

## The best available parent\*

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**Abstract:** There is a broad philosophical consensus that both children's and prospective parents' interests are relevant to the justification of a right to parent. Against this view, I argue that it is impermissible to sacrifice children's interests for the sake of advancing adults' interest in childrearing. Therefore, the allocation of the moral right to parent should track the child's, and not the potential parent's, interest. This revisionary thesis is moderated by two qualifications. First, parents lack the moral right to exclude others from associating with the child. Second, newborns' relationship with their gestational mother often deserves protection.

### 1. Introduction

On what grounds can someone acquire the moral right to parent? In this paper I defend a version of a child-centred answer to this question, according to which the right tracks the child's, as well as third parties', but not the potential parents', interests. This is the best available parent view; in the words of Peter Vallentyne, the one philosopher who defended the view in the past, the right to parent "can be legitimately claimed by anyone for whom possession is suitably in the child's best interest."<sup>1</sup> The view is deeply revisionary: it implies that neither procreators, nor merely adequate parents, can acquire the right if somebody who would make a better parent is willing to parent instead of them. Two additional qualifications, however, moderate my proposed version of the view. First, I argue that while parents may exclude others from exercising certain forms of authority over their children, they lack the moral right to exclude others from associating with the child, as long as the association is in the child's interest. Given plausible empirical assumptions about children's interests in relationships, this increases the number of adults to whom the most important goods of childrearing can be made available. Second, children come into the world as part of an already

existing relationship with their gestational parent; this relationship is likely warranted protection in many cases. I lay the ground of an account of the right to parent that reconciles a liberal understanding of permissible authority over other persons with plausible beliefs about the legitimate interest that many adults have in engaging in protected and loving relationships with children.

Some background clarifications: To “parent”, here, refers to rearing children rather than to procreation; “parenting” and “rearing” are used interchangeably. “Authority” (over children) and “control” (of children’s lives) are also used interchangeably. I assume that procreation is, under certain circumstances, permissible. I also assume that children’s rights protect their weighty interests<sup>ii</sup>. “Rights” refer to moral rights, unless specified otherwise. Finally, for simplicity the discussion is based on a model according to which parental authority over each child is held by one person; but I am far from assuming this as a normative premise – indeed, elsewhere I argue that monopolies of care over children are impermissible<sup>iii</sup>.

Further, I assume that it is in the children’s best interest to be subjected to some paternalistic authority, and that children’s interests are best served if such authority is exercised by a small number of committed adults who remain the same over time (i.e. by parents) rather than, for instance, in well-run orphanages. The family, as such, is a morally permissible institution.<sup>iv</sup> To be a parent, then, is to have authority over children in numerous ways over a long period of time. In virtue of their moral status, children’s interests are warranted the same protection as adults’ interests.<sup>v</sup> This means that it is no more permissible to sacrifice children’s interests for the sake of advancing other persons’ interests than it is permissible to sacrifice the interest of an adult for the sake of advancing other persons’ interests; it also means that children are owed justification for their treatment and, in particular, for the allocation of control rights over them. This is the normative basis that generates the best available parent view.

In the next section I elaborate the case for view. In the third section I analyse, and refute, the three most promising attempts to explain why merely adequate parents can hold the right even

when a better parent is willing and available to raise the child in their stead. One of these views holds that procreators have the right to parent if they can do it adequately; on a second and third view, the right to parent is held equally by all adults who would make adequate parents.

In the fourth section I address two likely, but ultimately misguided, objections to the best available parent view: that children are only entitled to equally good upbringings and hence do not have a right to the best available parents; and that parents don't have a duty to always give priority to their children's interests over their own. I explain that the best available parent view is no more at odds with egalitarian concerns than competitor views.

The fifth section defends a version of the best available parent view. I distinguish between two, analytically and normatively distinct, components of the right to parent: authority over children and association with children in long-term and caring relationships. (All present talk of "association" with children refers to this particular kind of associations.) Being the best available parent gives one the moral right to exercise authority over children's lives. By contrast, all those who would benefit children by associating with them have interest-based rights to seek *association*.

I do not attempt to establish to what extent, and in what manner, the rights under discussion can find legal and enforceable expression. It may be impossible to know the correct criteria for determining who counts as the best available parent, or how to apply the criteria in order to identify the best available parent of particular children. Such tasks face serious epistemic limitations. Moreover, it may be impossible to devise a child-rearing practice that fully translates the moral rights I identify into legal rights without impermissible interference with adults' bodily autonomy and privacy. However, the argument of this paper has some direct bearing on existing childrearing practices. The most direct of these is that it recommends that, in custody decisions, adults' interest in parenting not be given any priority over advancing the child's interest. The conclusion points out real-world implications of my version of the best available parent view.

## 2. The problem

The best available parent view is centred around a comparative claim: that the right to parent is held by the person who, among those willing to parent, is going to advance the child's legitimate interests best. I assume that children have some rights-protected interests, as well as other interests that are not sufficiently weighty to generate rights but which nevertheless are legitimate, in the sense that they can be satisfied without infringing on third parties' interests. (More will be said about the latter in the fourth section.) The comparative claim does not fully determine who has the right to rear; if the only available parents fall below a threshold of competence, it may be the case that nobody has the right to rear and that, instead, there is a collective duty to give children an institutional upbringing better than what the best available parent has to offer. The theory that specifies such a threshold is not the object of this paper.

Parents hold a bundle of rights that allow them to exercise authority over their children in various ways. There is extensive disagreement over the proper scope of this parental authority<sup>vi</sup> but, at the very least and uncontroversially, parents have the right to control where a child lives and a significant proportions of a child's daily routine. It seems that such amount of control over a person incapable of consent should be allocated to those individuals who are willing to exercise it and who are best able to promote the interests of the person over whom control is being exercised.

Yet, the general status quo – in law and common sense morality – is to allocate child custody to procreators, who are widely believed to hold the moral right to parent their offspring, unless they renounce it or lose it for child abuse or neglect. While it is indeed possible that procreators in general make the best available parents for their offspring, the allocation of custody in present societies is not exclusively justified by appeal to the interest of the children. For instance, if a baby is born to a family who already has numerous children for which it is obviously not capable to care well, states will not allocate the custody of the newborn to a childless couple wishing to parent, no matter how much this would benefit the newborn. And custody disputes are

sometimes decided by appeal to a procreator's right to rear, even while acknowledging that a different decision would better serve the interest of a child.<sup>vii</sup> Therefore, the status quo is that one need not be the best available parent to a particular child in order to hold a legal right to parent that child. Moreover, the conditions on holding the legal right are minimal: that one does not abuse or neglect one's child. Appeal to children's interests is a mere constraint on the exercise of the right to parent. As long as this constraint has not been shown to have been violated, we allow procreators and people who enter contracts with surrogate mothers or gamete donors to rear the children they, or their surrogates, have brought into the world. Moreover, we do not impose any tests or training on would-be parents, unless they become parents *via* adoption – that is, in cases that involve the transfer of a right to rear from the state to particular individuals. The first acquisition of the right to parent is entirely unregulated.

Absent proper justification, the status quo seems an anomaly by liberal lights.<sup>viii</sup> Liberals believe that rights to control the life of another person must be justified either by appeal to consent given by the person whose life is controlled, or, if consent is unavailable, by appeal to that person's legitimate interests and third parties' interests, but not by appeal to the interest of the person doing the controlling. Childrearing can have negative externalities, and only childrearing that respects third parties' rights is legitimate. Because they have not yet developed into fully autonomous persons, children cannot give authoritative consent; therefore, there is a presumption in favour of child-rearing that advances children's interests as much as possible, while respecting third parties' rights. If so, there is a presumption in favour of the view that the right to parent is held by the person who would make the best available parent for a child and who is willing to rear her.<sup>ix</sup>

The best available parent view may be understood either as a micro- or as a macro-principle. Suppose that there are two children, Julie and Jane, and two potential parents who only want to raise one child. Parent A would be optimal for both; parent B would be very good, but not optimal, for Julie and slightly less good for Jane. Understood as a micro-principle, the best available

parent view would indicate that both Julie and Jane have a claim to A and we should flip a coin. Understood as a macro-principle, it would require that A parents Jane and B parents Julie, on the ground that, overall, children are better parented by this allocation. I favour the macro-principle interpretation for its egalitarian implication.<sup>x</sup>

The best available parent view has two implications that many see as objectionable. First, as Vallentyne, notes, it entails that one does not acquire the right to parent a child by dint of being the procreator, or gene-provider, of that child.<sup>xi</sup> Yet, some of the main competitor accounts of the right to parent share this implication. The second implication is that, if only the best parents have the right to rear, it is possible that some adequate would-be parents lack a claim to any opportunity to parent.<sup>xii</sup> In this second respect, the best available parent view is not different from the status quo, according to which it is also possible for perfectly adequate parents to lack any opportunity to parent – in cases in which they cannot procreate (or have a partner who can) and there are no children in need of adoption – while other people parent multiple children. Yet, for reasons that I explain in the next section, some accounts of just child-rearing deem this state of affairs unjust.

