but that it is important for occupants of a
particular role to identify with the role. Therefore, there is no reason to suppose that
Hardimon’s explanation of role identification cannot be entirely consistent with the
practice of adoption and in fact, adoption provides a clear example of role identification,
at least from the perspective of adoptive parents. 80 Adults who choose to adopt are
voluntarily identifying with the role of parent (in the social, non-genetic sense) and hence
are consenting to carrying out the duties associated with that role.

One shortcoming of applying Hardimon’s volunteer principle to family roles is
that it makes family relationships appear contractual in a way that does not seem to match
the common understanding of family life. Diane Jeske takes a different approach to role
obligations than Hardimon. Jeske develops a voluntarist approach to intimate
relationships but one that does not trivialize the importance of family relationships by
using a contractual framework. Moreover, Jeske’s argument provides an understanding of
relationships that recognizes the uniqueness and significance of intimate relationships and

80 Indeed, philosophers such as Brenda Almond have argued that institutions like marriage and adoption
create a kind of bond between people that transcends law. See Almond 1988.
can therefore address the seeming tension between voluntarism and the nature of family relationships.

Given that relationships within families are not always voluntarily assumed (for instance, children do not voluntarily choose their parents or siblings), there appears to be a tension between voluntarism and certain special obligations. According to Jeske, “The difficulty arises, I think, because we make a serious mistake about what makes familial relationships morally significant, a mistake that is evidenced in the sharp distinction we often draw between those relationships and our relations to our friends” (Jeske 2001, 25).

Jeske notes that “choice” is ambiguous when applied to intimate relationships. For instance, friendship is a special sort of choice, and to understand its significance, she appeals to certain characteristics that are necessary to develop and maintain a friendship. Friendship requires reciprocation between the individuals involved and a deep understanding of character beyond mere factual knowledge about the parties involved (Jeske 2001, 26). So, according to Jeske, specific, voluntary, intimate interactions between friends are what ground obligations towards particular others; relationships are reciprocal and develop over time. Special obligations, therefore, do not arise from a mere contract, or from occupying a social role. The significant aspects that give rise to obligations are the characteristics of the relationship itself.

Jeske admits that while certain intimate relationships such as friendships require reciprocation and the intimate intertwinement of one’s will with another, relationships in families are not entirely the same (Jeske 2001, 28). Family members do not (typically) choose one another. Moreover, it is difficult to say that early relationships between parents and newborns are reciprocal. So it seems problematic to ground obligations to
others in characteristics of the relationship if these characteristics are different in friendships than they are within families. She asks, “Does it seem right to conclude that we have no special obligations to, for example, family members from whom we have grown apart?” (Jeske 2001, 28). Moreover, similar questions can be raised about other family ties such as those with in-laws. Would it seem appropriate to suggest that because one did not consent to or maintain a particular intimate relationship, one has no special obligations towards one’s in-laws? Jeske suggests that it is important to clarify the difference between the actual obligations people owe one another and their felt obligations (Jeske 2001, 28). Using an example of a brother and sister who have grown apart, Jeske argues that societal pressures may make individuals feel as if they have special obligations to one another, but it is not clear why (or whether) they do (Jeske 2001, 28).

Although it might be appropriate to question why the siblings grew apart, assuming that they have the opportunity to develop a relationship, it is unclear that they would nevertheless still have special obligations simply in virtue of being genetically related. As Jeske argues, moral criticism of siblings who grow apart is appropriate if the siblings “have failed to avail themselves of a good opportunity to develop an intimate relationship…. So, in many familial contexts, lack of intimacy is a sign of moral thoughtlessness, laziness or self-absorption, and such traits deserve moral censure” (Jeske 2001, 28-29).

In situations where intimacy is absent among those who are typically thought to have a certain type of relationship (such as between brothers and sisters), the attitudes and actions of the individuals can be morally criticized if they took no measures to
develop a relationship when they had the opportunity to do so. Therefore, being related to
another, either directly through biological ties or through marriage ties, should make one
open to the possibility of developing a relationship but does not guarantee it.\textsuperscript{81} Jeske’s
proposal has the advantage that it retains voluntarism in intimate relationships but does
not render such relationships equal to a mere contract or promise.

The significance of Jeske’s argument to my own is that although voluntarism with
regard to intimate relationships may seem to trivialize and be at odds with the common
understanding of relationships within a family, it need not be. There is an assumption that
obligations and bonds arise within families as a result of unchosen relatedness rather than
chosen relations, but there is no reason to suppose that choice threatens the significance
of intimate relationships. Moreover, obligations within families are not merely the
contractual fulfillment of a social role. There is no need to give up on either voluntarism
or the possibility of deep bonds within families if Jeske’s argument is successful.

Relationships within families, like other intimate relationships, develop through
time and involve particular others. Although there may not be a specific temporally-
located decision to be in a particular relationship with others, the fact that the relationship
remains and is sustained implies a kind of choice (although, as Jeske suggests, a special
kind of choice). Moreover, even if voluntarism requires the explicit or implicit
acceptance of obligations, there is nothing to suggest that this degree of choice within
families in any way devalues the relationships that family members share.

