

1 How Procreation Generates Parental Rights and Obligations

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Did I request thee, Maker, from my clay to mould me man? Did I solicit thee from darkness to promote me?—

(Milton, *Paradise Lost*)¹

While there is more than one way to become a child's parent, *procreating* a child is typically sufficient to achieve that status. But whether a person has procreated a child and thereby become her parent requires that her acts have some causal role in bringing that child into existence. To procreate is to create, not simply to bring into being, so as we shall understand this term, 'procreating' is an action type, not merely a causal relation. The precise causal role that a parent plays in procreation may vary: Most often, a parent is genetically related to a child, but he or she may participate in procreation by fulfilling a different biological role (e.g., gestating a genetically unrelated fetus). Beyond a causal contribution to the child's existence, procreation requires that the child's existence be a fact that can be attributed to her and her choices. A person procreates a child, on this view, either by (a) acting so as to contribute to bringing into existence a child for whom one intends to serve as a parent, or (b) by engaging knowingly and willfully in acts that contribute to bringing a child into existence (for example, 'accidentally' conceiving a child via sexual acts), irrespective of whether one intends to serve as that child's parent. On this understanding, an incompetent minor, ignorant of the mechanics of biological reproduction, cannot procreate. Nor does a gestational surrogate who has relinquished any claims to serve as the child's parent.² As a way of becoming a child's parent, procreation thus contrasts with paths through which an individual becomes a child's parent with no causal role in bringing the child into existence, e.g. the adoption of a child who already exists.

My aim in this article is to evaluate some common ethical convictions about procreation and its relationship to both parental rights and parental obligations. In particular, I will consider the following claims, which together we may call the *procreative model*:

- 1 Competent adults have a right to procreate. This right is negative, entailing that others may not interfere with procreative acts or choices (except in extreme cases), and perhaps positive, entailing that individuals may be entitled to medical or other assistance to enable procreation.
- 2 Parents acquire a set of *rights* with respect to their children due to their being responsible for the existence of their children. These rights include the right to control a child's physical location, to guide the child's personal relationships, to exercise proxy judgment on the child's behalf, and (more controversially) to shape a child's education and to raise the child in the parent's particular religious or cultural traditions.
- 3 These parental rights are *exclusive*, in that only a child's parents have these rights with respect to that child (or have them to anywhere near the same extent as others may).
- 4 These parental rights are accompanied by a set of parental *obligations*, including providing for a child's material welfare, stimulating the child's emotional and cognitive development, not abandoning, abusing, or neglecting a child, and protecting the child from abuse, attack, and other dangers.
- 5 These parental obligations interact with parental rights in that flagrant or repeated violations of these obligations can result in parents losing one or more of their rights *vis-à-vis* their children, including in the most extreme cases forfeiture of parental custody and cessation of the parent-child relationship.

Obviously, the procreative model does not provide a complete account of the ethics of parent-child relations. It is silent, for instance, on the obligations children bear toward their parents. Nevertheless, the procreative model incorporates what I take to be a widely shared understanding regarding the ethical relations between parents and children with respect to the most common way in which these relations are established, namely, via procreative acts. And it is my contention that extant attempts to account for how procreation generates parental rights have serious shortcomings. Here I hope to demonstrate why this is so and develop a stronger defense of the procreative model.

Our concern, then, is with how procreative acts might serve as the *source* of parental rights and obligations. Suppose that the answer to the question 'how can parents have the rights and obligations they have toward their children?' is along the lines of 'often enough, by virtue of having procreated those children.' My purpose is to identify the best defense of this answer. In this respect, there are two important dimensions of the procreative model about which I will say little. First, aside from parental rights and obligations regarding education, I will leave much of the *content* of parental rights and obligations aside. Again, the aim here is to consider whether the procreative model can account for parents having rights and obligations *vis-à-vis* their children, not with precisely which rights and obligations parents have.

Second, I contribute little to the issue of the procreative model's *limits*. In procreating, parents create beings with claims on other individuals and on their societies. Furthermore, those beings consume environmental and societal resources. Hence, any defense of the procreative model as a source of parental rights and obligations is incomplete absent an engagement with issues pertaining to how many times or how often parents may exercise their procreative rights. I do not tackle such issues here.

One possible justification of the procreative model as the source of parental rights and obligations is that parents are assigned these rights and obligations because doing so is in the vital interests (perhaps even the 'best interests') of the child. This *child interest justification* contrasts with the *parent interest justification*, according to which parents are assigned these rights and obligations because doing so serves some vital interests of parents. I first attempt (in sections 1 and 2) to show that neither of these interest-based justifications adequately justify the procreative model. The child interest justification cannot be squared with the exclusivity and presumptiveness that the procreative model assigns to parental rights. Nor can it be squared with the extensive procreative liberty associated with that model. For its part, the parent interest justification cannot bridge the gap between prospective parents' interests in becoming parents and their having a right to become parents. In particular, an interest that is popularly invoked as the basis of parental rights, the interest in having the kind of uniquely intimate or loving relationship parents can have with children, is not sufficient to ground a right to bring a being into existence in order to satisfy this interest. Appeal to these interests to ground the procreative model is even less plausible if procreation is morally objectionable from the standpoint of the procreated. I argue in section 3 that in procreating, individuals create a new human person who faces her future from a set of initial conditions determined by her genetic profile, her early life material circumstances, her parental and familial relationships, cultural expectations, and so on. How that new human person can exercise her will over her lifetime to craft a life of her choosing is profoundly influenced by these initial conditions, conditions into which she is involuntarily placed by her procreative parents. We have, I contend, good moral reasons to object to our wills being encumbered by these initial conditions. Procreation always places a person into specific life circumstances that she does not choose but which substantially demarcate the horizon of possible lives she may have. Procreative encumberings are thus wrong, I argue, in something like the way in which compelling an individual into a romantic or marital relationship wrongfully encumbers her will: To subject an individual, without her authorization, to a state of affairs that substantively determines the arc of her life possibilities objectionably constrains her will.

