

The Transfer and Delegation of Responsibilities for Genetic Offspring in Gamete Provision

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(Accepted: Journal of Applied Philosophy, 21/08/2016)

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Abstract

In this paper I reject the claim that the responsibilities acquired by gamete providers can be transferred to their biological children's intending parents. I defend this position by first showing that arguments in defense of the transferability of responsibilities in gamete provision cases fail to distinguish between the transfer and delegation of responsibility. I then provide an argument against the transferability of responsibilities in gamete provision cases that differs from the ones offered by James Lindemann Nelson and Rivka Weinberg. Though I conclude that gamete providers have inalienable responsibilities towards their biological offspring, I note that the precise ethical and policy implications this has for gamete provision remain somewhat unclear.

Introduction

A view held by many authors is that gamete providers¹ can transfer any responsibilities they may acquire towards their biological offspring to the children's intending parent(s).² If true, then gamete providers need not be too concerned about what responsibilities arise from assisting in the creation of new life, as any responsibilities that do arise can be transferred to others. In support of the claim that gamete providers' responsibilities are transferable, some authors point to the commonplace outsourcing of various parental responsibilities, such as education and supervision, which

are generally thought to be uncontroversial. However, despite their seeming plausibility, I show that these arguments fail to properly distinguish between the transfer and delegation of responsibility. On closer examination, these arguments only support the possibility of the delegation of responsibility. I further argue that there are strong reasons to think gamete providers' responsibilities cannot be transferred to others. Consequently, gamete providers ought to be concerned about the responsibilities they acquire towards their offspring.

In the first section of this paper I outline what I consider to be the ordinary language distinction between the transfer and delegation of responsibility. In the second section I demonstrate two things. First, that many authors fail to take this distinction into account when discussing gamete providers' responsibilities. Second, that at best arguments claiming to demonstrate the plausibility of transfers of responsibility in gamete provision cases in fact demonstrate the plausibility of delegations of responsibility. In the third section I argue that the kind of responsibilities gamete providers likely have can only be delegated, and not transferred. Otherwise put, because gamete providers' responsibilities cannot be transferred, we ought to think of them as inalienable. Though I conclude that gamete providers cannot alienate their responsibilities, in the final section of the paper I note that the precise implications this has for gamete providers and policy governing gamete provision is not clear.

On a terminological note, 'responsibility' can be used to designate a host of related concepts, such as blameworthiness, obligation, etc.³ Throughout this paper I use responsibility in the forward looking sense; I use 'responsibility' to designate the obligation(s) an individual acquires to work towards bringing about a certain state of affairs - in this case the well-being of certain children. What I have in mind is quite similar to what Claudia Card calls the care-taking sense of responsibility, which is the duty to stand behind something, make it good, or make right one's failure to do so.⁴

1 Ordinary Language Delegation and Transfer

Delegating and transferring are two ways of assigning responsibilities to a third party that are or were possessed by another individual. The difference between the two is best illustrated through an example.

Peter and Mary are both executive members of a student government. Peter is in charge of internal academic affairs and Mary is in charge of communication, including the production of a weekly student newsletter. The student government meets in order to review the different executive portfolios, and everyone agrees that it would be better for the internal academic officer (Peter) to take over production of the weekly newsletter, allowing the communications officer (Mary) to focus on external communication. Peter then solicits a volunteer, Charlie, to produce the page layout for the October newsletter.

In this example, both a transfer and a delegation of responsibility have occurred. Using an ordinary-language description, we would say that the responsibility for producing the weekly newsletter was transferred to Peter, and the job of creating the page layout for the October issue was delegated to Charlie. This is not just a semantic difference, for it highlights important features of the nature of the responsibilities that each individual has after the meeting. Following the reconfiguration of the responsibilities attached to each portfolio, we do not think that Mary has any special residual obligation to ensure that the weekly newsletter gets produced.⁵ For instance, if Charlie shirks his responsibility and fails to produce the page layout for the newsletter we do not think that Mary should be blamed, nor do we think that Mary has a duty to ensure that the newsletter gets produced. By contrast, we think that Peter might be to blame if Charlie fails to produce the page layout—for example, if there was good reason to distrust Charlie's commitment to the task and more competent volunteers were available. However, regardless of whether Peter is to blame, if Charlie does not complete the task, then we do think that Peter has an obligation to either complete the page layout himself or find someone else to do it. Furthermore, Peter seems obliged to 'make right' any negative consequences that arise from Charlie's poor performance. For instance, Peter might be reasonably expected to apologize to a company whose advertisement gets cut as a result of Charlie's failure to complete the layout in a timely fashion. Conversely, Mary has no such obligation.

