A Defence of Parental Licensing

How We Should Do Justice to Children and Adults

Riccardo Maria Spotorno

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DIRECTORA DE LA TESIS:
Prof. Serena Olsaretti

DEPARTAMENT DE DRET

Universitat
Pompeu Fabra
Barcelona

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Abstract

This thesis is a comprehensive study and defence of parental licensing, i.e. the proposal of making the right to parent one's biological conditional to the successful completion of a series of checks and tests that aim to establish whether an adult, or a group of adults, can adequately raise a child. Although this proposal has been object of deep controversy in the public debate and between philosophers working on parent-child relationships, it has not received a careful and detailed philosophical analysis: this thesis aims to fill this gap. More specifically I aim to show that we can build a defence of this rather controversial proposal starting from uncontroversial premises on justice between children and parent, which I spell out in Chapter 1. In Chapter 2, I provide an overview of the existing debate on parental licensing and I show that the main argument in its favour is based on symmetry between adoptive parents, who are currently licensed, and biological ones who are not; opponents of parental licensing, in turn, subscribe to what I call the Asymmetry View on parental licensing. Although advocates of parental licensing can convincingly reply to these objections, the existing debate fails to address some important fundamental issues. Chapter 3 argues that parental licensing is one among different possible systems according to which the state decides how to assign a specific child to the parental custody of a specific adult; moreover each child-assigning system determines a different distribution of harms and risks to children and adults. In Chapter 4, I argue that while defenders of the *status quo* may defend it only by invoking aggregativist views on the justification of harm and risk imposition, which are deeply implausible, a family of more plausible views on social risk supports parental licensing. Chapter 5 considers a series of questions related to the actual implementation of parental licensing and in particular addresses concerns about the presence of mistakes in the screening procedure and the justifiability of the policy under unjust social circumstances; this chapter also concludes my main defence of parental licensing. The last two chapters consider moral requirements that parents have beyond the ones that my licensing scheme aim to implement. Chapter 6 analyses and challenges the so called "Dual Interest View" on justice between parents and children and defends a controversial principle according to which the overall best interest of the child always takes priority over adults' interest in parenting. Chapter 7 argues that children have a right to be loved unconditionally and that adults who are unable to love their children unconditionally lack a moral right to parent any child.

Resumen

Esta tesis es un estudio sistemático y una defensa del *parental licensing* (es decir, la condicionalización del derecho a criar a un hijo biológico a la aprobación de una serie de tests y controles orientados a establecer si un adulto, o un grupo de adultos, es capaz de criar adecuadamente un niño). Pese a que esta propuesta ha sido objeto de una profunda controversia, tanto en el debate público como entre los filósofos que trabajan sobre las relaciones entre padres e hijos, no ha recibido un análisis detallado y meticuloso: esta tesis se propone llenar este vacío. En concreto, mi objetivo es mostrar que podemos defender esta polémica propuesta apelando únicamente a premisas no controvertidas sobre la justicia entre padres e hijos, que detallo en el Capítulo 1. En el Capítulo 2, ofrezco una visión panorámica del debate sobre el *parental licensing*, mostrando que el principal argumento a favor de la propuesta apela a una simetría entre padres adoptivos, quienes actualmente deben obtener un carné, y padres biológicos, que no lo necesitan; quienes se oponen al *parental licensing*, por otro lado, subscriben lo que yo denomino la Posición de la Asimetría (*Asymmetry View*) sobre el *parental licensing*. Aunque los defensores del *parental licensing* pueden responder con éxito a estas objeciones, el debate, tal y como se ha desarrollado hasta ahora, ha descuidado cuestiones fundamentales que una defensa robusta del *parental licensing* – o, igualmente, una crítica a la propuesta – debería tener en cuenta. En el Capítulo 3 argumento que el *parental licensing* es uno de los diversos sistemas mediante los cuáles el estado decide cómo asignar un hijo específico bajo la custodia de un adulto en particular; además, muestro que cada uno de estos sistemas produce una distribución distinta de los daños y los riesgos, tanto para los adultos como para los niños. En el Capítulo 4, argumento que, mientras que los defensores del *statu quo* sólo pueden apelar a posiciones agregativistas acerca de la justificación de la imposición de daños y riesgos, que son profundamente implausibles; otras posiciones más plausibles apoyan el *parental licensing*. El Capítulo 5 considera una serie de cuestiones relacionadas con la implementación de la propuesta; en particular, la posibilidad de que se produzcan errores durante el proceso de cribaje y la justificación de la propuesta en condiciones sociales injustas. Este capítulo concluye también mi defensa del *parental licensing*. Los dos últimos capítulos discuten los requisitos morales de los padres, más allá de los que mi propuesta particular pretende implementar. El Capítulo 6 analiza y pone en duda la llamada Posición del Interés Dual (*Dual Interest View*) acerca de la justicia entre padres e hijos, asumida a lo largo de la tesis. Frente a dicha posición, se defiende un principio controvertido según los mejores intereses del niño siempre gozan de prioridad sobre el interés que los adultos puedan tener en la crianza. En el Capítulo 7 se argumenta que los niños tienen un derecho a ser amados incondicionalmente y que los adultos que sean incapaces de amar a sus hijos carecen del derecho moral a criar ningún hijo.

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Introduction

Our ordinary views about the parent-child relationship seem to be characterized by a peculiar mix of widely shared convictions about some matters and stark controversy about others.

Starting with the former, both philosophers working on childhood and the public at large mostly agree that children have both negative and positive fundamental rights: in very general terms, children have a right to a decent childhood and to a sufficiently good development. These general claims entail more specific ones; fulfilling children's rights to a decent childhood and a sufficiently good development entails that they have rights to physical integrity, food, shelter, health, education, freedom from indoctrination, etc. While children's rights are correlated with general obligations falling on all moral agents (more about these shortly), parents –typically, those who have begotten those children, and so, their biological parents- hold special obligations *vis-à-vis* their children:[1] a parent has a primary responsibility to ensure that her child has a decent childhood and development. The parent-child relationship, then, is morally special primarily because parents have more specific and demanding duties towards their children than strangers: while the latter have negative duties and general duties of assistance, commonly discharged through paying taxes that fund public services to children, such as education and health-care, parents have a duty to directly care for their children and support them in their development. Parents, however, do not have only special obligations towards their children, but also some special rights. Specifically, a parent has a right to raise their child and to determine many aspects of their child's life by making choices about *how* to raise their child; this right includes rights of non-interference against the state and strangers that protect the exclusivity and intimacy of the child-parent relationship.[2] The general obligations which we all have towards children include the obligation, discharged by the state, to pass laws and implement public measures

[1] From now on when I refer to "parents" without any further clarification I refer to biological parents, i.e. parents who have either procreated or gestated their child. In Chapter 1, I analyse the relevance of biological ties between and a child and the adults who raise him. In Chapter 2, I consider whether different considerations apply to biological and adoptive parents both in terms of their parental obligations and rights.
[2] The family is characterized by other special moral relationships which entail distinctive duties to other family-members, e.g. duties to parents, to siblings to romantic partners, etc., and rights of non-interference against strangers and the state that protect the exclusivity and intimacy of these relationship. My focus is only on justice within parent-child relationships.
understood as the duties that parents have towards their children and the rights they have *qua* parents.

to enforce parental obligations; the state should also respect and protect parents' rights and, more generally, it should take into due consideration both children's and parents' interests when it makes choices that affect parent-child relationships.[3]

While there is broad agreement with these claims concerning the parent-child relationship, several other issues elicit very divided opinions. Three main areas of disagreement are as follows. First, we disagree about which rights children have beyond their basic entitlements mentioned above, and, accordingly, about which obligations parents have towards their children beyond their basic parental duties. Here, both philosophers and the public at large defend a variety of views regarding whether there is a requirement to respect a child's present and future autonomy (Feinberg 1980), and what that amounts to and whether, therefore, parents may pass their religious and ethical views to their children, or make medical and educational choices about their children on religious grounds (Clayton 2006, Brighouse and Swift 2014b, Fowler 2020). There is also disagreement on the question of which financial and non-financial sacrifices parents may and should make in order to improve the future prospects of their children (Vallentyne 2003 Clayton 2015); on whether children have a right to play, unstructured free-time and a sense of imagination that constraints what parents may choose for them, and on whether children have a right to be loved and parents a duty to love their children (Macleod 2010a, Gheaus 2015).

Second, we disagree about how we should distribute the costs related to raising children between parents and non-parents. While some philosophers have argued that, ideally, parents should bear all the costs necessary to raise their children since they are responsible for the existence of their children and consequently for their needs (Rakowski 1991, Casal and Williams 1995), others claim that parents have a valid claim to be, at least partially, financially supported in discharging their parental functions. This conclusion has been defended for different reasons: some have claimed that this is because parenting is a particularly important life project which people would choose to have protected (Bou-Habib 2012); others because discharging the role of parents involves bearing autonomy-limiting burdens for which parents should be compensated (Alstott 2004); others yet have argued that this is because by raising a child parents contribute to the creation of several

[3] In Chapter 1 I describe the so-called "dual interest view" on justice of child-parent relationship which I will take as an assumption for my defence of parental licensing, while in Chapter 6 I present some objections to this view.

public goods, the costs of which should be shared fairly among all those who benefit (George 1987; Folbre 1994; Olsaretti 2013).

Third, and perhaps most surprisingly, we hold divergent views about which specific policies the state should and may put in place to enforce parental duties and secure respect of children's rights, even where the most minimal duties and rights, mentioned earlier, are concerned, on which there is a general consensus. To be sure, here virtually everyone agrees that the state is justified in intervening with families where parents have committed substantial and severe forms of maltreatment; the state is justified in curtailing or withdrawing altogether these maltreating parents' rights and removing children from their custody; it is also justified, sometimes, in punishing them. Besides these extreme cases, however, the justifiability of other legal measures and policies that aim to protect children is hotly disputed.

This thesis is concerned with this third set of issues. More specifically, it provides an in-depth examination and defence of the controversial proposal of licensing (biological) parents, originally presented by Hugh LaFollette (1980). A parental licensing policy would require procreators to pass a series of tests and checks that prove their competence to adequately raise a child and thereby obtain a parental license in order to be recognized as the legal parents of the child and acquire the parental rights described earlier. Two main connected reasons have motivated this thesis' choice of focus.

First, as mentioned above, it seems surprising that there has been so little agreement on the defensibility, even in principle, of a proposal that, on the face of it, guarantees protection of rights on which there is so much agreement. If we all endorse the minimalist account of children's rights and of correlative parental obligations mentioned earlier, we agree that the right to parent a child is both limited and conditional. Why not endorse, then, the view that those who are classified as incompetent by the lights of this minimalist standard lack the moral right to parent and should be denied the legal right to do so?[4] While a few scholars have defended parental licensing as a direct implication of the state's duty to protect children (LaFollette 1980, 2010 Westman 1994, Vopat 2007; Cohen 2019), many others, including philosophers working on the family and the public at large, find it implausible,

[4] For a more robust account of parental competence, see Macleod (2015).

unfeasible, unjustifiable and deeply disrespectful to parents.[5] Parental licensing seems to be a highly controversial proposal grounded on rather uncontroversial premises. Understanding why this is the case, and whether parental licensing is indeed something we are committed to, at least at the level of principle,[6] by dint of accepting the uncontroversial premises I mentioned at the start of this introduction, seem important tasks for those interested in the justification of the family within a broadly liberal theory.[7]

Second, and relatedly, a sustained philosophical investigation of the merits of parental licensing is still missing from the sophisticated literature, within ethics and political philosophy, on the family; as I will show below, embarking in this investigation brings to light important insights. More specifically, I show that a convincing, well worked-out defence of parental licensing has to address some fundamental questions that so far have been neglected in debates on the family but that we must take a stance on.

My analysis of parental licensing proceeds as follows. Chapter 1 begins by spelling out in more depth the uncontroversial premises I have sketched above. I present an account of the basic needs and rights of children and of basic parental obligations by using the concept of child maltreatment. I then present what I take to be a plausible general account of adults' interest in parenting their biological children, which for reasons I explain is something we must take seriously when considering the licensing proposal, and some general considerations that plausible views on justice between parents and children all endorse. In Chapter 2, I critically review the existing literature on parental licensing; the existing debate between advocates and opponents of parental licensing has focused extensively on the claim that the reasons we have to require prospective *adoptive* parents to pass some tests and checks to become eligible for adopting a child apply also to biological parents, so that we should license them as well. Advocates stress that there are strong analogies between adoptive and biological parenting that justify a similar treatment of biological and adoptive parents, i.e. that both of them should be licensed; opponents, by contrast, present different reasons for why parenting one's own biological child is significantly different from adopting a child and for concluding that biological parents

[5] I review and reply to these objections in Chapter 2.
[6] In the thesis I distinguish between questions about the justifiability of parental licensing under ideal conditions, or at the level of principle, from questions about its implementation, which I analyse in Chapter 5.
[7] In Chapter 1 I clarify in whath sense the framework I assume is liberal.

should not undergo a screening and licensing process. I examine this debate closely, and argue that it fails to address the fundamental issues that are at stake and that can explain the disagreement about parental licensing.

With these conclusions at hand, Chapter 3 turns to offer a new framework that aims to redefine the debate on parental licensing and that can explain the existing disagreement about it. I argue that the state has to choose a system according to which it assigns the parental custody over a specific child to a specific adult, or groups of adults: advocates of parental licensing claim that the state should make the acquisition of parental custody over one's biological child conditional on passing a screening procedure and obtaining a license, while opponents defend a system (which happens to be the *status quo*) in which procreators automatically obtain the parental custody of their biological children. Relying on the premises drawn in Chapter 1, we can characterise these two "child-assigning systems" as distributing different prospects for children and adults; more specifically, they determine a different distribution of risks of harms to children, some of whom will suffer maltreatment, and to adults, some of whom will have their biological children wrongly removed from their custody. The disagreement on parental licensing, I argue, can be explained by our different judgements about which distribution of risks of harms is justifiable. The normative assessment of the various distributions of risks of harms and benefits which different child-assignment systems operate depends on general principles about the justifiability of the imposition of harms and risks of harms over which philosophers disagree: such a disagreement is what explains the disagreement on and the controversy about the proposal of licensing parents.

In Chapter 4, I turn to examine head on how the competing general principles we could deploy to settle questions about the justifiable distribution of risks of harms bear on the defensibility of different child assignment systems. I argue that we can justify the *status quo* on child assignment by invoking aggregativist principles according to which the only morally relevant consideration that justifies the choice of a specific child-assigning system is the amount of aggregated harm to children and adults it generates. By contrast, views that rejects aggregation and, instead, give priority to the minimization of child maltreatment, support parental licensing. Since we generally find aggregativist views deeply implausible, the fact that the rejection of parental licensing assumes those views is a

problem for opponents of parental licensing. Moreover, reframing the debate on parental licensing as a debate about the justifiable imposition of risks of harm to parents and children makes a relevant contribution independently of whether someone accepts my specific conclusions about aggregativism being presupposed by a defence of the status quo. This is because so reframing the debate opens the door for (and calls on) both advocates and opponents of parental licensing to develop better worked-out arguments in favour of their positions that do address the fundamental issues involved in the state choice of a child-assigning system.

Some of the scepticism that people have voiced about parental licensing does not regard its fundamental moral justification, but, rather, the implementation of the proposal and its feasibility. A convincing defence of parental licensing, besides providing a general normative argument in favour of it, has to address these practical concerns, something I do in Chapter 5. There I identify the level and kind of parental competence the state should require by reference to the notion of child maltreatment outlined in Chapter 1, and I outline what a parental licensing procedure, composed of different checks and tests, should be like that aims to detect which parents are likely to maltreated their children. I then turn to identify different types of mistakes that this screening procedure would unavoidably make: while the mere presence of mistakes does not undermine the justifiability of parental licensing, an accurate analysis of the different types of mistakes is crucial for identifying duties that the state has when it implements parental licensing. In particular, the state should take measures to ensure that adults are not wrongly classified as incompetent prospective parents, when they are, in fact, able to adequately raise a child, and that we can justify these type of mistakes as inevitable by-products of our effort to ensure that no incompetent would-be parent gets a license because of a failure in the screening procedure. The state, moreover, should carefully avoid any wrongful discrimination that might be carried out either through the very design of the screening procedure or by the biased behaviour of officers who run the specific tests and checks. Finally, I argue that the state has the duty to introduce, alongside with parental licensing, a series of policies that support parents in discharging their parental obligations and ensure that licenses are not denied to many adults who would be unjustly barred from parenting only because they lack some financial and non-financial support to which they are entitled. If a state is unable or unwilling to fulfil these obligations, a policy of licensing parents would be impermissible;

saying this, however, does not amount to denying that a state should *both* license parents and fulfil these obligations.

Chapter 5 concludes my defence of parental licensing. The last two chapters of the thesis consider two of the particularly controversial normative issues about parent-child relationships to which I have referred at the start of this Introduction, and which my defence of parental licenses side-lines.

Chapter 6 analyses the so-called Dual Interest View which, broadly speaking, claims that when settling various questions concerning the justification of the parent-child relationship (both its very justifiability and the shape it should take), we should not only consider children's interests, but we should also give appropriate consideration to parents' ones. While I subscribe to this general claim and I have built my defence of parental licensing on this assumption, in this chapter I subject the Dual Interest View as it has been defended by contemporary scholars working on the family to closer scrutiny. I show that we should distinguish between two different normative claims that can be made in the name of the Dual Interest View, and argue that while one of them is plausible, it is compatible with the controversial child-centred principle, which I defend, on which the interest in parenting may *not* outweigh the overall best interest of the child.

