

## THE MORAL COMPLEXITY OF SPERM DONATION

RIVKA WEINBERG

### Keywords

sperm donation,  
gametes,  
parental responsibility,  
parenthood,  
procreation,  
children,  
sperm

### ABSTRACT

*Sperm donation is a widely accepted and increasingly common practice. In the standard case, a sperm donor sells sperm to an agency, waives his parental rights, and is absolved of parental responsibility. We tend to assume that this involves no problematic abandonment of parental responsibility. If we regard the donor as having parental responsibilities at all, we may think that his parental responsibilities are transferred to the sperm recipients. But, if a man creates a child accidentally, via contraception failure, we tend to assume that the man does indeed have parental responsibilities. Assessing these contrasting conclusions requires a theory of parental responsibility.*

*I analyse prevalent theories of what makes someone parentally responsible and show that none of these theories can withstand scrutiny. I propose a new theory of parental responsibility, which, I argue, is more plausible than the alternatives. My theory of parental responsibility is based on our ownership and control over hazardous materials, namely, our gametes.*

*I show that neither my theory, nor the theories I reject, can support our contrasting intuitions. I conclude that sperm donors are fathers, with parental responsibility. I argue that the alternative conclusion, that neither sperm donors nor accidental fathers are parentally responsible for their resulting offspring, is less plausible. I then consider whether parental responsibility can be transferred and argue that it is far from clear that it can. Finally, I address objections and consider some practical implications of these views.*

Sperm donation is a widely accepted and increasingly common practice. In the standard case, a sperm donor provides sperm to an agency, waives parental rights, is supposedly absolved of parental responsibility, and goes on his merry way, minus some sperm, plus some cash. We tend to assume that there is no problematic abandonment of parental responsibility here for a variety of reasons, the most compelling one being that the sperm donor is not the ‘*real* father,’ i.e. not the person with parental responsibility. In order to make that claim, we must appeal to non-biological criteria to determine parental responsibility. If we retain the genetic criteria

of parental responsibility, we may think that sperm donors are initially parentally responsible, but their parental responsibilities are transferred to the sperm recipients.

Consider, however, the following set of cases, which are intended to bring the issue of parental responsibility into sharper focus:

*Joe Blow:* Joe Blow has a one-night stand with Jane using the just-in-case condom in his wallet. It is a brand name, unexpired condom that, unbeknownst to Joe and Jane, has a very tiny hole in it. Jane gets

Address for correspondence: Prof. Rivka Weinberg, Scripps College, 1030 Columbia Avenue, Claremont, CA 91711, (909) 607-1819. Rivka\_Weinberg@scrippscollege.edu

pregnant and gives birth to Jack. Joe walks away. He refuses to give any time, attention, or money to Jack.

*Joe Sperm donor:* Joe Sperm donor completes an application to donate sperm to an agency. He is deemed a desirable donor. He donates sperm, accepts the standard monetary compensation, and goes home. His sperm is inserted into Sheila who gets pregnant and gives birth to Julie. Joe Sperm donor never meets Julie and does not support or parent her in any way whatsoever.

I assume that we want to hold Joe Blow responsible for Jack. We think that Joe Blow has wrongly failed to fulfill his parental responsibilities to Jack. But, we tend to think that Joe Sperm donor has not failed to fulfill his parental responsibilities to Julie because he is not really parentally responsible for her. He is merely the sperm donor. These intuitions are not universal but they are quite common.<sup>1</sup> In order to assess these common and contrasting intuitions regarding parental responsibility in the above cases, we will need to look to a theory of parental responsibility. The theory will have to tell us when, how, and why parental responsibility is incurred.

In this paper, I will analyse the prevalent theories of what makes someone parentally responsible. Because I am trying to assess our intuitions regarding the two Joes, the theories of parental responsibility will be judged on grounds of their plausibility independent of what they make of the two Joes. (Thus, no theory of parental responsibility will be accepted or rejected on the basis of whether it can reasonably distinguish between the two Joes.) I will argue that none of the prevalent theories of parental responsibility can withstand scrutiny. That is not to say that they come to nothing. They may point to some form of responsibility or connection to a child, but they don't tell us which people are *parentally* responsible for the child, i.e. responsible for nurturing and raising the child to adulthood. I will therefore propose a new theory of parental responsibility that I argue is more plausible than the alternatives. My theory is about parental responsibility only. I make no claims, in this paper, about

parental rights.<sup>2</sup> In Section II, I will apply my theory to the cases of the Joes. My theory cannot distinguish between the two Joes. I therefore conclude that Joe Sperm donor is parentally responsible. (I argue that this is more plausible than the alternative conclusion, which is that neither Joe is parentally responsible.) This means that the common intuitive response to our two Joes is mistaken. They are *both*, at least initially, parentally responsible. I will note that the prevalent theories of parental responsibility, which I dispute, cannot distinguish between the two Joes either. So even if one remains unconvinced of my arguments against prevalent theories of parental responsibility, one will still have a hard time reasonably distinguishing between the Joes. Then, in Section III, I consider whether Joe Sperm donor can transfer his parental responsibilities to Sheila and argue that it is far from clear that he can. In Section IV, I consider some objections to these views and, in Section V, I very briefly note some possible practical implications of these views.

## I. WHAT DETERMINES PARENTAL RESPONSIBILITY?

Before considering what makes someone parentally responsible, I'd like to clarify what parental responsibility entails. Parental responsibility is, most fundamentally, the responsibility for raising and nurturing a child. Nurturing a child generally entails attending to her needs and guiding her toward adulthood (in the standard case), in the course of a caring and loving relationship. It is not controversial to claim that, in order to grow into healthy, productive adults, children need a longterm, loving relationship with a caregiver.<sup>3</sup> Being that caregiver in a caring and loving, long term relationship with a child is what parental responsibility entails, even if a good deal (though not nearly all) of the care giving is delegated to others, e.g. teachers, doctors, nannies, etc.

I will now consider what makes someone (initially) parentally responsible.

### Voluntary commitments

Some people voluntarily and explicitly undertake parental responsibilities, e.g. adoptive parents. Like any

<sup>1</sup> In fact, in most states in the USA, where the natural father usually has initial parental responsibility, if the sperm recipient is a married woman, her husband is considered the legal, initial father of the child (not the adoptive father). In the USA, the sperm donor is usually not deemed the 'natural father' of the resulting child: 'The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived' (Cal. Civ. Code § 7005[b]).

<sup>2</sup> For an illuminating discussion of parental rights, see H. Brighouse & A. Swift. Parents' Rights and the Value of the Family. *Ethics* 2006; 117(1): 80–108.