\textsuperscript{81} Margaret Little provides an interesting analysis of the wrongs of forced gestation and in her analysis, she
arrives at a similar conclusion: that a biological tie does not automatically determine a relationship but the
individuals involved ought to be open to the possibility of forming an intimate relationship (Little 1999,
308-309).
An objection that can be raised against using a voluntarist account to ground parental obligations is that there are many special obligations an individual has, including obligations as a citizen or as a child, that arise from unchosen circumstances. One does not choose to be born into a certain country or to a certain family yet few would contend that there are no obligations that arise from one’s role as citizen or daughter. Therefore, voluntarism does not explain how special obligations arise for occupants of other roles.

In response to this objection, I will use an approach similar to Jeske’s by appealing to the features of the parent/child relationship itself. It is important first to note that not all special obligations are the same. The special obligations one has as a citizen are not the same as the special obligations one has as a friend or family member. Moreover, not even all obligations within a family are the same. Parents have different obligations and commitments than children or siblings have towards each other. Furthermore, parental obligations can only be relational and necessarily involve others, whereas a citizen born into a particular country cannot maintain an intimate relationship with the state in the same way that parents maintain an intimate relationship with their children. Parental obligations are agent-relative in that they are owed to particular individuals by particular others. 82

Moreover, parental obligations, unlike political or filial obligations are chosen, and this is true for either causal or voluntarist accounts. If parental obligations are grounded in causal terms, then parents incur obligations as a result of their choice to have sex, donate gametes, or bring a fetus to term. Parents exercise their choice, according to causal accounts, prior to the birth of the child. If parental obligations are grounded in

82 See Derek Parfit for a more detailed explanation of agent-relative and agent-neutral obligations. Parfit 1984, 143.
voluntarist terms, parents incur obligations by voluntarily taking them on. Given that parental obligations are contingent and chosen, voluntarism is consistent with the idea that parental obligations, a subset of special obligations, arise from voluntary acceptance. While the same might not be true for special obligations that arise from the role of citizen, child, or sibling, parental obligations are chosen and necessarily involve others.

So even if it might not be possible to provide a voluntarist explanation for the incurrence of all special obligations or for obligations in all intimate relationships, parental obligations can be justified in voluntarist terms. In order to understand the incurrence of special obligations, the nature of the relationship itself must be analyzed, and since each role and hence, relationship, an individual might hold differs, the grounds for the special obligations that arise as a result of the relationship will differ. It may still be possible to generalize about the incurrence of other role obligations by analyzing the nature of different relationships.

To summarize, I have outlined two possible solutions to objections about voluntarism and familial relationships. Both Hardimon and Jeske provide possible answers to addressing tensions between voluntarism and family relationships, although Jeske’s approach is preferable because she does not rely on a contractual framework and appeals to the characteristics of relationships in order to understand obligations.

**Conclusion**

Although there may be some hesitation to accept a voluntarist account of parental obligations, Jeske’s approach provides a framework that grounds parental obligations in voluntarist terms and also retains the significance of special obligations within a family.
Familial obligations for both mothers and fathers are not undermined by choice and the practice of adoption provides a clear example of voluntarism’s consistency with the duties, responsibilities, and obligations parents have towards their children and the deep bonds found within families. In every possible outcome of an unplanned pregnancy, a voluntarist account can better explain the source of parental obligations and it is entirely compatible with the types of bonds formed among members of a family.
Chapter 6

Voluntarism and Parental Obligations: Further Practical Suggestions

Introduction

In previous chapters I supported a voluntarist account of parental obligations and suggested that the needs and welfare of unwanted children are the responsibility not just of one (or two) individual(s), but of the society in which they live. Therefore, unwanted children’s needs may be met in ways other than holding genetic parents responsible for them. In this chapter I provide a more detailed analysis of the kinds of programs and services necessary to meet the needs of children in Canada. I review portions of current legislation regarding adoption in Canada, describe how existing services can be improved, and suggest ways that a voluntarist framework can work towards meeting the needs of children.

I outline four main ways to address the needs of children: 1) by taking a proactive approach to reducing the number of unplanned and unwanted pregnancies so that there are fewer children in care; 2) by providing adequate support for adoptive families and at-risk families; 3) by promoting adoption rather than state care or foster care; and 4) by improving foster care and adoption in order to better meet children’s needs.

My support of voluntarism has legal and social implications and would require legislative and social support in order to be successful. In the following section I review current legislation on adoption in Canada in order to outline the kinds of protections and regulations already in place. I focus primarily on sections of legislation that have an impact on the issues that I have explored thus far, such as access to health information, the release of identifying information to each party, and additional protections for
vulnerable groups. Current legislation not only regulates adoption in Canada but also provides some guidance in cases where the interests of parents who place children for adoption and the interests of their genetic children conflict. Although there are some protections already in place for children and parents, the legislative framework regulating adoption in Canada can be improved, and in the following sections I provide suggestions on how to do so.

**Adoption Legislation and Practices in Canada**

In Canada there are currently five different types of adoptions available: 1) adoption from a public organization (such as the Canadian child welfare system); 2) adoption from a private company; 3) international adoption; 4) adoption of a stepchild; and 5) adoption of a child by a relative (Adoption Council of Canada). Moreover, each province and territory legislates and regulates adoption individually with slightly varying specifications. Although there are no national guidelines, in each province and territory, an in-depth application and interview process, background checks, and reference checks are required before prospective adoptive parents are eligible to begin the adoption process (Adoption Council of Canada).