When responsibilities are transferred, the person initially bound by them no longer has any trace of them. By contrast, when a responsibility is delegated, the individual initially bound by the responsibility still has the obligation to ensure that the responsibility gets fulfilled. Note that in the case of delegation, we might think that so long as the delegator had good reason to think the delegatee would complete the assigned task, she is not

blameworthy if things go awry. For instance, we would not find Peter blameworthy if Charlie could not complete the task due to an illness. However, the delegator still retains the obligation to ensure that the task gets completed, and/or to make up for whatever negative consequences arise due to the delegatee's failure to fulfil her responsibilities, even in the absence of blame.

2 Transfer and Delegation in the Gamete Provision Literature

The preceding distinction between the delegation and transfer of responsibilities is important because gamete providers could be like Peter rather than Mary, and thus have an ongoing obligation to both ensure that the delegated responsibilities are fulfilled, and make right any shortfalls of the delegatee(s). Such a result would be in contrast with the view that gamete providers can completely discharge their responsibilities by finding suitable parents for their biological offspring,⁶ and in tension with legal norms that generally recognize no ongoing responsibilities for gamete providers, at least when the proper mechanisms are employed.⁷ Although this distinction between transfer and delegation carries much normative weight, it is one that has either been ignored or not properly taken into consideration when discussing the structure of the responsibilities that arise following gamete provision.

Consider how Giuliana Fuscaldo and Onora O'Neill discuss the manner in which procreators can divest themselves of the obligations they have towards their offspring. Fuscaldo states, "in support of the claim that parental duties are transferable, we already recognize and accept the *transfer* of at least some of our parental duties, for example to nannies, tennis coaches, doctors and teachers. In fact we regard as negligent in many cases a parent who fails to *delegate* some of their parental duties to someone who could do a better job."⁸ (emphasis added). This passage employs transfer and delegation interchangeably; Fuscaldo seems to suggest that putting a child in the temporary care of others can equally be described as either the transfer or delegation of responsibility.⁹

Similarly, in a discussion of reproducers' responsibilities,¹⁰ Onora O'Neill fails to clearly differentiate delegation from transfer. O'Neill states, "begetters and bearers have at various times *delegated* or *transferred* some or all of their tasks to wet nurses, relations, tutors, servants, foster homes,

and schools including boarding schools. Provided that they take reasonable steps to ensure that their children will be adequately reared, they do not breach but *transfer* their parental obligations or some part of those obligations” (emphasis added).¹¹ Here O’Neill is unclear about which of the examples are delegations, and which are transfers. Additionally, since the conclusion that O’Neill draws from these examples refers only to transfer, it is unclear whether she thinks the distinction is important at all.

Despite this ambiguity, someone might take the examples appealed to by O’Neill and Fuscaldo, like placing children in boarding schools, as evidence that transferring parental responsibilities is largely unproblematic so long as the transferer takes due care when selecting others to fulfill the responsibilities. However, upon closer examination, these examples suggest that what is commonplace is delegation and not transfer. Consider the following analysis of supposedly *transferring* responsibilities to a nanny.

Imagine that a parent puts a child in the care of a nanny for an evening, but a few hours before the parent had arranged to return the nanny calls to say that she has decided to leave early. It is quite clear that the parent cannot simply leave her child unattended, but must either return home or arrange for someone else to care for the child. The claim that the responsibility to look after the child had been transferred to the nanny for the entire evening is no excuse for leaving the child unattended. The parent is thus more like Peter, who must ensure that the responsibilities he delegates get fulfilled, than Mary who retains no such responsibility.

The same holds true for the other specific examples offered by Fuscaldo and O’Neill, including putting a child in the care of teachers and doctors. If it becomes clear that a doctor or a teacher is failing in their responsibility to meet a child’s medical or educational needs, the child’s parent(s) have the responsibility to find other people to fulfill the child’s needs, or fulfill them themselves if possible. Consequently, the ability to transfer responsibilities in gamete provision cannot be justified on the grounds that it is commonplace for parents to transfer some of their responsibilities to others. As has been shown, in the case of parenting responsibility is normally delegated and not transferred. This of course does not mean that parents are necessarily blameworthy if the individual to whom they delegate responsibilities fails to fulfill them, just as Peter is not blameworthy if Charlie cannot complete the newsletter on account of illness.

While the examples employed by Fuscaldo and O’Neill do not establish that transferring responsibilities is commonplace in parenting, this by itself does not show that transferring parental responsibilities is impossible in all

cases. In the following sections I will explain why I think that transfers of responsibility are not possible in gamete provision cases, and distinguish my account from similar arguments made by others.

2.1 Permissibility of Transfers of Responsibilities in Reproduction

Other authors have questioned whether gamete providers can permissibly transfer any responsibilities they have towards their genetic offspring to others, but their arguments have tended to focus on the content of gamete providers' obligations. For instance, James Lindemann Nelson argues that if an individual has particularly weighty responsibilities, it is impermissible for her to transfer them to someone else if she could fulfil them herself. Nelson thinks this is the case because it is hard to predict how someone else will behave in the future, but an individual can always force herself to act to fulfil her responsibilities.¹² Since Nelson thinks that gamete providers acquire very weighty responsibilities, he concludes that these cannot be transferred to others.