This argument nevertheless contains a silver lining, as it paves the way to an alternative justification of the procreative model: If procreation is a wrongful encumbering, then procreators have an obligation to *compensate*

their offspring for this wrong. This general obligation is in turn the source of other more specific parental obligations, as well as of parental rights. A chief advantage of this compensatory account of parental rights and obligations is that it identifies a feature of procreation that is universal but specific. Because of this constitutive wrong, *every* procreative parent has a duty to compensate *her* offspring for this wrong. The compensatory account thus succeeds in making sense of how particular acts of procreation can generate parental rights and obligations specific to the offspring one procreates. More generally, my compensatory account better vindicates the procreative model, giving individuals wide latitude to procreate, making parental rights exclusive and reasonably presumptive, and linking these rights to procreation without having to bridge the chasm between prospective parents' interest in becoming parents and their putative right to become parents. Section 6 concludes with a discussion of parental rights *vis-à-vis* children's education, and in particular, how the provision of education might serve to provide children restitution for the wrongs of procreation.

1 Child Interest Justifications of Parental Rights

Much of the popular rhetoric and legal practice surrounding parenthood and procreation assumes that children's interests are well served, perhaps even best served, when those responsible for their biological existence are assigned the distinctive rights and obligations of parenthood. In some quarters, procreation is seen as a transformative experience,³ capable of turning otherwise somewhat self-absorbed individuals into adoring parents who love their children unconditionally and are willing to sacrifice most anything for their children's sake. Legal practices surrounding divorce, incarceration, and immigration, which often emphasize maintaining or reunifying families established via procreation, reflect a similar conviction that children are best off under the care of those who procreated them.

Such sentiments suggest a justification for the procreative model resting on children's interests. According to this justification, parental obligations are fundamental and parental rights derivative, co-originating in children's interests: The fulfillment of the moral obligations of parenthood ensures that children's interests are protected and realized; procreative parents are best suited to fulfill the moral obligations of parenthood; thus, assigning procreative parents these obligations, as well as corresponding parental rights, is justified by appeal to children's interests.⁴

As a generalization, the claim that procreative parents are best suited to fulfill the moral obligations of parenthood is probably correct. Certainly once a relationship is well established between children and their procreative parents, the disruption to this relationship that would occur if children were removed from their households and assigned to other parents would be a source of great trauma and anxiety to children. However, virility is not virtue, and there is no particular reason to suppose that having ultimate responsibility for a child's existence makes one *competent* as a parent, much

the less that one is best suited (i.e., better suited than any other prospective guardian) to parent a child in that child's best interests. In advocating for a regime of parental licensing, Hugh LaFollette points to a wide range of empirical findings regarding the prevalence of abuse and neglect by parents. As it turns out, parents who incur obligations toward their children through procreation rather than adoption are in fact more likely to be incompetent parents.⁵ LaFollette's licensing proposal is obviously controversial, and it is not my purpose to endorse it here. However, it does help illustrate the primary difficulty of justifying the procreative model by appeal to the best interests of children, namely, that there seems to be no special causal connection between a child's being one's procreative progeny and being disposed to act in that child's best interests. Again, this is not to say there is *no* such connection: It would be surprising if a child's procreative kin were not often the best qualified to serve as their parents (though even here we might question whether biological facts as such explain this, as opposed to, say, the relationship biological parents build with their children over time). Yet if the procreative model were grounded in the best interests of children, then parental rights would be less exclusive than the procreative model supposes inasmuch as other competent prospective parents would have conditional claims to parent children whose procreators are incompetent. Such rights would also be something less than presumptive: Less evidence would be necessary in order to override the parental rights claims of procreative parents.

The procreative model obviously has a strong grip on the customs and norms of various societies. But it is unlikely that a community primarily concerned with children's interests would bind together procreative acts and parental rights as tightly as the procreative model does. Indeed, were the procreative model grounded in children's best interests, we would likely be much more willing to decouple procreative acts from parental rights altogether. This possibility is encapsulated in what Sarah Hannan and Richard Vernon call the 'Plato worry.' Just as Plato advocated that children be redistributed in order to meet the state's interest in class specialization, the procreative model (if grounded in the interests of children) should entail a willingness to redistribute children in order to advance their interests:

If children's interests would be better served in being raised by people other than their biological or adoptive parents—say by those who work within state-run institutions—then according to the child-centered view it would be not only permissible, but required, that they be taken from their current parents. . . . Moreover, this redistribution would not constitute a violation of the original parent's rights because under the child-centered account their rights are predicated solely on the interests of the child . . .⁶

In other words, if parental rights are rooted in children's interests, then the rights of procreative parents with respect to the children they are responsible for creating would be much more contingent than the procreative model allows.

Furthermore, the very right to procreate would likewise be more contingent than the procreative model presupposes if it is justified by appeal to children's best interests. A number of practical concerns arise in connection with proposals to limit procreative liberty. Yet there may well be some individuals for whom procreation ought to be proscribed altogether if the right to procreate rests on the interests of children. Nature sometimes bestows the capacity to procreate on those without the wisdom, patience, energy, or interest needed to parent in ways conducive to children's interests. It is hard to discern how the procreative model can rightfully bestow parental rights and obligations on such individuals under the auspices of serving children's interests.

Defenders of the procreative model may well point out the practical difficulties that would arise if, despite our culture's current attachment to the procreative model, we attempted to implement a model of parental rights and obligations that deviated from it. They may also try to salvage the procreative model by gravitating toward a less demanding criterion regarding children's interests, claiming that (say) procreative parents need only be 'good enough' in serving their children's interests in order to retain their rights as parents. Yet neither of these responses undermines the key theoretical criticism of grounding the procreative model in children's interests, namely, that the ability to procreate (or arrange for procreation) and the ability to parent are too contingently related for children's interests to provide an adequate vindication of the procreative model.