Given the lack of national jurisdiction over adoption, both comparative analysis and intra-provincial/territorial adoptions become difficult. Moreover, each province and territory maintains its own adoption records with both identifying and non-identifying

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83 As I explain in a subsequent section, there has been some criticism of the types of adoption available and a call to recognize further non-traditional family structures.

84 Some have questioned the fairness of such intensive screening processes for adoptive parents, especially in comparison to the lack of screening for biological parents. Although there are important questions about the justice of screening processes of adoptive parents, I will not address these concerns here. See Bartholet 2004 and McLeod and Botterell 2014 for more details.
information about genetic parents and adopted children (Adoption Council of Canada).
Should the genetic parent or the adopted child wish to know the other’s identity, each
province and territory has different regulations on what information is made available to
each party (Alberta Human Services 2013).

Recall that I previously argued that identifying information about parents who
place children for adoption should, for the most part, be kept confidential (other than for
possible health related concerns\textsuperscript{85}). As I will explain in the following section, current
legislation is more or less consistent with some of the conclusions I reached in Chapter 4.
However, there are also points where my conclusions depart from current legislation, and
these are worth considering.

**Canadian Provincial and Territorial Legislation**

Although there are variations in the extent and content of legislation on adoption
among provinces and territories, there are also many similarities. Each provincial and
territorial legislative framework attempts to balance the rights of parents with the needs
and rights of the child (Infant Number 10968 v. Ontario). In doing so, legislation outlines
not only how to regulate adoption, but also what ought to occur in cases of conflict
between the parties involved.

For instance, provincial and territorial legislation provides guidelines on access to
information for parents who place children for adoption and their adopted children. In
each province and territory, adult adoptees can request information, although genetic
parents must wait for six months after the 18\textsuperscript{th} birthday of the child to request information

\textsuperscript{85} Again, this is because it is currently costly to obtain individual genetic screening, but this concern can be
addressed as genetic testing becomes more widely available and less expensive.
Moreover, in each province and territory, non-identifying information (which includes information such as the province or territory of birth of the child, and the education, marital status, occupation, and medical history of genetic parent(s)) is available to adopted children (Alberta Human Services 2012). For the health, safety, and wellbeing of children, non-identifying information, including a medical history, is always available upon request. Additional information may be available for the health, safety, and wellbeing of the child for medical emergencies, on the condition that a doctor verifies that the information released would increase the likelihood of diagnosis, prevention, and treatment of a severe life-threatening illness or of an illness that leads to irreversible damage (Adoption Council of Ontario 2013; Ontario: Search for Adoption Records 2012).

Further information (other than non-identifying and health-related information) may be available to each party depending on where the adoption took place, and the degree of contact between parties is determined by what the legislation in each province or territory allows. In some provinces, genetic parents and adopted children may sign a “Disclosure Veto” that prohibits the release of identifying information to the party requesting the information. In other provinces and territories, identifying information

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86 For example, for Nova Scotia see Adoption Information Act 1996 (11(2) (4)); for Newfoundland and Labrador see Adoption Act 2003 (c13 s14); for Saskatchewan see The Adoption Regulations 2003 (33) for Quebec see Youth Protection Act (72.5-72.11).

87 Other than in medical emergencies.

88 For example, for Nova Scotia, see Adoption Information Act 1996 (19(2)); in the Northwest Territories, see Adoption Act 1998 (66(3)); for Saskatchewan, see The Adoption Regulations 2003 (31(5), 32(1)); for Newfoundland and Labrador, see Adoption Act 2003 (c13 s18); in Alberta for adoptions that took place prior to 2005, see Alberta Human Services 2012; for Ontario, for adoptions that took place prior to
may be available upon request, although contact between the parties is prohibited if a “No-Contact Declaration” has been signed by one or both parties.\(^8^9\) If one or both parties sign a “No-Contact Declaration,” then identifying information is released on the condition that the information is not used to contact the party who signed the Declaration. Moreover, there are additional protections for Aboriginal children that regulate the release of identifying and non-identifying information in accordance with the \textit{Indian Act} in order to determine Aboriginal status and to protect the culture, heritage, and history of Aboriginal children.\(^9^0\)

Recall that in Chapter 4, I argued that information about their genetic parents provided to adopted children and children born from donated gametes should remain anonymous except where certain health-related reasons create an exception. Current provincial and territorial legislation is largely consistent with the conclusion I reached in Chapter 4, although there are some variations in the details among provinces and territories. In current Canadian legislation, the disclosure of information to adopted children and genetic parents is a complex matter and provinces and territories have attempted to balance the demand for access to information and the demand for protection.

\(^8^9\) For example, for adoptions that took place in Alberta after the \textit{Child, Youth, and Family Enhancement Act} came into effect in 2005, identifying information is available to either party upon request. However, genetic parents or adoptees may register preferences on whether they wish to be contacted or not (Southeast Alberta Child and Family Services 2007). For Manitoba, see Manitoba Family Services; for Newfoundland and Labrador, see \textit{Adoption Act} 2003 (c13 s18); for adoptions finalized in the Yukon, see \textit{Child and Family Services Act} 2008 (144); for British Columbia, see British Columbia Ministry of Children and Family Development 2013; for adoptions finalized in Ontario after 2008, see Adoption Council of Ontario 2013, \textit{Access to Adoption Records Act (Vital Statistics Statute Law Amendment 2008} (9-13)).