However, there is reason to be sceptical of the strength of Nelson's conclusion. Though we may sometimes feel that a specific responsibility is so important that we should fulfil it ourselves, this is not sufficient to show that certain responsibilities are so weighty that it is *unethical* to divest of them by transferring them to others. Consider a sperm provider who concludes that he is unlikely to be able to provide a stable environment to raise a child, and that the child he helps create is much more likely to have a good life if put in the care of others. In this case it seems far from obvious that the gamete provider acts immorally by having others rear the child he helps create.¹³ There are also cases where transfers of weighty responsibilities seem acceptable even if the transferers could fulfil the responsibility themselves. For instance, it seems perfectly permissible for an emergency care physician to transfer her responsibility for the care of patients to an equally capable colleague by swapping shifts, even if she could abide by the original schedule.

Rivka Weinberg argues that certain kinds of responsibilities must be fulfilled by specific individuals.¹⁴ For example, a person's duty to comfort her partner in a time of emotional distress cannot be transferred to another individual. In cases where duties arise from intimate relationships, the identity of the person fulfilling the responsibility is often non-fungible.

Weinberg argues that the duty to love one's children is a paradigmatic case of the kind of responsibility that cannot be transferred to other people. Since Weinberg thinks that gamete providers acquire intimate duties towards the children they help create, she argues that at least some of their responsibilities cannot be transferred to others. Furthermore, since these responsibilities cannot be fulfilled by anyone but those in the intimate relationship with the child, these responsibilities cannot be delegated either.¹⁵

Though Weinberg is right to point out that certain responsibilities that are intimate in nature cannot be transferred to others, that such responsibilities arise for gamete providers in the first place is quite contentious. Many authors argue that, because of its importance to the wellbeing of their offspring, gamete providers have a duty to ensure that *someone* develops the kind of deep intimate relationships with their offspring that may give rise to non-transferable responsibilities; however, gamete providers do not have an obligation to form these kinds of relationships themselves.¹⁶

The case I make for questioning the transferability of responsibilities in gamete provision cases differs from the preceding arguments made by Weinberg and Nelson in that it does not rest on the content of gamete providers' obligations.¹⁷ Instead, my argument follows from the manner in which these obligations arise. I take as a starting point a view defended by many authors, which is that individuals acquire certain responsibilities towards their offspring by virtue of the role they play in bringing them into existence. Authors such as David Archard, Fuscaldo, Nelson, Lindsey Porter, and Weinberg have all provided largely causal accounts of the relevant factors in gamete provisions that give rise to gamete providers' responsibilities towards their offspring.¹⁸ These authors defend various forms of the general claim that "when one's free actions put non-consenting¹⁹ individuals at risk of harm, some degree of responsibility arises to take steps to reduce the likelihood of those harms occurring, and to reduce the severity of those harms if they do occur." I will call this 'Principle R'. Before arguing why responsibilities acquired in this manner cannot be transferred to others, I will briefly explain why I think it is reasonable to take Principle R seriously in the context of reproduction.

2.2 Causal Responsibility and Procreation

We tend to have strong intuitions that individuals acquire responsibilities when they freely act in a manner that results in the creation of children

from their gametes; consider for example the scorn levied against men in one-night-stand cases who abandon their genetic offspring, or the norms that govern child maintenance obligations in these kinds of cases. This intuition has traditionally been defended by appealing to the fact that children have no choice in being brought into existence, and will suffer in the absence of support from others. In other words, Principle R has often been appealed to when justifying the claim that reproducers have responsibilities towards their offspring. Take for example Kant's account of parental responsibilities, in which Principle R features prominently. Kant states,

[F]rom a practical point of view it is a quite correct and even necessary idea to regard the act of procreation as one by which we have brought a person into the world without consent and on our own initiative, for which deed the parents incur an obligation to make the child content with his condition so far as they can.²⁰

A similar justification for the *legal* obligation to provide child maintenance appears in Blackstone's 18th century *Commentaries on the Laws of England*.²¹ And more recently Seana Shiffrin has argued that procreators have responsibilities towards their offspring that arise from the burdens imposed on them by virtue of being brought into existence. Shiffrin states,

“...because procreation involves a nonconsensual imposition of significant burdens, it is morally problematic and its imposer may justifiably be held responsible for its harmful results.”²²