<sup>3</sup> I suppose this claim can be challenged but I think that the attachment problems that children who lack a sustained caregiver experience will make that sort of challenge very challenging to support.

promise, the promise to be parentally responsible will, in the usual case, obligate one to fulfill one's promise. Therefore, voluntarily committing oneself to be parentally responsible for a child will usually make one parentally responsible. This theory, however, can be seen as uninformative since it does not tell us what counts as a voluntary commitment of this kind. If it is the bare fact of an explicit commitment to parental responsibility itself, this theory will leave many children with no one parentally responsible for them since, often, children are born 'accidentally,' with no one who has explicitly made a parental commitment to them. The idea of many children born with no one parentally responsible for them is counterintuitive. Before we resort to a theory that violates intuition and results in many children without anyone parentally responsible for them, we ought to seek an alternate theory.

### Intent to raise

Some argue that those with parental responsibility are those who intend, usually prior to the child's creation, to raise the child – to play the caretaking parental role.<sup>4</sup> This argument is most often made in the context of a surrogacy dispute, in order to support the claims of the non-biological parent or parents against the genetic and/or gestative claims of the surrogate (as in the *Mary Beth Whitehead* case).<sup>5</sup> This theory, like the voluntary commitment theory, may leave many children without anyone parentally responsible for them<sup>6</sup> (for the same reason) and it is also plagued by numerous other difficulties: intentions may change over time,<sup>7</sup> anyone can present a claim to parental responsibility status simply by showing intent,<sup>8</sup> and, if we base responsibility on intent, we allow each person to decide what may be attributable to her (since we often cannot know another's intention).<sup>9</sup> The theory is intended to defend the commissioning parents in surrogacy disputes but, ironically, surrogacy cases contradict the intentionalist theory of parental responsibility because commissioning couples explicitly

derive their parental responsibility from the surrogacy contract.<sup>10</sup> Legally, the parental responsibility belongs to the surrogate and is only transferred to the commissioning couple by contract, not by intent alone.

### Causation

For many, the clearest way to determine parental responsibility is to seek the cause of the dependent child.<sup>11</sup> This theory holds that, by imposing the considerable risks of existence on a helpless baby, one incurs parental responsibility (to equip, guide, and nurture the child through the obstacle course of existence). In order to ascertain exactly who has imposed the risk, it is suggested that we identify the proximate cause of the child's existence. This view has intuitive appeal: when we see a needy being, we may ask, 'By whose doing is there this needy being?' and the answer to that question seems to finger the person/s responsible for caring for the needy being. But it fingers too many people,<sup>12</sup> including, perhaps, fertility specialists, domineering and demanding grandparents, the friends who brought that fabulous bottle of wine to dinner, etc.

Nelson argues that although causation resists analysis, we know it when we see it, and parental responsibility belongs to those who are the cause of their child's existence:

A pair of coordinated actions which were proximate to and jointly sufficient for some event, and were not the result of forcing or fraudulent action on the part of others would be hard not to see as *the* cause of the event in question. Becoming a parent generally fits this model.<sup>13</sup>

Many parents' coordinated actions, however, aren't jointly sufficient for the event of their child's existence, since they require medical specialists to help them gestate and deliver a viable child.

Nelson may be right to claim that biological parents are 'irreplaceably involved'<sup>14</sup> in their child's creation in a way that others are not but this does not make them the real cause, the proximate cause, or the sufficient cause, since others can be just as causally necessary (e.g. the grandparents) and the biological parents are often not causally sufficient for the creation of their child.

<sup>4</sup> J. Hill. 'What Does it Mean to Be a Parent?' *The Claims of Biology as the Basis for Parental Rights*. *N Y Univ Law Rev* 1991; 66: 353–420.

<sup>5</sup> *In the Matter of Baby M*. 109 N.J. 396, 537 A.2d (N.J. 1988).

<sup>6</sup> This point is made by E. Anderson. *Is Women's Labor a Commodity?* *Philos Public Aff* 1990; 19(1): 71–92; and by T. Bayne & A. Kolers. *Toward a Pluralistic Account of Parenthood*. *Bioethics* 2003; 17(3): 221–242; among others.

<sup>7</sup> See M. Roberts. *Good Intentions and A Great Divide: Having Babies by Intending Them*. *Law Philos* 1983; 12: 287–317.

<sup>8</sup> *Ibid*.

<sup>9</sup> See A. Ripstein. 1999. *Equality, Responsibility, and the Law*. New York, NY: Cambridge University Press.

<sup>10</sup> See Roberts, *op. cit.* note 7.

<sup>11</sup> See Bayne, and Kolers, *op. cit.* note 6; and J.L. Nelson. *Parental Obligations and the Ethics of Surrogacy: A Causal Perspective*. *Public Aff Q* 1991; 5(1): 49–61.

<sup>12</sup> See Ripstein, *op. cit.* note 9, pp. 35–36.

<sup>13</sup> Nelson, *op. cit.* note 11, p. 54.

<sup>14</sup> *Ibid*: 59.

Because causation spreads parental responsibility too widely,<sup>15</sup> and can miss its intended targets, it seems an inadequate way to determine parental responsibility.

### Gestationalism

It has been argued that the person who gestates the child is parentally responsible for the child. The Warnock Commission endorsed this view, as do some women's rights advocates who wish to protect the rights of surrogate mothers. (Those with parental responsibilities are often deemed to have corresponding parental rights.) Gestationalists claim that fatherhood status, and its usual concomitant parental responsibilities, is determined not by a direct relationship with the child but, instead, by a relationship with the child's mother. This, without any compelling rationale, leaves fathers with only derivative rights and responsibilities.<sup>16</sup> Although gestating is usually part of a maternal role and, arguably, gestators play at least part of a maternal role, it alone cannot confer parental responsibility. The fact that it is theoretically possible that the role of gestator could someday be fulfilled by an incubator, leaving all children with no one parentally responsible for them, according to this theory,<sup>17</sup> casts yet more doubt on the gestational theory of parental responsibility.

### Geneticism

Biologically speaking, the person whose genetic material is transferred to create another being is the new being's parent. This holds for all kinds of organisms, from the most complex to the most simple: when a simple cell splits in two, the two resulting cells are called the daughter cells of the one original cell. This biological fact has a deep and pervasive impact on our views regarding parental responsibility. It has been argued that our social and legal practices implicitly endorse the genetic criterion of parental responsibility, as shown by the fact that sperm donors, egg donors, and surrogate mothers transfer or waive their parental rights and responsibilities.<sup>18</sup> If geneticism were false, why would we require gamete donors and surro-

gates to transfer or waive their responsibilities and rights? If geneticism were false, they would have no rights or responsibilities to transfer or waive. But this shows only that we tend to assume geneticism, it does not show that this assumption is warranted.<sup>19</sup>

Many have challenged geneticism by appealing to cases of involuntary use of one's genetic material. It is difficult to see how one could be deemed responsible for wholly involuntary use of one's genetic material, e.g. armed gamete robbery. Many go further and argue against geneticism on the basis of voluntary transfer of control over one's genetic material, as might occur in the case of a testicle transplant.<sup>20</sup> These cases have generally been viewed to rebut geneticism,<sup>21</sup> at least as a complete theory of parental responsibility.