2 Parent Interest Justifications of Parent Rights

The alternative is to ground the procreative model on the interests of parents. Many possible interests of parents could be invoked here, but advocates of this model often appeal to the distinctive goods parents can enjoy thanks to their relationships with their children. For instance, Harry Brighouse and Adam Swift⁷ (2006) propose that the parent-child relationship is unique among human relationships in being a relationship between unequals, in which one party is noticeably more vulnerable and needy; such that children cannot exit the relationship; characterized by spontaneous and unconditional love on the part of children; and fiduciary in that parents are entrusted with the immediate and future well-being of their children. Together these features lend the parent-child relationship a form of intimacy that makes these relationships incommensurable with other adult relationships and contributes uniquely to parents' flourishing and to the development of their capacities. In a similar vein, Christine Overall states that a fundamental "asymmetry" is built into the parent-child relationship inasmuch as parents choose to create their children and hence choose to establish a relationship with their children. This asymmetry makes possible "mutually enriching, mutually enhancing love" between the parties and hence provides what Overall believes is the best reason for procreation.⁸

Can the procreative model be justified by appeal to prospective parents' interest in realizing the special goods associated with parent-child relationships? One concern is that this justification appears vulnerable to a version of the aforementioned Plato worry. At most, this appeal establishes that individuals have an interest, and hence a right, to be a parent. However, it does not establish the procreative model's claim that individuals have the right to parent *the children they procreate*. As such, the appeal to parents' interests in having a relationship with their children seems to allow, *inter alia*, for the redistribution of children away from those who procreate but have no desire for such a relationship toward those individuals who desire such relationships but are unable to procreate.⁹

That concern notwithstanding, I believe we should be skeptical that an appeal to this parental interest can generate the kinds of rights claims embedded in the procreative model. Most fundamentally, the fact that individuals may have an interest in having relationships with the distinctive sort of intimacy afforded by the parent-child relationship cannot entail that individuals have a right to bring a new being into existence in order to help realize that interest. Even if such an interest establishes a right to parent, it falls short of establishing a right to procreate.

To see why, we must first consider what sort of right the right to procreate is. According to the procreative model, procreative rights are at least negative, i.e., all other individuals (and the state) have a duty to refrain from interfering in competent adults' procreative acts and efforts.¹⁰ Whether these rights are also positive, requiring other individuals (perhaps again, including the state) to enable or to assist in making possible procreation, is more controversial.¹¹ Notice that whether or not a right to procreation is, with regard to *other* already extant beings, negative or positive, this right is, with respect to *the person brought into existence*, clearly more than a negative right. In asserting a right to procreate, a prospective parent is not asserting that not yet existing beings may not interfere with her procreating. The procreator instead asserts a kind of claim *on* a not yet existing being, a claim akin to a positive right in that the prospective parent seeks a good from the child, in this case, the good of having a fulfilling relationship with that child.

Yet it hard to discern how this putative positive right might be grounded in a parental interest in having such a relationship. Whether an individual's interest is sufficient to ascribe to her a positive right that others fulfill that interest depends on both how vital the interest is, as well as on the extent or weight of the burdens that would befall others required to honor this right. Whatever interest we may have in establishing and maintaining a fulfilling relationship with our potential children does not seem to be as vital as the interests commonly thought to undergird positive rights, such as our interests in basic subsistence, healthcare, education, and legal counsel when accused of a crime. One cannot have a minimally satisfying life (at least in any minimally developed society) without these goods. But one can have a minimally satisfying life without having the distinctive sort of parent-child

relationship afforded by procreation. However, there are clearly some people whose interest in this kind of relationship is deep and abiding, as is attested to by the great lengths some go to in trying to become parents, whether through atypical biological means (various forms of assisted reproduction) or through legal means (adoption). So let us allow that this interest may at least sometimes be vital enough to generate a positive right. That still leaves the question of whether the burdens that exercising this positive right imposes on those who are procreated are sufficient to outweigh the parental interests on which this right rests. Positive rights can clearly be limited in what they ask of others by way of assisting in the fulfillment of their associated interests. As Judith Thomson¹² taught us, even if the only thing that will save us from dying is the cool caress from the hand of a Hollywood icon, we do not obviously have a right to that cool caress despite how vital our interest in continued living might be. There are some burdens we may not ask others to bear even in the service of our vital interests. The question at hand is whether we may ask others to bear the burdens of procreation in the service of our interests in having the special sort of relationship often found between parents and children.

Recently, philosophers have become more skeptical that the burdens procreation imposes on the procreated can be justified.¹³ Seana Shiffrin summarizes these burdens:

By being caused to exist as persons, children are forced to assume moral agency, to face various demanding and sometimes wrenching moral questions, and to discharge taxing moral duties. They must endure the fairly substantial amount of pain, suffering, difficulty, significant disappointment, distress, and significant loss that occur within the typical life. They must face and undergo the fear and harm of death. Finally, they must bear the results of imposed risks that their lives may go terribly wrong in a variety of ways.¹⁴

That such burdens are not sufficient to generate a positive right to procreation—despite the vital relationship interest prospective parents may have in procreation—becomes plausible when we consider whether there are rights to other relationships that impose burdens on others. In general, our interests in having various relationships generate no positive claim to such relationships. Long-term romantic relationships are arguably sources of distinct goods as well. Adults have negative rights to pursue such relationships (within the limits established by other moral rights and considerations). Yet they certainly do not also have positive rights to such relationships. Those unable to form romantic attachments have no claim against the larger world to be provided such attachments, and no matter how much Romeo loved Juliet, he had no claim on her love. But if we lack any positive right to relationships with particular existent others it is difficult to see how we can have a positive right to *bring another person into existence*, even in order to serve

our interests in having a certain form of relationship with them. For say what one will about romantic relationships, they do not impose burdens as weighty or extensive as those that Shiffrin catalogs as the burdens imposed on those we procreate. Hence, if our interest in having romantic relationships is as fundamental as our interest in having a parent–child relationship of the sort described by Brighthouse and Smith and by Overall, and yet (a) the former interest is not sufficiently fundamental to ground a positive right, and (b) such relationships do not impose burdens as extensive or weighty as procreation imposes on our offspring, then it appears very unlikely that the latter interest can ground a positive right to procreation. There is, then, a reasonable basis for skepticism about the claim that procreators’ interests in having relationships of “mutually enriching, mutually enhancing love” with their children entail their having the relevant right to such relationships. They may have a right that third parties not interfere with procreation, but they do not apparently have a claim against the children they procreate that they be procreated.

3 The Will and the Wrongs of Procreation

The arguments of the previous section showed that parent interests cannot justify the procreative model. This conclusion is all the more likely if exercising the negative right to procreate is a wrong to the procreated. For there cannot be a positive right to bring a person into existence if that very act is a wrong to that person.