Chapter 7 examines the claim that children have a right to be loved by their parents. I critically assess an argument recently proposed by Samantha Brennan and Colin Macleod (2017) according to which homophobes lack a moral right to parent any child because there is always the risk that they will be unable to discharge their duty to love their child given that there is a non-trivial probability that their child will turn out to be gay. While I agree with the conclusion of this argument, I show that it generates implausible judgements when we consider a case in which a couple of racist parents want to adopt a white child, because they will be unable to love a black one. Brennan's and Macleod's argument would conclude that racists do have a right to adopt a white child: this conclusion seems deeply wrong. I propose that we revise their argument by specifying that children have not only a right to parental affective care, but also a right to be loved unconditionally, i.e. independently of their morally irrelevant features. Since both homophobes and racists fail

to respect their children's right to be loved unconditionally, they lack a moral right to parent any child, and in particular they should not be allowed to adopt any child.

While these two chapters go beyond the defence of parental licensing which is the main aim of this thesis, the issues they discuss can bear on formulating an account of parental licensing that is different from the minimalist one I defend here. In particular, Chapter 6's conclusions indirectly strengthen the case for parental licensing, in that they show that less follows than is often thought from the premise that parents' interests, as well as children's, are fundamental. Moreover, if the conclusions of Chapter 6 and Chapter 7 are right, it may be that we should adopt a more demanding level of parental competence for a parental licensing procedure – at least, perhaps, for adoptive parents - than the minimalist one I have assumed.

However, these are not possibilities I consider in this thesis. Parental licensing, as this thesis sees it, aims to protect the most basic children's entitlements and to prevent child maltreatment; these are normative starting points over which we do not commonly disagree. I argue that if we start from these assumptions, and endorse plausible views on the distribution of harms and risks, we should be in favour of parental licensing, and that concerns about its implementation can be addressed through a careful and morally sensitive design of the screening procedure and the other complementary measures that the state should implement in conjunction with parental licensing. If this now controversial proposal can indeed be defended given widely shared assumptions about children's rights and relatively uncontroversial ones about how we should distribute risks of harm, this is an important enough result.

Chapter 1
Justice between Children and Parents

This chapter describes the general normative framework that forms the context of my research and lays down some important assumptions for my defence of parental licensing. I specify in which sense the family, and child-parent relationships in particular, constitutes an interesting domain of study for political philosophers; I then present the elements of a plausible account of justice between adults, and parents in particular, and children which are necessary for the discussion of this thesis. These include four main, related, elements: first, some fundamental rights and needs of children neglect or violation of which are seen to constitute child maltreatment; second, the minimal parental obligation to avoid child maltreatment; third, children's interest in being raised by their biological parents; and finally, adults' interest in parenting their own biological child. I conclude by considering some principles according to which the state should weigh the different interests at stake when it makes choices that affect the formation and development of child-parent relationships.

1 The family as special domain of justice

Since the first feminist critiques to John Rawls' foundational work in contemporary political philosophy (Rawls 1977, 1999, 2001) for not having given sufficient consideration to the family, issues of justice related to the family have become the object of substantial attention in normative theory. In particular, scholars who work under the liberal framework designed by Rawls have argued that the family is a fundamental component of our social lives and affects deeply our prospects in many different respects and in many different ways; more specifically, the family is part of what Rawls famously calls "the basic structure of society", i.e. the complex of institutions that distribute benefits and burdens of social life and determine the distribution of the so-called social primary goods (Rawls 1977, 1999 pp. 6-10). The institutions that compose the basic structure are regulated by principles of justice and for this reason the family is a domain that political philosophers should pay close attention to, both to ensure that some general principles of justice constrain its

functioning and to formulate what justice demands within the family. (Okin 1989, Munoz-Dardè 1998, Chambers 2013).

The liberal framework that I adopt in this thesis can be broadly defined in the following terms. First, it
employs a form of individualist methodology for which individuals are the ultimate object of moral consideration: while collective entities like communities, companies, states, and families are relevant objects for normative analysis, our principles of justice are ultimately concerned with the individuals that form these entities; in other words, entities do not have a relevance for justice that transcends the one of their individual members. Second, liberalism is characterised by a strong commitment to individual autonomy: individuals have a right to form, revise and follow their life-plans and values, to lead their lives on the terms set by themselves, and have a right to be free from unjustified interferences by others and the state into their private lives. Third, liberalism recognizes the fact of reasonable disagreement among the different conceptions of the good held by the citizens of a state. Because of this unavoidable disagreement, the state has a duty to remain neutral between comprehensive conceptions of the good and to justify its actions on the basis of political principles that can be the object of a consensus among all reasonable citizens. In this thesis I subscribe to this broad liberal framework and I consider debates about the justice within the family that are conducted under the same framework: for these reasons I will not consider accounts that give the family a value that transcends considerations about the individuals who form it, accounts that do not recognize the importance of the autonomy of family members and accounts that argue that the state may promote a specific, controversial conception of the good through its coercive and expressive means.[8]

While a substantial amount of the interest in justice within the family, within the liberal framework just sketched, has focused on the relationships between spouses and romantic partners and have considered issues like the socio-economic inequalities between romantic partners, the distribution of care-work within the family, and the hierarchical structure of the family (Kearns 1983, Okin 1989, Schouten 2020), another main area of concern, which has attracted more attention, regards the relationship between parents and children; this

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[8] Rawls (1993) presents the most prominent account of this understanding liberalism: his account clearly inspires my broad liberal account but I do not need to subscribe to all its components and claims.

interest can be explained by two main considerations that are particularly relevant for liberal philosophers. First, the way in which individuals are raised by their parents has profound effects on many aspects of their lives that are relevant for justice: the socio-economic status of parents deeply influences children's education and economical perspective; the type of upbringing children receive is a key factor for their wellbeing and their emotive and psychological development; parents have extensive power over many aspects of their children's lives and constantly make choices about the lives of their children and these choices have an important impact on child's present and future lives.[9] Second, the parent-child relationship is involuntary and deeply asymmetrical: while adults commonly choose whether and when to procreate, whether they want to raise their biological children or they want to adopt a child, children have no choice on who will raise them (Clayton 2006, pp. 93-94, Brighouse and Swift 2014b, pp. 88-89). Moreover, while parents control the lives of their children, the opposite is not true: parents decide what their children eat, which clothes they wear, to which school they go, etc., while children do not take any important choices about their parents' lives.

Since political philosophy is ultimately interested in formulating normative principles that regulate how institutions that have a substantial impact on the lives of their members and exercise power over them, may and should exercise that power, political philosophers have felt the need to feel the gap left by general theories of justice and to develop careful and systematic research on the justice principles that regulate the relationship between parents and children within the family. A number of works have focused on the effects that the family, even in the informal constant interactions between parents and children, has on children's socio-economic prospects, thus raising the question of how we should apply the principle of equality of opportunities in light of the existence of the family and which sort of indications such a principle gives us about how the state may and should regulate what happens within the family (Rawls 1999 pp. 447-448, Fishkin 1983, Vallentyne and Lipson 1989, Munoz-Dardé 1998, 1999, Brighouse and Swift 2008, Mason 2006, Macleod 2017). A different set of concerns arise about the justice requirements that apply to parent-child relationships independently of considerations about the inequalities in children's opportunities that the existence of families might determine. In very general terms, this body of research considers what duties parents have towards their children, what

[9] This concern has been originally identified by Rawls (1999) himself an later developed by Fishkin (1983).

constraints there are on what they might do with and to their children, and what rights they have *qua* parents against others and the state (Archard 2004, Clayton 2006, Brighouse and Swift 2006, 2014b. Richards 2010). This is the body of research I am concerned with here. I do not deny that comparative considerations about children raised in different families are an essential element of any plausible account of justice of child-parent relationships, but I focus only on a more limited set of moral considerations, namely the non-comparative rights that children have against their children. This research field provides the general theoretical context in which my defence of parental licensing is placed.

In what follow I provide a brief overview of the main accounts that have been formulated in the context of this debate; doing so will permit me to spell out some assumptions on which my analysis will be based. One important guiding consideration for my analysis is the following: since I defend a policy proposal that sounds rather controversial, I make assumptions that are rather basic and uncontroversial. I first consider the set of child-based considerations that any plausible account of justice of the parent-child relationship has to accommodate and which define an account of child maltreatment that will be a crucial component of my arguments throughout the thesis. I then turn to parent-based considerations and present a general account of the interest in parenting and the right to parent one's own biological child.

2 Justice to children: an account of child maltreatment

In developing an account of justice in parent-child relationships, children's needs, interests and rights are the principal elements of concern. I assume a simple account by which children's rights protect, at least, the most basic needs and interests of the children, i.e. the needs and interests whose satisfaction is necessary to lead a minimal decent childhood and later life. As I have anticipated, children's lives are profoundly affected by how they are raised by their parents; it matters that they enter into this relationship involuntarily and without any control on who will raise them, and how; an account of justice of the parent-child relationship must start with an account of what justice entitlements children have and what obligation parents have. Roughly speaking, we can distinguish justice entitlements from other types of normative considerations, like merely moral rights, reasons of gratitude

etc., because i) they are correlated to obligations for other agents that are *owed to* the entitlement-holder and ii) they are prima facie enforceable by the state, i.e. if there are no weightier countervailing reasons the state should use its coercive power to protect these entitlements and to enforce the correlative obligations.

A natural way to determine what justice for children requires is to identify children's fundamental needs and interests, consider which type of goods are necessary to meet these needs and interests, and finally establish the rights that children have against their parents. In the process, we should keep in mind that we are constrained by the neutrality requirement that characterizes political liberalism, and that I mentioned above: an account of justice for children may not rely on specific controversial conceptions of the good, but should, instead, present considerations about children's entitlements that would be supported by all reasonable people (Clayton 2006, Brighouse and Swift 2015 ch. 1).[10]

My main arguments in favour of parental licensing in this thesis will make reference to a narrow conception of children's fundamental needs that parents have a duty to meet and that we can formulate by reference to the concept of *child maltreatment*. I do not provide here a detailed or complete account of children's needs, interests, and rights, though I do believe that the promotion of children's wellbeing and autonomy require more than avoidance of child maltreatment; I focus on formulating a plausible account of the different harms to children that constitute maltreatment, which is built on a rather minimalist conception of children's needs and which will constitute the core of the account of justice to children that I assume throughout the thesis because, whatever else we believe may be owed to children, the avoidance of child maltreatment is certainly a requirement of justice for children. It is also all we need, in my view, to ground a case for parental licensing. In what follows, I occasionally signal those issues in the debates about children's rights that would require a more demanding or a more fully worked-out view of children's interests and I specify that I do not take a stance on them since my main arguments do not require so. Although justice for children certainly requires much more than simply not maltreating them and protecting them from maltreatment, I will present a defence of the

[10] For a perfectionist account of justice to children according to which we may and should incorporate controversial judgements about the good in establishing children's entitlements, see Fowler (2020).

controversial policy proposal of licensing parents exclusively on the minimal justice requirement to avoid and prevent child maltreatment.

How, then, should we understand child maltreatment? Roughly speaking, child maltreatment occurs whenever a child has her fundamental rights violated and her most basic needs unmet. To get a preliminary grasp of what child maltreatment is we can look at how the scientific literature has analysed this phenomenon. We can identify five fundamental dimensions of child maltreatment, concerning: the type of caretaker who is responsible of maltreatment; the type of maltreatment; the severity of maltreatment; the risk or actual occurrence of harms; and finally, whether abuse or negligence occurs, or in other words, whether the maltreatment is active or omissive. (English et al. 2003).

As far as the first dimension of maltreatment is concerned, since my focus is on the justice of parent-child relationships, in what follows I consider child maltreatment that is either directly committed by parents or that can be clearly ascribed to parents' responsibility. Consider, for instance, the case of a parent who agrees or accepts to have his child sexually abused by a third person: in this case, although the parent does not directly harm the child, he nonetheless bears responsibility for the abuse suffered by the child, so that we can conclude that he commits some form of maltreatment. I will not consider cases of maltreatment committed by other child caretakers, like paediatricians, nurses, social workers and teachers. (Later on in this section, I come back to the question of what kinds of considerations bear on viewing parents as responsible for maltreatment of their child.)

Turning, now, to different types of child maltreatment, it must be noted at the outset that in order to develop a plausible list of the harms to children that constitute maltreatment, we need to develop a minimal account of children's needs and rights. (To anticipate: the relationship I draw between children's needs and rights on the one hand, and parental obligations on the other, is very simple and straightforward: children have rights that protect their fundamental needs and generate for parents an obligation to meet these fundamental needs, i.e. to avoid maltreating their children.) I should also specify the fundamental needs that children have do not regard only their lives as children but their complete lives; in other words, children need to receive certain goods specifically because this is crucial to ensure that they will have a decent development that will bring them to

have a decent life as adults. Moreover children's fundamental needs regard both their present and future wellbeing and their autonomy, or agency: I do not need to present an account that explain the distinction between these two kinds of needs and I will refer to "children's lives" to indicate the set of different needs and interests that children have. Keeping these points in mind, we can divide children's needs and rights into three broad categories, relating to: first, physical and sexual integrity; second, material needs; and third, psychological, cognitive, and emotional needs.

First, children have a right to their physical and sexual integrity. Children are maltreated when their parents commit physical or sexual violence against them or when they fail to protect their children from physical or sexual violence committed by others.

Second, children need minimally good material conditions that ensure their healthy physical development, such as appropriate food, shelter, clothing and health care. Parents commit maltreatment when they fail to provide these basic material goods for their children. Moreover, children need an upbringing that enables them to meet their basic material needs once they have become adults. Parents should teach their children basic notions and skills that are necessary to lead a minimally decent life in material terms, such as basic skills that permit to operate effectively in the economy of the society in which they are raised, minimal norms of hygiene and behavioural norms that permit to conduct a minimally healthy life.[11] If parents fail to do so, their children are very likely to have extremely bad lives as adults: for this reason, we can assume that these parents are responsible of child maltreatment.

Third, children have basic needs related to their psychological and emotional wellbeing *qua* children and their healthy psychological, emotional, and cognitive development. Children have a right to enjoy a childhood free from excessive stress, fear, and psychological violence. Moreover, children have a right to understand their own emotional dispositions, to develop the abilities necessary to understand and regulate their own emotions and to connect with other people in normal interactions. Parents who perpetrate different forms

[11] As I have anticipated I assume that parents share these responsibilities with background institutions and therefore I also assume a just division of labour and costs related to child-raising between parents and non-parents. Here I claim that parents have some obligations to meet the material needs of their children, which are identified by one's preferred account of parental justice as defined by Olsaretti (2013), and that if they fail to meet them they maltreat their children. In Chapter 5 I discuss this issue at greater lenght.

of psychological violence and abuse against their children and do not provide them with minimal emotional support and with an upbringing that grant them a decent psychological, emotional and social development, for instance by not letting them socialize with other children and adults, maltreat their children.[12]

I should emphasize again that this list of harms to children that constitute child maltreatment does not aspire to be exhaustive; however, I claim that any plausible understanding of child maltreatment needs to include these harms. I do not deny that a complete account of child maltreatment should be more extensive; instead, I will argue that the state should implement a parental licensing scheme to prevent at least the type of child maltreatment I have just outlined.

It is worth noting here that in what follows I do not consider in detail three highly debated topics about children's rights. First, we may ask whether any form of infringement of a child's bodily integrity that is not justified by health reasons, or more in general, that is not in the best interest of the child, constitutes a violation of child's rights to bodily integrity: consider the cases of non-brutal corporal punishment, male circumcision, ears piercing and tattooing.[13] Second, although the third set of harms to children mentioned above refers to the decent development of a child, these do not provide a complete account of child's autonomy-based rights. I do not address questions of concerning which level and type of autonomy-enablement children are entitled to, nor which parental actions violate child's future autonomy and independence. My account of child maltreatment does not provide an account of impermissible indoctrination, nor does it consider whether parents may enrol their children into a religion or particular ethical view.[14] Again, this is not because I do not believe that we need such an account as part of a fully spelled out view of what parents should and may do for and to their children, but rather, because I believe that settling on which such account is right is not necessary to pursue the main aim of this thesis, which is a defence of parental licensing. Third, the list does not take a stand on the exact type of affective and loving relationship that parents must establish with their children. While a healthy parent-child relationship is characterized by a strong bond of affection, love,

[12] For a comprehensive philosophical account of children's rights see Archard and Macleod (2002) and Archard (2004). The main international legal reference on children's rights is the UN Convection on the Rights of the Child (1989).
[13] Ludbrook (1996), Benatar and Benatar (2003), Mazor (2017).
[14] Feinberg (1980), Clayton (2006), Brighouse and Swift (2014b, ch. 6), Fowler (2020).

emotive closeness and support between the parent and the child,[15] merely decent upbringing seems to require much less: minimal responsiveness to child's basic developmental needs does not involve nor require deep affection, nor love, but only minimal concern for the child's interests. In the two final chapters I expand this minimalist normative account of parent-child relationships: in Chapter 6 I consider whether beyond protecting basic interests of the child, parents should also promote their best interest, while in Chapter 7, I consider whether, instead, children have a fundamental right to parental love and what it means.