### Hybrid theories

Facing the inadequacy of the dominant theories of parental responsibility, some have sought to combine the views in order to strengthen them. Benatar's 'reproductive autonomy'<sup>22</sup> view can be seen as one such theory, combining geneticism and voluntarism. Benatar argues that reproductive autonomy entails the right to make procreative decisions regarding whether one wishes to procreate

<sup>19</sup> Hall argues that the principle of self-ownership supports geneticism by appealing to either the material constitution or the genetic constitution of the child: 'When we say that B is A and C's child, we are saying that B is (composed) of A and C'. On this view, self-ownership confers a property right on those composed of the self which, argues Hall, weakens over time: 'as the child grows, it becomes less physically derivative of the parents and more self-constituted'. See B. Hall. *The Origin of Parental Rights*. *Public Aff Q* 1999; 13: 73–82. This view faces numerous difficulties, including the fact that one never owns one's children.

<sup>20</sup> See T. Bayne. *Gamete Donation and Parental Responsibility*. *J Appl Philos* 2003; 20(1): 77–87; D. Benatar. *The Unbearable Lightness of Bringing Into Being*. *J Appl Philos* 1999; 16(2): 173–180; and J. McMahan. *The Ethics of Killing*. New York, NY: Oxford University Press 2002, p. 374. See also J. Blustein. *Procreation and Parental Responsibility*. *J Soc Philos* 1997; 28(2): 80–82, where an example of forced motherhood is used to discredit the genetic criterion of parental responsibility. Edmund Abegg uses an example of being involuntarily cloned hundreds of times as an exception to rather than as a challenge to geneticism. (E. Abegg. *The Moral Significance of the Genetic Relation*. *J Med Humanit Bioeth* 1985; 5: 142).

Note that one might argue that donating one's testicle for transplantation is simply a mass sperm donation and not qualitatively different from donating a portion of one's sperm supply. That is what a testicle transplant seems like to me.

<sup>21</sup> Abegg defends geneticism, even in the face of involuntary use of one's genetic material, because, he argues, transmission of the genetic code exhibits a causal link between parent and child. Because the argument rests on causation, it's really an argument for the causal criterion, which is difficult to defend (see above). *Ibid*: 127–144.

<sup>22</sup> Benatar, *op. cit.* note 20, pp. 173–180.

<sup>15</sup> Fuscaldo argues that parental responsibility is held by *all* who have voluntarily and foreseeably contributed to a child's existence, to whatever extent. This widespread sort of responsibility, which is claimed to vary in degree and kind, is not what I take parental responsibility to mean (G. Fuscaldo. *Genetic Ties: Are They Morally Binding?* *Bioethics* 2006; 20(2): 64–76).

<sup>16</sup> See Bayne and Kolers, *op. cit.* note 6, pp. 225–229.

<sup>17</sup> *Ibid*: 223.

<sup>18</sup> E. Page. *Donation, Surrogacy and Adoption*. *J Appl Philos* 1985; 2(2): 161–172.

or not and confers responsibility for the results of having this right, even in cases where it does not seem to be explicitly exercised, e.g. thoughtless or accidental pregnancy. Although Benatar discusses what reproductive autonomy entails, he does not tell us what reproductive autonomy is. He argues, though, that due to reproductive autonomy, people are normally parentally responsible for the children that result from their gametes.<sup>23</sup> It is also why, from his point of view, one is not responsible for the children that result from the gametes issuing from a gonad that one has donated for transplantation; the transfer of control over the gametes also transfers responsibility for the children that result from them.<sup>24</sup> Sperm donation, being one form of transfer of control over one's gametes, serves to transfer parental responsibility as well; but the responsibility is originally the donor's.<sup>25</sup>

It is not easy to know what to make of this theory since it rests on the undefined principle of reproductive autonomy. What, for example, would it say about people who exercise their autonomy *not* to procreate by using very effective contraception, e.g. the birth control pill, yet conceive nonetheless? If abortion is not possible, are they responsible for the resulting child? Since Benatar holds people responsible for thoughtless pregnancy due to their failure to engage their reproductive autonomy responsibly, are those who do engage their autonomy responsibly, say, by using the pill, released from the presumptive responsibility? More importantly, why does reproductive autonomy generate parental responsibility? This crucial question is not addressed. My best guess at an answer is that one must take responsibility for one's choices, yet what constitutes doing so is at issue. Reproductive autonomy does not tell us enough about which choices and/or acts generate parental responsibility.<sup>26</sup>

Bayne and Kolers advocate a pluralistic account of parental responsibility that incorporates the various causal elements that contribute to the creation of a child.<sup>27</sup> On this view, neither intentionalism, gestationalism, nor geneticism is necessary for parental responsibility but each is sufficient for parental responsibility because each can often be 'causally linked in the right sort of way to the creation of children'.<sup>28</sup> Causalism is not itself defended, although it is claimed that, 'parenthood is

ultimately grounded in causal relations',<sup>29</sup> nor is an account provided of the kind of pluralistic causal connections that determine parental responsibility. Yet, they conclude that an account of parental responsibility 'ought to be broad enough to grant parenthood to genetic, gestational, custodial, and intentional parents'.<sup>30</sup>

This theory seems to spread parental responsibility too broadly to be of much practical value in determining whether one is parentally responsible or not. Parental responsibility is spread too broadly by granting it to genetic, gestational, custodial, and intentional parents because, when numerous people play these roles and claim or disclaim parental responsibility (and the rights that are often deemed to come along with it), we will have no way of deciding which of the claims are legitimate. (Granting them all legitimacy decides little: where does the child live? Who pays her medical bills? Etc.) With so many candidates for parental responsibility, many children may be left with no one parentally responsible for them, since no criterion is granted priority over another. By fingering so many possibly responsible people and giving us no clear criteria for deciding amongst them, the theory can result in each candidate pointing toward another, leaving the child with no one.

Hybrid theories attempt to respond to a complex matter with more nuance, which seems warranted. They seem, however, to obfuscate rather than clarify the complex matter of parental responsibility, diffusing it to the point where it seems impossible to capture at all.