To see what such a wrong may consist in, consider Shiffrin’s account of harm:

. . . harm involves conditions that generate a significant chasm or conflict between one’s will and one’s experience, one’s life more broadly understood, or one’s circumstances . . . all [harms] have in common that they render agents or a significant aspect of their lived experience like that of an endurer as opposed to that of an active agent, genuinely engaged with her circumstances, who selects, or endorses and identifies with, the main components of her life.¹⁵

Let us set aside the issue of whether Shiffrin is correct in her account of harm.¹⁶ For my account of the wrongs of procreation will not assert that procreation wrongs by harming a person in any typical sense. Let us instead focus on Shiffrin’s talk of a “chasm” between a person’s will and her life or its circumstances.

The right to procreate is general, but procreative acts always result in specific individuals coming into existence. And those individuals have identities that stem not only from the genetic inheritance bequeathed them by their genetic parents, but also from the initial circumstances of one’s birth. These initial circumstances are not destiny. But they are powerful determinants of

the shape and quality of one's life. A person's genetic makeup; her place in the family birth order; her parent's personalities and professions; her material circumstances; the larger environment, including its political, environmental, and anthropological attributes; all of these constrain the possible ways in which a person's life can unfold. They are significant determinants of, to use Shiffrin's words, "the main components" of a person's life. Yet no person is afforded the opportunity to 'select,' 'endorse,' or 'identify with' these components, as all of these are unchosen. For the most part, an individual can only 'endure' these initial conditions and their subsequent effects.

In every act of procreation, there is therefore a 'chasm' between a person's will and her circumstances, not in the sense that those circumstances are contrary to her will but in the sense that those circumstances *encumber* her will. Procreation is on its face wrongful simply because it establishes a chasm between the will of the procreated and the life they experience due to being brought into existence. Procreation necessarily places a person into specific life circumstances—she is born into *this* family with *this* genetic inheritance in *this* society, etc.—that exert wide-ranging influence on what her life could be like. We have strong moral reasons to object to the range of possibilities among which we might choose a life for ourselves being limited in this way, much as we have strong moral reasons to object to being forced into romantic or martial relationships that similarly limit the possibilities for our lives. To compel an individual, without her consent or authorization, to occupy a state of affairs that narrows the range of options amongst which her will can choose normally wrongs her. Such a narrowing is inherent to the procreation of any given individual. Hence, procreators wrong their future children by *encumbering the future wills* of the children they create.

The encumbrance in question has two foundations. The first has already been mentioned: Simply by being brought into existence, we situate a person in circumstances not of his or her own choosing, circumstances that play a tremendous role in shaping who the individual is and what trajectories the individual's life can have. The circumstances into which a person is brought into existence—the material realities of the earliest stages of a person's life—are identity-constituting, exerting significantly more influence on her subsequent capacities, values, and attitudes than later stages. To a surprising extent, who one is and what one can reasonably expect from life is determined by social facts about one's parents. Procreation thus places us in early life circumstances that, even if highly desirable, we have no choice but to 'endure.' Let us say, then, that procreation *materially* encumbers the future will of the person so procreated, both by fashioning her identity and by establishing the initial palette of options and avenues through which she may exercise that will.

The second foundation of this encumbrance is *moral*. Recall Shiffrin's remark that "by being caused to exist as persons, children are forced to assume moral agency, to face various demanding and sometimes wrenching

moral questions, and to discharge taxing moral duties.” Morality makes claims on our future wills, simply by virtue of our membership in the moral community. Procreation thus places us within the moral community that will make demands upon us. Furthermore, procreation serves to place an individual into a specific web of social relations not of her choosing and hence functions to determine the specific contents of one’s moral duties. That individual will have relationships with *these* siblings, *these* parents, *these* peers, etc. These relationships profoundly influence the shape of an individual’s life, in addition to creating filial and other duties.¹⁷ Thus, procreation morally encumbers a person’s will both by making it true that she has moral duties and by determining what duties she has.

Again, the analogy to romantic relationships is illuminating. We observed earlier that there is not a positive right to romantic relationships. Why not? Entering into such a relationship encumbers the future wills of the parties: Such relationships shape the factual circumstances of a person’s existence while also creating normative expectations regarding one’s future choices and behavior (expectations of fidelity, care, etc.). Given the burdens and limitations that such expectations entail, we have strong reasons, then, to want to reserve for ourselves the latitude to determine which romantic relationships we enter into, even in cases where those relationships will be beneficial to us on the whole. Arranged marriage is thus objectionable because it encumbers our future wills in fundamental ways, even if it turns out to be an otherwise happy arrangement. Similarly, procreators assert a right to bring an individual into existence, an act which by its very nature generates wrongful burdens or claims on that individual’s *future* will.

Others have argued for procreation being wrongful, but to my knowledge, none have argued that the wrong in question consists in its encumbering the wills of the procreated. No doubt the claim that procreation is inherently wrong will rub many the wrong way, so let us first address possible objections to this claim before turning the discussion in a more positive direction.

An obvious concern about my claim is that, despite having interests, the not yet procreated lack wills by which to assert those interests. Hence, it might appear that the reasons for denying (say) a positive right to romantic relationships do not apply to procreation. Prospective romantic partners can exercise their wills via consent to a relationship, but notions of consent simply do not apply to the not yet existent precisely because they lack wills with which to consent. But it is not clear that a being needs a will at a given moment in order for there to be moral reasons not to encumber her future will any more than a being needs to be susceptible to pain at a given moment in order for there to be moral reasons not to cause her future pain. However plausible the principle that it is wrong to encumber a person’s future will, it does not seem to turn on a person’s having a will at the time when the encumbering occurs. That the not yet existent lack wills does not entail that procreation does not wrongfully encumber their future wills, which is the very same consideration that speaks against a positive right to relationships

of other kinds.¹⁸ Perhaps the concern is with the *timing* of the wrong. I have claimed that procreation wrongs the procreated by encumbering its future will. The time at which the wrongful event occurs thus diverges from the time at which the wronging in question occurs. But I do not see that such a divergence should trouble us. Granted, prospective parents cannot disregard the will of the child they procreate until the act of procreation occurs. But this merely illustrates that when a wrongful event occurs and when a person is wronged by that event need not temporally coincide.¹⁹

A second objection to my argument for the claim that procreation wrongs by encumbering a future person's will is that it appears vulnerable to a version of Parfit's non-identity problem.²⁰

If in order to be harmed by being procreated in some set of circumstances C^1 , a person must be made worse off by being procreated in C^1 , then her existence by virtue of being brought into existence in C^1 must be worse for her than it would have been were she brought into existence in some other set of circumstances. However, had that person been brought into existence in some other circumstances C^2 , that fact necessarily changes the identity of that person. Hence, being procreated in C^1 cannot be a harm to that person. We therefore cannot harm a person by bringing her into existence.