A third counter-intuitive implication is sometimes incorrectly imputed to Vallentyne's view, namely that whenever a person, who would make a better parent than the existing one, is willing to take over the task of parenting, some agent – such as the state – ought to redistribute the legal right to parent.<sup>xiii</sup> However, to the extent to which it can be translated into a theory of legal custody, the best available parent view only concerns the first acquisition of the right to parent; it doesn't extend into a theory of how the right can be lost in favour of another potential parent. As Vallentyne notes, the right to rear must be held robustly in order to provide incentives to parent to the best rearers. But, even if understood as a theory that concerns exclusively the moral right to parent, the best available parent view is not as disruptive of the status quo as suggested by this criticism: the child's interest in continuity of care means that transition costs to a different parent are very high for the child, which entails that adequate parents will usually qualify as the best available parent to a child

with whom they have already formed a mutual bond.<sup>xiv</sup> This fact does not rebut the principle that if custody transfer really was better for the child, the best available parent view would support it. It does however show that the view would only very rarely require a change of custody. Another possibility of dealing with this objection is more radical: one may think that there is a fundamental moral difference between gaining a right to parent and losing this right, because once established, adequate parenting relationships warrant protection. On this view, the prospective parent's interests do not matter for the initial allocation of the right, but they do matter once the parenting relationship exists, such that a custody transfer would wrong the adequate parent. I am sceptical about the prospects of this account but stop short of taking a view on this issue here. My inquiry is restricted to exploring the best available parent view as a view about the initial allocation of the right.

The best available parent view has *prima facie* appeal; yet, its failure to ensure parenting rights for either procreators or adequate parents, and, possibly, insufficient attention to the fact that competitor theories, too, fail on at least one of these counts, have contributed to the formation of a consensus, in the literature on just childrearing, around so-called dual-interest accounts of the right to parent. Dual-interest accounts are a family of views according to which the right to parent is grounded both in the interest of the child in being parented and in the interest of the would-be parent to rear the child, as long as the adult would parent adequately.<sup>xv</sup>

Another competitor to the best available parent view, which is a child-centred account of the right to parent, is a parent-centred view according to which the right to parent is fully grounded in the procreators' rights.<sup>xvi</sup> According to some libertarians, mere procreation with one's gametes gives an individual a right to rear one's offspring, because one has property in one's labour<sup>xvii</sup> or, more likely, in one's body.<sup>xviii</sup> Such arguments could be successful only if children lacked rights,<sup>xix</sup> and are therefore irrelevant to the argument of this paper. Other, non-libertarian, philosophers ground the right to parent in the gestational labour or other resources one has invested in bringing a child into existence<sup>xx</sup>; their proponents do not invoke self-ownership, or ownership of the child, but

it is difficult to see why appeal to mere investment, including investment of gestational labour, can justify the acquisition of a right to control the life of a person.

One may think that authority over children is special because children come into existence through the intentional, permissible but not required action of other people – that is, procreators. The thought here would be that liberal concerns about legitimate authority do not apply to the relationship between procreators and their offspring, because without procreators’ intentional action the offspring would not have existed. This is a variation of the non-identity problem: as long as their life is worth living, the offspring cannot be harmed – that is, made worse off – by procreators. Assume procreators refused to engage in procreation outside a regime that awarded them the custody of their offspring. Then, a legal right to parent one’s offspring would be a condition for the very existence of future people. This line of argument, however, would sanction not just procreators’ legal right to rear, but any level of abuse or neglect of children by procreators that would not bring them below the threshold of a life worth living. But this seems incompatible with children holding the rights that we generally attribute to persons who lack full autonomy, including the right not to be controlled for the sake of advancing the interests of the person in control.

### 3. Against the “best available parent”

Other, more promising criticisms of the best available parent view are available, which I identify as the “duties beget rights” view, the flourishing view and the lifetime view.

#### *The “duties beget rights” view*

Plausibly, procreation generates a conditional, and derivative, parental right to raise one’s offspring. Procreators incur a stringent moral duty towards their offspring, by dint of intentionally and avoidably bringing them into existence; common sense has it, and some philosophers<sup>xxi</sup> believe, that the duty goes well beyond giving children lives barely worth living, and requires giving them



reasonably flourishing lives. In order to fulfil this duty, procreators need the liberties and powers that are encompassed by the right to parent – including the right to exercise authority over their child.

Some defenders of this view argue that procreators who would be adequate as parents have a weighty, rights-generating interest to discharge their special duties towards children themselves. According to Lindsey Porter, a procreator can never fully transfer their obligations to other people such that the procreator becomes free of any responsibility vis-a-vis how their offspring's life is going. For this reason, she thinks, the procreator who would make an adequate parent has a right to discharge this duty herself: *“As the moral agent with the obligation, my right is that I be given the opportunity to do the job that is mine to do. ... because parents have a right to ensure the fulfilment of their obligations, biological parents thereby have a limited right to parent their biological children.”*<sup>xxii</sup>

More specifically, some philosophers argue that part of the duty incurred by intentional procreators is to be willing to enter the relationship with the child themselves, and draw on this claim in order to explain why procreators have a right to parent. A respect-based version of this argument is put forward by Serena Olsaretti. Intentional procreators knowingly create a new individual who needs a relationship. For this reason, those who are morally responsible for a child's coming into existence would be showing disrespect for the child they have created if they declined to embark on that relationship with them: “[I]f someone knowingly and voluntarily causes someone to be needy of a relationship, her refusal to be a party to it can be plausibly viewed as a rejection of the other party as worthy of being in a relationship with. Their responding to the child's relational needs by entering the relationship themselves, or by ensuring that someone else enters the relationship, are not two morally equivalent ways of discharging the same obligation”.<sup>xxiii</sup> Olsaretti draws on an analogy: if I push you into the water without your consent – assume I have overriding reasons to do so – and you cannot swim, not only I acquire the duty to rescue you, but also I acquire

the duty to be willing to do the rescue myself – on pain of disrespecting you.<sup>xxiv</sup>

I concede that the above arguments establish that procreators have a duty to (be willing to) parent their offspring in cases where no individual who would make a better parent is willing to parent that child. They also explain a derivative right to prevent others from interfering with one's ability to discharge this duty. This is because, in such contexts, the procreators will be the best available parents! This, indeed, is often the case. But this view cannot explain a fundamental, that is non-derivative, right to parent that child. When a potentially better parent is willing to assume the parental role, procreators' duty towards their offspring cannot ground a right to parent. In such a case, the procreator's failure to parent cannot be interpreted as a rejection of, and hence lack of respect for, the child. To the contrary, any procreator's demand of custody in cases when another prospective willing parent would better further the child's interests may represent a lack of respect for the child.

To see why these are unconvincing accounts of a right to parent one's offspring that is not derivative of the child's interest, recall Olsaretti's analogy. When I have pushed you into the water, I have incurred a duty to save you; grant that it would be disrespectful of you if I tried to convince another person, no better swimmer than me, to do the job. But now assume that an even better swimmer is willing to save you and can do so more quickly, sparing you some scare and the cold you're likely to catch unless you're brought out of the water as quickly as possible. Not only does the better swimmer have the right to rescue you, but it would seem to be a failure of respect towards you if I insisted in doing the saving myself. I cannot claim a right to prevent her from saving you by appealing to how important it is for *me* to fulfil my duty of bringing you to safety. By analogy, the right of an intentional procreator to rear her offspring is derivative of the child's interest, and depends on who else, if anyone, is willing to parent the child.