\(^9^0\) For example, in the Northwest Territories, see \textit{Aboriginal Custom Adoption Recognition Act} 1994; in British Columbia see \textit{Adoption Act} 1996 (62); in Saskatchewan, see \textit{The Adoption Regulations} 2003 (35); in Nova Scotia, see the \textit{Children and Family Services Act} (36(3)).
of privacy (Infant Number 10968 v. Ontario). Courts often use the interests of the child to determine what information is released, thereby justifying the release of parental medical records and medical history to the adoptee.

As this discussion indicates, there are already some legal protections for adopted children and genetic parents regarding access to information. In every province and territory, there are additional protections for Aboriginal adopted children in accordance with the Indian Act, which protects the right of Aboriginal children to apply for Aboriginal status (Indian Act 1985). Moreover, although in a number of provinces there is a move towards greater openness with regard to the amount of information made available (for example, Alberta, Ontario, and Yukon have recently made such shifts), there are legal regulations in place to respect the wishes of the parties involved. For instance, although in a few provinces and territories a Disclosure Veto is no longer available (which means identifying information is available to either party upon request), courts have decided that the rights to privacy of individuals can be adequately respected by allowing for a No-Contact Declaration, which prohibits contact between the parties.

Although there is already some protection for adopted children and genetic parents, there is more that can be done. Placing a child for adoption is, no doubt, a difficult decision to make and there may be multiple factors that parents take into consideration before deciding that they cannot (or do not want to) raise the child themselves.

This discussion is not meant to suggest that adoption is a second-best option. It could very well be the case that placing a child for adoption is in the interests of the parents and of the child. In what follows, I examine some factors that contribute to
unplanned pregnancies and the decision to place children for adoption, and I outline some suggestions on how to improve services for children and parents. I will also explain how each of the proposals I detail in the following section follows from voluntarism.

Room for Improvement

There is a difference between adoption and foster care in Canada. Foster care is the temporary placement of children and adoption is the placement of children in the permanent care of parents who wish to raise them (Canadian Child Welfare Research Portal 2011). Children may be placed in foster care for a variety of reasons, including removal from abusive or neglectful caregivers (Canadian Child Welfare Research Portal 2011). Children who are removed from their caregivers’ care are sometimes placed in temporary foster care or group homes while attempts are made to address the reasons that the children were removed from the home, in order to return them, eventually, to a safe environment. Many children are not returned to their parents and, unfortunately, remain in temporary foster care, which is not ideal compared to permanent placement via adoption (Adoption Council of Canada 2011). Although exact numbers are difficult to determine, it has been estimated that there are approximately 76,000 children under the protection of Child and Family Services in Canada and the number of children in care continues to grow (Farris-Manning and Zandstra 2003, 4).

The temporary placement of children in foster care may be beneficial in certain instances, although long-term adoptions are preferable to short-term foster care or state care for a variety of reasons. The Adoption Council of Canada notes that

[children in state or foster care are] shunted from temporary home to temporary home, or group home to group home. This
lack of permanency is a public health issue. Youth in care are 17 times more likely to be hospitalized for mental health issues than the general public, according to B.C.’s Representative of Children and Youth and its Provincial Health Officer. To quote an editorial last year in *CMAJ*, the *Canadian Medical Association Journal*, ‘Children who have a government as their parent, no matter how well-intentioned or necessary that arrangement is, are often damaged by it.’ They are damaged because multiple moves to living arrangements with multiple caregivers – no matter how loving the foster parents – do not promote stability, security and attachment, the building blocks every child and youth needs to succeed (Adoption Council of Canada 2010).

Improvements to foster care and adoption practices are a natural extension of the voluntarist account that I support because these services are necessary for voluntarism to succeed. If parents, under certain circumstances, have no further obligations to their genetic children, then it is necessary to have services available that will meet the needs of children. Adoption is preferable to foster care because it creates a stable and permanent environment for children. Adoptive parents incur the duties not only to care for and protect the child, but also to advocate for, and form a relationship with, the child. However, children are more likely to be adopted at a young age and as children in care grow older, their chances of being adopted decrease. So it is important to increase support for older children in care and advocate for the adoption of older children as well.

Moreover, since the number of children in care continues to grow, it is important to address the undoubtedly complex reasons that unwanted and accidental pregnancies occur, in order to reduce the number of unwanted children who end up in foster care. Therefore, one practical suggestion to the objection that voluntarism would result in harm to children is to reduce the numbers of children in care. Reducing the number of

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91 Even though, as I mentioned previously, improvements to foster care and adoption can be advocated using either a voluntarist or a causal account of parental obligation.
accidental and unwanted pregnancies by promoting a proactive and preventative approach and promoting adoption may lead to fewer children placed in foster care. My support of voluntarism requires that individuals take reasonable measures in order to avoid responsibility. To that end, improved sex education, the availability of reliable contraceptives, access to safe and subsidized abortions, and improved sexual health services can help reduce the number of accidental and unwanted pregnancies and result in fewer children in care.