In very general terms, while it is true that not any impermissible harm that a parent might impose on her child should be considered as maltreatment, the boundary between extremely severe harms and less severe ones is difficult to draw: I propose a characterization of child maltreatment which is probably incomplete but certainly not over-inclusive. A defence of parental licensing based on this conception of child maltreatment seems a sufficiently interesting philosophical enterprise and an ambitious political project. While it avoids taking a stance on some controversial issues like the ones listed above, it does not limit itself to defend licensing just for the most severe cases of maltreatment, like torture or continuous sexual abuse.[16] Moreover, as I argue in chapter 3, the philosophically most challenging aspect of the defence of parental licensing derives from the fact that certain levels of *risks* of harm to children occurring justifies preventing adults from becoming parents; so, even with a limited class of harms, the justificatory challenge is a considerable one. Having established the justifiability - indeed, the requirement – of parental licensing to avoid the type of child maltreatment I consider, there will be space for discussing whether we should add some further harms to the list, and consequently implement more robust and demanding licensing schemes than the one I commit to defending here.

We can now go back to consider other dimensions of child maltreatment identified by social scientists who write on children's rights, starting from the severity of maltreatment. Among the different possible instances of harms to children, child maltreatment refers to

[15] Liao (2006, 2015).
[16]Cohen (2019) for instance, builds an argument in favour of parental licensing based on the idea that we can justify preventively denying a biological parent the legal custody of his child at least in those cases in which it is clear that he harm the child in an extremely serious way. In the next chapter I argue that the existing debate on parental licensing has focused on an unduly minimalist conception of parental licensing.

the most severe cases. Surely, even the different harms that constitute child maltreatment may vary in degree of severity both across the harm-types and within the same type of harms: physical aggressions can be more or less severe, and a standard case of malnutrition harms the child less severely than sexual abuse. However, as I will argue in Chapter 4, all the instances of maltreatment I have presented are sufficiently severe to justify some robust preventive measures like parental licensing.

As for the risk/actual harm distinction, the account of child maltreatment I presuppose defines maltreatment as the occurrence of the severe actual harms to children I have identified; the risks of harms do not themselves constitute child maltreatment. However, in Chapter 3 I examine the relevance of the mere imposition of risk of maltreatment, asking whether the mere imposition of a risk of harm determines a distinctive wrong to the child and whether considerations about the wrongness of imposing a risk, independently of the goal of preventing a harm from occurring, play a role in justifying parental licensing. As I will explain, my defence in favour of parental licensing is ultimately built on the duty to prevent actual instances of severe harms to children that are virtually certain to occur. Although the argument I develop in Chapter 4 engages with the literature on the morality of risk imposition, as I will explain, the reasons I provide in favour of licensing parents are concerned with the badness of the actual harms to children I have presented and do not depend on our judgements about the wrongness of the imposition of mere risks, i.e. the wrongness of the imposition of the risks themselves, independently of the fact that they do materialise.

Let me turn now to the fifth dimension of child maltreatment identified earlier. The literature on child maltreatment commonly distinguishes between abuse that occurs when parents consciously perform an action that directly harms the child, and neglect that occurs when parents, often unconsciously, fail to meet children's basic needs through omissions. Each of the harms I have listed may obtain either through an action or an omission of the parents; furthermore, in many cases is not clear whether a parent is maltreating his child trough an abusive action or a negligent omission. Parents might sexually abuse their children, let others sexually abuse them or fail to protect them from sexual abuse. They might poison their children by giving them inappropriate food and medicines or they may harm them by not giving them the food and the medicines they need. Parents might

psychologically abuse their children by displaying violent attitudes towards them or they might fail to provide them with the necessary support, knowledge and basic skills that are necessary for a healthy psychological development. Although the distinction between actions and omissions might be relevant for some domains of justice related to parent-child relationships, such as the degree of blameworthiness of different parental failures, or the appropriate criminal punishment for maltreating conducts, it does not play a fundamental role for the focus of my analysis: the ultimate aim of parental licensing is to avoid severe harms to the child that obtain because of parents' incapacity to adequately raise a child and, as we have just seen, this can occur because of either parents' actions or omissions. For this reason, throughout the thesis, I frame the discussion in terms of parents' duty to avoid child maltreatment, where this condemns equally child abuse and neglect, and where this entails more specific duties that can be negative, like the duty not to physically attack one's child, and also positive, like the duty to provide sufficient and appropriate food to one's child.

Let me conclude this section with some further considerations that help us have a more complete picture of child maltreatment and to understand better the type of wrong that maltreating parents commit.

I start by giving a clarification about the temporal structure of child maltreatment. While certain harms, like sexual abuse, are harms the occurrence of which has a clearly discernible specific temporal dimension, and generate extremely negative consequences for the child even if they occur once or a limited number of times, other harms which children suffer have a more complex and diffused temporal nature, and obtain only through the conjunction of many single actions and omissions over time. Consider, for example, the harm of malnutrition: typically, there is no single specific action or omission by parents, occurring at a specific time that we may consider as the direct cause of malnutrition. Instead, malnutrition is the result of a behavioural pattern on the part of the parent: a pattern that can include both actions, such as giving inappropriate food, and omissions, such as forgetting or failing for other reasons to feed the child. When we refer to child maltreatment in general, we are more likely to be referring to parents' behavioural patterns that severely harm the child rather than specific harms to the child whose occurrence,

either by action and omission, is clearly identifiable in time. In what follows, as already indicated, I use the idea of child maltreatment to cover all these types of harms.

These observations point to another important point that is worth noting, and which bears on the stance we take regarding the first dimension of child maltreatment, concerning the responsibility of parents for maltreatment. Child maltreatment does not merely refer to a set of harms that cause extremely bad outcomes for children, but to a seriously wrongful treatment of children by their parents: the parental behaviours that occur in child maltreatment belie a severe lack of concern, by the parent, for the child's life. To see this point, compare two cases in which two parents harm their children by giving them some unsafe food. In the first case, the harm occurs because of an accident that was outside the reasonable control of the parent; suppose, for instance, that the parent bought a stock of food that is unsafe because of a fault by the producing company of which he could not be aware. In the second case, the parent poisons his child because he is deeply ignorant about the child's food needs and has given her some food that is not appropriate for her age. Although in both cases we can say that the severity of the harm to the child, in terms of reduced child's wellbeing, is the same and none of the parents have voluntarily harmed the child, we believe that only the second parent has committed child maltreatment. While the first parent has caused a severe harm to her child, she has not done so out of a lack of concern for her child's life, but out of bad brute luck. By contrast, we believe that the second parent has maltreated his child, because the harm has been caused by a (non-excusable) failure to live up to parental responsibilities and accordingly, it reflects a lack of appropriate concern for the child's life. This case of what we might call culpable ignorance shows also that a clear intention to harm the child is not necessary for child maltreatment to take place: although the parents does not aim or intend to poison his child, his ignorance determines an extremely harmful behaviour that we identify as maltreatment in some relevant sense.

It is worth pausing here to say something more about the attributability to the parent of the harm to the child he has caused and how this is linked with lack of concern for the child. Someone might claim that if a parent is not able to adequately care for her child, it would be wrong to hold her responsible for her failures: if ought implies can, we should conclude that a parent who cannot adequately raise a child cannot have a duty to adequately raise

him, and therefore, it would be wrong of holding her responsible for child maltreatment. However, this view is absurd. As I explain in the next section, parenting a child involves a bundle of duties towards her, and assuming the parental role means accepting to fulfil these duties: if somebody takes up the parental role and she is not in the position to adequately discharge the most fundamental of these obligations and, as a result, ends up severely harming the child, she is showing the form of deep lack of concern towards the child that accompanies what we call child maltreatment. There are, of course, issues here that call for further discussion, which I will not provide here. First, I am not going to analyse whether and how much merely incompetent parents are comparatively less morally blameworthy than ill-intentioned ones: I simply claim that when both incompetent and ill-intentioned parents commit the extremely severe wrong to children identified above, they commit the wrong of child maltreatment and this justifies interfering with the parent-child relationship in certain ways.[17] Second, I do not argue that my claims about the relation between harms to the child, parents' inability to avoid these harms, and extremely wrongful parental conduct applies above the threshold of child maltreatment. It might be the case that parents who cannot fulfil further obligations towards children are not particularly blameworthy, or are not committing severe wrongs, since the "ought implies can" thought can have some force in these cases. What I claim, instead, is that the right to parent a child is conditional upon being able to discharge a duty not to cause severe harm to her; therefore, when someone fails to fulfil this duty because of her own incompetence, even if involuntarily, she commits child maltreatment.

I should notice that so far I have not specified who should bear the responsibilities to care for a child and to ensure that she does not suffer maltreatment or in other words, or in other words, who has parental obligations towards the child. This question has been debated extensively in moral philosophy and different accounts have identified different facts that make specific adults responsible to meet the needs of a specific child. Roughly speaking, there are two main sets of views here, including, first, causalist accounts that argue that adults who are responsible for the existence of the child bear special responsibilities towards the children they have created (Austin 2007, Archard 2010, Porter

[17]Scanlon (2008) famously distinguishes between the wrongess of an action and the blameworthiness of the agent who commited a wrong action. While it might be the case that deep ignorance about children's needs reduces the blameworthiness of the ignorant parents who severly neglect their children's nees, it does not affect the wrongness of this negligence to children.

2014), and second, voluntarist accounts that claim that only people who voluntarily accept the parental role bear special responsibility towards the children they have decided to raise (O'Neill 1979, Brake 2010).

Nonetheless, my analysis does not have to enter this important debate: my aim is to make a case for one condition that should be respected by adults for them to have the legal right to parent; this is compatible with adopting various views of the grounds in virtue of which one comes to be a candidate parent, or, to put the point differently, to have a *prima facie* claim to be a parent (e.g. as a result of causing to exist, or as a result of intentionally embracing the parental role).

Children's right not to be maltreated, and parents' correlative duty to respect that right, plays a fundamental role in this thesis. There is, however, another child-centred assumption the thesis makes, namely, that children have an interest in being raised by parents, i.e. in child-parent relationships, and moreover, that children have a specific interest in being raised by their biological parents, in particular, i.e. adults who have used their genetic material to create them and mothers who have gestated them.[18] Children who are raised by parents who share biological ties with them are benefitted in different respects: children in general form stronger affective bonds with their biological parents than with adoptive ones, they can identify more easily and spontaneously with their parents, (Archontaki et al- 2012), they have access to important information about their health, such as propensity to have determinate genetic diseases, and to a form of self-knowledge that is important in the process of self-formation (Velleman 2005). I do not critically assess these different considerations but I simply subscribe to the claim that children, besides an interest in having a decent upbringing free from maltreatment, have an interest in being raised by parents, and by their biological parents if they can adequately raise them. Children who would be raised in institutions without parent-like figures, and children who are removed from the custody of their competent biological parents, I assume, suffer a specific loss that an account of justice of child-parent relationship must take seriously.

[18] In Chapter 4, I show that this interest does not constitute a valid ground against parental licensing while in Chapter 6 I consider the relevance of this interest in comparison with other interests of the child to determine what is the overall best interest of a child.

To sum up, starting from an account of children's fundamental needs and rights I have described a set of severe harms that we commonly define as child maltreatment. Parents have an obligation to avoid producing these harms either through abuse or neglect that display a lack of minimal concern for child's wellbeing. Over the next few chapters I argue that if we subscribe to this minimal and uncontroversial account of justice for children, we have good reasons to support the controversial proposal of licensing parents.

3 Justice to parents: the interest in parenting and the right to parent

In order to develop a defensible account of justice of parent-child relationship, besides a minimal account of children's rights and parental duties based on the concept of child maltreatment, we need to ask what interests and rights *of parents* are relevant. As I will clarify in the next section, a plausible account of justice of parent-child relationships should not focus exclusively on children's interests but should take also parents' interest as distinctive objects of normative concern: in other words, also parents' interests matter, besides children's ones.

In the growing literature on the parent-child relationship, a number of authors have claimed that many adults have a weighty interest in parenting (Schoeman 1980, Page 1984, Brighouse and Swift 2006, 2014a, 2014b, Shields 2016). These authors argue that establishing and developing a close affective relationship with a child makes an important and distinctive contribution to the lives of many adults and that a plausible account of justice in child-parent relationships should not overlook adults' interest in parenting. Before considering briefly some reasons for why parenting is particularly valuable to many adults, I point to two considerations that are useful for approaching the issue.

First, claiming that parenting a child is particularly valuable to many adults does not mean that all the adults benefit from the chance to parent a child nor that those adults who do not value the option of parenting a child commit an evaluative mistake (Brighouse and Swift 2014b, p. 100). Parenting is one of those options that are particularly valuable for those people who have particular preferences, life projects and plans, but not to those individuals who have different reasonable preferences, and life projects. While some goods, like Rawls' primary goods, are important to every person because they are necessary to

pursue any life-project, the option to parent a child is valuable to a person only if he endorses the project of raising a child.[19] Nonetheless, an account of justice in the family that recognizes and accommodates a weighty interest in parenting does not violate the liberal neutrality requirement I have outlined above: all reasonable individuals can agree that the state should keep into account the interest in parenting that many adults have even if this interest is not shared by each and every individual. In this respect, we can compare the interest in parenting with religious liberty: although not all people practice a religion nor value the prospect of practising a religion, and therefore, do not directly benefit from the right to religious freedom, all reasonable individuals agree that the state should recognize the value that practising one's religion has for many people and protect their right to do so.

Second, it is helpful to distinguish three aspects of parenting that clarify what the object of the interest in parenting is and how this interest can be frustrated. First, adults have an interest in becoming parents, i.e. starting and establishing a close, intimate, affective, and authoritative relationship with a child. This interest is frustrated whenever an adult who wishes to parent a child cannot do so. This can happen because the law does not permit the formation of families and parent-child relationships, because the state does not permit a particular adult to parent a child, or because there is simply no child whom an adult might parent: imagine an infertile couple who is very willing to parent a child but lives in a place where there is no child up for adoption. Second, after an adult has become the parent of a child, she has an interest in being sure that this relationship will continue in the future, that nobody will take her child away from her custody and assign the child to other parents or raise the child in an institution. This interest also protects parents from other adults trying to become parents of, and establishing close, affective and authoritative relationships with, their children. Third, parents have an interest in discharging their parental role effectively. Parents benefit from being the ones who make different choices about their children's lives: to which school they go, what food they eat, with which people they associate with, etc. This interest is frustrated when strangers or the state intrude extensively into family lives and take parents' place in making many and/or crucial choices about their children's lives: imagine a state that implements a mandatory public canteens service in which

[19] Following Raz (1986) we could say that parenting is a good in which an objective and a subjective condition (i.e. the endorsement of the project) are necessary to make it valuable to a specific person.

children get all their meals and parents have a legal obligation to send their children to these canteens.

With these points in mind, let us turn to some influential accounts that specify the distinctive value of parenting to adults. Edgard Page presents an account of parental rights based on parents' positive desire "to influence the course of a child's life, to guide the child from infancy to maturity, a desire to mould it, to shape its life, to fix its basic values and broad attitude, to lay the foundations of its lifestyle, its priorities, its most general beliefs and convictions, and in general to determine, to whatever degree is reasonable and possible, the kind of person the child will become." (1984, p. 195) According to Page, this desire to control different aspects of children's lives that many adults share is the ground that best explain the parental rights that we commonly ascribe to parents Colin Macleod (2010b, 2015) presents a similar account which, though, does not focus directly on the control of children's lives, but is based on the idea that parent- child relationships enable parents to exercise a form of "creative self-extension" defined as the "opportunity to express their own commitment to ideals and ground projects by passing them on to children" (2010b, pp. 142). Since children lack commitments to specific values and life-projects, Macleod argues, parents enjoy the valuable opportunity to promote their own values and conceptions of the good by sharing them with their children and, given the asymmetrical nature of the relationship, by transmitting them to their children; therefore, in Macleod's view the control that parents exercise over their children by shaping their identities and their lives is not the primary object of the interest in parenting, but is, instead, a by-product of the valuable sharing of their profound commitments with children who do not have developed their own commitments and are very likely to interiorize their parents' ones.[20] Other accounts stress the type of valuable intimacy that characterize parent-child relationships. Ferdinand Schoeman (1980) argues that human beings have a fundamental interest in establishing intimate relationships that require a certain level of privacy and autonomy: the protection of these relationships requires that strangers are excluded from them and the state does not regulate or dictate the terms of this relationships. Among intimate relationships, parent-child ones have a central role: many

[20] I should specify that "creative self-extension" is only a component of Macleod's account of the value of parenting: nonetheless it is the most peculiar component. More generally Macleod relies on the claim made also by Schoeman (1980) and Brighouse and Swift (2006, 2014a, 2014b) that parents enjoy a specific kind of valuable intimacy with their children.

adults have an interest in establishing an intimate parental relationship with a child and both strangers and the state should not obstacle the formation and the development of this relationship. Harry Brighouse and Adam Swift argue that Schoeman's original argument fails to capture some elements that make the parent-child relationship a distinctively valuable type of intimate relationship. Brighouse and Swift (2006, 2014a, 2014b pp. 86-93) develop Schoeman's argument and argue that four facts explain why the type of intimacy involved in child-parent relationship is especially important to adults: first, parents and children do not have equal power, or standing, in the relationship; second, parents may and should act paternalistically towards their children; third, children do not have developed preferences, conceptions of the good and life-plans; fourth, parents receive from their children a type of love which is unconditional, spontaneous and outside the rational control of the children. The structurally asymmetrical nature of parent-child relationship, determined by these facts, produces a type of intimacy that is distinct from the one people enjoy in symmetrical relationship, like romantic ones: adults who parent children enjoy a complex of relationship goods that make a significant contribution to the quality of their lives.