As David Archard observes<sup>xxv</sup>, it is possible that, by dint of procreating, people acquire duties concerning the well-being of their offspring – for instance, a duty to provide the material

basis necessary for the child's life to go well – without necessarily acquiring a duty, let alone a right, to be the one actually in charge of the child's life. The better swimmer may have a claim to be compensated by the person who created the need for a rescue action; similarly, the best available parent may have a claim to be compensated by the procreator.

### *The flourishing view*

Another type of answer to the “Why not the best available parent?” question seeks to justify a fundamental right to parent – one which is not derivative of children's interests – by showing that adequate would-be parents' have a powerful interest in parenting and that denying such individuals an opportunity to parent amounts to injustice. This interest in parenting, together with the right-generating interest of children in having parents, form the core of dual-interest theories; these theories do not seek to establish procreators' right to parent, but *any* adequate prospective parent's right to a fair opportunity to parent.

One version of the dual-interest view is flourishing-based and has been most prominently defended by Harry Brighouse and Adam Swift. According to them, adults who would make adequate parents have a fundamental – that is, non-derivative – right to parent because parenting is necessary for the full flourishing of many such individuals.<sup>xxvi</sup> They start by noting that children have a weighty, right-generating interest in adequate parents; specifically, they have a right to an intimate and authoritative relationships with an adult who makes a competent, loving and stable fiduciary to the child. In addition, this theory says that all would-be adequate parents have an interest in an opportunity to play such a fiduciary role in the life of a child; on this account, the adults' interest is sufficiently weighty to ground a fundamental right to parent. The value of parent-child relationships, on this account, is both significant for most adults, and unique: it is essential to the full flourishing of many, perhaps most, adults and it cannot be realised in other intimate relationships – such as friendships or other loving relationships. The unique value of parent-child

relationships is made possible by the combination of four joint features of the relationship. First, the relationship is structurally unequal: children are unavoidably and involuntary dependent on adults, while the same is not true of adults. Second, parents are in charge of their children's well-being during childhood and development into autonomous adults, to an extent to which people are never responsible for other individuals. Third, good parents unavoidably shape their children's minds – that is, their beliefs and interests – even when they don't intend to do so, because such shaping cannot but happen within intimate relationships. And since children have a weighty interest in intimacy with their parents, a good parent-child relationship is intimate. These three features generate the distinctive moral burdens of parenthood: responsibility for the well-being and development of an individual who is deeply dependent on the parent – including in the formation of their own identity – and who cannot exit, at will, the relationship with the parent. According to Brighthouse and Swift, meeting this challenge is, for most adults who would parent adequately, a unique opportunity to engage in a process of self-knowledge and personal development that contributes to the parent's flourishing. Fourth, children are capable of loving their parents in a spontaneous, unconditional and non-reflective way that is not to be encountered in other types of relationships; this is the source of the unique joy afforded by parenthood.

Together, these four features are said to greatly contribute to the flourishing of most adults who would make adequate parents; they generate the morally weighty interest in parenting which grounds the right to parent even for those who are not optimal parents. Therefore, a parental right to exercise authority over a child is partly justified by appeal to the adult's own interest in being the person who makes the child's life go well by engaging in a fiduciary relationship aimed at satisfying the child's interests. Unlike the best available parent view, and the current status quo, this theory has the virtue of distributing opportunities to parent fairly across adequate parents: “Within certain limits, adults' interests in being a parent can trump children's interests in having the best possible parents. No child has a right to be parented by the adult(s) who would do it best, nor do children as

a whole have a right to the way of matching up children and parents that would be best for children overall. Both scenarios could leave perfectly competent parents missing out on the goods of parenting.<sup>xxvii</sup>

The flourishing view faces a major concern about the justification owed to children: Could it be legitimate for a person to control somebody (in need of being controlled), partly in order to fulfil the former's own interest in flourishing, *when another person would do a better job?* To make an intuitive case for a negative answer, consider again the analogy between parenting and rescue cases. Imagine that, during a humanitarian emergency, some people would make adequate but suboptimal rescuers – i.e., by assumption, would save the same lives that would be saved if they did not get involved in the rescue action, but, say, more slowly and by sparing less suffering. On the one hand, it is easy to see how adequate, but suboptimal, rescuers have an interest in being allowed to rescue: this may be their best occasion to make an important and valuable contribution to the world. On the other hand, however, it is difficult to see how their interest in making a contribution could possibly outweigh the victims' interest in speedier rescue and minimal suffering. Moreover, it seems obvious that due concern for the victims is incompatible with even engaging in trade-offs that permit setting back the victim's wellbeing for the sake of satisfying the suboptimal rescuers' interest in assuming responsibility for the rescue. For this reason, should a suboptimal rescuer insist on being given a chance to contribute, they would fail to display the right attitude towards the victims. In the case of parenting, proper concern for children is incompatible with setting back their wellbeing for the sake of satisfying suboptimal parents' interest in assuming the responsibilities of parenting. The parents' case is in one respect even clearer than the rescuers' case: One of the central features of good parents, as Brighthouse and Swift themselves acknowledge, is that they love their children. Insisting on sacrificing some wellbeing of the beloved – in this case, the child – for the sake of advancing one's own interest – in this case, for taking responsibility for the child – is, arguably, not a loving attitude.

Here we might contrast voluntary and involuntary cases: one may accept being rescued by a suboptimal rescuer as part of a game, or of doing a drill meant to allow participants to practice their rescuing skills; the person in case consents to a suboptimal rescue. Even if in such cases it is justifiable to give rescue rights to would-be suboptimal rescuers, the justification does not extend to cases like childrearing because children's predicament is non-voluntary.

Brighthouse and Swift's account of why it would be wrong for the state to allow only the best available parents to rear is intuitively very appealing. The truth of their dual-interest account depends on the normative value of the combination of features displayed by parenting. Most people already believe that adequate parents have a right to parent, and no other relationship displays all of the above-mentioned features of the parent-child relationship. So it is difficult to test if these features, rather than the status quo, drive the intuition that adequate parents have a right to parent. Elsewhere<sup>xxviii</sup> I argued that the intuitive basis of their account may derive from the way in which children come into the world: as already part of a relationship with their birth parents, relationship which is usually in their best interest to maintain (as well as in their birth parents' interest).

To test how much normative work is done by the special features of the parent-child relationship, consider a counterfactual situation in which all these features are present, but in which children do not come into the world already part of a relationship. Assume that children really were brought by storks. The question is whether we should, in that case, give all adequate parents equal chances to parent or only allow the best available parents to rear; a subsequent question (the interest of which should become clear in the fifth section) is what would parents be entitled to, in their custodial capacity. Suppose that you want to parent one of these babies, and do it adequately, but there are other willing potential custodians who would do a better job. Do you, in these circumstances, have the right to lodge a baby in your home and take upon yourself the control over, and responsibility for, her life? And is it plausible that you have a right, against all others, that they do not undermine your relationship with this child even if it would be in the child's best interest that

they did? If you had the right to do these things, your relationship with the baby would display the same combination of features that characterise parent-child relationships in the world as we have it, and which are said to generate a weighty interest in parenting and hence the right to parent: The relationship would be asymmetrical, with high exit costs for the child; it would involve significant moral responsibility for the child's wellbeing and development; you would unavoidably end up shaping the person in your care; and it would make possible a kind of spontaneous, unconditional and unreflective love that is not usually possible between adults. If people have a (conditional) right to enjoy relationships that display the above combination of features, then you should be allowed to take control of the baby's life in the way in which parents in the real world exercise authority over their children.

And yet, a policy allowing you to take control of the baby's life appears to be unjust to the baby, your weighty interest in parenting notwithstanding. More plausibly, if all babies came into the world brought by storks, we would not be tempted to take into account, as justification for a right to parent, adults' interest in the goods that are uniquely afforded by playing the fiduciary role in some child's life. Rather, we would find it easier to acknowledge that the best available parents have a right to parent, that is fully derived from the children's interest. I return to the significance of the way in which we actually come into the world in the fifth section.