In Canada, with the goal of promoting overall health, sex education is part of the school curriculum (Canadian Guidelines for Sexual Health Education 2003, 13). The Canadian Guidelines for Sexual Health Education (CGSHE) recognizes that “HIV/AIDS, Sexually Transmitted Infections (STIs), teen pregnancy, sexual abuse, sexual harassment, sexual assault, and other personal and societal problems demonstrate the need for preventive measures to help individuals avoid circumstances that are harmful to sexual health” (Canadian Guidelines for Sexual Health Education 2003, 13). The goals of the CGSHE are twofold: the first is to promote positive outcomes (such as improving self-esteem, creating non-exploitative sexual relations, and promoting the joy of desired parenthood), and the second is to avoid negative outcomes (such as sexual coercion, HIV/STI’s, and unintended pregnancies) (Canadian Guidelines for Sexual Health Education 2003, 13). The CGSHE provides a guideline for promoting and improving sexual education in Canada that is consistent with the suggestion that promoting a proactive and preventative approach to sexual health may reduce unwanted and accidental pregnancies.
However, it has been recognized that unemployment and low socio-economic status are associated with poor health in general and create additional barriers to achieving the two goals outlined by the CGSHE. For instance, it has been found that “individuals with higher levels of education significantly increase their chances of obtaining better employment and higher social and economic status, resulting in improved working conditions. Health status (including sexual and reproductive health) increases with one’s level of formal education. In women, higher levels of education are linked to fewer unintended pregnancies” (Health Canada 1999). While the CGSHE provides guidelines from which to promote and teach sexual education in Canada, the underlying issues related to poor health (including sexual health) require a broader scope of analysis and action.

Improved education, including sex education, and access to sexual health services are suggestions that are consistent with voluntarism and required in order for a voluntarist account of parental obligations to function well. Since voluntarism requires that individuals make reasonable and informed decisions about their sexual activity, access to reliable contraceptives and information about how to use contraceptives is necessary. Moreover, as the previous paragraph indicates, in order to improve sex education, it is important to consider the variety of factors that contribute to poor health in general.

Despite the provisions I have suggested so far as ways to address some of the shortcomings in current practices, not all children in care and not all at-risk families are in similar circumstances. Arguably, Aboriginal children represent one of the most marginalized groups in Canadian society. Therefore, support for voluntarism would require attention to the needs of Aboriginal children in particular. In light of the history of
colonialism, it would be remiss to ignore the significant needs of Aboriginal children in care.

Aboriginal children are over-represented in foster care and face multiple barriers in Canadian society given the historical and persistent oppression of Aboriginal people. Precise provincial and territorial numbers of Aboriginal children in care are unknown (Adoption Council of Canada 2010). However, it has been estimated that Aboriginal children comprise approximately 26% of all children in care, even though they represent only 6% of the overall child population in Canada (Canadian Child Welfare Research Portal 2011). There has been an appeal to collect statistics on the numbers of Aboriginal children in care in order to address the particular needs of this marginalized and vulnerable group (Adoption Council of Canada 2010). However, at present, it is difficult to gather precise numbers because the Canadian government does not collect federal information on children in care.

The Canadian Council of Child and Youth Advocates (CCCYA) recognizes that although the high number of Aboriginal youth in care is due to a variety of complex issues, there are systemic problems that lead to the over-representation of Aboriginal children in care (Canadian Council of Child and Youth Advocates 2011, 28). Furthermore, the CCCYA found that

[s]ocio-economic, environmental and historical factors have led to health inequities for Aboriginal children and poor outcomes, in general, as compared to non-Aboriginal children. Substandard housing, poverty and low educational attainments are associated directly with Aboriginal children’s poor health. A third of Aboriginal children live in low-income families where access to food is a concern, which has led to poor nutrition and preventable chronic health conditions …. As a result, [Aboriginal children] experience higher infant mortality rates, lower child immunization rates, poorer nutritional status and endemic rates of obesity, diabetes and other chronic diseases.
Aboriginal people also suffer higher rates of suicide, depression, substance abuse and fetal alcohol spectrum disorder, and their representation in the welfare and justice systems is generally higher than in the non-Aboriginal population (Canadian Council of Child and Youth Advocates 2011, 32).

The CCCYA’s report includes a number of recommendations, such as providing adequate community-based support, promoting coordination among federal, provincial, and territorial bodies to ensure adequate healthcare, and improving Canada’s health and education initiatives, in order to help all children in care, with additional protections for Aboriginal children in particular (The Canadian Council of Child and Youth Advocates 2011, 33).  

92 Given the issues faced by Aboriginal children in foster care, there appears to be some tension between some aspects of the voluntarist account that I support and providing additional protections for Aboriginal children. For instance, I previously argued that identifying information should not be released to adopted children and I supported a move away from transparency between parties in cases of adoption, unless both parties agreed to the release of identifying information. However, as I explained in the previous section, there are additional protections for Aboriginal children in care such as access to identifying information for the purposes of applying for Aboriginal status. So on the one hand, I have argued that identities should be protected but the recognition of the plight of Aboriginal children requires that identifying information sometimes be released.