In what follows I do not subscribe to one of these accounts in particular, nor do I take a stance on which of these accounts best explains why parenting a child is distinctively important to many adults. Instead, I simply assume that they jointly successfully show that the option of parenting a child is extremely valuable for many adults and therefore, that a plausible account of the justice of child-parent relationship should take seriously the interest in parenting that many adults have. In what follows I discuss some further aspects that the above mentioned accounts of the value of parenting share and that better define the interest in parenting.

First, one of the reasons that makes parenting distinctively valuable to many adults is that it is a non-substitutable, or irreplaceable, activity. Adults who are committed to raising a child cannot find comparable satisfaction and fulfilment by engaging in a similar activity, like caring for a pet or baby-sitting others' children. The various accounts of the value of parenting emphasise that raising a child makes a distinctive contribution to parents' lives that cannot be achieved by engaging with other activities or projects; there is no valid substitute that adults might choose to compensate the lack of this valuable option. (De

Wispelaere and Weinstock 2012, Brighouse and Swift 2014b pp. 87-88). An account of justice for parents has to accommodate this fact if it wants to take seriously adults' interest in parenting.

Second, the interest in parenting is conditional on the parents' being able and willing to discharge their obligations towards children: raising a child is a valuable project to an adult only if he adequately discharges his parental role. (Brighouse and Swift 2006, 2014b pp. 94-95) As mentioned in the previous section, in my thesis I set the level of parental adequacy that ground a genuine interest in parenting at the minimal requirement to avoid child maltreatment: only those parents who are able and willing to display minimal concern for their child's wellbeing and to act accordingly may claim to have an interest in parenting. So, on my view, letting an adult who is unable or unwilling to meet a child's most basic needs parent that child would not only be very detrimental for the life of the child, but it would also not make any positive contribution to the adult's lives. An adult who would be incompetent or ill-intentioned and is prevented from raising a child is not harmed as a result of being prevented from raising that child incompetently.

Third, although the accounts I have surveyed above argue that parenting an adopted child can generate the type of value to adults they identify, we can – and I assume we should - integrate them with considerations about the specific value of raising one's own biological child. When adults decide to have a biological child, they develop a special life project in which they raise a child with whom they share biological ties: for them it is not valuable to parent just any child; instead, it is valuable to parent their biological one. In addition to the child-centred reasons for why children should be raised by their biological parents I have mentioned above, there are also adult-centred ones that tell us that the prospect of raising one's own biological child is distinctively valuable. Creating a child using one's own genetic material and gestating her is a particular form of shaping the identity of one's child; creative self-extension can be achieved by generating and gestating a child; biological parents might claim to enjoy a special type of intimacy with their biological children even before they are born. Anca Gheaus argues that scientific evidence shows that gestational mothers develops a particularly strong intimate relationship with the foetus before birth and this relationship ground a right to parent the child they have gestated (Gheaus 2012, 2017). Independently of the account of the value of parenting to which we subscribe and of the whether

biological ties have any intrinsic values, we can conclude that in those cases in which adults have biological children, they have a strong interest in specifically parenting their own biological children, not any child. To illustrate this claim better, consider a case in which two couples of biological parents have their biological children swapped so that each couple end up raising a child with whom they do not have any biological connection; although we might claim that the adults still enjoys the value of parenting in some sense, we can allow that their interest in parenting has been frustrated since they are deprived of the distinctively valuable option of raising their own biological child. Since my thesis specifically studies the regulation of the legal right to parent one's own biological child and I do consider the claims that adults have to adopt a child, i.e. to establish a parental relationship with a child with whom they do not share biological ties, but only adults' claims to parent their own biological child and whether they are compatible with parental licensing, I will focus on the particular interest that many adults have in establishing and developing a parental relationship with a child with whom they share a biological connection: this is the type of interest to which I will refer when I mention the "interest in parenting".

Fourth, the claim that adults have an interest in raising their own biological child if they can do so adequately well is commonly understood as a ground for a right to parent their own biological child. If a plausible account of justice of the parent-child relationship has to take seriously into account adults' interest in parenting their biological child, the state should recognize that, when there are no weighty competing reasons, all the biological parents who are able and willing to adequately raise their biological child have the right to do so. This right entails a duty of the state not to remove the child from the custody of their biological parents and on refraining from intrusions within the family life of parents and children. The analysis of parental licensing in this thesis is an analysis of what constitute "weighty competing reasons" that would justify preventing adults to raise children, including children they are biologically related to; my aim is to show that licensing can and should be defended even if we take into due consideration the strong interest that biological parents have in raising their biological children, as well as children's interests in being raised by their biological parents. To avoid misunderstandings, I will use the expression "right to parent" to refer to the moral right to raise a child that should be recognized by the state, and the expression "interest in parenting" to refer to the

(presumptive) moral right that biological parents have to raise their own biological child which is grounded on the specific positive contribution that parenting makes to adults' lives.

Most of this thesis does not discuss which type of rights parents who fulfil their duty to avoid child maltreatment should have over their child, although Chapter 6 does tackle this issue. I simply assume that the right to parent a child does not only entail a right to establish a close affective exclusive relationship with a child, but also the right that the law currently recognizes to legal parents in terms of making important choices about their children's lives.

4 Doing Justice to children and parents

Having outlined the main interests and rights of children and parents I assume in what follows, we can turn to some general principles that regulate how we should evaluate and weight these interests and rights in developing an account of justice of parent-child relationships; my thesis argues that on the basis of a plausible conception of justice of child-parent relationships that integrate these principles we can justify the claim that the state should license all prospective parents.

When we aim to justify policies that affect the formation and development of parent-child relationships, we should give proper consideration to the interests of both children and parents. This claim has been presented as the "dual interest view" on the family (Clayton 2006, Brighouse and Swift 2014, Shields 2016). In a nutshell, this view opposes two opposite views both of which are held to be implausible. On the one hand, there are views that claim that only parents' interests matter for the justification of how the state should regulate child-parent relationships: among these are, for example, accounts that claim that biological parents own their children because they have produced them; these might argue that biological parents have extensive property rights over their children so that the interests and the rights of the latter should not be taken into consideration by the state. While exclusively parent-centred views, like these proprietaran accounts of parental rights, are clearly implausible and have been held only by a few theorists (Hall 1999, Narveson

2002), since children have fundamental rights and basic needs that are of extreme importance, the opposite view, namely that only children's interests matter, has had some support. Some authors have stressed that since children enter into relationship with their parents involuntarily, cannot exit the relationship and are particularly vulnerable to their parents' choices, the justification of how the state regulates child-parent relationships should be ultimately based on the promotion of children's interests only (Brennan and Noggle 1997, Noggle 2002, Vallentyne 2003, Archard 2004, Goodin 2005). Supporters of the dual interest view argue that this view gives an incomplete picture of our common reasoning about the family: when we look more closely at it, we realize that while children's and parents' interest commonly go hand in hand, and particularly, that promoting the interests of parents also benefits the children, sometimes they diverge. In these cases, claiming that we should always promote children's interests at the cost of parents' interests, as child-centred views do, would not do justice to parents.

My defence of parental licensing assumes this dual interest view according to which, in order to do justice to parents and children, the state should take both children's and parents' interests as distinctively important and give both of them appropriate weight to justify its choices. I assume this view both because I believe there is some plausibility to it, and because, as I have already emphasised, my aim is to show that we can defend parental licensing if we start from widely held assumptions.[21]

In concluding this overview of the normative framework that will be assumed in later chapter, three last points should be mentioned. First, in this chapter, as in most discussions around the family, I have talked about parents' and children's interests as the interests of different persons. In fact, however, we should not overlook that, as most individuals age and pass from childhood into adulthood and that many current children will be parents, and all the current parents have been children. For this reason, there are reasons why we should not consider children's and parents' interests as the interest of two distinct groups of people, but rather as interests that individuals have at different stages of their lives. In Chapter 4, I will say more about this and bring this point to bear on the defence of parental licensing. Second, my main argument in favour of parental licensing assumes minimally just

[21] As mentioned earlier, however, Chapter 6 proposes that we should challenge the Dual Interest View as it is commonly formulated, and argues that what is plausible about can be reconciled with some remanding requirements about what parents owe their children

background conditions: there are no pervasive phenomena of wrongful discrimination against members of socially salient groups who are wrongly considered as incompetent parents and a just distribution of labour and costs related to child-raising between parents and public institution is ensured. Chapter 5 considers scenarios in which these two assumptions do not obtain and asks whether, under this circumstances, parental licensing is justified. Third, my thesis explores the justifiability of parental licensing exclusively as a matter of justice to children and parents and does not consider the interests of third parties, namely of adults who are not interested in establishing a parental relationship with a child. A fully worked-out defence of parental licensing should also accommodate the interests and claims of non-parents, especially the interests they have as taxpayers who would need to pay for the implementation of licensing; unfortunately, in my thesis I cannot offer an assessment of these types of concerns. I offer an argument that shows that parental licensing does justice to children and parents: this is an important step towards a fully worked-out defence of parental licensing that takes into considerations also the interests of non-parents and taxpayers.

Chapter 2
Parental Licensing: An Overview of an Unfinished Debate

This chapter introduces the idea of licensing parents and reviews the existing philosophical literature on the issue. In the next two chapters I show that the existing arguments in favour and against parental licensing fail to address what I believe to be the fundamental normative issues that are related to the justifiability of parental licensing and that can explain our profound disagreement about this proposal. The critical overview of the current debate about parental licensing which this chapter provides proceeds as follows. I start by giving a general description of the proposal and I distinguish it from other types of child protective measures. I also describe the current *status quo* on parental licensing and specify how the proposal in question does not defend a mere reform of the *status quo*, but supports abandoning the *status quo* entirely. I then present the canonical argument in favour of parental licensing proposed by Hugh LaFollette and show how it relies on a double moral symmetry between already licensed activities and parenting, and between biological and adoptive parenting. LaFollette's argument concludes that we should license all prospective parents: biological and adoptive. In the final part of this chapter I examine objections to parental licensing that focus on alleged asymmetries between biological and adoptive parenting to conclude that licensing prospective biological parents is not appropriate. To examine these objections, I identify and discuss different versions of what I call the *Asymmetry View* about parental licensing and show how advocates of universal parental licensing can successfully reply to such objections. (I postpone the analysis and discussion of objections concerning the actual implementation of parental licensing until Chapter 6.) I conclude by noting that the debate around the symmetry-based argument for parental licensing cannot find a definitive solution to the question of whether or not we should license all prospective parents, since it fails to tackle some fundamental issues about the assignment of the legal custody over a child and the distribution of risks of harms to children and adults, which I analyse in Chapters 3 and 4.

1 What is parental licensing?

"Licensing parents" refers to a legal regime requiring any individual to obtain a licence in order to become the legal parent of a child, i.e. to have the right to raise the child and have legal custody of that child. Such licence is granted on the basis of successfully completing a screening procedure comprised of a set of tests and checks that proves that the would-be parent demonstrates the necessary competence to adequately raise a child.

States license many activities by making the right to practise such activities conditional on having a licence, which the state grants to individuals who can demonstrate certain relevant knowledge, skills and abilities. Driving a car, practising as a physician or as a lawyer are paradigmatic cases of licensed activities. The fact that an activity is licensed has three main consequences: i) the state does not permit one to practice the activity in question without a licence; ii) when the state discovers that an individual is practising the activity without a licence, it ensures that she stops doing so; and iii) in many cases, the states punishes those agents who have undertaken a licensed activity without a licence. My interest here is not in iii), i.e. in whether the state should punish those adults who try to escape state controls and raise a child without a licence; I will also not discuss ii) at length. Rather my focus is on the justifiability of i), i.e. on the justifiability of the state's barring unlicensed adults from becoming the legal parent of a child, establishing a close relationship with her and raising her.

It is important to note at the outset that a parental licensing regime is only concerned with the recognition of an adult as the legal parent of a child – as I said, with the acquisition of the bundle of parental rights and authority and the right to establish a parental relationship with a child that I presented in the previous chapter - and it is completely silent about the right to procreate. Adults are required to have a licence to raise a child, not to procreate. The state does not aim to impede the right to procreate to those adults who do not have a licence through mandatory sterilisation, abortion or denial to the access of reproductive technologies; instead it aims to make sure that those adults who do not have a licence do not raise any children. Parental licensing permits anyone to procreate, but if a procreator does not have a parental licence, the state denies her the right to parent her biological child.

Of course, parental licensing is likely to have a strong effect on people's decision to procreate and on their sexual behaviour, since adults who do not yet have a licence or who have been denied one would, it seems probable, be deterred from procreating by the possibility or the prospect of not being permitted to raise their biological children. Nonetheless, parental licensing does not regulate procreation nor does it directly affect individuals' procreative autonomy.

Another point worth noting at the outset is this. When we set out to examine the proposal of licensing parents, we should note that most states already implement some form of partial parental licensing. Botterell and MacLeod (2014, 2015, 2016) define the *status quo* on parental licensing as the regime by which prospective adoptive parents are licensed, while biological, or procreative, parents are not. Adults who want to adopt a child have to undergo a procedure by which the state aims to establish whether they can provide good living conditions to a child; if they pass the procedure and qualify as good prospective parents, they may be granted legal custody of a child in need of adoption and become her legal parents. Adults who procreate, by contrast, automatically acquire the legal custody of their biological children and the state does not run any check to prove their parental competence. The picture of the *status quo* is actually more complicated than this brief sketch suggests, on account of some ambiguities about the distinction between adoptive and biological parents. In many states, relatives of the child can acquire legal custody of the child without having to undergo any screening, for instance when the parents are dead or have lost custody of the child. Also, spouses or partners of the biological parents of a child may become a legal parent of this child without undergoing any screening: they seem to acquire this right through the relationship they have with the biological parent (Botterell and McLeod 2014, pp. 154-155). Finally, in some states that recognise surrogacy agreements, the "commissioning" parents who both obtain gametes from donors and contract or receive the help of a surrogate mother do not have to undergo any screening procedure, even if they do not have any type of biological or gestational relationship with the child: in this case, the causal and intentional relationship with the conception and birth of the child might be said to replace the biological one in exonerating them from any licensing requirements. (Overall 2015, Botterell and McLeod 2016).

I can now present two common criticisms of the *status quo* that call for the latter's reform, but do not support universal parental licensing.

A first type of criticism focuses on the inconsistency of the *status quo*. Current legal systems fail to identify a clear criterion that distinguishes those adults who have to undergo screening and those who do not, and accordingly, they do not provide a justification for this differential treatment. As we have seen, in many states, having a genetic or gestational relationship with a child is sufficient, but not necessary to have legal custody. Botterell and Macleod argue that the appeal to the right to reproduce cannot justify the current *status quo* on parental licensing, in which some parents who have not played a role in the child's creation, such as relatives, step-parents and commissioning couples, are not licensed, and that we should create a new system that clearly identifies which adults should get screened and give a principles reason for such a distinction (Botterell and McLeod 2015).

Second, it has been claimed that the type of screening that would-be adoptive parents have to undergo is overdemanding, putting a lot of unnecessary burdens and stress on them: a better designed screening procedure should and could produce equally reliable results with regard to the applicants' parental abilities without overburdening them. Such a reform would also have the positive effect of incentivising many adults who are currently highly concerned about the various costs associated with going through the adoption procedure and the possibility of failing the screening: if the state were to implement a less burdensome screening procedure, we can reasonably expect that more adults would apply for adoption and join the pool of available adoptive parents and, consequently, more children in need of adoption could have parents. (Botterell and McLeod 2014).

Defenders of parental licensing who challenge the asymmetry between biological and adoptive parents, however, are not merely critical of the arbitrariness of the distinction between biological and adoptive parents, nor are they simply concerned about the overdemandingness of tests for adoptive parents. Instead, they believe that the state should screen all adults in order to give them the legal custody of a child, that is, both biological and adoptive parents. In other words, while we currently have partial parental licensing, i.e. only for some would-be parents, defenders of parental licences propose to have universal parental licensing, i.e. for all would-be parents, including biological ones. We might think,

then, that licensing parents simply proposes to extend to procreators the requirements that the state demands of would-be adoptive parents in order to secure custody of a child. However, two further clarifications show that this is not exactly what is being claimed here.

First, as I will explain in more detail, supporting parental licensing does not commit us to saying that would-be biological parents should undergo the very same type of screening that would-be adoptive parents undergo: instead, all the defenders of parental licenses must commit themselves to is the view that both adoptive and biological would-be parents should undergo *some* form of licensing. The argument for licensing all would-be parents is compatible with the claim that would-be adoptive parents should undergo more demanding screening than biological ones. The universal licensing scheme that I defend aims to determine exclusively whether the would-be parents are likely to maltreat their children; on top of this, further, more demanding checks and tests for would-be adoptive parents may be added, perhaps on grounds offered by the arguments for the *Asymmetry View*, surveyed below. (In other words, asymmetry *within* the parental licensing scheme, rather than concerning the scope of that scheme, may be justified. I remain open in what follows about this possibility.)