Though the claim that procreators acquire responsibilities on the basis of Principle R is quite intuitive in the case of one-night-stands,²³ one serious theoretical challenge its defenders must overcome is establishing plausible criteria for determining what kinds of actions make individuals *moral procreators* in the sense that they acquire responsibilities towards the children they are implicated in creating. Clearly, simply being part of a causal chain that results in the creation of children ought not to be sufficient for the acquisition of procreative responsibilities, and so additional criteria beyond causation are necessary for avoiding problems of over-breadth. This problem of establishing appropriate constraints on causation simpliciter is

noted by Bayne, who goes on to argue that causal theories of parenthood all suffer from problems of over-breadth that render them implausible.²⁴

However, most accounts of causal responsibility appealed to by authors arguing that procreative responsibilities arise from gamete provision are more nuanced than those dismissed by Bayne. For instance, though Bayne attributes a 'but-for' causal account of procreative responsibilities to Nelson, Nelson in fact explicitly rejects this view as too weak.²⁵ Instead Nelson gestures towards elements generally considered part of 'proximate causation' used in legal contexts for delineating the salient elements of a causal chain from those that are too 'distant' for consideration in analyses of responsibility, damages etc. Porter similarly appeals to legal approaches to causality when developing her account of procreative responsibilities.²⁶ Additionally, Weinberg and Fuscaldò have defended accounts of procreative responsibility that supplement causality with other features, and have argued that these additional features obtain in gamete provision.²⁷

Though these approaches to resolving the problem of over-breadth in causal accounts of procreative responsibilities are not without their own challenges,²⁸ they do show that attacking but-for causation is insufficient for establishing their implausibility. Additionally, that no unproblematic theory of causal responsibility has yet been established ought not on its own lead us to the conclusion that individuals never acquire responsibilities on causal grounds.²⁹ Such a conclusion would run counter to many deeply held intuitions. For instance, if we abandon causal accounts of parenthood then it becomes unclear why individuals would have *any* special moral responsibilities³⁰ towards children that are conceived accidentally, say as a consequence of a failure of generally reliable contraception.

Despite problems with establishing the precise conditions under which individuals acquire responsibilities arising from the consequences of their actions, in general Principle R aligns with widely held intuitions about responsibility in reproductive contexts - especially the strong intuitions many individuals have about responsibility in one-night-stand cases. At a minimum the argument that follows will establish that those who think that principle R or some more refined variant establishes that gamete providers acquire some responsibilities towards their offspring, (and as noted above, many authors do) should also think that these responsibilities cannot be transferred to others.

3 The Impermissibility of Transfers of Responsibility in Gamete Provision

To begin, it is worth noting that in non-reproductive cases it is often not possible for individuals to transfer responsibilities they have to a third party. Consider the following example. Sam has a library book that is due. As she is about to leave to return it, her brother James asks her for a favour. Sam agrees on the condition that James return her library book, which James consents to do. Though James is normally very reliable, this time he drops the book in the mud. The library determines that the book is unsalvageable, and charges Sam's account the cost of replacing the book.

It seems implausible that Sam could protest the library charges on the basis that she had transferred her responsibility for the book to James. Since Sam entered into an agreement with the library to be responsible for the book, the library can rightfully seek compensation from her. The fact that she engaged another person to help her fulfil this responsibility seems to have no effect on the responsibility she has to return the book in good condition. Consider this example from the point of view of the library. Since the library entered into the agreement with Sam, it seems wrong that it now be required to seek compensation from James. To permit this kind of transfer would amount to permitting the unilateral alteration of a promise, and this seems deeply problematic. In this example, Sam can only delegate to James the responsibility of returning the library book, not transfer it.³¹

The preceding example demonstrates that transferring to a third-party obligations we have towards another person is not always simple. However, there are various disanalogies between the case described above and gamete provision that might raise doubts about the implications this example has for gamete provision. For instance, gamete providers generally provide gametes only on the condition that someone else will be responsible for the needs of any resulting children. In the book example, Sam took out the book independently of any prior agreement with James to return it. Additionally, in the case of the book there was a pre-existing agreement between Sam and the library that gave rise to Sam's obligation to safeguard and return the book. In gamete provision, there is no such prior agreement between the gamete provider and offspring. However, as I will show next, even when we create cases that are more analogous to gamete provision, transfers of responsibilities do not seem possible. Consider the following example.

My friend Bob wants to play a light-hearted prank on our colleague Michelle by deflating the tyres on her bicycle. Bob does not know which bicycle is Michelle's, nor does he know how to deflate a bicycle tyre, so he asks me for assistance. At first I protest, arguing that this might cause Michelle a great inconvenience, and refuse to participate. To assuage my worries, Bob states that he does not think the prank will inconvenience Michelle in any serious way, and promises to take care of any harms that might befall Michelle as a consequence of the prank. Since I know Bob is generally very trustworthy, I agree. I deflate the front tyre while Bob deflates the back tyre. Unbeknownst to either of us, Michelle has a very important meeting to get to, and she does not have a bicycle pump with her. The only way for her to get to her meeting on time is to take a cab, and lacking the funds she asks Bob to provide her with money for the taxi. Instead of helping Michelle as promised, Bob uncharacteristically runs off leaving me behind. Though I have money on me, I tell Michelle that I transferred the responsibility to take care of any harm that arose from the prank to Bob, and so I do not have to help. Instead, I encourage her to run after Bob.