Note that the non-identity problem assumes that the wrongs of procreation consist in how procreation harms a person. However, my argument may appear to circumvent the non-identity problem because it grounds the objectionability of procreation in the fact that it encumbers a person's future will rather than in the fact that it harms her. Nevertheless, it might appear that my argument regarding the encumbering of a person's future will could be attacked with parallel reasoning:

If in order to be wronged by being procreated in some set of circumstances C^1 , a person's will must be more encumbered by being procreated in C^1 , then the state of her will by virtue of being brought into existence in C^1 must be more encumbered for her than it would have been were she brought into existence in some other set of circumstances. However, had that person been brought into existence into some other circumstances C^2 , that fact necessarily changes the identity of that person, and indeed, changes the initial state of her will. Hence, being procreated in C^1 cannot be a wrong to that person. We therefore cannot wrong a person by bringing her into existence.

However, whatever validity the non-identity problem has when applied to claims regarding harming a person via procreation, it is not valid when applied to my argument regarding procreative wrongs. First, the wrong I have identified is not a comparative wrong. The wrong in question is not

the purported wrong of rendering a person's will *more* encumbered than it otherwise would have been. The moral reasons that make procreation objectionable do not rest on the claim that encumbering our wills in this way harms us comparatively, making us "worse off" with respect to the state of our wills than we would otherwise have been. For there is no way we would otherwise have been had we not been procreated, and no antecedent state of our wills that is encumbered by being procreated. It is rather the wrong of encumbering a person's will without their authorization. By its very nature, procreation precludes the "joining of wills"²¹ necessary to permissibly encumber another's will. Second, the wrong identified in my argument is not the wrong of procreating a particular person in some specifiable set of circumstances. The wrong consists in encumbering the will of a future person *irrespective* of the precise circumstances of her procreation. The person is affected by being procreated. Thus, the wrong is not an impersonal wrong. However, that wrong does not rest on any special facts about the person's identity as a person or the procreative circumstances that establish that identity. The wrong of encumbering a future person's will is best understood as a *de dicto* rather than a *de re* wrong: a wrong done to whichever individual, or whichever rational will, is brought into existence by being procreated—a wrong to whomever the procreated individual turns out to be.

Finally, critics may contend that in proposing that procreation is inherently wrong, I thereby depict parents in a morally unflattering light. Virtually none of those who procreate intentionally mean to encumber their offspring's wills, and those who procreate unintentionally would not wish ill on their offspring. I do not deny these assertions. Procreation is not generally malicious. However, it need not be malicious in order for it to have the properties that (I contend) make it wrongful. The wrong in question is best seen as akin to a violation of a strict liability standard: Procreation is wrongful thanks to a property inherent to it, and therefore, whether procreators acted intentionally, exercised due care, etc. does not affect its wrongfulness. And even if there were some way of showing that procreators are not at fault for this wrong, procreators who take responsibility for this wrong would nevertheless exhibit the "nameless virtue" Susan Wolf describes in terms of a "willingness to give more . . . than justice requires" when one is responsible for unjust outcomes.²²

Section 2 cast doubt on the parent-interest justification of the procreative model, illustrating how this interest does not seem sufficiently weighty, particularly when juxtaposed with the burdens of being brought into existence, to justify ascribing to would-be parents a positive right to procreation. This section provides further reason to doubt that justification of the procreative model: Given that procreation makes an arguably wrongful claim on the future wills of those we bring into existence, the interests that would justify such claims must be extraordinarily valuable. In a sense, procreation is by necessity coercive. Prospective parents exploit the very features highlighted

by Brighthouse and Swift and by Overall (that parents choose to procreate but children do not choose to be procreated, that children cannot exit the relationship, etc.) to force not yet existent beings into relationships the parents value. In so doing, parents treat the rational will or agency of the children they create merely as a means. Such treatment, I maintain, cannot be justified by the relationship goods that may thereby flow to parents.

4 How the Wrongs of Procreation Ground Parental Obligations

Our discussion to this point shows how an adequate vindication of the procreative model must satisfy two desiderata. First, it must rest on some feature that is universally present in acts of procreation. Parental rights and obligations must come into existence due to procreation itself. Second, in light of the Plato worry, an adequate vindication must nevertheless morally bind particular procreators to their offspring. There must be a plausible account of how a procreator has rights and obligations with respect to all and only her offspring.

The second desideratum—that parental rights and obligations must be specific to a procreator’s offspring—suggests that parental obligations cannot rest on general or impersonal duties. Given that (as I have argued) procreation encumbers a person’s future will undeservedly, we might think that parental obligations are duties of justice. However, an appeal to justice misses that procreators do not just happen upon the situation in which a person’s future will is undeservedly encumbered. They are *responsible* for that situation. Parental obligations must instead fall under a category of obligation resting on prior acts of procreators. W. D. Ross identifies three categories of obligation resting on individuals’ prior acts. The first, fidelity, does not apply to procreation. Procreators have not made any promises to their offspring that would ground subsequent obligations. Nor does the second category, gratitude. Parents were not benefitted by their children’s acts. The only possibility left is duties “resting on a previous wrongful act.”²³ In procreating, one wrongs one’s children by encumbering their future wills. While procreative parents cannot cancel these wrongs, they can compensate their children for them.²⁴

Rooting parental obligations in compensatory duties offers a superior justification of the procreative model, including its claims regarding parental rights. Parental obligations stem from the act of procreation, i.e., on parents having made the right sort of contribution to the existence of their children. It is through the wrongful act of procreation that they incur the relevant compensatory obligations. Thus, a compensatory account of parental obligations depends on a universal feature of procreation, its encumbering of the procreated individual’s future will. Furthermore, because compensatory obligations are special obligations, a compensatory account also makes parental obligations specific to those one procreates: While the state of

affairs that constitutes their fulfillment can be realized by someone besides the individual who incurs the obligation, they can only be *discharged* by the individual who incurs the obligation. Consider the special obligation of promise keeping: If S promises T that she will make it the case that P, S's promissory obligation to T can in a sense be fulfilled if U makes it the case that P. However, in that instance, S has not discharged her duty to T. Compensatory obligations are subject to the same underlying deontic logic: If S owes compensation to T for having wronged T, then U may 'compensate' T, thereby rendering T 'compensated' for S's wrong. But again, S has not discharged her compensatory duty to T.