### The Hazmat theory

I'd like to suggest that parental responsibility is derived from our possession and high degree of control over hazardous material, namely, our own gametes. Our gametes are dangerous because they can join with the gametes of others and grow into extremely needy innocent persons with full moral status. Being in possession and control of such hazardous material is a very serious responsibility. The enormity of the risks gametes pose generates a very high standard of care. In that respect, gamete owners are comparable to owners of pet lions or enriched uranium. Dangerous possessions under our voluntary control – e.g. enriched uranium, a loaded gun, viable sperm – generate an extremely high standard of care. When we choose to engage in activities that put our gametes at risk of joining with others and growing into persons, we assume the costs of that risky activity.

Risky activities often involve a conflict of interests (which can be deemed rights by deontologists, or simply

<sup>23</sup> Ibid: 174.

<sup>24</sup> Ibid: 175.

<sup>25</sup> Ibid: 175.

<sup>26</sup> Bayne, similarly, wonders exactly what Benatar's reproductive autonomy principle entails. He questions whether it need deem sperm donors parentally responsible and concludes it need not. T. Bayne, *op. cit.* note 20, p. 79.

<sup>27</sup> Bayne and Kolers, *op. cit.* note 6, pp. 221–242.

<sup>28</sup> Ibid: 238.

<sup>29</sup> Ibid: 222.

<sup>30</sup> Ibid: 242.

goods by consequentialists) between the interests of the risk imposer and the interests of the risk imposee.<sup>31</sup> Generally, the imposer has an interest in freely engaging in activities of her choice and the imposee has an interest in avoiding being the victim of a risk that results in harm. One way to resolve this conflict of interests is to weigh the costs to each party of having the other party's interests prevail. This may help establish the relative strength of the competing claims (be they rights claims or goods claims).

Many activities impose risks yet result in a low standard of care, e.g. exhaling. Exhaling risks communicating disease yet we generally would not hold exhalers responsible for the harm that may result from their risky activity, even if exhaling could be voluntarily suspended (resulting, though, in death). The exhalers' interests are deemed stronger, in the typical case, than the inhalers' interests; the costs of not exhaling are usually more severe than the costs of occasionally becoming infected by someone else's exhalation. For other risky activities, however, the potential victim's interests outweigh the risk imposer's interests. Owning a pet lion is a clear case in which the interests of your neighbors in not being lion lunch trump your interests in owning a pet lion. It seems to me that the cost of being born without specific people highly responsible and committed to one's care are far more serious than the cost of being restricted from engaging, cost free, in behaviour that risks having a child created from one's gametes. That does not mean that engaging in behaviour which risks creating a child from one's gametes is wrong or inconsiderate *per se*. It just means that the costs of engaging in risky behaviour with one's gametes belong to those who engage in it.<sup>32</sup> Parental responsibility is a cost (or reward) of the risks we choose to take with the hazardous gametes we possess. Thus, parental responsibility is incurred when we choose to engage in activities that put our gametes at risk of joining with others and growing into persons, and persons result from those activities.

There is, of course, an important difference between being in possession of gametes and being in possession of a pet lion. One can choose not to own a lion. That is the choice most of us would take, given the high level of responsibility we would incur by owning such a dangerous pet. We'll take a turtle instead. In contrast, we are born with our gametes lurking inside us, ready to bolt at their earliest opportunity and able to breach many fences. Yet, it is not our bare, involuntary ownership of gametes that makes us parentally responsible for their union with

others. Rather, it is the risks we choose to take with our gametes that make us parentally responsible for what happens to them, should they develop into beings with moral status. (This is consistent with the Hazmat account's view of parental responsibility as grounded in our responsibility for the risks we take with our hazardous gametes.) If we are deeply averse to parental responsibility, we can abstain from sexual intercourse or surgically interfere with our gamete-release system.

In cases of arguably involuntary use of our gametes, e.g. rape, or some other more creative form of outright gamete theft, it may be the rapist or gamete thief who ought to bear the costs of that procreative risk. In cases of rape, or the like, perhaps one is not parentally responsible for the resulting child but may be, instead, bound to the child as one may be to any extremely needy innocent stranger.<sup>33</sup> One may also be bound to the child in various ways entailed by one's genetic and gestational relationship to the child but those kinds of relationships, as argued, do not make one parentally responsible.

The Hazmat theory of parental responsibility accords with many of our intuitions regarding our high level of responsibility for the children that result from our gametes. It explains why we hold people parentally responsible for children that result from birth control failure, drunken, half-unconscious activity, and unbridled passion. It explains why Joe Blow is responsible for Jack, despite the fact that Joe Blow is not an especially reckless person and despite the fact that he did not intend to father a child. It also explains why we think that one is not parentally responsible for the children that result from one's stolen testicle. (A donated testicle, however, would likely be considered by the Hazmat theory to be a case of mass sperm donation and, therefore, subject to the concerns expressed in Section II regarding transferring one's hazardous materials.) It even draws a reasonable distinction between gamete owners and fertility doctors: the gamete owners voluntarily engage in activities that risk uniting their gametes with others, resulting in an utterly helpless and needy person; the fertility doctor acts as the gamete owner's agent. Fertility doctors do not possess rights of ownership and control over the gametes they may manipulate. Being a fertility doctor may generate its own set of responsibilities but parental responsibility is not amongst them.

The Hazmat theory avoids the pitfalls of the prevalent theories I have analysed. It does not leave many children with no-one parentally responsible for them (as the voluntary commitments and intent theories do, and as the

<sup>31</sup> See Ripstein, *op. cit.* note 9, chapters 1 and 3.

<sup>32</sup> Here, I largely follow Ripstein's liability analysis model. *Ibid.*: 70–72.

<sup>33</sup> In this case, that might entail bringing the child to the attention of social services or to others willing to take on the burden of its care.

gestationalism and the Bayne and Koler's pluralistic theories could); it does not leave children with too many candidates for parental responsibility to be of practical value in determining parental responsibility (as do the causation and the Bayne and Koler's pluralistic theories); it does not hold people responsible for actions well beyond their control (as geneticism can); and it is not indeterminate regarding which actions generate parental responsibility (as is Benatar's reproductive autonomy theory).

The theory, however, is not without its defects. Its biggest flaw lies in the fact that we are in involuntary possession of our gametes and naturally inclined to risky gamete-owning behaviour. Yet that is mitigated by the fact that we do have significant control over our gametes and we are not deemed responsible for involuntary risks taken with respect to our gametes. Other concerns include the importance of genetic, gestational, or intentional ties, which are not given much weight in the Hazmat theory. Note, however, that the Hazmat theory does not deny the importance of genetic, gestational, or intentional ties; it only denies the claim that those sorts of connections establish parental responsibility, leaving open the possibility that they establish other sorts of responsibilities. The Hazmat theory is not perfect, but, in my view, it is, of the accounts currently available to us, the one that best explains how, why, and when parental responsibility is incurred.

Now that I have established what makes one parentally responsible, I will return to our intuitions about the two Joes to see whether either one or both of them are parentally responsible for their offspring (in the above cases).