Intuitively, this response seems very morally problematic. It is implausible to suppose that an agreement I enter into with a third party (Bob) can absolve me of my responsibility to help my colleague out of the state that I have helped put her in.³² The case against the transfer of responsibilities in such cases is strong. But notice that the case against transfer in the reproductive context is even stronger. In the reproduction case, the gamete provider knows that the intention of the other party (the intending parents) is to create a dependent being that will be in need of care. If we adjust the bicycle example to reflect this prior knowledge that exists in the gamete provision case, it seems to only enhance my responsibility to assist Michelle. Consider how we would feel about my response following the prank if at the onset I knew that we were disabling Michelle's bicycle on the same day that she has an important meeting immediately after work.

One might object to this analogy on the grounds that the gamete provider does not create the dependent child in the same manner that I inconvenience Michelle. The gamete provider merely provides the material while the physicians and intending parents create the child. However, even if we tweak the example to make the analogy even closer it still seems that I cannot transfer to Bob my obligation to help Michelle. Imagine that Bob tells me his plan, then merely asks me to describe Michelle's bicycle to him and explain to him how to deflate a bicycle tyre. Even with this less direct

contribution to the prank, it still seems that I have a responsibility to alleviate the ill effects³³ that Michelle would otherwise suffer as a consequence of having her bicycle temporarily disabled.³⁴

One worry with the model of responsibility I have advocated is that it appears as though Bob escapes responsibility for his actions because I am left to fulfill all of Michelle's needs that arise as a consequence of the prank. Once I have paid for the cab, there is nothing left for Bob to do. It thus appears that by fulfilling the responsibility I delegated to Bob, I necessarily relieve Bob of his responsibility. We might think this is particularly problematic because Bob initiated the prank, and promised to be responsible for any harms that might arise if anything this seems to make Bob more responsible for Michelle's state than I am. This raises a potential problem of fairness. It might seem unfair that I am 'on the hook' for Michelle's damages even though Bob was also an active participant and even though Bob promised to be responsible for any harms that arose.

However, my view does not entail that Bob has no responsibilities arising from the harms suffered by Michelle, but only that both Bob and I are both responsible for ensuring that Michelle is not left suffering from ill effects from our prank. Though it is true that if I pay for Michelle's transportation costs Bob will no longer owe her anything, this does not mean that both of us were not initially fully responsible for ensuring Michelle's welfare. To give a different example, in a two-parent home, the fact that one parent ensures that their child has an adequate dinner does not mean that both were not equally responsible for ensuring the child did not go to bed hungry. It is perfectly possible for multiple individuals to be fully responsible for ensuring that the same responsibility is fulfilled.³⁵

Furthermore, the fact that I cannot transfer my responsibility to Bob does not mean that the promise Bob made is of no consequence. Bob's promise to take care of any harm that befell Michelle requires that he compensate me for any costs that I incur while fulfilling my obligation to her, even though the promise does not diminish my responsibility to Michelle. Consider the library book example again. Though James' promise to return the book cannot free Sam of her responsibility for the book, it does require him to compensate her for any costs accrued as a result of his carelessness.

My analysis of the bicycle case thus reveals three different 'arrows' of moral responsibilities that arise in these kinds of cases. Both Bob and I independently have responsibilities to ensure that Michelle is restored back to her pre-prank state. These responsibilities arise as a consequence of our joint involvement that contributed to the state Michelle found herself in. In

addition, as a result of his promise, Bob has a responsibility to me to ensure that Michelle's needs that arise as a consequence of the prank are fulfilled. This second responsibility that Bob has does not alter my responsibility to Michelle, but it does give me recourse against Bob if he fails to step up and I am required to come to Michelle's aid. For instance, I could reasonably ask Bob to compensate me for the cost of the taxi if he runs off and leaves me to take care of matters. This shows that Bob has not been completely freed of his obligations even if I provide for Michelle's needs.

What the bicycle examples show is that the responsibility to minimize the harms likely to befall someone that individuals acquire when their free actions put an unconsenting person at risk cannot be transferred away. Consequently, if one accepts that gamete providers' actions amounts to freely engaging in an activity that places their offspring at risk of harm, which as noted earlier is a position held by many, then it seems implausible that gamete providers can transfer their responsibilities to intending parents. This does not mean that the intending parents are not also responsible for the children created by use of others' gametes, just as Bob remains responsible for ensuring Michelle gets to her meeting.