A defender of the flourishing version of the dual-interest account may resist my criticism. They may have the intuition that, when the gain to the child would be trivial if they were not parented by the optimal parent, and the loss to the adult would be huge if they were denied a chance to parent, we ought to give priority to the parent's interests.<sup>xxix</sup> There are several responses to be given to those who share this intuition. The first is to resist it, and note that in no other circumstances do we allow appeals to such interest trade-offs to justify a right to control a non-consenting person's life. This response is best at making bese sense of the belief that, if children (in a biological sense) came into the world as autonomous individuals, there would be no right to

parent; but, since they lack full autonomy, children's interests generates a right to exercise authority over them – in other words, they justifies the parental role. It would, however, be an anomaly if the would-be parents' *own* interests were then to determine, even in part, the right to parent a particular children. In general, when it comes to personal relationships, we do not see individuals' interests in particular relationships as grounding, to any extent, a right to enter the relationships in question. This obviously applies to relationships with parties that can give or withdraw consent: the fact that Joe would benefit a lot more than John from being your spouse does nothing to show that Joe has the right to marry you, even if you only slightly prefer to marry John rather than Joe. (If you have a duty to marry Joe in this case, the duty is unowed.) It also applies to fiduciary relationships with individuals who lack the power to consent, but who have an interest in an authoritative relationship with someone – for instance, a highly disabled sibling. If interest trade-offs are impermissible in the marriage-like cases, that is, in relationships between equally competent individuals, it is even less plausible that they are permissible when at stake is the protection of an individual in need of an authority figure. The fact that Bridget is a lot more psychologically invested than Ann in playing a role of authority in the life of her sibling is not relevant for establishing whether Bridget, rather than Ann, has a moral right to exercise authority over that person. Similarly, the fact that a lot more objective value is at stake for Bridget in being free to play that role than it is for Ann in no way indicates that Bridget has more right to occupy the role in question than Ann. Perhaps, then, the intuition that trade-offs between children's and parents' interests are relevant to establishing the right to parent should be dismissed as reflecting a long history of denying children's moral status.

Another, more conciliatory response, is to say that if the choice of parent would only result in a trivial advantage to the child, then all prospective parents are equally good. In other words, this is a case of more than one "best available parent". In the vicinity of this response, and compatible with the first one, there is another conciliatory reply, which I favour. It relies on a distinction



between whether the better parent:

(a) benefits the child by protecting her from some harm (understood non-comparatively), and which could be as trivial as better helping the child come to terms with the death of the family cat;

or

(b) benefits the child by bestowing on her some morally trivial benefit, for instance by singing slightly nicer lullabies.

Appeal to the first kind of benefit is a better criterion for identifying the best available parent; perhaps we should never use the second kind of benefit as a criterion. If the interest in a-benefits is insatiable, the best available parent is relevantly different from dual-interest accounts. Indeed, it is plausible that, no matter who parents, there will always be room to bestow more (a)-benefits onto children: growing up is a difficult process with endless opportunities for (small-scale) suffering and emotional damage. If so, this also means that childrearing is in one important sense like rescuing; in a rescue case, too, it is always possible to spare victims from harms – for instance, by rescuing more swiftly and leaving less scars.

### *The lifetime view*

A second version of the dual-interest account is grounded in the belief that the right to parent ought to be allocated in a way that serves the best interest of individuals over the entire span of their life. As a prominent defender of this view, Matthew Clayton,<sup>xxx</sup> notes, childhood and adulthood are stages of one and the same life; therefore, the relevant interests to be considered in justifying the right are not the interests of two different parties – children and adults – but the interests that one and the same person is supposed to have at different stages of her life. This version of the dual-interest account states that adequate would-be parents have a fundamental right to parent because the loss in well-being that one faces, *qua* child, if all adequate prospective parents have a right to parent is (more than) made up for by a chance to parent *qua* adult. If so, then it is

possible to justify it to a child that we allow the less than optimal parent to have authority over her, as long as the child will herself become a parent in due course.

The lifetime view has some clear limitations of scope. The above justification is not available to all: First, some children never grow up and hence never have a chance to parent; the loss in parental competence they experience as children if the less than optimal parent is allowed to control their lives cannot be compensated as Clayton's view suggests it should. Second, some children grow up to be less than adequate parents, possibly out of no fault of their own, and so they lack, on Clayton's account, a right to parent; they, too, seem to be owed compensation. Third, it is possible that a child who is very difficult to raise grows up to be one of the best available parents if brought up by the most competent adult willing to rear her, yet fail to become even an adequate parent if brought up by someone less competent.<sup>xxxix</sup> To all these groups of children, the lifetime view is incapable to justify the fact that mere adequate parents have a right to exercise authority over them; this is particularly problematic since the first group of individuals is (other things equal) amongst the worst off on account of their short lifespan<sup>xxxix</sup>, while the second and third group are amongst the worst off on account of their lack of legitimate access to childrearing. Therefore, the lifetime view does not establish that it is permissible to allocate all children to mere would-be adequate parents.

There is, moreover, an even more fundamental objection to the lifetime version of the dual-interest account: even if giving everybody a chance to exercise authority over another person's life for the sake of one's own interest advances the lifetime prospects of each and all individuals, doing so seems illegitimate. The reason, again, is that satisfying an interest in exercising authority over another person's life for the sake of the person exercising the authority is disrespectful, and hence incompatible with fitting attitudes towards those whose lives are controlled.

Clayton himself denies that this objection is generally true; he notes that our interest in having access to positions of authority can legitimately figure amongst the reasons that determine

the right distribution of such positions. He illustrates this claim by pointing to democracy, which gives suboptimal voters a right to vote and thereby to exercise some control over others' lives. On one widely endorsed view, this is justified not only by instrumental reasons but also by appeal to the intrinsic value of everybody's exercising authority over political matters. If so, then it is false that control rights over others are always exclusively grounded in the interests of those who are controlled. Two rejoinders can be offered here.

First, assuming that it is indeed intrinsically valuable to allow all citizens to exercise some authority over others<sup>xxxiii</sup>, the analogy between parenting and democracy breaks down in a relevant respect: in the case of democracy, giving everybody an (equal) vote is necessary in order to allow all individuals to exercise some degree of self-governing while living as part of a political community. Allowing sub-optimal voters to exercise control over co-citizens is, in this case, a regrettable, but justified, consequence of the fact that sub-optimal voters are given an opportunity to self-govern. It is not, as such, a compromise with the general liberal principle that no one ought to control others for the sake of satisfying her own interest in exercising control, since in this case the justification is sub-optimal voters' interest in exercising some control over their *own* lives. It is an unavoidable consequence that they thereby also exercise control over others. By contrast, people who would make sub-optimal parents *can* exercise authority over their own lives without also controlling the life of a child: all they need to do is refrain from parenting. It seems mistaken to claim that it is a *virtue* of democracy that it allows sub-optimal voters to satisfy an interest in exercising authority over their co-citizens. Further, according to a prominent defence of its non-instrumental value, democracy is constitutive of people standing in equal social relations, which is valuable in itself<sup>xxxiv</sup>. But in this case, again, custody cases are disanalogous to political ones, since an opportunity to parent is not necessary, let alone constitutive of, equal social relations. The best available parent view is therefore compatible not only with acknowledging the instrumental value of democracy, but also with acknowledging its non-instrumental value.

Second, the democracy analogy may fail for an additional reason. In democracy, control is being exercised by individuals who are equally vulnerable to each other, and who are symmetrically situated with respect to the exercise of authority. In the case of parenting, by contrast, authority is being exercised over particularly vulnerable individuals. There may exist a deontological constraint against exercising control over particularly vulnerable individuals (children), for the sake of those who exercise it (adults), given that the latter are much less vulnerable than the former.<sup>xxxv</sup>

To make the general point intuitive, here is a *reductio* argument: Reconsider the humanitarian crisis example and assume that it is recurrent; thus, over the course of our lives, everybody takes turns being a victim and a potential rescuer. Assume, also, that whatever loss of wellbeing one incurs as a victim at the hands of adequate but non-optimal rescuers, is more than made up for by the satisfaction of one's interest in becoming a rescuer at a different time in one's life. If there was a right to exercise authority over others' lives without their consent and for the sake of the authority-holder, there would be nothing wrong with letting sub-optimal rescuers help. And yet, it seems something *is* wrong with letting sub-optimal rescuers help: a failure to display, in each and every occasion, a fitting attitude towards the victims – in this case, respect. Even if, by assumption, a system that allows non-optimal rescuers to rescue is in everybody's advantage, it appears objectionable to avail oneself of the opportunity to advance one's interest – even a noble one, such as the interest in making a contribution to a rescue effort – at the expense of a victim's additional suffering. This is even more obvious if rescuers and victims are not strangers to each other, but friends connected by bounds of love. It is particularly objectionable to seek to advance one's interest in saving if this will cost the beloved person you are saving some wellbeing. The point holds whether or not one has been in the past, or will be in the future, in the position of a victim at whose expense another rescuer will advance their own interest in helping. In this form, the analogy is directly relevant to the parenting case; while parents are not yet in a loving relationship with their future children, the relevant assumption here is that an adequate parent-child relationship

is loving. IF an adequate parent is loving, she cannot, on pain of inconsistency, be willing to set back the interests of her potential child (even if she doesn't love the child yet!) by denying the child a better rearer.<sup>xxxvi</sup>

#### 4. Two challenges

The best available parent view does not require, let alone permit, parents to advance their children's interests as much as they can in every respect. Benefitting children is constrained by the equality claims of all children, and parents' non-childrearing-related rights and duties. In this section, I explain why these constraints do not tell against the best available parent view.