## II. DISTINGUISHING BETWEEN THE JOES

There is one sense in which it may not be all that difficult to distinguish between the Joes. When two people voluntarily engage in an activity that risks creating a child, it may be reasonable to expect the two adults to bear that risk equally, unless otherwise agreed upon by both parties. We may think that Joe Blow fails to fulfill his presumed obligation to Jane, with respect to participating in the raising of Jack. Joe Spermdonor does not shirk his obligation to Sheila, with respect to participating in the raising of Julie, because Sheila has agreed to absolve him of it. So the Joes differ in their performance of their obligation to the mothers of their offspring.<sup>34</sup> But obligations to the adults with whom one procreates are separate

from obligations to the children one procreates. Fulfilling one's obligation to one does not fulfill it to the other.

It seems clear that the Hazmat theory does not distinguish between the Joes. Since they both voluntarily engage in activities that put their respective gametes at risk of joining with others and growing into persons, and persons result from their respective activities, both Joes are parentally responsible. But perhaps Joe Spermdonor, by transferring his hazardous materials to Sheila via the sperm bank, has thereby transferred *initial* parental responsibility to Sheila (or to the bank which then transfers it to Sheila). The Hazmat theory would suggest that transferring one's hazardous materials is unlikely to make someone else *initially* parentally responsible since an extremely high standard of care does not easily accommodate a transfer of responsibility. Whether we can incur parental responsibility and *subsequently* transfer it is a different question (which we may ask of any theory of parental responsibility), discussed in section III. First, let's determine whether one can claim that the Hazmat theory implies that a transfer of one's hazardous materials makes the materials, and any resulting children, someone else's responsibility from the start.<sup>35</sup> If that is possible, we may have finally found a theory that deems Joe Blow parentally responsible for Jack but Joe Spermdonor not parentally responsible, even initially, for Julie.

But that will not be easy. Surely, selling your enriched uranium to a uranium brokering agency won't absolve you of responsibility for the nuclear explosion that may result. Enriched uranium is so volatile and dangerous that it is not easy to transfer it safely and reliably. In order to transfer your enriched uranium permissibly to someone else, the transfer would have to be undertaken with extreme care, investigation, and caution. Current practices of sperm donation in many countries, including the USA, fall far short of any claim to the very high standard of care that transferring such hazardous material would demand.<sup>36</sup>

The difficulty with claiming that transferring ownership and control over one's gametes makes the recipients the ones with initial parental responsibility for the children that result from them runs deeper than current sperm donation procedures. Arguably, donating sperm

<sup>35</sup> I am grateful to Masahiro Yamada for raising this question.

<sup>36</sup> Although the precise standard of care is not set out here, since sperm donors in many countries currently have no information about where their sperm is going, there cannot be any claim to investigation or significant care at all. Therefore, the current practice usually does not even meet a moderate standard of care, let alone any standard of care that can claim to be high. A similar point is made by Benatar, *op. cit.* note 20, p. 176.

<sup>34</sup> I thank Colin Allen for raising this point.

is not simply a *transfer* of ownership and control but, rather, is also an *exercise* of the donor's ownership and control, for purposes of uniting his gamete with another's (usually, for a cash bonus). Sperm donors take the gametes that they own and control and give them to someone else for procreative purposes, much like ordinary fathers do (except for the usual cash bonus). It might be argued that, unlike sperm donors, ordinary fathers don't waive parental rights and are not supposedly absolved of parental responsibility. But, waiving one's parental rights and being supposedly absolved of parental responsibility by the gamete recipient seems, if anything, to confirm one's initial parental responsibility. Sperm donors may claim to transfer their responsibility for the resulting child but it is not at all clear that they can claim never to have incurred that responsibility.

It is doubtful that the Hazmat theory can accommodate the view that sperm donors, by transferring their hazardous materials, are never parentally responsible for the resulting children. It is certain that the theory holds Joe Sperm donor parentally responsible since donating sperm to a sperm bank, in the USA and many other countries, currently gives the donor virtually no information or control over which person or persons will gain control of his hazardous materials. It is a reckless transfer. Even if responsibility for one's gametes can be transferred, current practices of sperm donation, in the USA and many other countries, which usually give the sperm seller no information about the sperm buyer, cannot possibly meet the very high standard of care that the possibility of transfer, if possible at all, would entail.<sup>37</sup>

The Hazmat theory will not distinguish between our two Joes. It will hold them both parentally responsible for the risks they took with their hazardous materials. Joe Blow should know that sperm often breach the condom gate (it says so on the condom wrapper). Joe Sperm donor donates his sperm to a brokering agency for the express purpose of procreation (it says so in the contract).

I have argued against the prevalent theories of parental responsibility on various grounds having nothing to do with their assessment of our two Joes. Since I have argued that our contrasting intuitions about the cases are mistaken, however, it is worth noting that the theories I

dispute do not support those contrasting intuitions either. (My conclusion regarding the two Joes is therefore no special reason to reject the Hazmat theory out of hand, nor is a commitment to the contrasting intuitions regarding the two Joes any special reason to rescue the theories I have disputed.)

Voluntary commitments will not distinguish between Joe Blow and Joe Sperm donor: it will hold neither of them parentally responsible since neither of them voluntarily committed to parenthood.

Intent will not distinguish between Joe Blow and Joe Sperm donor: it will hold neither of them parentally responsible since neither intended to raise his child.

Causation will also not draw a distinction between our two Joes because each Joe is causally necessary for the existence of his child and neither Joe is causally sufficient for the existence of his child. Yet, Joe Sperm donor does not actually impregnate anyone, which may distance him enough from Julie's creation to disqualify him as a proximate cause, or causal agent.<sup>38</sup> The same cannot be said of Joe Blow. Perhaps the difference between the Joes is causal responsibility after all. The fact that Joe Sperm donor does not insert the sperm into Sheila himself, however, does not make him any less necessarily or voluntarily a cause, only slightly less proximate, much as fathers whose wives are artificially inseminated with their sperm are slightly less proximate a cause of their resulting child. Physical proximity does not exhaust causal agency: the mere presence of an intervening link in an intentional, foreseeable causal chain does not eradicate causal agency. If I kill you myself, I am the proximate causal agent of your death; if I hire a hit man to kill you, I am no longer the most proximate causal agent of your death (just as Joe Sperm donor hasn't impregnated anyone, I haven't killed anyone), but I am still a causal agent of your death and probably the most important one. So even if the causal account of parental responsibility were correct, it would not draw a moral distinction between our two Joes.

Gestationalism, obviously, does not distinguish between Joe Blow and Joe Sperm donor. It holds neither of them parentally responsible since neither has gestated his child and neither is in a relationship with the woman who has gestated his child.