Though the library and bicycle cases demonstrate that it is not possible for individuals to alienate their moral responsibilities through transfer, it does leave open the possibility of delegation. For instance, suppose that instead of refusing to help Michelle, I instead have another friend give Michelle a lift to her meeting. Here it seems that I no longer have an obligation to Michelle. Furthermore Michelle does not seem to be wronged in anyway by having a third person do all the 'work' to ensure that she is not left harmed by my joint actions with Bob. So long as we adopt the view that creating children does not results in the kind of intimate responsibilities suggested by Weinberg, it is plausible that gamete providers can delegate their responsibilities to others.

We are thus left with two possible outcomes, depending on the view adopted regarding the kinds of responsibilities that arise from gamete provision. If we adopt the more onerous view defended by Weinberg - that gamete providers have a responsibility to form close intimate relationships with their biological offspring- then neither the transfer nor the delegation of all parental responsibilities is possible. If we adopt the less onerous view defended by Archard and others, that gamete providers need to ensure that someone forms close parental bonds with their offspring and cares for them, but that the gamete providers have no duty to do any of the parenting tasks themselves, then delegation is possible but transfer is not. In either

case gamete providers cannot completely alienate the responsibilities they acquire towards their offspring through transfer.

4 Conclusion

In this paper I have argued that authors who defend the claim that gamete providers can transfer their responsibilities to others have failed to properly take into account the distinction between the transfer and delegation of responsibilities; in the case of delegation, some responsibility is retained by the delegator, while in the case of transfer, responsibility is completely alienated by the transferor. Using this distinction, I have shown that the examples commonly provided to demonstrate that the kinds of responsibilities parents acquire can be easily transferred are actually instances of delegation. Lastly, I have argued that an analysis of the manner in which gamete providers acquire responsibilities towards their offspring reveals that the responsibilities they acquire cannot be transferred. In sum, my argument shows that though gamete providers might be able to *delegate* their responsibilities to others, they cannot *completely alienate* them through a transfer to the intending parents.

This conclusion raises several further issues that I will briefly outline, but will not be able to address in full here. First, given that gamete providers acquire inalienable responsibilities towards their offspring, some detailed account outlining the content of these responsibilities is needed. Even at a broad level of generality, it is unclear what such responsibilities would entail. For instance, we might think that gamete providers need only ensure that their offspring have a minimally decent life, and thus in societies with robust social safety nets it is unlikely that they will ever have to act on their responsibilities. Conversely, we might think that gamete provider might have the responsibility to ensure that their offspring are not made worse off as result of the delegation of responsibilities undertaken by their progenitors. In this case, gamete providers might have a responsibility to provide resources to their genetic offspring if their parent(s) face economic hardships not faced by the gamete provider. Additionally, we might think that in extreme cases gamete providers might have a responsibility to take on the intimate parenting duties themselves, say if their offspring's parents become incapacitated and no other person is available to parent. I admit that such cases are unlikely to arise, but it is worth noting that a similar kind of case, *In Re M.C.*,³⁶ led California to adopt a law permitting children to have more than two parents.³⁷

In *In Re M.C.*, the court lamented that because there was no special legal recognition of non-parental progenitors, a young child would have to be placed in foster care rather than with a genetic progenitor who had displayed interest in helping raise her. This case involved a lesbian couple who, due to a series of unpleasant and unfortunate events, became unable to care for M.C.. M.C. had been conceived during a previous relationship between M.C.'s mother, Melissa, and her then partner, Jesus. Jesus had helped care for Melissa while she was pregnant, and had voluntarily provided child support to Melissa and M.C. at various times. However, since Jesus was not a legal parent, he had no standing to request custody when M.C.'s parents were no longer able to care for her. Consequently, M.C. was placed in the far-from-ideal foster-care system. In response to this case, California passed legislation permitting the recognition of more than two legal parents when doing so is in the best interest of the child, so that situations like this could be avoided in the future. Though not a gamete provision case, it is not a significant departure from the relevant facts to imagine Jesus as a willing gamete provider who had some involvement in the life of his genetic offspring. Given that foster care is far from ideal, this case demonstrates that there may be times when gamete providers have the responsibility to undertake the job of parenting themselves in cases where it is unlikely that the person who was initially delegated that responsibility to parent will be able to fulfil that responsibility, and where no other competent individual is available or willing to do it.

Second, it is unclear how law and policy ought to reflect the moral responsibilities acquired by gamete providers. Again, there are a variety of possibilities that seem plausible. At one extreme, policy may simply remain silent on gamete providers' responsibilities, as is the case with many moral responsibilities. Alternatively, the law could enforce these responsibilities in much the same manner as it enforces child-maintenance responsibilities. If, for example, a child's parents became destitute, we might think that the law ought to be able to demand some kind of financial support (though perhaps not to the same degree as standard child support) from a gamete provider. Finally, we may think that policy ought to provide a mechanism for gamete providers to act on their responsibilities if they so wish, but not force them to do so. Anonymously or otherwise, gamete providers could be provided with a mechanism for finding out how their offspring are faring, and be provided a mechanism (also one that could preserve anonymity) for providing financial support to their offspring's parents.