In such cases, I agree that identifying information should be released so that Aboriginal children can apply for Aboriginal status should they wish to do so. Being

92 For a more detailed list of recommendations, see the Canadian Council of Child and Youth Advocates’ special report 2011.
granted Aboriginal status could have a significant impact on the child’s future and welfare. Therefore, in the interests of the child, identifying information should be released. However, the interests of the genetic parents can be respected by allowing each party to sign a No-Contact Declaration, should they wish to do so. So, although information regarding the identities of the parents is released, their wishes for anonymity can still be respected to a degree. Just as with cases where identifying information is released for non-Aboriginal children, the No-Contact Declaration is in place to respect the wishes of either party.

Therefore, current legislation that provides additional protections for Aboriginal children is consistent with a voluntarist framework because the children’s needs for release of information and the rights of parents can both be accommodated. For voluntarism to be successful, the needs of children must be met. And if the needs of children must be met, the situation of Aboriginal children requires careful attention.

Although there is much that can be done to improve foster care, particularly for Aboriginal children, adoption is preferable to temporary foster care or group care because it is ultimately a more permanent and stable environment for children. Therefore, one way to improve social support for children is to promote adoption. Children who are in foster care may benefit from being placed for adoption. However, current adoption legislation creates barriers that make it difficult to transfer children from foster care to more permanent care and so legislation needs to be improved. The problems of foster care and adoption are intertwined; so it is important to understand how the two work together in order to provide adequate solutions for both practices.
In addition to the numerous recommendations made by the CCCYA, the Adoption Council of Canada identifies several further areas where the Canadian government could improve current adoption practices. One suggestion is to uniformly extend the same parental leave and employment insurance that genetic parents currently receive in Canada to adoptive parents across all institutions. Another suggestion is to make inter-provincial and inter-territorial adoption easier, since at present a number of legislative barriers make adopting from other provinces or territories difficult. So, given these legislative barriers, instead of being eligible for adoption, children remain in foster care or group housing. A third recommendation is to increase awareness campaigns to allow for more public debate about the benefits of adoption (Adoption Council of Canada 2010). There also needs to be better advocacy for children in care in order to recruit and retain family-based care homes rather than placing children in group-care or state care (Farris-Manning and Zandstra 2003, 5). Moreover, there needs to be better advocacy in order to promote the acceptance of non-traditional family arrangements like adoption.  

In addition to the Adoption Council of Canada’s recommendations and the problems associated with foster care already outlined, Cheryl Farris-Manning and Marietta Zandstra have identified further challenges to providing for children in care. Farris-Manning and Zandstra note that as the number of children placed in care increases, there are shortages in the supply of resources that affect the quality of care in Canada (Farris-Manning and Zandstra 2003, 10). As Farris-Manning and Zandstra note, there is not only a lack of adequate foster care homes, but also a lack of adequate mental health

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93 Also, as I will explain in further detail, there ought to be an expansion of the kinds of adoption currently available in Canada.
resources, since an increasing number of children in care suffer mental health issues (Farris-Manning and Zandstra 2003, 10).

Furthermore, the funding structure of child welfare programs contributes to inadequate support by encouraging the placement of children in care instead of providing services for at-risk families and addressing the reasons that children are at risk in the first place (Farris-Manning and Zandstra 2003, 12). Farris-Manning and Zandstra explain, “Currently, funding frameworks reflect a reduced emphasis on family preservation, and a clear devaluation of one of the traditional roles of child welfare agencies; that of providing services that focus on reduction of risk indicators, through community-based prevention and support services to families” (Farris-Manning and Zandstra 2003, 12).

Therefore, even viewed from a strictly cost-benefit perspective, it is more cost-effective to provide subsidies and support to adoptive families, and to provide resources to high-risk families, than to keep a child in care or in group homes (Ontario Ministry of Children and Youth Services 2010). Not only are there direct financially prudent reasons to support adoption over state or group care but long-term costs of state and foster care are often overlooked. For instance, “The stated cost of keeping a child in care does not include the long-term cost to society of a child who grows up without a stable family. Former Crown wards are less likely to finish high school, and more likely to rely on social assistance and live in homeless shelters” (Ontario Ministry of Children and Youth Services 2010).

Although adoption is preferable to state care or foster care, the types of adoption available in Canada need to take into account the dynamic and changing constitution of some families. For instance, inadequate social support for children with complex needs
and possible adoptive families makes it difficult to place such children for adoption (Farris-Manning and Zandstra 2003, 13). Thus, in addition to the policy changes that Farris-Manning and Zandstra recommend, they also advocate better adoption options, including “open-, kinship-, and subsidized/assisted- adoption,” to supplement the five types of adoption already available (Farris-Manning and Zandstra 2003, 13).94

Since the likelihood of adoption decreases as children in care grow older, additional resources and services aimed specifically at addressing the needs of older children in care are recommended (Farris-Manning and Zandstra 2003, 14). Lacking a uniform national definition of the age requirements necessary to qualify as a child, Farris-Manning and Zandstra recommend following the United Nations definition of a child (i.e., any individual under the age of 18) in order to promote the health and safety of children and meet the needs of children to the same degree in each province and territory (Farris-Manning and Zandstra 2003, 14). In addition to better services for older children, more research and resources are necessary to ensure that children who eventually leave care have the resources necessary for success as they become adults (Farris-Manning and Zandstra 2003, 14).