<sup>37</sup> Where sperm donation is more regulated, e.g. in England, it is probably less problematic. To the extent that the screening and monitoring of sperm recipients is reliable, it does make sperm transfer less reckless. Agency screenings of persons, however, for something as difficult to assess as parental ability is, I think, unavoidably vulnerable to grave errors. Thus, whether any practicable screening and monitoring process could meet the high standard of care that the Hazmat theory would demand of gamete transfers for procreative purposes, if it could permit them at all, remains in doubt.

<sup>38</sup> See R. Munson. 1988. Artificial Insemination and Donor Responsibility. In *Intervention and Reflection*. R. Munson, ed. Belmont, CA: Wadsworth: 448. Also, note Nelson's reply: 'in splitting up the ordinary male role in procreation – supplying and delivering the sperm – into two roles occupied by different people, the moral responsibility associated with fatherhood isn't doubled or even halved; apparently, it simply leaks away.' Nelson, *op. cit.* note 11, p. 58.



Geneticism, of course, does not distinguish between the Joes either: it holds them both parentally responsible since each is the genetic father of his offspring.

Whether Benatar's hybrid theory distinguishes between the two Joes depends upon which decisions are considered to be reproductively autonomous. On the most obvious interpretation, both Joes are parentally responsible because both make voluntary reproductive decisions yielding a child who results from their gametes: Joe Blow decides to have sex with a less than foolproof contraceptive; Joe Spermdonor decides to donate sperm to be used to create a child. One can argue, though, that Joe Blow has a lesser degree of responsibility because, had his reproductively autonomous choice had its usual and intended effect, he would not have created a child. This is hardly the analysis we were after.

Bayne and Koler's pluralistic account of parental responsibility will not support the common contrasting intuitions regarding the two Joes. If it tells us anything about our Joes at all, it seems most likely to hold them both parentally responsible since they both satisfy the genetic criterion, deemed sufficient for parental responsibility by this theory, and neither satisfy the gestational, intentional, or custodial criteria. If either is held more parentally responsible than the other, it is likely to be Joe Spermdonor since he comes closer to being an intentional parent<sup>39</sup> than does Joe Blow, giving him two criteria to Joe Blow's one.

The most plausible theory of parental responsibility, the Hazmat theory, does not support the contrasting intuitions regarding the two Joes. It holds them both parentally responsible. The less plausible theories do not distinguish between the Joes either. I conclude that the contrasting intuitions are mistaken. (Why so many tend to have these erroneous intuitions is an interesting question for further research.) If Joe Blow is parentally responsible then so is Joe Spermdonor.

According to the Hazmat account, Joe Spermdonor is, at least initially, parentally responsible for his daughter, Julie. If one is unconvinced by the Hazmat account, one could conclude that, since we cannot distinguish between the Joes, neither Joe is parentally responsible but that conclusion is more difficult to support since only the least plausible theories of parental responsibility (i.e. voluntary commitments, intent to raise, and gestationalism) can be consistent with that conclusion. Furthermore, I think it is likely even more counterintuitive for most

people to deem Joe Blow not parentally responsible than to deem Joe Spermdonor parentally responsible.

For the remainder of this paper, I will assume that both Joes are parentally responsible. That is no small conclusion but, if one can easily transfer parental responsibility, it may be no big conclusion either.

### III. CAN PARENTAL RESPONSIBILITY BE TRANSFERRED?

Parental responsibility includes the responsibility to provide for one's child's basic needs, at least to the best of one's ability. My misgivings regarding transferring parental responsibility are based on the premise that love is one of a child's basic needs. If a child's basic needs include the need to be loved, it is unclear to me that a responsibility of this kind – a responsibility to relate with a particular feeling towards another person – can be coherently transferred.

When we promise to love our spouses in sickness and in health, can we fulfill this promise by transferring it to someone else? 'Now that you are confined to a wheelchair, I don't love you anymore but my friend Sally is willing to,' is a ridiculous attempt to fulfill one's spousal promise. Notice that its ridiculousness is not only due to the fact that one has promised continued love and a transfer may imply a discontinuity (if Sally starts her loving before you stop yours, the transfer may not involve a discontinuity) but it is also, more fundamentally, due to the fact that you have promised *your* love, not someone else's.<sup>40</sup> When you incur parental responsibility, and thereby the responsibility to love your child, it may be *your* love that is required since it is those parentally responsible for the child, and not just anybody, who must love the child. Once you incur parental responsibility, you may have incurred the included obligation to love your child. That *relational* obligation entails standing in a particular emotional relation towards another and I'm not sure how that can be passed to someone else. 'Here, you love this baby,' sounds like, 'Now that you are in a wheelchair, I don't love you anymore but my friend Sally is willing to', to me. The fact that the transfer is intended in advance, in the case of sperm donation, does not help. An intended violation of obligation is, if anything, worse than an unintended one. If children do need the love of those parentally responsible for them and parental

<sup>39</sup> Joe Spermdonor comes closer to intentional parenthood than does Joe Blow because Joe Spermdonor donated sperm to be used to create a child.

<sup>40</sup> Note that one need not already be in a loving relationship to promise to love someone or to be obligated to love someone. The former occurs in many arranged marriages and the latter occurs both in many arranged marriages and, arguably, in standard procreative cases.

responsibility includes providing children with what they need, it may be impossible to transfer parental responsibility.

#### IV. OBJECTIONS

##### Adoption

Parental responsibility is often transferred via adoption.<sup>41</sup> Widespread acceptance of adoption may make it seem like parental responsibility is easily and unproblematically transferable. But, transferring parental responsibility in adoption and transferring parental responsibility in sperm donation cases may not be relevantly similar. Furthermore, even if they are, that does not mean that transferring parental responsibility in sperm donation cases is unproblematic. Instead, it may mean that transferring parental responsibility in adoption cases is not as simple as we may have thought.

There are some important differences between adoption and sperm donation. First, adoption is usually a *post facto* solution to the pressing problem of a child whose parents cannot or will not care for them. The child is already there and something must be done to care for her as best we can. This may differ, morally, from conceiving a child with the intention of transferring one's parental responsibilities, and for that express purpose, as a sperm donor does. If some parental responsibilities are of the emotionally relational category, and therefore not easily transferred, it may behoove one to take care not to incur those responsibilities unless one has a reasonable expectation of being able to fulfill them oneself. A sperm donor has deliberately done the opposite; a person relinquishing her child for adoption most often has not. Second, whereas one may claim that parents who relinquish their children for adoption may do so as an expression of their love for a child whose care they cannot undertake, it is hard to see how sperm donation can be an expression of love. 'I loved you so much that I released you to a family more capable of caring for you,' a parent who has relinquished a child for adoption may say to her biological child. But, what comparable statement can a sperm donor make? 'I loved you so much that I donated (or sold) the gamete from which you grew to someone else?' In what sense is that an expression of love and who is the subject of that love? These differences give pause to the analogy between adoption and sperm donation. Finally, adoption transfers parental responsibility from those

<sup>41</sup> Cases of foster care are analogous, for our purposes, to cases of adoption: they are post fact solutions to the pressing problem of a child in need of care and usually not ideal.

who have it to those who did not (until they accepted the transfer) but sperm donation can sometimes 'transfer' parental responsibility solely to the mother, who already has that responsibility. Can she meaningfully be said to now have more of it? If not, it is difficult to understand the sense in which the responsibility has been transferred.