A compensatory account of parental obligations is therefore invulnerable to the Plato worry. The Plato worry arises so long as we assume that the procreative model must derive its rationale from one of the parties' interests. Whether that model's rationale is that the assignment of parental rights to those responsible for procreation is in the (best) interests of children or that the assignment of parental rights (and obligations) serves a vital relationship interest of prospective parents, it is in principle possible that decoupling parental rights from procreation better serves the relevant interest. But by appealing to compensatory obligations, my defense of the procreative model dodges the Plato worry. For while it may well be true that children's procreative parents are not necessarily best situated to discharge these obligations, it does not follow, in light of the special nature of these obligations, that it would be just to distribute children and the associated right to parent children to those most able or willing to discharge those obligations. No doubt some will wish to undertake these obligations despite not having procreated. Adoption is certainly not ruled out on my account. However, to distribute children to those most willing to discharge these obligations is unjust, as it permits the procreators who incurred these obligations in the first place to circumvent them.

5 From Obligations to Rights

The source of procreative parental obligations, I have argued, is compensatory. The right to procreate, in turn, is a right to create beings to whom one is necessarily indebted simply by virtue of causing them to exist. However, the procreative model also maintains that procreation is the source of parental obligations as well. My compensatory account sees parental rights are acquiring their legitimacy from compensatory parental obligations. That is, because procreative parents have obligations to compensate their children, they must be accorded rights entitling them to exercise specific forms of care toward their children, the exercise of which provides those children the compensation to which they are entitled. The rights procreative parents have with respect to their own children—rights of guidance and control, decision-making, etc.—are ascribed to them in part so that they may fulfill these compensatory obligations. The exclusivity of these parental rights,

another feature of the procreative model, flows from the exclusivity of the parental obligations. The assignment of parental rights to them largely serves to make the fulfillment of their special compensatory obligations possible. At the same time though, these rights may justifiably be curtailed or forfeited by parents who do not fulfill the corresponding obligations, in which case these rights fall on particular individuals who agree to undertake these obligations (adoptive parents) or on the community or society at large.

As I noted at the outset, in grounding the procreative model in procreative parents' compensatory obligations toward their children, I aim primarily to make sense of procreation as a source of parental rights and obligations. Although (as we shall see in the next section) education plays a distinctive role in parents discharging these compensatory obligations, parental rights and obligations are not a straightforward function of those obligations. Children have a wide range of interests and needs. Procreation, I propose, makes parents uniquely responsible for attending to these interests and needs. For by procreating, parents incur special obligations toward their children that render them morally accountable to their children in ways that strangers and others are not morally accountable to them. Thus, the currency of parental compensation takes many forms beyond direct attempts to compensate for children's wills being encumbered. I would argue that when parents provide care toward their children, such as ensuring the availability of nutritious food, they are serving to disencumber their children's wills and so provide indirect compensation. But that is not all parents are doing: They are also satisfying non-compensatory moral demands that nevertheless originate in their special compensatory relationship with their children.

Still, one might find the fact that my compensatory account of parental rights and obligations divorces these from the antecedent interests of the relevant parties puzzling. If the arguments for the previous sections are sound, this is as it should be: Neither the interests of children nor the interests of parents are sufficient to justify the procreative model of parental rights and obligations, particularly given (as I argued in section 3) that procreation wrongfully encumbers the future wills of children. Obviously, the interests of parents still bear on whether adults *ought* to procreate. But the decoupling of parental interests from their rights and obligations represents an advantage of my compensatory account. Individuals become parents for any number of reasons (and sometimes for no reason at all). By grounding parental rights and obligations in facts regarding the obligations that ensue from the act of procreation rather than the motivations for that act, my compensatory account is neutral regarding the reasons behind procreation and so can explain why those who procreate acquire parental rights and obligations irrespective of their motivating reasons (or the lack thereof). This compensatory obligations defense thus succeeds where neither the child interests nor the parental interests defenses do precisely because it attaches parental obligations to what, on the procreative model at least, generates them: the very act of procreation itself. Yet at the same time, it seems to give

both sets of interests their due without ignoring either. Should parents desire to procreate, for whatever reason or for no reason at all, they may do so as long as they provide for the interests of the children thus created.

A second puzzling feature of my compensatory obligations defense of the procreative model is that it appears to codify a permission to do wrong. If, as I have argued, procreation is on its face wrong because it encumbers the future will of those brought into existence, then why should we ascribe to individuals a right to do wrong via procreation? I concur that a moral right to procreation—a pre-institutional permission to bring new human beings into existence—is implausible. This is not because one needs the state's moral permission to procreate. The wrongs of procreation are, on the view I have defended here, 'natural.' However, the absence of a moral right to procreate is compatible with there being moral considerations that militate in favor of recognizing a legal right to procreation. First, the moral right in question is not unlimited, and it is compatible with the general contours of my compensatory obligations account that the right to procreate be circumscribed by the capacity and willingness to discharge these obligations. We should, for example, be skeptical of procreative rights asserted by those with past records of child abuse or neglect, by early adolescents lacking the maturity to parent, and those with an express intent of abandoning the children they create. That said, preventing the wrongs of procreation must be juxtaposed alongside other morally important interests and considerations. Among these may be societal interests in, for example, maintaining a population level sufficient for intergenerational justice. Moreover, legal rights bring in tow burdens of enforcement that may be unreasonable or unjust in their own right. Attempting to prevent wrongful procreation may involve equally serious draconian wrongs of its own: intrusions into privacy in order to determine which parents will discharge their compensatory obligations, violations of bodily integrity in order to sterilize, compulsory abortion, and so on. That there may be no moral right to do X whilst there is a legal right to do X is not so odd after all. We may lack a moral right to break certain promises but still (and perhaps justifiably) have a legal right to break them. In any event, the state may sometimes have no right to compel people not to do what they have no moral right to do.

6 Education as Parental Restitution

I have proposed that the obligations associated with the procreative model of procreation are compensatory in nature and serve as the basis for parental rights. I conclude by considering how parental rights and obligations regarding education fit into this model as I have defended. In particular, how might parents make possible educations for their children that accord with these compensatory obligations?