Thus while I have shown that gamete providers cannot transfer their responsibilities to others, it is not immediately clear what implications this

has for gamete provision, both in terms of what moral requirements gamete provision places on gamete providers, and what implications it has for policy governing assisted reproduction. While I cannot fully flesh out the normative implications of my argument in this paper, doing so is a project that ought to be taken seriously because of its relevance to ethically-minded regulation, and more importantly because of its importance to the wellbeing of children created via third-party gametes.³⁸

Notes

1. I use the term gamete provider rather than gamete donor because the argument I make applies equally to gametes acquired commercially
2. For examples see: Tim Bayne, 'Gamete donation and parental responsibility'. *Journal of Applied Philosophy*, 20, 1 (2003): 77–87; Giuliana Fuscaldo, 'Genetic ties: are they morally binding' *Bioethics*, 20, 2 (2006):64–76; David Benatar, 'The unbearable lightness of bringing into being' *Journal of Applied Philosophy*, 16, 2 (1999):173–180.
3. H.L.A. Hart. *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Oxford University Press, 1968) pp.210.
4. Claudia Card. *The Unnatural Lottery* (Philadelphia: Temple University Press, 1996) pp.28.
5. More precisely, Mary has no special responsibility beyond that which we might think any board member has to ensure the newsletter gets published. What is important is that the mere fact the responsibility to produce the newsletter was initially part of her portfolio does not influence her later responsibility to ensure the newsletter gets produced.
6. David Archard, 'The Obligations and Responsibilities of Parenthood', in D. Archard and D. Benatar (ed.) *Procreation and Parenthood: The Ethics of Bearing and Rearing Children*. (Oxford: Oxford University Press, 2010), pp. 103–127.
7. For a discussion of the legal norms governing legal parenthood following sperm donation see: Brandt, R. "Sperm, Clinics, and Parenthood". *Bioethics*. Forthcoming
8. Fuscaldo op. cit. 2, p. 73.
9. While O'Neill and Fuscaldo refer to parental obligations and duties, I take these to be synonymous with responsibilities in the forward-looking sense, as outlined in the introduction.
10. O'Neill uses the term 'begetter'
11. Onora O'Neill. 'Begetting, Bearing and Rearing' in O. O'Neill and W. Ruddick (ed.) *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979) pp. 28.
12. James Lindemann Nelson, 'Parental obligations and the ethics of surrogacy: a causal perspective', *Public Affairs Quarterly*, 5, 1 (1991): pp. 49–61.
13. Fuscaldo, op. cit. 2.
14. Rivka Weinberg. 'The moral complexity of sperm donation'. *Bioethics*, 22, 3 (2008): pp. 166–178.
15. Ibid.
16. For examples see: Archard, op. cit. 2.; Elizabeth Brake. 'Fatherhood and child support: Do men have a right to choose?' *Journal of Applied Philosophy*, 22, 1 (2005): pp. 55–73;

- Elizabeth Brake. 'Willing Parents: A Voluntarist Account of Parental Role Obligations', in D. Archard and D. Benatar (ed), *Procreation and Parenthood: The Ethics of Bearing and Rearing Children* (Oxford: Oxford University Press, 2010), pp. 151 – 177; Lindsey Porter, 'Why and How to Prefer a Causal Account of Parenthood', *Journal of Social Philosophy* 45, 2 (2014): pp. 182–202.
17. Though I cannot defend the view here, I do not think that the responsibilities that arise in gamete provision amount to the responsibility to personally parent one's biological offspring. For authors who defend similar conclusions see the preceding footnote.
 18. Establishing what counts as a 'causal account' of parenthood is difficult because, as will be discussed below, mere causal involvement in procreation is widely recognized as being an overly broad condition for the acquisition of responsibilities. Consequently, most authors augment causation with other factors, and so their accounts are not purely causal. Roughly speaking, I take causal accounts of procreative responsibility to be any that attributes responsibility to some individuals causally implicated in the creation of a child even when those individuals do not consent to take on those responsibilities. For examples of individuals who hold such views see: Archard, op. cit. 2; Brake 2005, op. cit. 16.; Brake 2010, op. cit. 16.; Fuscaldo, op. cit. 2; Nelson 1991, op. cit. 12; James L. Nelson, 'Special Responsibilities of Parents Using Technologically Assisted Reproduction', in F. Baylis and C. McLeod (ed.) *Family-Making* (Oxford: Oxford University Press, 2014), pp. 185–197; Porter 2014, op. cit. 16; Weinberg, op. cit. 14.
 19. By non-consent I mean the absence of consent
 20. Immanuel Kant, *Practical Philosophy*. (Cambridge: Cambridge University Press, 1999), 6:280.
 21. William Blackstone, *Commentaries on the Laws of England*, (Oxford: Clarendon Press, 1765-1769) Book 1, Ch.16.
 22. Seana Valentine Shiffrin, 'Wrongful Life, Procreative Harm, Responsibility, and The Significance Of Harm', *Legal Theory*, 5, 2 (1999): pp.139. Note that Shiffrin does not think that this necessarily implies that reproduction is, all things considered, morally wrong.
 23. Not everyone thinks that these responsibilities are parental. For instance Elizabeth Brake argues that while some procreative responsibilities might arise in 'one-night-stand' cases, individuals who procreate accidentally do not necessarily acquire parental responsibilities.
 24. Bayne, op. cit. 2.
 25. See Nelson 1991, op. cit. 12, p.53.
 26. Porter, op. cit. 12.
 27. Fuscaldo, op. cit. 2.; Weinberg, op. cit. 14.
 28. Weinberg's account rests on arguing that in cases where individuals exercise control over hazardous materials, they are strictly liable for any harms that arise as a consequence of the of those materials. However, Weinberg fails to provide a convincing reason for why we should consider gametes hazardous materials in the first place. Weinberg, op. cit. 14.