Egalitarians may entertain two worries<sup>xxxvii</sup> about the view, each of which relates to one of the two constraints. The first worry is that children lack a right to optimal parents because they are only entitled to an equally good upbringing. The second is that parents are under no duty to always act in their children's best interest, if this means putting their children's interest above their own.

##### *Equality between children*

There is a *pro tanto* presumption that children are entitled to equally good upbringing. Assume that, since not all parents are equally good, no particular child can have a right to the best available parent. Here I explain why this fact does not help establish a right to parent for merely adequate parents, as long as better parents are available and willing to rear. How good a child's equally good upbringing can be depends on the total available pool of parenting resources. This, in turn, depends on who are the people who raise children. The richer the collective pool of resources that can be used for childrearing – in terms not only of material resources but also of emotional abilities and various parenting skills – the better off the next generation can be, and hence the higher the level of what justice in childrearing can require. So, the content of duties owed to children is not independent of who has the right to rear. Moreover, it is plausible to assume that some parenting

resources are usable exclusively for childrearing purposes; these include some of the emotional, intellectual and behavioural dispositions that make some people better at parenting than others, such as an ability to take great pleasure in children, display great patience with and attention to them, and the capacity to devote oneself, without showing much regret or resentment, and over a very extended period of time, to the wellbeing of a child. Other dispositions are likely to be put at particularly efficient use in childrearing: sound judgement, a tendency to be nurturing, emotional maturity and stability.<sup>xxxviii</sup> I call these dispositions, by stipulation, “personal parenting resources”. If only the best available parents rear, the pool of personal parenting resources is used as efficiently as possible. If, instead, people acquire the right to rear merely in virtue of being adequate parents, then it is permissible to waste some personal parenting resources for the sake of satisfying some individuals’ interest in exercising authority over children.

Note that the challenge of respecting children’s equal entitlements is not unique to the best available parent view. On *any* account of the right to parent, as long as potential parents are unequally good, some children will be benefitted by their parents more than others. If equality is the right principle of justice towards children, some children will be owed compensation on grounds of having been less lucky with respect to the quality of parenting that they have experienced.<sup>xxxix</sup>

This view is compatible with the belief that there is an upper limit to the level of resources that a certain generation is required, or, indeed, permitted, to invest in childrearing. Children’s claims are not the only demands of justice. The content of their rights must be determined in a manner that, amongst other things, tracks the quality of available childrearing and doesn’t waste personal parenting resources. But, at the same time, if children are entitled to equally good childhoods, parents lack a permission to advance *some* of their children’s interests as much as possible, on grounds that doing otherwise will generate unjust demands on the rest of the society to fully compensate the children raised by less resourceful parents. Frequently discussed examples are parental investments in their children’s education, or gifts of high material value, including

inheritance.<sup>xi</sup> It may be unjust for society to incur a duty to match the most resourceful parents' investments in their children in such areas – for instance, to pay private school fees for all children or offer gifts as high as the most expensive parental gifts to children of less wealthy or generous parents. More likely, egalitarian justice requires that parents' freedoms to benefit their children in respects such as these are limited. Here, an essential consideration is that both education and money have significant positional value, therefore affording competitive advantage to those who enjoy them. Equality in the distribution of positional goods is not open to the levelling down challenge, because some people having more positional goods than others worsens the situation of those who have less.<sup>xii</sup> But then, in order to qualify as the best available parent with respect to children's interests in these positional goods, it is sufficient for a person to have the resources needed to give the children their fair share of positional goods<sup>xiii</sup>. One does not qualify as a better parent because one has the ability to benefit the child by bestowing on to her more than her fair share of those goods with a strong positional aspect that societies ought not to be required to match for the less lucky children.

Parents, however, may also benefit their children in ways that need not confer on children positional advantage, and that, moreover, might generate high levels of positive externalities.<sup>xliii</sup> Personal parenting resources are a good example: it is not obvious that emotionally stable and mature parents, who exercise good judgement, and treat their children kindly and attentively thereby necessarily give their children competitive advantage. And, in cases when they do, this may be all-things-considered justified by the positive externalities generated by the parents' higher level of personal parenting resources. Assume that such parents raise happy, compassionate, trusty and trustworthy children, who become psychologically resourceful adults, better able and motivated to benefit others as friends, colleagues, citizens and parents. In this case, even if society should not be expected to, or cannot, fully compensate children whose parents have lesser levels of personal parenting resources, the inequality is all-things-considered justified: Everybody, including the less

lucky children, is better off if the best available parents rear children. The best available parent view is supported by the most plausible versions of egalitarianism: Paretian egalitarianism and prioritarian/weighted beneficence views, none of which are wasteful.

Therefore, although children are only entitled to equally good upbringing, and parents lack a permission to always maximise the fulfilment of their children's interests, in a hypothetical bidding for the right to rear it will matter which prospective parent can best advance at least *some* of the interests of the child. An egalitarian version of the best available parent view does not encourage parents to engage in an arms race in which each potential parent tries to outdo others, except with respect to personal parenting resources. *This* kind of arms race looks hardly problematic.

Here is another way of making the last point: It is most likely permissible, by egalitarian lights, to give children benefits above and beyond what they are entitled to – at least provided that such benefits do not have a strong positional aspect. Think of these benefits as gifts: if gifts in general are permissible, surely it is permissible to give them to children. And there may be no upper limit to how much good judgement, kindness, or understanding, it is permissible to exercise in relation to a child. If so, then the best available parents have the right to parent not because the children have an independent entitlement to the goods that the parent has to offer, but because it is impermissible for anybody else to exclude the best available parent from rearing: Nobody else's claims to exercising authority over the child can be valid, for the reasons given above. By analogy, assume that all patients have the same rights to health care, and no particular patient has a claim right to the best available doctoring (since not all doctors are equally good). Even then – assuming that there is no undefeated reason to level down – it is impermissible to deny some doctors a right to benefit their patients above and beyond what their patients are entitled to, as long as doing so does not make the patients of less good doctors worse off. Similarly, children have a legitimate complaint if the best available parents are prevented from benefitting them as much as they wish and justice permits.



*The limits of parental duty*

Another worry with the best available parent view is that it entails, implausibly, that parents ought always to give priority to their children's interests over their own – to be their children's slaves.

Brighthouse and Swift, who defend a child-centred view of parental rights according to which all the rights that parents have in relation to their children are fiduciary, give two reasons why parents are not their children's slaves.<sup>xiv</sup> The first has to do with those rights and duties that parents have that are not related to childrearing. Devoting the entire pool of one's resources to parenting would lead to objectionable neglect of oneself and impermissible neglect of third parties. The second is that failing to cater enough to the parent's and third parties' interests would not in fact adequately benefit children, since good childrearing teaches children how to balance their own interests against other people's. Parents have to look after themselves well-enough to sustain flourishing relationships with their children and to model for their children behaviour that harmoniously respects children's, parents', and third parties' rights. It is in children's own, relational and educational, interests that parents don't always act such as to maximise the fulfilment of children's other interests.

These considerations limit the demands on parents if the right to parent is grounded in parental adequacy. The the best available parent view is more demanding of parents yet not as demanding as to enslave parents to their children, because most of the reasons provided by Brighthouse and Swift also apply to the best available parent view: One cannot acquire the right to rear by being willing to benefit one's child with resources that one needs in order to fulfil one's duties towards third parties and towards oneself, and the fulfilment of parental duties themselves, limits how many resources the best available parents may (let alone must!) devote to their children.