Improving foster care and adoption practices in the ways that I have outlined builds on the voluntarist foundation I support. Also, increasing the variety of types of adoption available is also consistent with a voluntarist account. As I have said, adoption provides a clear example of the voluntarist assumption of parental obligations, and as the proceeding discussion indicates, adoption is more beneficial for children than temporary,

94 Open adoption is a form of adoption in which the adoptive parents and genetic parent(s) have some initial or continued contact. Kinship care refers to the caretaking of a child by a relative. Subsidized/assisted adoption refers to subsidies or incentives to encourage adoption, particularly for older children and children with special needs. See Farris-Manning and Zandstra 2003, 23, for more details.
short-term care. Therefore, not only does voluntarism provide a better account of parental obligations than causal accounts, it is also more beneficial for children to be adopted rather than remain in temporary care. The majority of the problems I outlined are problems associated with temporary foster care and state care and they can be addressed by promoting adoption instead. It follows that expanding the availability of the types of adoption currently available is consistent with voluntarism and ultimately beneficial for children. The provisions that I have outlined are an extension of a voluntarist foundation and do not require qualifications to the voluntarist argument that I support.

However, given the preceding discussion, it is evident that there are problems in the way foster care and adoption are regulated and executed in Canada. In response to these challenges, numerous recommendations have been made. Improved resources for genetic, adoptive, and foster parents, improved health (including sexual health) education, better substance abuse programs, adequate child abuse prevention programs, expansion of the five adoption options currently available, the replacement of group care with family-based care, improved resources for older children, special protections for Aboriginal children, improved protections for special needs children, mental health resources, resources for single parents, and resources for teenage parents are all recommendations that could improve the lives of families and of children in care, and address the inadequacies in current legislation and policy in ways that are consistent with voluntarism.

These issues are philosophically important because voluntarism suggests that adoption is morally unproblematic and in some cases, preferable. One could object that

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95 Although, they are consistent with a causal account as well.
given the preceding discussion outlining the problems with adoption, adoption appears to be a second-best alternative. The objection is that adoption and foster care, as I have outlined it here, sound as if they are second-rate alternatives to parenting by biological parents.

However, as I mentioned previously, adoption, even as it is currently practiced, might be preferable in certain cases where biological parents cannot provide adequate parenting. Moreover, advocating adoption rather than foster care addresses many of the issues unwanted children face as a result of living in temporary, unstable environments. Therefore, rather than being a second-best option, adoption (even as currently practiced), can be beneficial to children, biological parents, and adoptive parents. Simply because there is room for improving current practices does not imply that adoption is necessarily less desirable than parenting by the child’s biological parents.

To summarize, I have outlined some concrete suggestions to address the criticism that the acceptance of voluntarism will result in harm to children. I have suggested that reducing unwanted pregnancies, providing support for adoptive families, promoting adoption, and improving foster care could help improve current social and legislative policies and these suggestions are consistent with a voluntarist account of parental obligation.

**Further Considerations about Voluntarism**

Given the inadequacies of child welfare services in Canada and the significant changes that are necessary to meet the needs of children in care, further objections need to be addressed. First, it could be objected that if voluntarism hinges on the establishment
of such significant improvements of social programs, then it will not adequately meet the needs of children since evidence shows that there is chronic underfunding and continual withdrawal of funding for existing social programs. If adequate social support is already unavailable for vulnerable children, and voluntarism requires significant social support for children and at-risk families, then voluntarism ought to be rejected. Given the possibility of harm to children, even if it is unjustified to ground parental obligations using causal accounts, using a causal account to justify policies ensures that, at the very least, there are specific individuals who are responsible for the financial support of their genetic children and can be held accountable when they fail to support them.

In response to this objection, I have two related remarks. The first part of my response draws attention to the fact that many social services are already available in Canada and so the groundwork has already been laid for support for such services. Advocating for improving existing programs is easier when policies and programs already exist. The problem is not so much that these programs do not exist as that they have been underfunded and reduced. Furthermore, a society that allows and encourages people to have children accepts responsibility for their wellbeing and should therefore provide adequate assistance.

Moreover, it is also clear that current Canadian policies and laws are implicitly based mostly on a causal account of parental obligation, as evidenced by the use of increasingly reliable paternity testing to determine genetic parentage and, hence, parental financial support of children (Wiegers 2011, 623). The increasing use of technology helps focus responsibility on specific individuals – the genetic parents. The reliance on specific individuals for the wellbeing and needs of children could result in a failure to recognize
that a just society requires adequate social support for children and to improve existing services. Placing responsibility on specific individuals in a social context that encourages and allows procreation with inadequate social support is unjustifiable.

The second part of my response is to suggest that one way of encouraging governments to increase support for children in care is precisely to move away from a causal account of parental obligations. Voluntarism provides a better alternative than causal accounts by shifting the responsibility from individuals to collective duties. In essence, implicit reliance on causal accounts to determine obligations allows governments to wash their hands of responsibility to vulnerable populations and further reduce already underfunded programs by putting the onus on individuals. Therefore, in response to the criticism that chronic underfunding makes causal accounts necessary, it can be argued that causal accounts may indeed justify underfunding by placing the responsibility on individuals. Hence, a voluntarist account should encourage increased support by providing a framework that better recognizes collective duties.