Second, the current screening procedure for adoption gives to successful applicants fewer guarantees than a licensing regime strictly defined. Under a licensing regime, when someone obtains a licence to practice a certain activity, she acquires the right to practice that activity and the state may not prevent her from doing so. When someone passes a driving test and gets a driving licence, the state recognises her right to drive a car and may not prevent her from driving a car. Adults who qualify as good prospective adoptive parents after the screening procedure do not have a right to adopt a child in the strict sense: they are simply eligible to receive a child in custody. The state may decide to keep the child in foster care or to give him to a different adoptive parent. This does not mean that the state is at complete liberty to choose how to allocate children in need of adoption among eligible adoptive parents; on the contrary, it should have some justified criterion to make this decision. The scheme of parental licensing I will defend, by contrast, works under the clear presumption that if the procreators of a child have a parental licence, they acquire the right to parent their biological child and the state may not assign the child to the custody of other parents. Parental licensing is not committed to abolishing this specific

asymmetry; indeed, it is compatible with it: procreators who pass the screening procedure automatically acquire the custody of their biological child, while adoption applicants have to pass a screening procedure, which is possibly more demanding, simply in order to become eligible to adopt a child.

Two final remarks will help us to get a clearer picture of the proposal. First, parental licensing is a preventive measure that denies certain individuals the right to parent on the basis of a screening procedure which predicts some negative outcomes. Parental licensing is neither essentially a punitive nor an *ex-post* measure: it does not aim to stigmatise adults who do not have a licence or to readdress a past injustice. Parental licensing differs from the existing measures of removing a child from the legal custody of maltreating parents. Under these measures, if the state has enough evidence to suggest that a parent has demonstrated an inability to adequately raise a child by having committed some forms of child maltreatment, then it terminates his or her parental rights and removes the child from their custody. Under parental licensing, instead, the goal is that the state intervenes *before* the establishment of the parent-child relationship and relies on predicting factors about the would-be parent, not previous severe harms that the parent has imposed on the very same child.[22] Parental licensing does not aim to replace the current child removal regime, but to complement it: the state would run a preventive screening to establish whether would-be parents show any predictive sign of risk of child maltreatment before giving them custody of a child, and when the parent-child relationship has been established, it intervenes to remove the child when there is evidence of actual child maltreatment.

Second, under a defensible licensing regime, the state runs individualised screenings in order to establish whether the individual has the relevant competence and does not rely solely on very general features, like age, to make such a judgement. A reference to voting rights is helpful to see this distinction: only citizens who are beyond a minimal age have the right to vote in political elections and age is taken as a rough proxy for their capacity to have structured political preferences and the competence to make political choices. Nonetheless, we cannot say that voting is currently licensed: advocates of licensed voting

[22] I add this specification because, as I will show, parental licensing might take as a relevant piece of information how a would-be parent has parented other children in the past. In this case, the screening procedure uses evidence of past harms
to a specific child, or multiple children, as a predicting factor for how the adult would parent other children in the future.

propose introducing individual assessments of all adults to check whether they have the minimal "political literacy" to exercise the right to vote competently.[23] Licensing is a type of regulative policy that makes the recognition of a right to practice a certain activity conditional on an individualised assessment of some specific features of, or facts about, the individual who wants to practice a certain activity, and not simply on the satisfaction of very general requirements, like a minimum age. In the case of parental licensing, the screening procedure includes more detailed checks and tests than the mere requirement of reaching a certain age, which is already in place in several legal systems for obtaining the legal custody of one's biological child.

I have provided so far a general characterisation of parental licensing that leaves many details of the proposal undefined: for instance, I have not discussed the specific standard of competence that the screening procedure should detect the actual tests and checks the state should employ to grant or deny a licence; when the adults should apply for a licence; and what would happen to adults who procreate without having a parental licence (i.e., point ii) mentioned at the beginning of this section). Although all these issues must be settled in order to make the proposal of licensing parents clear and to provide a convincing defence of parental licensing, I defer their analysis to Chapter 5, where I examine issues about the actual implementation of the licensing scheme. The discussion of the argument for parental licensing, and the objections it faces, that I conduct in the remainder of this chapter and the next two chapters abstract from all these details and simply refers to the general characterisation provided so far.

2 The canonical argument for parental licensing

In his famous article, Hugh LaFollette (1980, 2010) provides a general account of which type of activities should be licensed by the state. An agent should need a license to perform an activity if: i) this activity determines a high risk of severe harm on others, ii) competence typically guarantees safe performance of the activity, iii) reliable procedures for detecting such competence are available. LaFollette shows how the satisfaction of these three

[23] For the proposal of licensing the right to vote, see Brennan (2016).

conditions explains why the possession of a license is necessary to drive certain vehicles[24] and to perform certain professions, e.g. physicians and lawyers.

Broadly speaking the argument for licensing an activity is based on the principle of harm prevention: when the practice of an activity poses a high risk of harm to others, but not so high as to justify prohibiting the activity altogether, and the state can implement procedures to establish who will practice the activity safely thanks to her competence, it has strong reasons to license the activity.

LaFollette goes on to show that parenting is an activity that meets all these three conditions.

As far as the first condition is concerned, it is undeniable that the exercise of parental authority by incompetent parents can result in various severe harms on the child. As I have said in the previous chapter, I focus on the especially serious harms to children that we commonly define as "child maltreatment" and on a parental licensing scheme that aims to prevent maltreatment. Some basic considerations about the dynamic of child maltreatment support this claim. First, since parents have a right to privacy and not-interference that commonly protects the intimate relationships with their children, the state may not systematically monitor what happens within families; moreover, parents commit most of the forms of child maltreatment within the domestic sphere, away from the control of strangers and public officials. Second, when someone external from the family, often school teachers or neighbours, have elements to suspect that a child is victim of maltreatment and report it to child welfare services or the police, commonly the child has already been severely harmed. In other words, given how parent-child relationships are structured, in a system in which all procreators automatically get the legal custody of their biological children there is a high risk that some of them will maltreat their children.

As for the second condition, it seems plausible that requiring competence in parenting commonly guarantees a safe performance of the exercise of parental authority. LaFollette

[24] The fact that bike-driving is not licensed, while car-driving is, could be explained by the consideration that the likelihood of a traffic accident caused by a bike-driver is significantly lower than the likelihood of a traffic accident caused by a car-driver and that the harms caused by bike-drivers are significantly less severe than the ones caused by car-drivers.

refers to the paradigmatic cases of already licensed activities to make this point: while performing surgery always entails the risk of harming the patient, those individuals who have the required knowledge, judgement, abilities, and dispositions commonly perform surgery safely and efficiently. In the same way, adequately raising one's child is not the product of brute luck, but is the consequence of a set of knowledge, judgement, abilities and dispositions that commonly ensure that a parent will be able to meet her basic parental obligations and avoid child maltreatment. I defer the discussion of which precise abilities constitute parental competence to Chapter 5, but the general claim that adults discharge their parental role efficiently and safely, i.e. without imposing undue risks of severe harms on their children, only if they have some sort of competence is undeniable.

Third, reliable tests for detecting competent parents are available. This is the most controversial condition of LaFollette's argument: in fact, it is unclear whether the state has or can have at its disposal screening procedures to know whether an adult will raise her child adequately before she has had any chance to parent (Sandmire and Wald 1990). To this concern, LaFollette replies, first, that since the licensing scheme only aims at detecting a rather low standard of competence, i.e. child maltreatment avoidance, and does not aim to predict which adults will be good parents, we can be confident in finding strongly reliable, although fallible, system of checks and tests. The claim is that the less demanding is the requirement of parental competence, the more reliable are the results of the procedures to detect this standard of competence and to predict whether the parents will adequately raise their children. I consider which specific screening procedures the state should employ for licensing parents in Chapter 5; for the moment I simply assume that there is at least one reliable predicting check or test that the state could use to determine whether an adult is likely to maltreat a child under his custody or not. LaFollette's minimalist argument for parental licensing claims that the state should make the right to parent for any individual conditional to passing at least this check or test, while "theoretical" objections to this minimalist argument claim that it is not morally mandatory, nor permissible, to license all prospective parents even if only this check or test was implemented. In the remainder of this chapter I consider theoretical arguments that object to the use of any predicting check or test, independently of its reliability, for licensing all would-be parents.

In his argument for licensing, LaFollette adds that his argument is already applied in the case of would-be adoptive parents: the state requires would-be adoptive parents to pass a screening procedure because it has a duty to ensure that children in need of adoption will not be assigned to the custody of adults who we can know, thanks to reliable checks and tests, are likely to maltreat them.

The intuitive force of LaFollette's argument ultimately lies on a double symmetry. First, the state has good reasons to license paradigmatic activities, like car-driving, and certain professionals, like physicians and attorneys, because they satisfy the three conditions for licensing. Parenting shares these three conditions and therefore is analogous to the paradigmatic licensed activities and we should conclude that the state has equally good reasons for licensing parents. Second, since the state has good reasons to license would-be adoptive parents and parenting a biological child is analogous to parenting an adopted one, especially in terms of the likelihood that the child may be maltreated, we should conclude that the state has equally good reasons to license biological parents: "if we continue current adoptive practices - and certainly we should - we are rationally compelled to establish a licensing program for all parents" (2010, p. 336).

In this chapter I consider objections to LaFollette's argument that argue against the second symmetry and, consequently, give support to some versions of the status quo on parental licensing presented above. I do this because although – as I will argue later in this chapter and the next – showing that these arguments do not work is not sufficient to defend licensing, setting them aside is a helpful starting point a defence of parental licensing. If the objections which these arguments level were successful, such a defence would not even get off the ground. While LaFollette's argument claims that all the would-be parents should pass some form of screening to get the legal custody of a child, these objections claim that some adults, especially procreators, should or may be exempt from having to pass this screening to get the legal custody of a specific child.

3 The *Asymmetry View* on parental licensing

As I have anticipated, many theoretical objections to the proposal of licensing parents point to some relevant differences between biological and adoptive parenting,[25] that can defeat the validity or the intuitive force of LaFollette's analogy-based argument. These objections subscribe to what we might call the *Asymmetry View* on parental licensing, which claims that some relevant differences between biological and adoptive parents justify treating would-be biological parents and adoptive ones differently when it comes to preventive regulation of their right to parent a child, and to licensing in particular. More precisely, the *Asymmetry View* claims that there are morally relevant considerations that we need to take into account when assessing the merits of the licensing parents proposal that identify two groups of would-be parents whose right to raise a child should be regulated differently. The view is not necessarily committed to distinguishing between adoptive and biological parents, which, as we have seen, are not clearly defined categories under the *status quo:* as I will show, some versions claim that we should distinguish between causal, but not necessarily biological, and non-causal parents. For the sake of simplicity, however, I formulate the *Asymmetry View* as only distinguishing between how the state should treat would-be adoptive and biological parents, but we should keep in mind that the very same claims could be formulated along a different distinction. The *Asymmetry View* can take one of the following forms:

I) Would-be adoptive parents should be licensed, while biological parents do not need to be licensed (we have an obligation to ensure that parents are licensed vs. a mere lack of an obligation);

II) Would-be adoptive parents may be licensed, while biological parents may not (permission vs. prohibition);

III) Would-be adoptive parents should be licensed, while biological parents should not (obligation vs. prohibition).

[25] As I will explain, these differences do not have to be ultimately about the existence or the absence of biological ties between parents and children, but they may be about other facts or considerations that are related to biological and adoptive parenting.

The different specific objections to parental licensing I consider in this chapter subscribe to one of the versions of the *Asymmetry View*, by singling out different morally relevant considerations that establish a moral asymmetry between adoptive and biological parenting, which are said to justify to a difference in how the state should treat prospective adoptive and biological parents. Depending on which version of the *Asymmetry View* they endorse and which relevant groups of would-be parents they identify, different arguments for different versions of the *status quo* on parental licensing are available. In the remainder of this section, I consider the main asymmetry-based objections to licensing parents that have been presented in the literature and for each of them I provide a reply that shows how these arguments fail to establish that not all would-be parents should undergo some form of screening to obtain the legal custody of a child.

3.1 Procreators' right to parent

LaFollette already considers one main theoretical objection to his argument based on the idea that procreators have a negative right to parent their biological children, i.e. to not be barred from raising their biological children, while would-be adoptive parents do not have a positive right to receive a child to adopt. Therefore, while licensing would-be adoptive parents does not violate any of their rights, licensing would-be biological parents does. If this claim is true, we might conclude that the state may license adoptive parents, while it may not license biological ones, since it would violate their right to parent. LaFollette replies that, although we have good reasons to accept the claim that procreators have a negative right to parent their biological children, we do not believe that such a right is absolute, and more precisely, we do not believe that it includes a right to maltreat them (2010, pp. 334-335). It follows that a measure, like licensing, that aims to prevent abuses of parental authority cannot be accused of violating the right to parent: instead, it is a measure to ensure that parents act within the limits of their right to parent. A revised version of this objection claims that procreators' right to parent is conditional only on not having committed actual maltreatment, and not on being likely to commit maltreatment. LaFollette replies that such an objection misinterprets the nature and the function of licensing, which is preventive rather than punitive or restorative: although a parent can lose her right to parent a child because she maltreated her, it is not clear why biological parents

should have a right to get legal custody of their biological children that cannot be preventively regulated before they are in a position to maltreat their child (2010, pp. 335-336).

3.2 Biological parenting as a human right

Matthew Liao (2016) develops an argument for why licensing biological parents would constitute a violation of procreators' rights and is, therefore, impermissible; the argument claims that parenting one's own biological child is a human right and that the exercise of human rights may not be regulated by preventive measures like licensing. He provides a general normative framework according to which there are certain basic activities that are important to human beings *qua* human beings and whose importance does not depend on specific individual preferences, values, and conceptions of the good. Having access to these activities, and actually engaging in some of them, is necessary for having a good life. These universally valuable activities are protected by a human right to access the fundamental conditions for pursuing them and, in particular, they are protected by a right against others interfering with the pursuit of these activities. Liao argues that licensing a certain activity necessarily interferes with the pursuit of this activity, since it denies an unconstrained access to it by making the right to pursue it conditional on the possession of a licence and on having successfully passed a screening procedure. Liao concludes that the state may not license basic human-rights-protected activities: there should be a strong presumption that individuals should not have to prove competence to be at liberty to pursue a basic activity, which licensing fails to respect.

The second half of the argument is devoted to the claim that biological parenting is, indeed, a basic activity. Liao points to four distinctive features of biological parenting which explain why it is especially important to human beings *qua* human beings: biological parenting involves i) the creation of a human being, ii) who will develop into a right-holder, iii) by using one's own genetic material, iv) and the experience of shaping one's own offspring growing and of shaping her life in different respects. The joint value of these features grounds the claim that the value of being at complete liberty to pursue biological

parenting is important to any human being *qua* human being, such that being deprived of this absolute liberty is not compatible with having a minimally good life. Liao concludes that licensing biological parents would constitute a violation of their human right to the fundamental conditions for a minimally good life. Liao gives further support to this claim by comparing biological parenting with licensed activities such as driving a car, practising medicine and adoptive parenting: while they are very important to many individuals, they are not important to all individuals and therefore they do not constitute basic activities and, as a result, they may be licensed.

My reply to Liao's arguments proceeds in two steps. First, I want to cast some doubt on his general account of basic activities and the human right to unconstrained access to them. Liao completely overlooks the unavoidable risk of harm to children that is involved in parenting. The argument for licensing parents does not deny that is very important for procreators to raise their biological children, but it stresses that automatically giving the legal custody of children to their procreators imposes on some children a serious risk that could be prevented. Unfortunately, in his list of basic activities Liao does not present any case of an activity that is potentially harmful to others but is nonetheless so important to human beings that individuals have a human right to its pursuit and exercise. A reference to the right to vote might be helpful to apply Liao's argument to potentially harmful activities. We can easily claim that determining political decisions through voting in elections is extremely important to human beings *qua* human beings and that therefore we have a human right to the fundamental conditions for voting and in particular a right against others interfering with our pursuit of voting. The argument would conclude that voting may not be licensed. This sounds very plausible even if we concede that some voters may impose a risk of harm on their fellow citizens because of their extremely bad political choices: the risks of harms that a bad use of one's right to vote can impose on others, nonetheless, are not a sufficient reason to conclude that we may prevent some individuals from voting because a reliable screening procedure predicts that they will make extremely bad political choices. If I am right in reconstructing Liao's argument, opponents of parental license could appeal to it and say that biological parenting is analogous to voting: although biological parents might impose harms on children that could be prevented through licensing, they should not be licensed because free access to biological parenting is extremely important to human beings *qua* human beings.

Second, with this more qualified claim in hand, I argue that Liao fails to establish that biological parenting is a basic activity and that adoptive parenting is not. First, it is not clear why biological parenting is so important to human beings that it must be protected by a human right against any type of preventive regulation, including licensing (Barry and Leland 2017). As I show in the next two chapters, a fully worked-out account of which activities may, or should, be licensed, and which not, requires a careful assessment of the importance of practicing those activities and of the amount and severity of the harms that an unconstrained access to these activities involves. While we intuitively think that this assessment speaks in favour of licensing car-driving while it speaks against licensing voting, we need to look more closely at the case of parenting in order to arrive at a definitive answer. Establishing that the state may not license biological parents by simply pointing to the huge importance of biological parenting to human beings, as Liao does, wrongly overlooks the harms to children that could be prevented. Moreover, Liao's focus on the four features of biological parenting that explains why it is important to human beings seems rather arbitrary: while Liao's argument might establish that biological parenting is distinctively valuable[26] and that access to it is more important to human beings than access to adoption, it fails to show that biological parenting is so much more important than adoptive parenting to make licensing impermissible in the first case, but not in the latter. So, even without denying that the unequal importance of biological and adoptive parenting to individuals may justify different screening procedures for would-be adoptive and biological parents, we can still say that Liao's argument fails to show that biological parents may not be licensed at all.