All these qualifications leave space for parents to permissibly advance some of their

children's interests above and beyond what it takes to satisfy children's rights. The best available parent view uses a comparative criterion to establish who has the right to parent: in cases when the number of available adequate parents exceeds the number of children, the allocation of parental rights may depend on ability and willingness to act on such permissions. For instance, it may be possible and permissible for parents to sacrifice some of their own interests in free time, better holidays or better paid jobs in order to bestow on their children benefits in excess of what justice requires. When many adequate potential rearers are available, all of which ensure that the child's rights are met, the best available parent view makes the right to parent conditional on an ability and willingness to permissibly benefit one's child in excess of her rights. Even so, given children's own interests in having parents who lead reasonably balanced lives the view is far from entailing parental slavery. Moreover, the best available parent view may favour a reform that turns childrearing into a highly communal practice – or so the next section suggests; this would make it a lot less onerous for parents to advance their children's interests as much as possible within the constraints of justice.

Consider, again, an analogy: it seems justified to give doctoring licenses to people who are likely to best advance their future patients' health prospects. We can do this consistent with not requiring doctors to become slaves to their patients. We regulate the demands that their jobs impose on surgeons in recognition of surgeons' own rights, of their duties to third parties, and in order to protect patients' interests in surgeons' long-term health. Yet, surgeons are permitted to go above and beyond their duty in order to improve their performance: for instance, they can devote more of their free time to studying medicine. It would be objectionable to deprive patients of the services of such particularly devoted surgeons for the sake of allowing to practice surgery all those who would operate adequately, but sub-optimal.

## 5. Associational rights

The attempts to refute the best available parent view, examined in the third section, fail. Nevertheless, Brighthouse and Swift's appeal to a morally weighty interest to engage in intimate, caring relationships with children is attractive: It seems cold-hearted and unfair to deny any opportunity to have intimate and beneficial relationships with children to people merely on grounds that they would not make optimal parents. Yet, such exclusion lies within the scope of parental rights as we currently understand them: parents may prevent other individuals from having access to their children, independently from how these individuals would affect the children. Here I sketch an account that preserves what I take to be the central insight of Brighthouse and Swift's theory, and incorporate it into a fully child-centred account of legitimate child-rearing. The result is a more attractive version of the best available parent view.

Brighthouse and Swift believe that the relevant interest that grounds the fundamental right to parent is to be in a fiduciary relationship that is both intimate and authoritative. However, I argued, one cannot have a morally weighty interest to be the person who exercises the authority that a child needs, unless one can parent optimally. The interest defended by Brighthouse and Swift is moralised – it is an interest that can be fulfilled only by serving the child's interest. Therefore it is unclear that the mere adequate parent can have *any* morally relevant interest in exercising authority over the child when they would do so sub-optimally, since the child would thereby be illegitimately controlled. Alternatively, even if sub-optimal rearers do have such an interest, it cannot be sufficiently weighty to justify a right to parent because acting on it would display an unfitting attitude towards the child.

More likely, adults' weighty interest in rearing children can be satisfied by establishing beneficial intimate and caring, although not globally authoritative, relationships with children, relationships which are protected from outside interference. Such relationships can satisfy adults' interest in self-knowledge and self-development: maintaining a long-term intimate and caring relationship with a child comes with great responsibility for how the child's life goes, and for the

child's development. Not only parents, but all parental figures exert great influence of this kind over children; by dint of being in an intimate relationship with an adult, a child becomes particularly vulnerable to that adult in material and emotional ways when strong attachments are formed.<sup>xlv</sup> Protected relationships with children are also likely to display the experiential value of the parent-child relationship, since children can love and trust other adults with whom they stand in caring relationships. Most of the interest that Brighouse and Swift ascribe to adults can be satisfied by long-term and secure association with children, although, perhaps, not to the same extent that it is satisfied within the parent-child relationship.

My proposal then relies on an analytical distinction between two separate components of the right to parent (as we currently think of it): parental authority over children, which is global, and association with them. At least in the case of young children, beneficial association requires the exercise of some local authority on the part of the adult, which however is far from the parental power to make general decisions of great consequence for the child's life. In current theory and practice, association and global authority are bundled together in the right to parent, such that one cannot have a protected right to associate with children without also having the right to exercise global control over them. Parents are the only adults whose association with children is usually protected by the law; they can also control with whom their children associate.

On the Brighouse-Swift view, the weight of the interest in parenting derives from the combination of associational and control rights. Against this view, I argue that the right to control a child and the right to associate with her are not only analytically, but also normatively, distinct. What is really valuable is to have a loving and lasting relationship with the child, one which can develop between a child and someone who has no say in the general rules that govern her life, provided they have enough time together and enough freedom to cultivate the relationship. The objections to both procreative and dual-interest accounts of the right to parent were aimed at the authority component of the right; but the adult's interest in association with children can be satisfied

without exercising parental authority over the child. On the view I defend, then, the right to exercise global authority is held by the best available parents; third parties have a duty not to interfere with its exercise. Since exercising beneficial control over the life of a child requires close knowledge and interaction with the child, the right to control a child's life includes a duty (and hence a derivative right) to associate with the child in an intimate relationship.

By contrast, the right to pursue caring and close relationships with children is an associational right held by all those who would make beneficial associates to the child. Others have a duty not to interfere with the association. I cannot fully flesh out this associational right here. An important question concerns the degree of freedom that children have to decline such association, which will surely vary with age. As long as children are too young to make authoritative associational choices, and assuming that more individuals who would be beneficial to the child want to enter such associations, priority should be given to those whose association would benefit children the most. The same reason that support the best available parent view also support the best available associator view. This may elicit the worry that some adequate associators can be excluded from forming close relationships with children. The worry is cogent; yet, the exclusion is likely to affect few, if any, adults, if it is difficult to satiate all children's interest in beneficial caring relationships.

On my proposal, then, parents legitimately control many aspects of the child's life, but lack a right to exclude others from seeking, and maintaining, close relationships with children<sup>xlvi</sup>. Moreover: once some individuals<sup>xlvii</sup> have exercised their right to associate with the child, forming close and beneficial bonds with her, parents acquire significant obligations, both towards the child and towards the adult with whom the child stands in a caring relationship, to ensure the conditions in which the relationship can continue. Because the relationships in question are, by assumption, beneficial to the child, a child-centred account of the right to parent demands parents not to interfere with the relationship, even when it sets back the parent's own interests. In addition, if the adults'

interest in enjoying the goods of close association with children is very weighty, it justifies a right to seek association with children for all adults whose association would be in the children's (best) interest. Third parties may, moreover, have a duty to facilitate such associations; if the goods of association with children are part of the metric of justice – as a revised version of Brighthouse and Swift's account would have it – then institutions and practices of childrearing ought to be rearranged so as to provide adults with equal opportunities to associate with children.

#### 6. Conclusions: in the real world?

A version of the best available parent view which disentangles the elements of authority and association in parenting has the potential to mandate radical reforms in childrearing. For instance, it may cast doubt on the legitimacy of surrogacy practices – whether altruistic or commercial – if the practice is understood as a voluntary transfer of one's right to parent to another individual; if the right to parent is held exclusively on the basis of the child's interest, it is unclear that it can be transferred at will. The view also indicates that, between different alternative arrangements that can be justified by appeal to the child's interest, we ought to give priority to those that give fair opportunities to all adults with whom association would be beneficial for children. In practice, this may amount to a more communal form of childrearing; if so, the view I defended is more capable than the status quo to accommodate many people's interest in playing a caring role in children's lives. But it is not easy, and far beyond the scope of the paper, to work out in detail how the best available parent view could be expressed in institutional practices and ascriptions of legal rights.

The best available parent view need not imply the highly counterintuitive demand of redistributing children away from procreators. Instead, it can accommodate, to some extent, the wide-spread intuition that gestational parents have a right to rear the children they bring into the world. The fact that someone already stands in a caring, intimate relationship with a newborn can

make her the best available parent for that child even if she would not otherwise – that is, absent the loving relationship – be the best available parent. At the very least, the newborn’s attachment to the parent makes the parent non-fungible, and children have a weighty interest in maintaining relationships with people to whom they are non-fungible, making it impermissible for others to sever the relationship. One may doubt that newborns and their gestational mothers typically find themselves in a relationship that is warranted protection; dispelling the scepticism would require a longer argument than I can provide here. But it is worth noting that many women express feelings of love for their newborns, and that we have some indications that, soon after birth, newborns strongly prefer their gestational mothers to other people and that proximity to her is beneficial to newborns; moreover, the relationship that newborns have with their gestational mother is the most developed relationship of which they are yet capable.<sup>xlviii</sup>

If so, then another person’s claim to parent a newborn cannot easily over-ride the claim of the loving and adequate gestational mother to exercise global authority over the child. But the view allows for this possibility. Suppose another adult wishes to parent the child, an adult who is not yet in a loving relationship with the newborn but whose abilities to exercise beneficial authority over the child significantly surpass those of the gestational mother. In this case the best available parent view may mandate the exclusion of the gestational parent from exercising parental authority over the child, but not from continuing an intimate relationship with her. Thus, at the very least, the best available parent view identifies gestational parents as having robust associational rights, albeit not for the sake of the parents’ interest, as competitor theories do. Some will find this feature of the view highly controversial.