Even if we assume that adoption and sperm donation are analogous, what conclusions should we draw from this analogy? We can either decide that they are both unproblematic transfers of responsibility or that they are both problematic transfers of responsibility. I'd argue for the latter conclusion. Adoption is not, in my opinion, an ideal arrangement, even though it is often the best one can do in a difficult situation and may often turn out quite happily for all concerned. It is not uncommon for adoptees to wonder why their natural parents relinquished them for adoption, to struggle with identity, self-esteem, and feelings of rejection.<sup>42</sup> It is also not uncommon for biological parents to have persistent negative feelings about having relinquished their child for adoption.<sup>43</sup> That may be why it is commonly and accurately assumed that cavalier reasons for releasing a child for adoption indicate too cavalier an attitude towards one's parental responsibilities.<sup>44</sup> Adoption seems to be an attempt to make the best of a less than ideal situation. It is not itself an argument in favor of the unproblematic transfer of parental responsibility.

Furthermore, even if we take adoption as a role model for the transferring of parental responsibility, current practices of sperm donation, in the USA as well as many other countries, fail to meet the non-commercial and parental screening standards set by adoption.

##### Delegating parental responsibility

One might claim that parental responsibility entails seeing to it that one's child has a long term, loving relationship with a caregiver, but that relationship need not

<sup>42</sup> See D. Brodzinsky. *The Psychology of Adoption*. New York, NY: Oxford University Press, 1990; A. Jones. Issues Relevant to Therapy with Adoptees. *Psychotherapy* 1997; 34(1): 64–68; and S. L. Nickman & A. Rosenfeld. Children in Adoptive Families: Overview and Update. *J Am Acad Child Adolesc Psychiatry* 2005; 44(10): 987–995.

<sup>43</sup> See J.J. Haugaard, A. Schustack, et al. Birth Mothers Who Voluntarily Relinquish Infants for Adoption. *Adoption Q* 1998; 2(1): 89–97; and M.L. Weinreb & B.C. Murphy. The Birth Mother: A Feminist Perspective for the Helping Professional. *Women Ther* 1988; 7(1): 23–36.

<sup>44</sup> Attitudes toward adoption likely vary by culture but I would venture to guess that the need for parental love and unease at having been released for adoption are likely near universal. Similarly, I'd be surprised if the pain of not being able to raise one's biological child was a mere cultural artifact. These issues remain open to further findings.

be with the one who is, herself, parentally responsible. From this point of view, parental responsibility requires seeing to it that the child has a long term, loving relationship with a caregiver, but not being the caregiver oneself. This is a rather odd view of responsibility, one which would mean that one's teaching responsibilities require not that one teach but, instead, that one ensure that the class is taught (perhaps by a friend). Some responsibilities are fairly simple to delegate, e.g. bringing cups to a party, since who brings the cups (assuming the type of cup is decided in advance) is unlikely to make any difference. But responsibilities to perform duties that different people perform significantly differently, e.g. teaching, singing, drawing, conducting, and, yes, parenting, seem to commit one to doing the job oneself or transferring the responsibility entirely. Hiring a substitute teacher or relinquishing a child for adoption seem more like transferring one's responsibilities than fulfilling them oneself. But even if parental responsibility could be fulfilled by seeing to it that one's child is adequately raised, most sperm donors usually do not meet that standard. Since most sperm donors usually know little or nothing about those receiving their sperm, and since sperm donors do not monitor their children to step in and replace a delegate failing to properly play the parental caregiving role, most sperm donors cannot be said to fulfill even the diminished 'seeing to it' sense of parental responsibility.

### Reckless transfer?

Some may wonder whether sperm donation is a reckless transfer, given that those who buy sperm are likely to be, like most people are, adequate parents, especially since they can afford sperm and obviously want children. I suppose it is true that, generally speaking, parents who want children tend to make better parents than people who have children that they did not really want to have. It is also likely that poverty stresses families, which can lead to less than adequate parenting. Yet, affording sperm is not a guarantee of financial stability, especially since sperm is not particularly expensive. More importantly, sperm purchase is surely no indication of mental stability, kindness, consistency, patience and other qualities that contribute to adequate parenting. As for most people being adequate parents, the prevalence and persistence of child abuse and neglect (which occurs frequently in all socio-economic groups) make relying on this generality, even if it is accurate, reckless. Relying on the general adequacy of people does not meet the high standard of care that owners of hazardous materials must meet.

### Competing claims

Some may claim that the need for donor sperm revives the analogy between sperm donation and adoption since sperm donation may also be the best we can do to satisfy pressing needs. Whereas adoption satisfies the child's pressing needs, however, sperm donation satisfies the pressing needs of infertile and/or gay adults. Since parental responsibility is to the child and for the child's sake, the fact that the needs of the child may justify the transfer of that responsibility does not entail that the needs of the parents can as well. The positive adult claim to have children is not necessarily a claim that is permissibly achieved by any means necessary. Whether that sort of claim can override the problems I point to regarding donor responsibility is a question I leave open. My focus here is on donor responsibility.

### Too high a standard

It can be argued that the Hazmat theory sets parental responsibility at a standard that no parent could meet.<sup>45</sup> After all, one can never be sure that one will fulfill one's parental responsibilities, given that one might die, become terribly ill, turn out to be an unfit parent, etc. This issue raises complex questions about parental responsibility that demand further research but I will briefly address it here. It is true that parental adequacy cannot be guaranteed but, arguably, we can come reasonably close by having children only once we are in a position to have reasonably high expectations of being able adequately to raise and nurture them to adulthood. That position may include financial, emotional, and social stability, as well as a safety net of caring adults (including spouses, grandparents, friends, or other social networks) who can step in in case of disaster. I suggest that the reason we allow reasonably high rather than guaranteed expectations to meet our parental adequacy standards is because we have strong interests in becoming parents and guarantees of parental adequacy are never available. (See the discussion of risk imposition, in the Hazmat theory section, above.) Just as we allow people to drive, but require them to be licensed and insured, we may allow a reasonably high expectation of parental adequacy to suffice. Sperm donation, however, as argued, often involves utter abdication of responsibility or a reckless transfer of responsibility – nothing even close to meeting a high standard of care.