3.3 Relationship between gestational mothers and children

Anca Gheaus (2012, 2017) argues that during pregnancy, gestational mothers form close emotional and physical bonds with their biological children and that this type of relationship deserves special moral protection. The same claim can be extended to partners of gestational mothers who share the experience of pregnancy with them and want to raise

[26] Rulli (2014) argues for the opposite position: adoption has a type of unique value for parents that is absent in biological parenting.

the biological child with them (2017, pp. 156-157). Would-be adoptive parents, by contrast, cannot claim to have this type of relationship with any child in need of adoption.

Critics of parental licensing might argue that the state should be particularly concerned about interrupting existing relationships between children and their gestational mothers (and their partners) while the same worry does not apply to the case of would-be adoptive parents. They might conclude that while the state may license adoptive parents, it may not license gestational mothers out of a concern for respecting the existing relationship between them and their biological children. While Gheaus' argument is convincing,[27] the conclusion that critics of parental licensing might attempt to derive from it is not. Parental licensing works under the assumption that procreators, and gestational mothers in particular, should raise their biological children, because maintaining the relationship with them is important for various reasons, as I have explained in the previous chapter. Nonetheless, we cannot argue that when we can reliably predict that a gestational mother will maltreat her child, the importance of maintaining the existing relationship between her and her child takes priority over the imperative of preventing child maltreatment. While Gheaus' argument may give a specific ground for why competent gestational mothers have a right to raise their biological children and for the claim that those would-be parents who do not have the same kind of pre-birth relationship with the child - not only adoptive ones but also genetic parents who are not involved in the pregnancy - might have to undergo a more demanding screening procedure, it cannot support a version of the *Asymmetry View* according to which gestational mothers may not be licensed, while other would-be parents may.

3.4 Procreators' legitimate expectations

Jurgen De Wispelaere and Daniel Weinstock (2019), relying on an account of legitimate expectations proposed by Alexander Brown (2017), argue that the state is responsible for procreators' expectation not to be licensed. According to Brown, "the legitimacy of expectations depends on governmental agents bringing certain beliefs while being placed in

[27] For a critique to Gheaus' argument based on the claim that genetic ties are more important than gestational ones to determine who has the right to parent a child, see Magnusson (2020).

a position of competence and discretion for making decisions in a field to which those beliefs pertain." Brown specifies that the existence of a certain legitimate expectation grounds that "any governmental agencies that were responsible for creating legitimate expectations on the part of non-governmental agents have a *prima facie* obligation to fulfil rather than frustrate those legitimate expectations". (2017, pp. 436- 437)

According to this account, procreators, who have lived under a legal system in which biological parents have never been licensed, have the legitimate expectation not be licensed in the future and this is true even if licensing all would-be parents were a requirement of substantive justice. It is clear how, by contrast, prospective adoptive parents, who have lived under a legal system that has systematically licensed adoptive parents, do not have a legitimate expectation not to be licensed. Consequently, De Wispelaere and Weinstock conclude, the state has a duty not to frustrate biological parents' legitimate expectations by implementing parental licensing, while it has no such a duty towards adoptive parents who do not have any legitimate complaint against being licensed (2019, pp. 218-220).

I offer two replies to this argument. First, of course, public institutions can change citizens' legitimate expectations, by announcing sufficiently in advance that they will change the law and consequently the behaviour of governmental agencies. Even if we assume that biological parents' legitimate expectations not to be licensed are weighty and a certain amount of time will be needed to effectively change them, it is not true that it is impossible to change them. For this reason, the type of asymmetry presented by De Wispelaere and Weinstock persists only as long as the state does not take any action to make clear that it intends to implement universal parental licensing: once this happens, biological parents could no longer legitimately expect not to undergo parental screening and the asymmetry between them and would-be adoptive parents will disappear. So, De Wispelaere's and Weinstock's argument can be rephrased as expressing a condition for the justifiability of parental licensing: the state may implement parental licensing only if it permits prospective biological parents to adapt their legitimate expectations to this change in the law. The state should give notice that it will introduce parental licensing and allow enough time before implementing it, for instance the time necessary to bring to term all the pregnancies started under the *status quo* on parental licensing or to wait so that all the individuals who became fertile under the *status quo* have the opportunity to procreate and raise a biological child

without undergoing licensing. De Wispelaere and Weinstock should agree that their argument does not establish a case against the implementation of parental licensing under any circumstances; instead, their argument establishes that the legitimacy of implementing parental licensing is conditional on the fulfilment of the state duty to inform its citizens about the future implementation of parental licensing so that they can revise their legitimate expectations.

Second, and more importantly, as Brown himself notes in his account of legitimate expectations on which De Wispelaere and Weinstock draw, the duty of the institutions not to frustrate citizens' legitimate expectations is a *prima facie* duty, that can be overridden by other moral considerations: "sometimes other areas of justice […] dictate the frustration of legitimate expectations" (2017, p.457). Even if the content of a legitimate expectation can be in contrast with the requirements of substantive justice, this does not mean that the fulfilment of citizens' legitimate expectations by public institutions always trumps the fulfilment of justice requirements by the same institutions. The protection of children's basic rights and the prevention of child maltreatment, which parental licensing aims to guarantee, are clearly weighty justice reasons that outweigh the duty not to frustrate biological parents' legitimate expectations not to be licensed. I would also argue that these reasons are so weighty to justify frustrating would-be biological parents' legitimate expectations by implementing parental licensing immediately, even without waiting so that biological parents adjust their expectations to the change.

3.5 Creation vs. transfer of parental obligations

Mark Vopat (2007) and Christine Overall (2015) consider the following claim that aligns with causal accounts of parental responsibilities: while procreators directly incur parental responsibilities towards their biological children simply in virtue of their procreative actions or pregnancy, adoptive parents acquire parental obligations from the state by being assigned legal custody of a child by the state. While Vopat quickly dismisses the possibility that this consideration might successfully object to universal parental licensing, Overall (2015) argues that whenever the custody of the child passes from the state to specific adults or from one adult to another, as in the case of surrogacy agreements, the state has a duty to

ensure that those adults who are to acquire custody of the child are competent; such a duty does not exist when biological parents who are the primary, or original, holders of parental responsibilities want to discharge directly the parental obligations they have generated through their causal contribution to the existence of the child. The argument concludes that while the state should license adoptive parents and commissioning couples in surrogacy agreements, it does not have a similar duty to license the primary holders of parental obligations, i.e. biological parents. A different version of this argument could claim that since commissioning couples are, in fact, the primary cause of the existence of the child, they are the primary holders of parental obligations, and not the gestational mother who plays a less crucial role in the causal chain that determines the existence of the child:[28] this claim would support a *status quo* on parental licensing in which the state does not have to license commissioning couples either.

Even if we agree with the causal account of parental responsibilities assumed by this argument, there are two objections to its conclusion about the asymmetrical duty of the state to license prospective parents. First, the source of one's obligation (i.e. whether it is directly generated by the duty-bearer or transferred to him by the primary duty-bearer) is irrelevant to the duty of the state to ensure that those activities that pose a high risk of severe harm on others are performed by competent agents. The following case illustrates this claim: a driver inadvertently hits a pedestrian who suffers a severe leg fracture. The pedestrian is temporarily unconscious and needs urgent surgery to avoid further complications. The driver and a passer-by volunteer to perform the surgery themselves. If we really subscribed to the reasoning presented before, we should conclude that the state has a duty to check whether the passer-by can perform the surgery safely, while it does not have a duty to check whether the driver can, because the driver has directly generated, or is causally responsible for, the obligation to rescue the victim. This seems deeply implausible: since the practice of surgery involves a high risk of severe harm to the victim of the accident, the state has a duty to ensure that the person who will perform it can do so safely, independently of whether she has a direct or transferred obligation to do so. This case shows by analogy that the asymmetry between the source of one's parental obligation - the causal role in the child's existence for biological parents, and the transferral by the state for

[28] On the notion of "primary and proximate" cause for the child's existence see Austin (2007, pp. 38-39).

adoptive parents - cannot justify the asymmetry in the state's duty to license would-be parents.

Second, as I explain at greater length in the next chapter, even if we agree that biological parents directly incur moral parental obligations, while adoptive ones receive them by the state, we should recognise that the state is unavoidably involved or implicated in the assignment of parental rights and authority over a child to specific adults. The causal pre-institutional account of parental responsibilities can address the issue of the acquisition of moral parental obligations, but it cannot explain the acquisition of legal parental rights by specific adults: under the *status quo* on parental licensing, procreators do not directly, or naturally, acquire *the legal custody* of the child, but they receive it (automatically) from the state. In other words, while we may draw an asymmetry about the ultimate source of moral parental obligations for biological and adoptive parents, we cannot draw a similar asymmetry about the ultimate source of their parental rights, which are always assigned, through different procedures, by the state.

3.6 Biological and adoptive parents have unequally demanding parental obligations

Opponents of parental licensing might finally claim that adoptive parents have more demanding parental obligations than biological ones. Children in need of adoption have commonly already suffered different forms of traumatic experiences; often they have been maltreated and removed from their parents, they will likely face special challenges during their life, such as the social stigma associated with being an adopted child, coping with the knowledge of having being abandoned, the struggle to know one's biological origins, etc. Although this is not true of each and every adopted child, we can conclude that the task of adoptive parents is commonly much more arduous than that of biological parents: adoptive parents have to face specific challenges in raising their children and have a duty to provide them with a specific type of material and psychological support. In a nutshell, the competence to adequately raise an adopted child requires much more robust knowledge, abilities, judgement and dispositions than is required to raise a biological child. If the competence necessary to adequately fulfil the obligations of adoptive parents is more

demanding than that of biological parents, someone could claim that the state has a duty to check whether would-be adoptive parents have the competence to assume these particularly demanding obligations, while it does not have a duty to check whether would-be biological parents are competent to fulfil their less demanding parental obligations.[29]

A second possible line of argument focuses on different causal contribution played by biological and adoptive parents in the child's existence. While biological parents are commonly causally and morally responsible for the existence of their children because they have performed the actions that caused the existence of the child (i.e. the fusion of two gametes, either through a sexual act or artificially act and the pregnancy),[30] adoptive parents did not play any role in the creation of the child. Someone might combine this consideration with the claim that being brought into existence constitutes a benefit and conclude that biological parents benefit children merely by dint of having created them:[31] if life is a good either in itself or because is the precondition for enjoying all the goods, biological parents have benefited their children by giving life to them. This clearly would not be true of adoptive parents. Therefore, if we believe that a parent owes her child a certain amount of benefits over his life, we should conclude that biological parents after her the birth of the child owes him a smaller benefit than adoptive parents, since the former have already given him the benefit of life, while the latter have not. This would mean that adoptive parents have more demanding parental obligations than biological ones.[32]

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[29] Archard (1990) presents a similar argument against licensing biological parents.

[30] I specify that this is the case under common circumstances since we have two kinds of exceptions: adults who do not have any biological tie with a child but are ultimately responsible for her existence, such as commissioning couples, and biological parents who are not causally nor morally responsible for the existence of their biological children, such as raped women and adults who have their gametes used to create a baby without their consent.

[31] On the notion of "existential benefit", see McMahan (2013). The general context of the debate about existential benefits and harms is the so-called "non-identity problem" famously presented by Parfit (1984).

[32] Notice that starting from the claim that biological parents are responsible for their children's existence we might run an argumente that goes in the opposite direction. Biological parents are responsible for the neediness of the children they have created, while adoptive parents are not; therefore, biological parents have more demanding obligations to meet these needs, or even they have an obligation to compensate the wrong or the harm of having brought their children into existence: adoptive parents, by contraast, do not have this kind of duties arising from their responsibility for their children's neediness. On the wrong and the harm of being brought into existence, see Shriffin (1999) and Benatar (2006). I do not commmit to any of these arguments about the normative relevance of bringing a child into existence and I simply argue that none of these claims can help deny that we should license biological parents.

I think a straightforward reply to these two lines of argument can be given. It is clear that raising an adopted child is commonly much more complicated than raising a biological child and that the required competence to adequately raise an adopted child is much more demanding than that required to adequately raise a biological child. We can also concede that biological parents owe their children less than adoptive ones because they have already benefitted them in a significant way by bringing them into existence. Nonetheless, the basic requirement of not maltreating one's child applies equally to all parents. While considerations about the more demanding requirements of adoptive parents might justify the claim that we should have more demanding screening procedures than for biological parents, they cannot support the claim that we may or should exempt biological parents from a minimal screening that aims to establish whether or not they are likely to maltreat their children.

Conclusion

In this chapter, I have presented the canonical argument for parental licensing, which claims that the state should implement some form of screening for any would-be parent in order to give them custody of a child. The intuitive force of this argument lies largely in a symmetry between adoptive parents, who are currently undergoing licensing, and biological parents: the reasons we have to license the former apply also to the latter. I have shown that many objections to the proposal are based on the idea that certain relevant differences between adoptive and biological parenting ground an asymmetry about the appropriate treatment of would-be adoptive and biological parents. The first task of a defence of licensing parents, therefore, is to show that these asymmetry-based objections fail. I have engaged in this task over the last few pages: these objections are either grounded on flawed premises, or they mistakenly deduce implications about the appropriateness of licensing biological parents from sound premises.

Nonetheless, as I have anticipated in replying to Liao, the debate between advocates and opponents of parental licensing presented so far is unsatisfactory, because it fails to tackle the substantive deeper questions that lie behind the question of whether it is appropriate to license all would-be parents or none of them. A well worked-out and robust defence of parental licensing cannot simply point to the fact that we already screen adoptive parents

and we have good reasons to do so, and a well worked-out objection to parental licensing cannot simply point to some important differences between adoptive and biological parenting. Both advocates and opponents of licensing parents have to engage in a careful analysis of the different fundamental interests of parents and children that are at stake when the state gives legal custody of a child to a specific adult, and how it is right to respond to them. I devote the next chapter to presenting a normative framework that allows advocates and opponents of parental licensing to tackle these issues and provides a more structured context in which to debate the merits of the *status quo* on parental licensing and of universal parental licensing.

Chapter 3
Reframing the Debate Over Parental Licensing: Harms, Risks and Justified Choice Among Child-Assigning Systems

1 Why should we reframe the debate over parental licensing?

As we have seen at the end of the previous chapter, the debate around parental licensing, as it has been conducted so far, has mainly focused on the alleged symmetries and asymmetries between biological and adoptive parents. While advocates of licensing stress that the reasons we have to license adoptive parenting, and risky activities in general, also apply to biological parenting and conclude that we should license all parents, opponents have presented different reasons for why biological and adoptive parenting are relevantly different and have claimed that these differences should translate into a differential treatment of adoptive and biological parents when it comes to licensing.

Advocates of parental licensing, I have argued in the previous chapter, can successfully claim that the asymmetry-based objections fail to show that the state may not or should not license biological parents; at most, what these objections establish is that we should require higher parental competence from adoptive parents than from biological ones. However, the canonical argument for licensing parents does not seem very satisfactory for a number of reasons.

First, the canonical argument is *prima facie* vulnerable to new versions of the *Asymmetry View* that might be formulated: if we do not find a more fundamental argument in favour of parental licensing, the justifiability of the proposal is constantly under the threat of encountering a asymmetry-based objection that the canonical argument cannot convincingly rebut.

Second, it is based on a double symmetry that looks intuitively convincing but has a rather weak theoretical ground; more specifically, the argument simply extends our judgements about the appropriateness of licensing some activities, and adoptive parenting in particular,

to the case of biological parenting. In doing so, the argument fails to give us more fundamental reasons for why we should license an activity in general, and for why we should license biological parenting in particular. In other words, the argument may be accused of being rather superficial, i.e. it does not engage in an analysis of fundamental issues that we sense are involved in the proposal of parental licensing. In this chapter I spell out these reasons.

Third, because the argument is mainly focused on the risk of harms that parenting poses to children by incompetent parents, it might be accused of overlooking adults' interests, and in particular, their interest in parenting. As we have seen in the previous chapter, various appeals to the right to parent, or the interest in parenting, one's biological child, fail to establish that we should not license biological parents; nonetheless, a fully worked-out defence of parental licensing should give a more careful assessment of adults' interest in parenting.

Similarly, attempts to reject parental licensing based on the identification of asymmetries between biological and adoptive parenting are unsatisfactory for the same reasons. They do not consider the fundamental reasons for why we should prefer the *status quo*; they do not carefully consider the fundamental interests of the children affected by the *status quo*; and consequently, they do not provide a conclusive and convincing argument in favour of the *status quo*. While the canonical argument provides an unsatisfactory reason for the proposal, the objections to it are equally unsatisfactory since they do examine the fundamental reasons in favour the *status quo*. Both opponents and advocates of licensing parents should, then, recognise that a debate that simply identifies symmetries and asymmetries between biological and adoptive parenting cannot settle the question of whether or not we should license biological parents. Relying solely on more or less intuitive particular analogies and disanalogies is not the right method to address the question at hand. Instead, we should proceed by engaging with the foundational reasons that explain our intuitive responses to the proposal of licensing parents.