The wrong of procreation, I have proposed, consists in how it encumbers the future will of a child. Many of the ways we might compensate for

this wrong represent a different form of moral currency: By, for example, tending to a child's material needs, a parent is at most only indirectly 'encumbering' a child's will. Education, however, can serve not merely as compensation, but as in-kind *restitution* for the specific wrong of procreation. A broadly liberal education, among whose purposes is to expose children to a variety of modes of life and to provide them with various generic goods and skills needed to pursue and implement those modes, can counteract the encumbrance of the will that procreation creates. Education thus offers a way of 'giving back' to the children we create the power over their future wills that procreation wrongfully encumbered.

Here Bruce Ackerman's description of liberal education in terms of a "great sphere" is illuminating:

The entire education will, if you like, resemble a great sphere. Children land upon the sphere at different points, depending on their primary culture; the task is to help them explore the globe in a way that permits them to glimpse the deeper meanings of the dramas passing on around them. At the end of the journey, however, the now mature citizen has every right to locate himself at the very point from which he began—just as he may also strike out to discover an unoccupied portion of the sphere.²⁵

In encumbering the will, procreation locates a person at a given location on this sphere. Indeed, its influence on that location is likely greater than the "primary culture" to which Ackerman refers. But one's location on this sphere determines what other locations one can perceive and travel to. That location thus establishes the horizon for one's life-shaping options and choices. There will be some locations on that sphere from which it may be difficult to travel from either because of lack of resources that make the surrounding terrain more challenging or because occupying that location has made perceiving or envisioning other locations harder. Poverty and cultural parochialism will, for example, be powerful factors in determining how mobile one is across this sphere. These differences in locations aside, however, procreation inevitably locates a person on this sphere and thereby encumbers her will to a greater or lesser degree.

One antidote to this encumbrance, admittedly imperfect, is the provision of an education to children that enables the adults they will become to travel to various locations on the sphere, and if they so choose, to resettle at a different location. Such an education seeks to assist children, in ways that do not reflect cultural prejudice, in learning about locations on that sphere other than the one they presently occupy. This does not preclude that education giving greater attention to the history, culture, etc. of children's local culture. After all, many children will opt to remain more or less at the location on that sphere where they started, and knowledge of its history and culture will be valuable in that context. Nor does this preclude parents, who presumably

are co-located with their children on that sphere, from inculcating in their children affection for that location. The overall aim of parenting and formal education is not to produce human agents who occupy the view from nowhere. Its aim is instead to produce human agents who, from wherever they are on this sphere, can perceive other locations with sufficient clarity to rationally ascertain which location they wish to occupy. Still, the restitutive role of education entails that parents' rights to shape their children's education in accordance with their own values is more limited than commonly thought. A parent whose principal concern regarding her children's education is that the education instill her values in her children at any cost is compounding rather than redressing the wrongs of procreation I identified earlier. Dogmatic indoctrination, aimed not only at engendering affection or loyalty regarding the child's existing location but also at either obscuring other locations or presenting them in an instinctively hostile light, is ruled out.

Likewise, the skill set children acquire via education should not be excessively parochial. Their education should instill skills valuable in multiple locations on this sphere, including (to the extent possible) skills that will prove useful in future locations that have not yet emerged.

As noted above, the encumbrances of a child's future will that result from procreation are both material and moral. A liberal education of the kind I have been describing counteracts both kinds of encumbrance. It makes it more feasible for individuals to establish a different set of material circumstances for their lives, to modify their conceptions of themselves and the trajectories of their biographies. Liberal education counteracts the moral encumbrance of procreation in two ways. First, it invites individuals to scrutinize their own values and make independent judgments regarding the merits of alternative value systems. Second, it permits individuals to choose among different sets of possible social ties, and hence, to choose among different possible sets of specific moral obligations.

These claims ought not be exaggerated. I am not suggesting, for instance, that children ought to be raised or educated in such a way that we maximize their future options—that the more 'open' a child's future remains, the better.²⁶ Certain options regarding a child's future might permissibly be foreclosed to her because these options are uncontroversially awful. More generally, any process of human development is likely to put some occupations or ways of life out of the realm of the feasible. Nevertheless, that education can provide restitution for procreation's having their future wills encumbered at least suggests a desideratum for a defensible educational regime: that it expand the possible trajectories of their existence, unlike the act of procreation itself.

7 Conclusion

On its face, the compensatory account is not an especially rosy or heartening picture of the parent-child relationship. For the moral foundation of this relationship is not love, nor any good that flows to children or parents from

this kind of relationship. Of course, in grounding parental obligations in compensatory obligations, I am not claiming that this is the very reason that parents do, or ought, to fulfill these obligations, nor that the fulfillment of these obligations exhausts the parental virtues. We may permissibly provide our children what we owe them from any number of motives besides the fact that we owe them.

Still, grounding procreative parental rights in parental obligations to compensate children for encumbering their future wills avoids the problems that beset grounding these rights in the interests of children or of parents. It does so by appealing to a moral bond that can only exist between procreative parents and their children. This compensatory rationale offers the best prospects for making sense of how procreative parents have both exclusive obligations toward, and rights regarding, the children they bring into existence. Granted, a central premise in my defense of the procreative model—that procreation is wrong as such—seems radical on its face. But further investigation suggests that my position is less radical than it appears. Procreators owe their children certain things, prominent among which is the real possibility that the initial conditions of their birth, conception, and upbringing do not function as fate—that, should a child so desire, she may rationally embrace a life path that diverges from those made most readily available to her by those initial conditions. My compensatory account of the procreative model merely homes in on the most philosophically plausible way to make sense of these widely shared claims.