An objection to the argument that voluntarist accounts promote collective duties better than causal accounts is that supporting the improvement of social programs is wholly consistent with any account of parental obligations, including causal accounts. Moreover, given the current chronic underfunding of social programs, causal accounts at least provide an alternative to collective responsibilities by holding genetic parents responsible where there is no, very little, or inadequate social support otherwise. One could argue that causal accounts are preferable within a non-ideal social structure.

I recognize that it will be difficult to shift views about parental obligations and establish the social structure necessary for voluntarism to work adequately. However,
despite the difficulties in changing societal views and policies so as to provide adequate care for children, a causal account need not be the default position. In the absence of adequate social support for children, genetic parents might initially be responsible for the care of their genetic children since the harm to children is grave if there is absolutely no support. However, conceding this does not commit me to a causal account if, in addition to improving social programs, attempts are simultaneously made to shift views to a voluntarist account by recognizing the importance of collective responsibilities. In fact, as stated previously, a voluntarist account better justifies the need for such programs. Therefore, in a non-ideal society, greater attempts should be made to move away from causal accounts as one way to promote better social programs.

Furthermore, even if, in some cases, parents might have financial obligations to their children due to inadequate state support, these minimal contributions are not parental obligations as I have understood them. Recall that I argued that parental obligations are partly a matter of convention but it is largely uncontroversial to say that they are unique (in that they can only be expected from particular others), and go beyond the minimum obligation to provide and protect. Parents are obligated to advocate for their children, create a relationship, and nurture an emotional bond. Obviously, no account of parental obligation can ensure that individuals are emotionally bonded. However, since voluntarism is about the voluntary acceptance of the parent role, emotional bonds may be

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96 Just to clarify the argument, voluntarism requires that parents explicitly or implicitly assume responsibility for children. Therefore, genetic parents are responsible unless they choose to place children for adoption. What I have been arguing in this chapter is that in the case where parents choose adoption, there ought to be adequate support for unwanted children. In the absence of adequate support, genetic parents who choose adoption may be financially responsible since children can be harmed.
more likely to develop if the relationship is chosen rather than simply given. Seen in this light, mere financial contributions are not the same as parental obligations.\textsuperscript{97}

The purpose of this chapter is not to suggest that a voluntarist account is the only way to promote social programs or that causal accounts cannot be supportive of social programs as well. Rather, my aim here is more modest. My aim in this chapter is to answer the charge that voluntarism leads to harm by providing concrete ways to improve social policies and legislative guidelines for children in care, at-risk families, adoptive families, and adoption practices. Further, I hope to have shown that voluntarism provides a better framework than causal accounts to advocate for improving social programs by recognizing the need for collective responsibilities.

**Conclusion**

Meeting the needs of unwanted children and children in care is a significant challenge given any account of parental obligation. Addressing the reasons that parents place children for adoption and the reasons children are removed from homes and placed in care should be a primary concern. Children, especially those in care, face multiple problems and a preventative and proactive approach would require significant changes to current legislation, social programs, policies, and cultural views.

However, voluntarism could be the best option for achieving these goals since it recognizes the importance of collective care and the interconnections of individuals within society. Even within a non-ideal society with inadequate support, advocating voluntarism might provide a better solution to the problems that unwanted children face.

\textsuperscript{97} Elizabeth Brake makes a similar argument. See Brake 2010.
than relying on a causal account of parental responsibility. Moreover, as I explained previously, voluntarism recognizes that adoption is not only defensible but preferable to children being raised by their biological parents, in certain cases. If what is of importance is the wellbeing of children, then voluntarism is, on the whole, a stronger account of parental obligations.
Chapter 7

Conclusion

I began this thesis with the general question of what it means to be a parent. I realize that that question is difficult to answer. It is a difficult question to answer because “parent” can mean many things and what is expected from a person occupying such a role is dynamic and multifaceted. I hope that part of what I have provided in this thesis is clarification of its meaning as well as a better understanding of how parental obligations are incurred.

Moreover, given recent changes to the ways families are constituted, answers to the question, “what does it mean to be a parent?” are becoming increasingly complex. As I have argued, voluntarism provides a clear answer: a parent develops a particular relationship with a child and owes special obligations to that child as a consequence of the voluntary choice to parent. As an example of the voluntary assumption of parental obligations, adoption provides a valuable model of how to understand the assumption of parental obligations. What I think is the most appealing feature of voluntarism is that it requires that parents want to raise children. Intending to become a parent is ultimately more beneficial for children than simply being a parent as a result of a biological or causal connection. If the goal is to have responsible, caring, and eager parents, then voluntarism provides the best model of family formation.

Throughout this thesis, I have developed a version of voluntarism that resists the problems that plague causal accounts, provides answers to criticism of voluntarism, and offers a valuable model of parental obligations. Through various arguments, I have supported a version of voluntarism that takes the consensual intentions, desires, and
actions of individuals to be morally relevant factors in determining responsibility. Given these conditions of responsibility, individuals have a duty to act responsibly whenever possible. Moreover, I have argued that parental obligations are special obligations; therefore, voluntarism coheres with the kinds of special relationships parents have with their children. Finally, voluntarism can provide a solid justification for the development of social services (even in the absence of an ideal society) that adequately meets the needs of vulnerable citizens.

In closing, although he was speaking on women’s right to abortion, I think that the words of Henry Morgentaler help encapsulate my support of voluntarism: “Every mother a willing mother. Every child a wanted child” (Morgentaler 2008).
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