In this chapter, I put forward a new framework that aims to redefine the debate over parental licensing that explains and engages with the foundational aspects involved. Under this framework, opponents and advocates of parental licensing share an equal burden of

proof to show that their respective positions are morally preferable to the ones of their intellectual adversaries. This framework changes the debate around the moral assessment of parental licensing, relative to the existing debate on parental licensing described in Chapter 2, in two ways. First, it does not take the *status quo* as presumptively justified and it does not assume that the burden of argument falls mainly on advocates of parental licensing. In other words, those who reject parental licensing may not limit themselves to presenting simply negative arguments, but have to argue *for* the *status quo*. Second, this framework shows how both views on parental licensing have failed to provide sufficient arguments for their positions: the new framework will enable both advocates of licensing parents and supporters of the *status quo* to develop more conclusive arguments that are grounded on the assessment of the fundamental issues at stake. I should clarify here that I do not claim that the new framework alone clearly shows that we should license biological parents, nor that after having considered the issue of parental licensing under this new framework, we will obtain a general consensus and disagreement between advocates and opponents will disappear. Rather, I claim that the disagreement between them will appear with greater clarity and completeness once it is considered under this new framework. In other words, both advocates of licensing and supporters of the *status quo* require this framework in order for them to be able to develop better worked-out, foundational arguments and defences.

2 The role of the state in assigning parental custody

The first step in understanding this new framework is to realise that the *status quo* and parental licensing are two different systems by which the state assigns parental authority over a specific child to specific adults. It is the state that, on the basis on a variety of moral considerations as well as empirical premises, determines which adults are the legal parents of a child and have legal custody and the bundle of parental obligations and rights. This claim might sound, paradoxically, both quite obvious and implausible: some further remarks can help us understand what exactly it means.

First, note that this claim denies that there is a natural, pre-institutional or pre-legal status that determines who has parental authority over children; however, at the same time, it is

compatible with accounts that maintain that there are natural, pre-legal parental obligations that some adults have towards children. As we have seen in Chapter 1, various accounts of the grounds of parental responsibilities identify some adults as holders of parental obligations towards a specific child in virtue of some relevant pre-legal facts: their biological ties with the child; the causal role they have played in her existence; their willingness to parent her. We have therefore different plausible views that tell us that before and independently of any involvement of the state, special moral relations exist between some adults whom we can define as "moral parents" on the one hand, and a specific child on the other. The claim that the state assigns legal custody of a child to a parent does not deny this: having special moral duties towards a child, duties that exist independently of what the law says, does not entail that one should have legal authority over her.[33] Consider again the case of the driver who has hit a pedestrian who, as a result, requires urgent surgery, as presented in the previous chapter. Although we believe that the driver has a moral obligation to ensure that the pedestrian receives the medical attention she needs, from this it does not follow that he should have the legally recognised authority or the right to perform the surgery on her. The state has to determine whether or not he may do so, commonly checking whether he has a licence as a surgeon. The point here is general: establishing who is the moral parent of a child does not automatically tell us who should be the legal parent of a child. In order to know *that*, we need to know how the state assigns parental authority; the state may simply recognise, as in the *status quo*, the moral parents of a child as her legal parents, but this is nonetheless a choice made by the state, among several possibilities and, importantly, taking into account other considerations besides those that bear on the claim that some adults have some moral obligations towards the child, including the moral obligation to act as her parent.[34]

Someone could also argue that moral parental obligations necessarily go together with some moral rights that subsist independently of their legal recognition and that the state has a duty to respect. My claim does not deny even that. First, we should better specify the limits of these moral rights and the conditions for having them. Second, once the state is in

[33] On the distinction between "moral" and "legal" parents, see Brake (2010). My interest is in the criteria according to which the state should recognise a specific adult as the legal parents of a specific child.

[34] It is important to notice that parental licensing does not deny that establishing who is the moral parent of a child is relevant to determine who should have the legal parental custody over her, but it claims that is not the *only* relevant consideration. In fact, if a biological parent has a license he, and not others, has the right to parent her child also because he has moral pre-legal obligation towards the child.

place, these moral rights can ground legal authority only if the state grants them this type of recognition: if we believe that the state has a duty to respect these rights, we have to recognise the only way in which it can fulfil this duty is by establishing that the holders of parental moral rights are the legal parents of a child. The state needs to make a decision about how it assigns the legal custody of a child to specific adults: by subscribing to a specific account of the grounds of moral parental obligations and rights, it does not refrain from making a decision, but it decides to translate into law the moral considerations that bear on the issue. An important conclusion that we can derive from these observations is that when the state decides not to license biological parents because it believes there are good reasons for not doing so, such as the respect of the biological parents' right to parent, it makes a specific choice among different possible choices. To sum up, when some adults have the legal custody of a child and enjoy legal parental rights, it is always because the state has decided to assign the child to their custody according to a more general system that defines the procedures that determine who is the legal parent of a child. Under the *status quo*, the procedure is to assign a child to the custody of their biological parents if they are willing to raise her; under parental licensing, the child is assigned to their biological parents if they are willing to raise her *and* have a parental licence. From now on when I refer to the *status quo* on parental licensing I only consider the automatic assignment of the legal custody of a child to his biological parents and I do not consider the fact that adoptive parents are currently licensed, asin this and the next chapter I do not raise objections about the asymmetry in treatment between biological and adoptive parents. My focus is instead on comparing a system in which biological parents are licensed with one in which they are not, namely the *status quo*.

A second point worth noting is that the claim that there are different possible child-assigning systems between which the state might choose does not mean that they are all equally good or that there are no moral indications or principles that the state should follow to make its choice. Consider, for instance, the following implausible hypothetical case: if the state decided to switch children randomly among adults who have had a biological child in the last week, it would clearly act unjustifiably, since there is no good reason for such a system. Recognising that the state has to make a choice about how to assign children to the custody of specific adults does not mean that it may make any choice whatsoever; rather, it means that the state has a duty to justify its choice. More specifically,

the state is a special agent, morally speaking: while individuals commonly have to respect a series of moral constraints and requirements, the state has a specific duty to justify the choice it makes to the individuals affected by them. In the next chapter, I consider more closely what this duty exactly requires; for now, I want to simply clarify that the state has to justify its choice of a specific child-assigning system.

A final point worth noting is this: the justifiability of the system by which the state determines which adults have the legal custody of a child does not just depend on the choices of citizens expressed by democratic procedures. While we might believe that citizens' preferences are the only relevant considerations to address certain areas of policy or certain political issues, in what follows I argue that in the case of assigning the legal custody of children, there are fundamental moral reasons at stake – reasons of justice - that are relevant to determine which system is justifiable.[35] Advocates of licensing parents and supporters of the *status quo* may not simply argue that their preferred system is justifiable because it is the one that citizens chose or would choose in a democratic election. Rather, they need to provide a more fundamental justification.

To sum up, when the state recognises someone as the legal parent of a child, it necessarily makes a choice between different systems that determine how to assign a child to the legal custody of one adult or more. The *status quo* is not a natural state of affairs that advocates of parental licensing propose to overcome by the intervention of the state; on the contrary, both the *status quo* and parental licensing are two possible child-assigning systems that the state might choose to implement, and the choice of which it needs to justify to those affected by them. By "child-assigning system" I mean the set of principles and procedures on which the state relies to determine who is the legal parent of the child: the *status quo* simply looks at who is the biological parent of a child, while under parental licensing the state also checks whether the biological parents have a parental licence. Both advocates of parental licensing and supporters of the *status quo* need to offer reasons for why the state should implement their preferred child-assigning system; more precisely, they have to show

[35] Dworkin (2000 ch. 4) distinguishes between *dependent* conceptions of democracy, according to which democratic procedures substantively just results, and *detached* ones, acording to which democratic procedure are intrinsically just. I claim that the justifiability of a child-assigning system is a *detached* issues does not (uniquely) depend on citizens' preferences expressed through democractic procedures, but mainly on substantive normative principles.

how the state can justify the choice of their preferred child-assigning system to both parents and children.

3 Harms and risks to children and adults

But what are the fundamental moral considerations that we have to take into account to determine which child-assigning system the state should implement? In this section I briefly recall the assumptions I made in Chapter 1 about children's and adults' interest and I present an account of severe harms and risk of harms to children and adults that, as I will show, are unavoidably involved in the different child-assigning systems. Our assessment of different child-assigning systems and the arguments we might give in favour of them have to be grounded on an assessment of these harms and risks. I roughly define harm as the setting-back of a person's fundamental interest and I explain later why it is preferable to frame the discussion in terms of harms rather than mere costs or burdens. Moreover, I simply assume that individuals have a strong interest in not being harmed and in being protected against harm. I consider harms to children first and then to adults.

3.1 Children

It should be clear that the first type of harm that we should consider is *child maltreatment*. As we have seen, the canonical argument for parental licensing is based on the idea that we have strong reasons to prevent child maltreatment by making would-be biological parents undergo some tests and checks, while asymmetry-based objections argue that we have reasons not to try to prevent child maltreatment by requiring biological parents to obtain a parental licence. I need not recall here the details of the account of child maltreatment I have presented, and simply remind the reader that child maltreatment can be caused both by abusive *actions* performed by parents, like violently beating a child, and negligent *omissions*, like forgetting to feed her, that demonstrate a lack of minimal concern about the life od the child.

However, when the state determines which adults will raise a specific child, this can affect another interest of the child. As we have seen, several different considerations support the claim that children benefit to a great extent from having a stable relationship with a limited number of adults who take care of them, so that we can conclude that children who are deprived of relationships with affective and caring parents, and who are for instance raised in foster-care institutions, suffer a specific harm that does not constitute child maltreatment: a child who is raised in good-working foster care would commonly not suffer the terrible consequences of child maltreatment, but does nonetheless suffer the severe deprivation of the individualised care that only competent parents can provide. Note, however, that this harm occurs only if the child is deprived of the opportunity of being raised by their competent parent; if a child is removed from the custody of his incompetent parent and placed into foster care, we cannot claim that he is being deprived of the valuable relationship with his biological parents, since establishing a relationship with an abusive or neglectful parent has no value for the child.

We can also argue that a child who is removed from the custody of his competent biological parent and assigned to the custody of another competent adult does suffer a more specific type of wrong. Besides the value for children of establishing close and stable affective relationships with one or a few adults, as we have seen, there are good reasons why it is important for children to be raised by their biological parents. The case of a state that randomly assigns children to the custody of would-be competent parents is clearly wrong also because it deprives many children of the value of being raised by their competent biological parents. Since my focus here is on a proposal that, as I will explain better, might be accused of wrongly depriving children of the value of being raised by their competent biological parents, I consider here jointly the harm that children suffer when they are not raised by parents, and the harm they suffer when they are not raised by their competent biological parents. I term this two-faced harm *familial deprivation*.

To sum up, when the state needs to choose according to which system it assigns children to the custody of specific adults, it has to consider two main harms that children might suffer: child maltreatment; and familial deprivation, i.e. the harm of not being raised by one's own competent biological parents.

3.2 Adults

As I have explained in Chapter 1, different theorists have argued that many adults have a fundamental, specific interest in establishing, keeping and developing affectionate and authoritative relationships with children, i.e. in parenting. The "dual interest view" tells us that for the justice of parent-child relationships, both children's and adults' interests matter: in particular, the interest that parents have in raising a child matters.[36] This interest is so important that we can assume that an adult is suffering harm when she is prevented from parenting a child. I term this harm *parental deprivation*.

Two further qualifications are necessary to correctly understand this harm. First, as we have seen, the interest of raising a child is conditional on the ability to adequately raise her: only parents who are competent can claim to have an interest in raising a child. For this reason, only adults who are prevented from raising a child but would be able to do so suffer parental deprivation; by contrast, an incompetent parent who is denied the opportunity to parent a child does not suffer any type of harm. Second, adults who have biological children do not have an interest in parenting *a* child, but to parent their own biological child. To make this point clearer, consider again a system that assigns children randomly to the custody of competent parents: such a system would harm not only children but also many biological parents who would be deprived of the value of raising their biological children. Since my ultimate aim is to argue that the proposal of licensing biological parents does not underestimate their interest in parenting their biological children, I focus on the specific deprivation suffered by adults who are wrongly prevented from raising their biological children and I do not consider the deprivation suffered by adults who want to adopt a child but are wrongly barred from doing so. Parental deprivation, therefore, refers to the specific harm suffered by those competent parents who are barred from parenting their biological children.

[36] My defence of parental licensing, in other words, assumes the "dual interest view" and shows that parental licensing does not underestimate adults' interest in parenting. In Chapter 6 I argue that once we look more closely at the content of the dual interest view we have reasons to raise objections against it.

I have decided to frame my analysis in terms of harms to children and adults and the importance of avoiding these harms for three main reasons. First, one might claim that while it is true that many adults benefit from parenting their biological children, depriving them of the opportunity to do so does not constitute a severe harm, but is simply the frustration of a project or a desire. If we subscribe to this claim, we would have a quite complicated moral picture in which we should compare harms to children and lack of pure benefits to adults, i.e. benefits which are not also a prevention of, a removal from or an alleviation of harm, and consider specific principles regulating the permissible imposition of harms to someone to grant pure benefits to herself and others.[37] Describing the loss suffered by adults who do not have a chance to parent their biological child as a harm allows me to conduct a more straightforward analysis in which we compare unequally severe harms. Second, I defend a proposal that generally seems insensitive to adults' interest in parenting their biological children and is accused of not taking this interest seriously. In order to present a convincing argument, then, I need to start from the assumption that adults who lack an opportunity to parent a child actually suffer a severe loss, and are not simply deprived of something valuable to them. If I can show that we can defend parental licensing even if we start with the premise that adults have a right not to suffer the harm constituted by the lack of the opportunity to parent a child, the proposal of parental licensing does not face the usual accusation of trivialising adults' interest in parenting and the loss suffered by those adults who are barred from parenting. Third, and most importantly, we have good independent reasons to uphold the claim that lacking a chance to parent one's biological child constitutes a harm for many parents. As we have seen in Chapter 1, different accounts of the value of parenting shows why the chance to parent one's own biological child is particularly valuable to many adults and makes a distinctive contribution to their lives: parents are committed to shaping their biological children's lives and in expressing and sharing their commitments with their children by making important choices on their behalf; adults have a fundamental interest in enjoying the special kind of intimacy that characterizes parent-child relationships, it is valuable both for the child and the gestational mother to protect the pre-birth relationships they have formed, etc. Denying that biological parents who can adequately raise their children and have their biological children removed from their custody suffer a severe harm would

[37] On the concept of "pure benefits" on and justification of pure benefits that involve a risk of severe harm, see Shriffin (1999, 2006).

mean failing to do justice to parents; in other words, a plausible account of justice of child-parents relationship has to assume that the loss I described constitutes, in fact, a significant harm. To sum up, assuming that being deprived of the opportunity to establish a parental relationship with one's biological child constitutes a severe harm permits me to develop a simpler, stronger, and more convincing argument for parental licensing that does not underestimate biological parents' interests.

4 The wrongness of parental risk

Actual child maltreatment, i.e. the actual setting-back of children's fundamental interests, which I have presented in Chapter 1, does not seem to be the only child-centred object of moral concern that we have to consider in deciding which adults should have the legal custody of a child. In fact, besides consideration of maltreatment, we could argue that children have an interest in not being subjected or exposed to the *risk* of maltreatment specifically by their parents. In other words, we can integrate the simple claim that children have a basic interest in being protected from child maltreatment on which I have relied so far with the claim that children have also a distinctive interest in not being subjected or exposed to mere risks of maltreatment by their parents. In this section I present two orders of reasons in support of the claim that parental risk, i.e. risk posed to children by their parents, wrong children: first, individuals in general have an interest, and probably a right, against risks; second, there are at least two reasons that make *parental* risk imposition on children particularly wrong.

But what do I have in mind when I talk about parental risk? There are certain psychological, behavioural and cognitive traits of parents that make them likely to commit some form of child maltreatment but do not directly harm the child. Consider, for instance, a parent who has little control over stress levels and under certain conditions becomes irascible: for instance, if he has had a long working day and the child cries for a long time, he is very likely to violently beat the child. It is not certain that he will actually maltreat the child – it may be that the combination described above never occurs or it occurs only when there is someone else present who can save the child, but we tend to think that the fact that the child is constantly under this risk makes the parent-child relationship in some sense

wrongful to the child, even if the actual maltreatment never materializes. Similarly, a parent who does not know how to handle a situation where the child is in danger, for instance the child presents severe symptoms and needs urgent medical assistance, is not certain to harm the child; this situation may never occur or there might always be someone around who knows to call emergency services, but we think that the parent wrongs the child by exposing her to the risk of not getting medical attention and the derived harms. To sum up, we share the intuition that parents who leave their children unprotected from the risk of maltreatment, wrong their children even when thanks to good luck (for instance that the child never cries when her parent is stressed, or that there is always someone around who calls emergency services when the child is in danger) maltreatment does not occur.

4.1 The wrongness of risk

The first reason that explains why we should be concerned about parental risk is the general moral wrongness of risk subjection. Accounts of the moral wrongness of risk commonly makes two claims: i) a risk of harm is morally wrong in a way that is distinctive and non-reducible to the wrongness of the harm at stake; ii) a risk of harm is morally wrong even if the related harm does not obtain.