Another way in which the view could identify procreators as holding the right to parent is by pointing to the popular claim that genetic parents are the best available parents of their children. This claim is controversial amongst philosophers, but David Velleman<sup>xlix</sup> has argued that our genetic ties play a central role in our self-understanding, and hence identity. Even if this was true, it would

not imply – as Velleman thinks – that genetic parents have the right to exercise parental authority over their offspring. At most, it would single out genetic parents as uniquely placed to benefit children in one respect, and provide a *pro tanto* reason to grant them associational rights.

It is not obvious how the moral right to parent, as defended here, can be translated into a legal right. One set of obstacles are epistemic. There is some agreement about what constitutes terrible parenting – expressed in legal standards of abuse and neglect – and some (contested) agreement about what constitutes acceptable parenting – expressed in standards for adoptive parenthood. But we lack any consensus on excellent parenting. Even if we came to such an agreement, it might be impossible to establish who meets the standard. More deeply, there may be no determinate best available parent, but, rather, a range of best available parents due to the fact that a child's preferences and values, hence her identity, are inevitably shaped, in part, by the identity of the parent.<sup>i</sup>

This is not to say that the best available parent view is without consequence. Most immediately, it can provide guidelines in cases of custody disputes, by requiring that they be settled by exclusive appeal to children's interests – rather than, as it is sometimes the case, by assuming that a procreator's right to rear can trump the child's interest.<sup>ii</sup> Dual-interest accounts of the right to parent cannot do the same, at least not in cases in which both contenders for custody can parent adequately. Further, the view recommends that individuals who are likely to harm children – for instance, former child abusers – be denied a right to parent, if the likelihood of harm can be established with sufficient certainty and if better parents for the children are available.

In non-ideal circumstances many people are unjustly poor and suffer from social exclusion; one may worry that the best available parent view compounds injustice by denying them a right to parent. This is a real worry, albeit one that is shared with dual-interest accounts that stipulate high adequacy thresholds as a condition for having custody.<sup>iii</sup> Adults who are unjustly deprived of the material and social resources needed for optimal parenting are owed compensation that may well



put them in the position to be optimal parents for their offspring. In this context, the best available parent view gives additional support to their general grievance, because it shows how unjust deprivation of material and social resources entails a further deprivation: that of the right to parent.

To conclude, the view that the right to parent is held by the best available parent is at odds with the universal assumption that people acquire the right to rear in virtue of being procreators, and with legal practices based on the assumption that procreators have a fundamental right to parent. It is also at odds with some philosophers' belief that all adequate would-be parents have a fundamental right to rear, grounded in a morally weighty interest in playing a fiduciary role in the life of the child. The view has many revisionist implications, but it is able to accommodate a right to parent, or at least associational rights, for most gestational mothers. Moreover, a liberal form of childrearing is imaginable that does not prevent too many people whose association would be beneficial for children from fulfilling their interest in loving and caring for children. This depends on finding practices that successfully disentangle the exercise of a right to control a child's life from pursuing an interest to associate with the child – that is, to seek, and maintain, a close relationship with the child, with immunity from self-serving interference from the child's custodian.

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<sup>i</sup> Peter Vallentyne, “The Rights and Duties of Childrearing”, *William and Mary Bill of Rights Journal* 11 (2003): 991-1009, p.991. See fn. 36 in this paper for a possible version of the view according to which the right to parent is held by the person for whom possession of the right is in the best interest of children in general.

<sup>ii</sup> But I stop short of committing to an interest theory of rights, which has difficulties explaining, amongst others, parents’ rights. See Leif Wenar, “The Nature of Claim-Rights”, *Ethics* 123 (2013): 202-229. It is unclear that either the will or the interest theory of rights is adequate; I follow others in allowing the possibility of a hybrid theory of rights, in which children’s rights are interest-based. See Peter Vallentyne, *Ibid.*

<sup>iii</sup> In Anca Gheaus, “Children’s Vulnerability and Legitimate Authority Over Children”, *Journal of Applied Philosophy* 35 (2018): 60-75.

<sup>iv</sup> For elaborate arguments, see David Archard, *The Family: A Liberal Defence* (London: Palgrave, 2010) and Harry Brighouse and Adam Swift, *Family Values* (Princeton University Press, 2014).

<sup>v</sup> I assume that children are right-holders. See Samantha Brennan and Robert Noggle, “The Moral Status of Children: Children’s Rights, Parents’ Rights, and Family Justice”, *Social Theory and Practice* 23 (1997): 1-26; Vallentyne, *Ibid.*; and Brighouse and Swift, *Ibid.*

<sup>vi</sup> Most prominently over the putative parental rights to intentionally shape their children’s bodies and values and to confer on them benefits above and beyond that is required by justice. Particular controversies concern the right to choose one child’s school, to deny one’s child medical procedures that are proved to be beneficial and to bequeath. See Mathew Clayton, *Justice and Legitimacy in*

*Upbringing* (Oxford University Press, 2006) and Brighouse and Swift, *Ibid.*

<sup>vii</sup> See, for instance, the cases discussed by Norvin Richards in *The Ethics of Parenthood* (Oxford: Oxford University Press, 2010), 8-18.

<sup>viii</sup> See Brighouse and Swift, *Ibid.* and Harry Brighouse and Adam Swift, “Advantage, Authority, Autonomy and Continuity: A Response to Ferracioli, Gheaus and Stroud”, *Law, Ethics and Philosophy* 3 (2015): 220-240.

<sup>ix</sup> The willingness condition is explained by freedom of occupational choice. One may believe that being the best potential parent of a child grounds a duty to parent that child, independently from one’s willingness to do so. I do not examine this intriguing possibility here.

<sup>x</sup> I am grateful to an anonymous referee for drawing my attention to these alternative interpretations, drawing on Norman Daniel’s distinction in “Merit and Meritocracy”, *Philosophy & Public Affairs* 7 (1978): 206-223.

<sup>xi</sup> Vallentyne, *Ibid.*, p.991.

<sup>xii</sup> This implication is discussed by Brighouse and Swift in *Family Values*.

<sup>xiii</sup> For one such misunderstanding see Liam Shields, *Just Enough* (Edinburgh University Press, 2016).

<sup>xiv</sup> This is noted by Brighouse and Swift, *Ibid.*; for a fuller discussion of this issue see Anca Gheaus, “Sufficientarian Parenting Must be Child-Centered”, *Law, Ethics and Philosophy* 5 (2017): 189-197.

<sup>xv</sup> Most prominent examples include Colin Macleod, “Conceptions of Parental Autonomy”, *Politics & Society* 25 (1997): 117– 140; Matthew Clayton, *Ibid.*; Brighouse and Swift, *Ibid.*; and Liam Shields, *Ibid.*

<sup>xvi</sup> This view – or, rather, group of views – is not a strictly symmetrical opposite to the child-centred view, because it does not deem the interest of children in being parented well as irrelevant. I am grateful to Adam Swift for drawing my attention to this point. A view that denied any role to the child’s interest would be incompatible with thinking that children have any moral status, and, to the

best of my knowledge, is not held by any contemporary philosopher.

<sup>xvii</sup> Jan Narveson, *The Libertarian Idea* (Temple University Press, 1989).

<sup>xviii</sup> Barbara Hall, “The Origin of Parental Rights”, *Public Affairs Quarterly* 13 (1999): 73-82.

<sup>xix</sup> For arguments to this conclusion see, for instance, Brighouse and Swift, *Ibid.*, and Anca Gheaus, “Biological parenthood: gestational, not genetic”, *Australasian Journal of Philosophy* 96 (2018): 225-240.