Notes

- 1 As will become evident later on, I find the fact Mary Shelley chose this as the epigraph to *Frankenstein* to illustrate an important insight regarding the source of parental obligations.
- 2 Medical personnel may appear to be a difficult case, since they seem to satisfy (b) but do not procreate the children to whose existence they causally contribute. While I cannot fully defend this claim here, their contribution is the result of parents enlisting their assistance in procreating; they are therefore ‘sub-actors’ with respect to procreation and so do not satisfy (b).
- 3 Paul, “What You Can’t Expect When You’re Expecting.”
- 4 Blustein, *Parents and Children: The Ethics of the Family*, 104–114, and Archard, “The obligations and responsibilities of parenthood,” 107–108.
- 5 LaFollette, “Licensing Parents” and “Licensing Parents Revisited.”
- 6 “Parental Rights: A Role-based Approach,” 112. See also Brighouse and Swift, “Parents’ Rights and the Value of the Family,” 86.
- 7 “Parents’ Rights and the Value of the Family,” 95–96.
- 8 *Why Have Children? The Ethical Debate*, 217.
- 9 Gheaus, “The Right to Parent One’s Biological Baby.”
- 10 LaFollette and others who favor *ex ante* restrictions on procreation would of course disagree.
- 11 Robertson, “Gay and lesbian access to assisted reproductive technology.”
- 12 “A Defense of Abortion.”
- 13 Shiffrin, “Wrongful Life, Procreative Responsibility, and the Significance of Harm,” and Benatar, *Better Never to Have Been*.

- 14 Shiffrin, "Wrongful Life, Procreative Responsibility, and the Significance of Harm," 136–137.
- 15 Shiffrin, "Wrongful Life, Procreative Responsibility, and the Significance of Harm," 123.
- 16 For critiques, see Bradley, "Doing Away with Harm," and Rabenberg, "Harm."
- 17 Keller, "Four Theories of Filial Duty," and Jeske, *Rationality and Moral Theory: How Intimacy Generates Reasons*.
- 18 This argument concerns whether prospective parents have a non-comparative claim on those they procreate to bring them into existence. A different argument for comparative claims to bring persons into existence is possible, roughly, that a positive right to procreation is grounded on considerations of distributive justice. It might be unfair for some to be able to procreate but others unable to do so due to luck, etc. But notice that the validity of any comparative argument will assume that at least some prospective parents have a prior non-comparative claim to bring individuals into existence.
- 19 Shiffrin, "Wrongful Life," 137–138.
- 20 Parfit, *Reasons and Persons*, and Boonin, *The Non-Identity Problem and the Ethics of Future People*.
- 21 Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, 113.
- 22 Wolf, "The Moral of Moral Luck," 13–14.
- 23 *The Right and The Good*, 21.
- 24 It may be inferred that the rights and obligations of those who become parents through non-procreative paths (for example, through adoption) cannot be rooted in this form of compensation. After all, a parent cannot compensate a child for the encumbrances of procreation if that parent did not procreate that child. This inference is incorrect, though. For while adoptive parents do not encumber through procreation, they nevertheless encumber through parenting, i.e., through placing the child in early life circumstances that greatly influence her subsequent identity and life trajectory. Moreover, while compensatory obligations cannot be renounced, they can be transferred. Adoptive parents, I propose, agree to acquire the compensatory obligations of a child's procreative parents (obligations stemming from encumbrances of the will due primarily to genetics). Thus, while adoptive parents' parental rights and obligations have two sources, they are nevertheless compensatory in nature and will not differ from those of procreative parents.
- 25 *Social Justice in the Liberal State*, 159.
- 26 Feinberg, "The Child's Right to an Open Future."

Bibliography

- Ackerman, Bruce. *Social Justice in the Liberal State*. New Haven: Yale University Press, 1980.
- Archard, David. "The Obligations and Responsibilities of Parenthood," in *Procreation and Parenthood*, edited by David Archard and David Benatar, 103–127. Oxford: Oxford University Press, 2010.
- Benatar, David. *Better Never to Have Been: The Harm of Coming into Existence*. Oxford: Oxford University Press, 2006.
- Blustein, Jeffrey. *Parents and Children: The Ethics of the Family*. Oxford: Oxford University Press, 1982.
- Boonin, David. *The Non-Identity Problem and the Ethics of Future People*. Oxford: Oxford University Press, 2014.
- Bradley, Ben. "Doing Away with Harm." *Philosophy and Phenomenological Research* 85 (2012): 390–412.

- Brighouse, Harry and Adam Swift. "Parents' Rights and the Value of the Family." *Ethics* 117 (2006): 80–108.
- Feinberg, Joel. "The Child's Right to an Open Future," in *Whose Child?* Edited by W. Aiken and H. LaFollette, 124–153. Totowa, NJ: Rowman & Littlefield, 1980.
- Gheaus, Anca. "The Right to Parent One's Biological Baby." *Journal of Political Philosophy* 20 (2011): 432–455.
- Hannan, Sarah, and Richard Vernon. "Parental Rights: A Role-Based Approach." *Theory and Research in Education* 6 (2008): 173–189.
- Jeske, Diane. *Rationality and Moral Theory: How Intimacy Generates Reasons*. New York: Routledge, 2008.
- Keller, Simon. "Four Theories of Filial Duty." *Philosophical Quarterly* 56 (2006): 254–274.
- LaFollette, Hugh. "Licensing Parents." *Philosophy and Public Affairs* 9 (1980): 182–197.
- . "Licensing Parents Revisited." *Journal of Applied Philosophy* 27 (2010): 327–343.
- Overall, Christine. *Why Have Children? The Ethical Debate*. Cambridge: MIT Press, 2012.
- Parfit, Derek. *Reasons and Persons*. Oxford: Clarendon Press, 1987.
- Paul, L. A. "What You Can't Expect When You're Expecting." *Res Philosophica* 92 (2015). DOI: <http://dx.doi.org/10.11612/resphil.2015.92.2.1>
- Rabenberg, Michael. "Harm." *Journal of Ethics and Social Philosophy* 8 (2015). DOI: <http://www.jesp.org/PDF/harm.pdf>
- Ripstein, Arthur. *Force and Freedom: Kant's Legal and Political Philosophy*. Cambridge, MA: Harvard University Press, 2009.
- Robertson, John A. "Gay and Lesbian Access to Assisted Reproductive Technology." *Case Western Reserve Law Review* 55 (2004–05): 323–372.
- Ross, W. D. *The Right and the Good*. Oxford: Oxford University Press, 1930.
- Shiffrin, Seana. "Wrongful Life, Procreative Responsibility, and the Significance of Harm." *Legal Theory* 5 (1999): 117–148.
- Thomson, Judith Jarvis. "A Defense of Abortion." *Philosophy and Public Affairs* 1 (1971): 47–66.
- Wolf, Susan. "The Moral of Moral Luck." *Philosophic Exchange* 31 (2001): 4–19.