<sup>45</sup> I am grateful to an anonymous reviewer at *Bioethics* for raising this objection.

### Is sperm donation in the child's interests?

One might think that Sheila is able to waive Joe Spermdonor's obligation to Julie just as parents often consent to arrangements on behalf of their children, to further their children's interests. But it's not easy to see how a waiver can be said to be in Julie's interests in this case. If Sheila is benefiting Julie by distancing her from Joe Spermdonor because he'd make a lousy father, why not say what we would usually say to someone who would make a lousy father: don't have any children. Instead of having children and then doing them the favor of distancing them from your lousy parenting, don't have them at all. We generally think it better to refrain from undertaking responsibilities we will not be very good at fulfilling. On the other hand, if Joe Spermdonor would make a good father, it would not be in Julie's interests to have him absolved of his parental responsibilities. However, maybe if Sheila is married to Sam, who would make a better father than Joe Spermdonor, we can say that it is in Julie's interests to have Joe's responsibilities transferred to Sam. But, that transfer of responsibility implies that Joe Spermdonor is (initially) parentally responsible.

Maybe Sheila benefits Julie by absolving Joe Spermdonor of his parental responsibilities since that is the only way that Julie can exist at all.<sup>46</sup> Of course, we may also say that if someone will only have a child if they can beat it occasionally, and the child's life is worth living, overall, then it is in the child's interests to be beaten occasionally. Or, if someone will only have a child if they can beat it often, yet its life is still worth living, overall, then it is in the child's interests to be beaten often. These counterintuitive conclusions lead most of us to abandon using existence itself (which nobody needs and everyone has) as a justification for what we would otherwise take to be parental wrongdoing. If existence itself allows Sheila to let Joe Spermdonor off the hook, it is only because, on some views, existence is worth numerous burdens and not because being a sperm donor absolves one of parental responsibility.

## V. PRACTICAL IMPLICATIONS AND CONCLUSIONS

The practical implications of this paper demand far more thought and analysis than I can provide here. I will briefly highlight some important points, leaving further analysis for future research.

<sup>46</sup> See 'The Non-Identity Problem.' D. Parfit, 1984. New York, NY: Oxford University Press, pp. 351–374.

If sperm donors are parentally responsible, and parental responsibility is not easily transferable, sperm donation poses a serious moral problem. It may be argued that since, in the usual sperm donation case, we all go home happy, sperm donation is a positive practice. That may be true, although it is not as straightforward as some may think. The consequences of sperm donation have yet to be fully realized or assessed. It is conceivable that sperm donation may contribute to the dispersal and erosion of parental responsibility. It may also contribute to a eugenic or proprietary attitude to children.<sup>47</sup> But, I make no claims in that regard. From a deontological perspective, sperm donation is problematic. Ova donation may be problematic as well since, if we accept the Hazmat theory of parental responsibility, egg donors are just as parentally responsible as sperm donors. If we reject the Hazmat theory, a distinction between egg donors and 'standard' mothers can be drawn on the basis of gestationalism, but that is, as argued, a weak theory. (Intent and voluntary commitments may sometimes distinguish 'standard' mothers from egg donors, but they will not distinguish between egg donors and women who become pregnant accidentally.) Because motherhood usually involves both providing an ova and gestating a fetus, egg donation may be more complicated and perhaps less morally problematic than sperm donation, though it is not on the Hazmat account. But I leave a full discussion of egg donation for another day.

The Hazmat theory may be thought to hold implications for the permissibility of abortion as well. If we are responsible for the needy beings that result from the risks we take with our gametes, does that make abortion – the killing of the needy beings that result from the risks we take with our gametes – impermissible? From some points of view, perhaps. According to the Hazmat theory, however, we are responsible for the *persons* that result from our gametes since our obligations to needy beings, generally, are unclear. Suppose our gametes, if united with others, would result in non-sentient, needy lumps that disintegrate unless tended to with elaborate care and at considerable expense. It is doubtful that we would be required to sustain the lumps since, arguably, nonsentient lumps are no worse off disintegrating than not. It is the fact that the risks we take with our gametes sometimes result in needy *persons* that makes us responsible for the care of those persons (what our responsibilities would be to sentient lumps, etc., I leave open). If we take personhood to occur when brain waves begin, at viability, or at

<sup>47</sup> See A. Davis. *Reproductive Technologies and Our Attitudes Towards Children*. *Logos* 1998; 9: 51–77. See also, D. Plotz, 2005. *The Genius Factory: The Curious History of the Nobel Prize Sperm Bank*. New York, NY: Random House.

birth, then our parental responsibilities begin at those times, respectively, rather than at conception.<sup>48</sup> We may also simply view our parental obligations as conditional upon our gametes attaining full moral status. Questions of the permissibility of abortion will then be answered, as they often are now, on the basis of our views regarding attainment of full moral status.

Some may claim that holding sperm donors responsible for their resultant offspring is too counterintuitive to accept. But, we may wonder about the strength of that intuition. As McMahan asked, if a sperm donor is the only match for the bone marrow without which his biological child will die, does he not have a stronger obligation than a stranger might to donate the bone marrow?<sup>49</sup>

<sup>48</sup> The Hazmat theory though, may be taken to challenge Thomson's argument in favor of the permissibility of abortion (until viability) even if a fetus is a person. Thomson attempts to respond to parental responsibility kinds of claims by arguing in favor of a 'reasonable care' standard of avoiding pregnancy. The Hazmat theory may, on some views, challenge that argument by invoking a higher standard of care with respect to one's gametes. (See J.J. Thomson. A Defense of Abortion. *Philos Public Aff* 1971; 1: 47–66).

<sup>49</sup> McMahan, *op. cit.* note 20, p. 375.

If the intuition that sperm donors are not parentally responsible is going to bear significant weight, an argument supporting it and a counter-argument to the ones supplied in this paper is required. Until then, it's seller (or donor) beware.

#### Acknowledgements

I am extremely grateful and indebted to Paul Hurley and Dion Scott-Kakures for extensive comments and discussions on numerous drafts of this paper. I am also very grateful to Ann Davis, Peter Kung, Alex Rajczi, Masahiro Yamada, Charles Young, and the members of the Claremont Philosophers Work in Progress Group for helpful comments and discussions. I am indebted to anonymous reviewers for Bioethics, for helpful comments.

Rivka Weinberg received her PhD. in Philosophy from the University of Michigan in 2001 and is currently an Assistant Professor of Philosophy at Scripps College, Claremont, CA. Her primary research interests are Ethics, particularly procreative ethics, theories of moral obligation, contractualism/contractarianism; and the Metaphysics of birth and death.

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