<sup>xx</sup> Uma Narayan, “Family Ties: Rethinking Parental Claims in the Light of Surrogacy and Custody,” in U. Narayan and J. J. Bartkowiak (eds.) *Having and Raising Children: Unconventional Families, Hard Choices, and the Social Good* (University Park, PA: The Pennsylvania State University Press, 1999), 65–86; Joseph Millum, *The Moral Foundations of Parenthood* (Oxford University Press, 2018).

<sup>xxi</sup> Immanuel Kant, *The Metaphysics of Morals* (Cambridge University Press, 1996), 64; John Stuart Mill, *On Liberty and Other Writings* (Cambridge University Press, 1989), 108; Onora O’Neill, “Begetting bearing and rearing”, in O’Neill O. and Ruddick W. (Eds.), *Having children: Philosophical and Legal Reflections on Parenthood* (Oxford: Oxford University Press, 1979), 25–38.

<sup>xxii</sup> Lindsey Porter, “Gestation and Parental Rights: Why is Good Enough Good Enough?”, *Feminist Philosophy Quarterly* 1 (2015): 1-27, p.25.

<sup>xxiii</sup> Serena Olsaretti, “Liberal Equality and the Moral Status of Parent-Child Relationships”, in D. Sobel, P. Vallentyne, and S. Wall (eds.) *Oxford Studies in Political Philosophy*, Vol. 3 (Oxford University Press, 2017), p.75.

<sup>xxiv</sup> Compare with Melissa Moschella’s similar argument, according to which the specific interest of the child, that procreators alone can fulfil, is not respect but the knowledge that the child is loved by her procreators: “There is ... [a] unique benefit that only biological parents can give to their children ... the benefit of knowing oneself to be loved by one’s biological parents, by those out of whose bodies and bodily union one came into existence.” If children have an interest in a loving

relationship with their genetic procreators, Moschella's argument can, at most, indicate that parents lack a right to exclude genetic procreators for pursuing loving relationships with their children. In *To Whom Do Children Belong?: Parental Rights, Civic Education, and Children's Autonomy*. (Cambridge: Cambridge University Press, 2016), 41.

<sup>xxv</sup> In David Archard, "The Obligations and Responsibilities of Parenthood". In D. Archard and D. Benatar (eds.) *Procreation and Parenthood. The Ethics of Bearing and Rearing Children* (Oxford: Oxford University Press, 2010), 103-127.

<sup>xxvi</sup> Brighouse and Swift's account of the right to parent draws partial support from the lifetime view, which I discuss next. On my interpretation, however, appeal to flourishing is independent from the lifetime view: even if they were to deny the lifetime view, their belief that parenting is necessary for adults' flourishing would generate a powerful argument for a dual-interest account. Therefore, the flourishing view and the lifetime view merit separate discussion.

<sup>xxvii</sup> Brighouse and Swift, *Ibid.*, 95. The view, however, is not entirely clear on this matter. Brighouse and Swift do not commit to an absolute standard of adequate parenting; they allow for the possibility that what counts as an adequate parent for a particular child partly depends on who else is available rather than on absolute standard. A dual-interest account that adopted such a comparative standard of adequacy would allocate the right to parent by weighting the adults's interest in parenting against the interest that the child has in being raised by a better parent. (For another version of the dual-interest account that explicitly defends a comparative standard of adequacy see Shields, *Ibid.*) If the standard is comparative, then a dual-interest view could also leave perfectly competent parents missing out on the good of parenting.

<sup>xxviii</sup> In Anca Gheaus, "The Right to Parent One's Biological Baby", *Journal of Political Philosophy* 20 (2012): 432-455 and Anca Gheaus, "Is there a right to parent?", *Law, Ethics and Philosophy* 3 (2015): 193-204.

<sup>xxix</sup> I am grateful to Colin Macleod for pressing this point.

<sup>xxx</sup> Brighouse and Swift, too, draw support from the lifetime view. See *Family Values*, and,

especially, “Advantage, Authority, Autonomy and Continuity.”

<sup>xxx</sup> Perhaps it is possible to get around this difficulty by saying that only adults who can raise the child to become an adequate parent meet the adequacy threshold. This, however, seems to involve an *ad hoc* definition of “adequacy”.

<sup>xxxii</sup> For a similar point, see also Brighouse and Swift, *Ibid.*

<sup>xxxiii</sup> Against this, see Richard Arneson, “Democracy is not intrinsically just”, in K. Dowdling, R. Goodin and C. Pateman (eds.), *Justice and Democracy Essays for Brian Barry* (Cambridge University Press, 2004).

<sup>xxxiv</sup> For instance, Niko Kolodny, “Rule Over None II: Social Equality and the Justification of Democracy”, *Philosophy & Public Affairs* 42 (2014), 287–336.

<sup>xxxv</sup> I am thankful to Andrew Williams for this point.

<sup>xxxvi</sup> The case against Clayton’s version of the lifetime view also challenges a different version of the view. One may argue that individuals determining principles of justice in childrearing behind a veil of ignorance (not knowing their circumstances as either children or adults) would choose a dual-interest account of parenting because the former gives everyone a good upbringing and does not deny adequate parents a right to parent. If the arguments in this section are correct, they indicate that individuals making this choice would fail to display the appropriate attitude towards the vulnerable. I am thankful to an anonymous referee for drawing my attention to this implication.

<sup>xxxvii</sup> I am grateful to Lars Lindblom and Patrick Tomlin for expressing these concerns.

<sup>xxxviii</sup> These remarks reflect one particular, and contestable, sketch of parental qualities; their role in the argument is merely illustrative.

<sup>xxxix</sup> Who ought to bear the burdens of compensation is itself a different question, that requires separate consideration.

<sup>xl</sup> See Brighouse and Swift, *Family Values*.

<sup>xli</sup> For an elaborate analysis of egalitarian demands with respect to positional goods, see Harry Brighouse and Adam Swift, “Legitimate Parental Partiality”, *Philosophy and Public Affairs* 37

(2009): 43-80. For egalitarian and child-centred reasons why parents lack permission to benefit their children maximally with respect to private education and material gifts, see Brighthouse and Swift, *Ibid.*

<sup>xlii</sup> Alternatively, an ability and willingness to contribute more resources may qualify the most resourceful parents as the best available ones, but on condition that they are willing to allow these resources to be fairly distributed between the children they rear and children of less resourceful parents. Similarly, an egalitarian rescue system that shows fitting attitudes towards those in need of rescue will only allow optimal rescuers contribute to the rescuing effort during a humanitarian crisis, but require them to apply their rescuing efforts in ways that benefit the victims equally. I think this is a promising model for thinking about child-centred childrearing; however, given the partial nature of the parent-child relationship the rescuing analogy is not straightforward. To appreciate the promise of such a proposal would require more unpacking than I can do here.

<sup>xliii</sup> Some believe that this argument extends to goods that have a strong positional aspect, such as education. See, for instance Debra Satz, “Equality, Adequacy and Education for Citizenship”, *Ethics* 117 (2007): 623-648.

<sup>xliv</sup> In *Family Values*. See discussion at pp.121-122.

<sup>xlv</sup> For a theory that we are responsible towards people who are vulnerable to us, as children are to adults who are in close and long-term with them, see Robert Goodin, *Protecting the Vulnerable. A Re-analysis of our Social Responsibilities* (The University of Chicago Press, 1985).

<sup>xlvi</sup> I argue for this at length in Gheaus, “Children’s Vulnerability” and Anca Gheaus, “Child-rearing With Minimal Domination: A Republican Account”, *Political Studies Online* First <https://doi.org/10.1177/0032321720906768> (2020).

<sup>xlvii</sup> The maximum number of which is itself a separate question whose answer depends on what is the ideal number of with whom a child can have simultaneous and beneficial relationships.

<sup>xlviii</sup> For a fuller discussion see Gheaus “Biological Parenthood...”.

<sup>xlix</sup> In “Family history”, *Philosophical Papers* 34 (2005): 357–78. Sally Haslanger convincingly

criticised Velleman's view in "Family, ancestry and self: what is the moral significance of biological ties?", *Adoption and Culture* 2 (2009): 91–122.

<sup>1</sup> I am grateful to an anonymous referee for this point.

<sup>ii</sup> See Richards, *Ibid.*, 8-18.

<sup>iii</sup> Such a Clayton *Ibid.*, Brighthouse and Swift *Ibid.*, and Shields *Ibid.*