Fuscaldo attempts to limit the scope of causal responsibility by arguing that we only acquire responsibilities for the foreseeable consequences of our free actions, and defines foreseeable consequences as those that "a reasonable person would have reason to expect that they might occur"(p.70). However this definition still seems over-broad. For example, a reasonable person expects that a possible consequence of freely choosing to drive is that she may be struck by a careless driver. However, that this

- consequence is foreseeable does not make the driver bear responsibility for the damages she suffers as a consequence of another's carelessness. Fuscaldo, *op. cit.* 2.
29. See note 18 for what I take to fall within causal accounts of parenthood.
 30. We might agree with Brake and think that while parental responsibilities do not arise in these kinds of cases, some responsibilities do arise. For instance, we might think that an individual who gives birth to a child that arose from an accidental pregnancy is not free to simply abandon the child, and thus cannot be said to have acquired no responsibilities towards the child whatsoever.
 31. This example is an amended version of Ross' example of returning a book. For the original see: W.D. Ross, *The Right and the Good* (Oxford: Clarendon Press, 2002), p.44-46.
 32. My claim is that it is implausible than any agreement I enter with anyone but Michelle can relieve me of my obligation to ensure (by my own actions alone, or with the aid of someone else) that Michelle is made whole. This is separate from any harm done to me by an individual (in this case Bob) who promises me that they will make Michelle whole, but then breaks this promise.
 33. As noted by an anonymous reviewer, there is a possible worry about over-breadth here; it seems implausible that an individual has a responsibility to alleviate *all* the possible downstream ill effects of a prank of this sort. However, as with the discussion of causal responsibility, some consequences are 'proximate' enough as to be uncontroversial. I take causing someone additional travel costs by virtue of tampering with their bicycle to be one. In the reproductive case, I am inclined to agree with Fuscaldo that creating a person with serious needs to be fulfilled is an obvious consequence of providing gametes for reproductive purposes, and thus I think that the responsibility to fulfil these needs arises.
 34. In addition to showing that responsibilities in these kinds of cases cannot be transferred, this example also shows that I do not fulfil my responsibility by merely taking reasonable steps to ensure that Michelle's needs will be fulfilled. Even if I had good reason to trust Bob, I still have responsibilities towards Michelle. This is an important observation, because, as noted earlier, David Archard claims that by taking reasonable steps to ensure that future children will be adequately reared, gamete providers fulfill their responsibilities to the children they help create. Archard, *op. cit.* 6, p. 121.
 35. Michael Zimmerman gives a good critique of the 'pie' conception of responsibility - the idea that there is a total sum of responsibility that then gets divided amongst the responsible parties. Though Zimmerman's focus in responsibility in the sense of blame, the argument applies to forward looking responsibilities as well. See: Michael J Zimmerman. 'Sharing responsibility'. *American Philosophical Quarterly*, 22, 2 (1985): pp. 115-122.
 36. *In re M.C.* (2011) 195 Cal.App.4th 197, 211-212
 37. California Senate Bill 274. A specific reference in *In RE M.C.* is made at 1(b).
 38. I would like to thank Carolyn McLeod, Andrew Botterell, and Dennis Klimchuk for their detailed feedback on earlier drafts of this work. I would also like to thank Stephen Wilkinson and two anonymous referees for their comments and assistance that improved the final version of this paper. Work on this paper was supported in part by Wellcome Trust grant 097897/Z/11/Z