The first claim highlights that if we framed the moral analysis of risk exposition as referring exclusively to the moral wrongness of harm, we would arrive at an incomplete picture of the normative situation. Both our intuitive moral judgements and different legal institutions show that we believe that the wrongness of posing a risk of harm to someone is not completely reducible to the wrongness of the harm in question (Oberdiek 2017 ch. 3). We can see this rather abstract point by referring to the second claim. In those cases in which a risky action, e.g. driving at high speed, does not produce any harm, we nonetheless think that it is a morally wrong action precisely because it wrongly imposes a probable harm on others. Risk of harms wrong the person on whom they are imposed, like other road users in the case of driving at high speed, even if the harms in question do not materialise.[38]

[38] In Chapter 1, I have claimed that my account of child maltreatment is ultimately concerned with actual harms to children. In this section I explore whether mere risks of severe harm imposed to children by their parents constitute a distinctive form of wrong. As I explain later, my argument side-lines the issue of mere

Theorists have proposed different accounts to explain the distinctive moral wrongness of risk imposition. Claire Finkelstein (2003) builds her account on the basis that risks of harms are a particular type of harms. She starts from the consideration that a chance to be benefitted is in itself a benefit, in the sense that people fare better when they have probable benefit than when they do not: for instance, we intuitively think that a person who owns a lottery ticket is better off than a person who does not. Out of symmetry we have to believe that a chance of being harmed makes us worse off, it reduces our wellbeing in a relevant sense and therefore it harms us. A child who is under the risk of being physically attacked by her irascible parent, then, is relevantly worse off than a child raised by a well-tempered parent. John Oberdiek (2008, 2017, ch. 3-4) argues that risks wrongly reduce the autonomy of other people by narrowing the set of options that they might choose safely. Children raised under constant risk of maltreatment may not make several choices in a safe way, i.e. without being maltreated; the child in our case, for instance, may not cry when her parent has worked many hours. Although this argument cannot probably explain why we find parental risk wrong even in those cases in which children are unable, for independent reasons, to make choices, for instance when they are extremely young, it signals the negative effects that parental risk might have on children. Children raised under the constant risk of being maltreated are very likely to internalise their fears and to develop strict norms of self-restriction and self-control that might diminish their autonomy because they reduce the amount of choices that they consider safe for them. Adriana Placani (2016) argues that risks of harms violate the dignity of the person who is under risk because either voluntarily imposing the risk or failing to take necessary precautions not to do so fails to treat the victim with due respect, and ultimately fails to recognise her moral worth. Rahul Kumar (2009) presents a similar contractualist account of intergenerational justice according to the mere imposition of a risk of harm to future generations is a violation of the principle of mutual respect that regulates interactions between moral persons. As I have mentioned in Chapter 1, child maltreatment is caused by a lack of minimal concern for the child's life; imposing a risk of maltreatment over a child is a failure to recognise that she has moral worth that implies that she should also be free from mere risks. I do not commit to one of these views in particular here, since all of them identify good reasons for

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risks and focuses on actual harms to children: considerations about mere risks, then, do not play a central role but give further support for my defence of parent licensing.

why we believe that parental risk wrongs children and we should integrate them. In what follows, I focus on reasons for why we believe that the risk of maltreatment imposed by parents has some distinctive wrongness that the account of the general wrongness of risk imposition I have presented cannot capture.

4.2 The specific wrongness of parental risk

If we look more carefully at the two cases of parental risk I have presented, i.e. the irascible parent who is likely to exercise physical violence over her child and the ignorant parent who does not know how to manage a situation in which her child is in danger, we can see how, when parents impose a risk of harm on their children, there seems to be a specific type of wrongness that would not occur if a stranger imposed the very same risk on the child. In fact, we tend to be more concerned about and to express stronger blame towards a parent who poses the risk of a severe harm to a child than about a person who poses an equally high risk of the very same type of harm to a child who is a stranger to him. Consider, for instance, an individual walking along a street who, if he hears a child crying, is very likely to physically maltreat her, or a stranger who sees a child in danger and in need of medical help in a public space but because of his ignorance does not call anyone and passes by. Although the harms the child is likely to suffer are the same in the two cases and we can assume that the likelihood that they will materialise is the same, we find the cases of parent risks more worrisome.

A first explanation might be that we do not care only about single episodes of imposition of risks, but instead, we mainly care about the conjunction of different episodes over time. Since parents, unlike strangers, have a close relationship with their children which is stable over time, if they constantly impose a risk of harms on their children, the harms in question are very likely to materialise in the long run: irascible parents over time are almost certain to violently beat their children at a certain point; a parent who does not know how to handle a situation in which his child is in danger over time will fail to give her the assistance she needs. This is not true of strangers who have sporadic, occasional or single contacts with the child, as in the cases above: while the likelihood that a risk imposed by a

parent and by a stranger might be the same in a single episode, over time parents are more likely to maltreat a child than strangers.

However, this consideration does not seem to capture entirely our concerns about parental risk. Other considerations about the parent-child relationship, besides its temporal dimension and the overall likelihood that a risk will materialise over time, play a role in explaining our concern with and condemnation of parental risks. I briefly consider two tentative possible explanations.

First, as we have seen, parents should have and act on an at least minimal concern about their child's life. This concern, despite being minimal, is nonetheless special: as I have anticipated in Chapter 1, it characterises the relationship between parents and their children, while strangers do not have a duty to be concerned specifically about the life of a child who is not theirs, owing that child only general duties and impartial respect. While risk imposition violates the rights that any person has against others, it might be said to be especially wrong in the context of relationships of care in which parents should have and express special individual concern for their child. A stranger who imposes a risk of severe harm to a child wrongs her for the different reasons outlined above, whereas a parent who does the same also deprives the child of the special concern he owes her.

Second, parenthood constitutes an exercise of a kind of authority over children, which is recognised and protected by public institutions and the law. The law obviously does not protect the imposition or risk of harms by parents on children, but it does protect the exercise of discretionary parental power over children when it is neither harmful nor risky. This is not true of strangers: the law neither recognises nor protects any kind of authority to people over children who are not theirs. The fact that parents act under a legal recognition of their power over their children, while strangers do not, could partially explain why we are more concerned about parental risk. Our common moral and legal responses to wrongful conduct by public officials *vis-à-vis* the very same conduct by private citizens support this consideration: we generally think that the wrongful conduct of public officials is more wrong than similar conduct undertaken by private citizens. For example, we think that crimes committed by public officials are more severe than crimes committed

by private citizens (false arrest vs. kidnapping)[39] and wrongful discrimination committed by a public official is considered much more severe than wrongful discrimination committed by a private citizen, e.g. an employee selecting employers. The same might be true not only of actual harms but also of risks of harms: when someone imposes a risk of severe harm on another over whom they have legal authority, the wrong suffered by that person is distinctive and seems greater than if it were imposed by an ordinary person: in our case, parental risk imposed by parents who hold legally recognised parental authority over the child is more wrong than a similar risk imposed by a stranger.

I would like to conclude this section by clarifying that I am not claiming that parents may not impose any type of risk on their children or expose their children to any risk. Parents in their daily life have to take a number of decisions and perform a number of actions that might result in severe harms for the child: consider the case of feeding the child and the unavoidable risk of poisoning the child that I mentioned in Chapter 1. My focus here has been on the unjustified imposition of risks by parents on their children, as in the two cases presented above. When a parent imposes a risk of a severe harm on her child and such a risk is easily avoidable or is not necessary to avoid a different severe harm (in medical decisions, for instance, parents may agree to impose a risk of harm to their child to avoid or try to avoid a medical condition), she is clearly wronging her child.[40] Moreover, my claim does not deny that parents may impose certain risks on their children that strangers may not: while a parent may decide which food her child should eat, or they may decide to make or let her child practice a sport that determines a risk of physical harm, strangers are not in the position to make this type of choices. Again, we believe that these choices form part of the normal dynamics of parent-child relationships and if the risk is not excessively high, parents are justified in making them, while strangers are not. I have argued, instead, that when the imposition of a certain wrong on a child is clearly wrong and unjustified, either because it is easily avoidable or because it does not serve any relevant purpose, as in the case of the risk of being beaten by an irascible person or having one's medical needs unmet because of the ignorance of other people, considerations about the special relationship of concern that parents have with their children and the legal authority that the

[39] In this case, the distinctiveness of the moral wrong committed by a public official is shown not only by the higher punishment, but, even more clearly, by the fact that the same action constitutes a distinct crime.
[40] For a more worked-out account on the justifiability of risk imposition on children, see Macleod (2019).

former hold over the latter explain why parental risk looks particularly worrying and wrong in comparison with a similar risk posed to the child by a stranger.

5 Child-assigning system as distributions of harms

Let me sum up what I have argued so far. First, we need to recognise that the debate between advocates and opponents of parental licensing that has been developed so far is unsatisfactory for different reasons and especially because it has failed to give conclusive reasons in favour of or against licensing parents. For this reason, I have proposed a new framework that enables us to consider some fundamental issues that have been overlooked so far and to provide better worked-out arguments in favour of parental licensing or the *status quo*. Second, I have shown that the state has to choose a system by which it determines which adults have legal custody of a child and it has to justify its choice: both the *status quo* and parental licensing are child-assigning systems that need justification. Third, I have reviewed the morally relevant considerations that have to be made when determining which child-assigning system to use; these are the harm of child maltreatment and the specific harm suffered by would-be competent parents who are wrongly deprived of the opportunity to parent a child. Fourth, I have given some reasons for why the imposition of risks of maltreatment by parents on their children, which might not materialise as actual harms, is particularly wrong and is a further element that we have to consider in seeking to justify the choice of a particular child-assigning system.

The last step in defining the new framework consists in noticing that different possible child-assigning systems distribute differently different amounts of the risk of harm of child maltreatment, of familial deprivation, and of parental deprivation. In this section, to illustrate this point and introduce the discussion of the next chapter, in which different theories regarding social risk are deployed to make the choice regarding child assignment systems, I describe three paradigmatic systems that the state might choose to determine which adults have legal custody of a child: the *Status Quo* in which biological parents are automatically assigned legal custody of their biological children; *Parental Licensing* in which biological parents need to have acquired a licence to receive legal custody of their biological children; and an *Ideal Orphanage* in which all the children are collectively raised by public

workers. I must specify that from now on when I refer to *Parental Licensing* and the *Status Quo* in capital letters I refer to the specific child-assigning systems I describe in this section, while when I refer to parental licensing and the *status quo* in lowercase I refer to the general proposal of licensing parents or to the automatic assignment of the custody of a child to her biological parents. I claim that focusing on the specific child-assigning systems I present help us to think more broadly about the justification of licensing parents and of the *status quo* on child-assignment in general.

It is very difficult to estimate the amount of the different harms these three systems would produce, especially since we have never experimented with the effects of *Parental Licensing* and *Ideal Orphanage*. Nonetheless, relying on the projections of the effects of licensing formulated by Sandmire and Wald (1990), I assign specific numbers of harms and risks to each child-assigning system, which are not implausible and are exclusively meant to graphically represent the following relevant facts.

First, any *Parental Licensing* scheme will unavoidably make some mistakes. More precisely, it will encounter some false negatives, i.e. it wrongly bars some would-be competent parents from parenting their children, and some false positives, i.e. it gives a licence to some incompetent would-be parents who are very likely to maltreat their children. Second, under *Parental Licensing*, some children suffer familial deprivation since they are wrongly removed from the custody of their would-be competent biological parents. Third, under the *Status Quo* children face a higher risk of being maltreated than under *Parental Licensing*, because the latter denies some incompetent parents the right to parent their biological child, while the former does not. Fourth, the *Ideal Orphanage* further reduces the likelihood that a child is maltreated because of the systematic mutual control that public workers exercise over each other. Fifth, *Ideal Orphanage* deprives all adults of the valuable opportunity to raise their biological children and deprives all children of the value of being raised by their competent biological parents. While earlier in this chapter I have analysed at some length the specific wrongness of parental risks that do not materialize as actual child maltreatment, for the sake of simplicity here, I only consider the different amount of the actual child maltreatment that each child-assigning system determines. I should clarify the two different uses of the notion of risk I have made: on one hand, I have claimed that the different child-assigning system determine different levels of risks of the different harms to children

and adults, which will eventually materialize as actual harms to some children and adults;[41] on the other hand, I have argued that the imposition on a child of a mere risk of maltreatment is wrongful to the child even if the related harm does not materialize. From now on, my argument engages with the first consideration, while leaves it to the side the second one: more precisely I show how we can build an argument in favour of *Parental Licensing* based solely on considerations about harms to children, which can be further strengthened by the reasons we have to avoid parental risk.

If we agree with these facts, we can describe the three child-assigning systems in the following terms. I focus on a hypothetical set of 1,000 biological parents and 1,000 children in which there is a 1% rate of parental incompetence, i.e. 990 competent parents and 10 incompetent ones.[42] These are the speculative distributions of harms to children and adults that each child-assigning system determines.

i) The Status Quo

All children are raised by their biological parents and are removed from their families only when the institutions find clear evidence of actual maltreatment. Every child faces a 1% chance of being maltreated by her parents. All the non-maltreated children enjoy family goods and all the competent adults get a chance to parent a child.

These are the harms at stake:

10 maltreated children
0 children suffering familial deprivation
0 adults suffering parental deprivation

[41] This is the important consideration in light of which in the next chapter I will argue tha child-assignment constitutes a case of social risks.
[42] This is the current rate of maltreated children that different studies indicate on the basis of available evidence as indicated by Mangel (1988).

ii) Parental Licensing

An adult can parent her biological child only if she has a parental licence that proves her competence in parenting. The licensing process is not perfect: there is a 5% chance that a would-be competent parent is classified as incompetent and therefore that she suffers parental deprivation, and there is a 20% chance that an incompetent parent is classified as competent, and therefore that her child will be maltreated. All the non-maltreated children enjoy family goods, 95% competent adults get a chance to parent a child and 5% do not.[43]

These are the harms and risks at stake:

> 2 maltreated children, who also suffer familial deprivation
> 50 safe children who suffer familial deprivation, because they are wrongly removed from their parents because of failures in the screening procedure
> 50 adults who suffer parental deprivation for the same reason

iii) Ideal Orphanage

All children are raised in public foster care by an unlimited number of public carers and every child faces a 0.1% chance of being maltreated by her carers. No child enjoys familial goods and no adult gets a chance to parent a child. Properly speaking, this is not a child-assigning system, since the state does not assign legal parental authority to anyone.[44]

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[43] For the sake of the argument and in contrast with what I have said in Chapter 2, I assume that the implementation of Parental Licensing would not disincentivize unlicensed adults from procreating. If this effect obtained, instead, the number of children suffering familial deprivation and of adults suffering parental deprivation would be lower, since some unlicensed parents would choose to refrain from procreating. My argument shows that even if this effect, and the relative reduction of harms, does not obtain, we should implement parental licensing.

[44] Since there is no collective well-run orphanage, we have no data on the effects of this kind of child-raising arrangement on the reduction of child maltreatment. In line with the arguments by Munoz-Dardè (1999) and Gheaus (2018), I consider the idea of an ideal public orphanage as a theoretical alternative to the family that might be supported by certain moral considerations: in this case, the claim that an ideal orphanage might minimise the amount of child maltreatment.

These are the harms and risks at stake:

1 maltreated child,

1000 children who suffer familial deprivation

990 adults who suffer parental deprivation

I sum up all the numbers suffering the harms at stake in the different child-assigning systems in the following table:

	The Status Quo	*Parental Licensing*	*Ideal Orphanage*
Maltreated Children	10	2	1
Children Suffering Familial Deprivation	0	50	1000
Adults Suffering Parental Deprivation	0	50	990

Assuming this distribution of various harms to parents and children that each child-assigning system determines, we can see how the debate between advocates and opponents of parental licensing can be reframed. The state has to make a choice between at least three different child-assigning systems, which differently affect adults and children. More precisely, these systems distribute differently the three relevant types of harms to children and adults. This is the fundamental issue that the existing debate between advocates and opponents of parental licensing have overlooked. For this reason, both the canonical argument and the asymmetry-based objections look rather unsatisfactory. A well worked-out defence of a specific child-assigning system has to show that that system's distribution of harms to children and adults is the one that is, on balance, justified to both parents and children. More specifically, the disagreement between advocates of parental licensing and supporters of the *status quo* can be reframed as a disagreement over how we may justify different distributions of harms and which distribution we should prefer. In the next

chapter, I show how the literature on social risk and the distribution of harm can handle the harms at stake in child-assigning and I argue that supporters of the *status quo* may justify their choice only by employing implausible moral views on the aggregation on harms, while most plausible views on the justification of risk and harm imposition support parental licensing.

Chapter 4
Defending Parental Licensing: An Anti-Aggregativist Argument for Rejecting the *Status Quo*

In the previous chapter, I have shown that it is incumbent on the state to establish a system according to which it assigns the legal custody of a child to specific adults and different systems distribute differently harms and risks of harm to children and adults. *Parental Licensing* and the *Status Quo* are two of the systems by which the state can assign children to the custody of specific adults: the former automatically assigns children to the custody of their biological parents, the latter requires biological parents to have a parental licence. I have suggested that we should reframe the debate about parental licensing as one about the justifiability of the distribution of harms determined by *Parental Licensing* and the *Status Quo*: both advocates of *Parental Licensing* and supporters of the *Status Quo* have to argue that their preferred child-assigning system produces a justifiable distribution of harms. In order to present more fully this new framework for evaluating the justifiability of different child-assigning systems, I have also considered a possible *Ideal Orphanage* where children are raised by public carers and no child-parent relationship is established.

In this chapter I begin by showing how describing the assignment of a child to the custody of specific adults by the state as a case of social risk can help us to approach the questions of the right distribution of harms to children and adults: once we clarify the notion of social risk, we can revise the claim made in the previous chapter and say that the different child-assigning system do not directly determine different distributions of harms, but produce different distributions of risks of harms which are virtually certain to materialize as actual harms to some individuals. I then consider how the main views on the distribution of risks of harms would handle the case of child-assignment by assessing the different harms at stake; I argue that only views that rely on implausible principles of the justification of harm imposition support the *Status Quo*, while a family of more plausible views supports *Parental Licensing*. I also consider what these views could say about *Ideal Orphanage* and argue that, although a more careful analysis is needed, we have good reasons to prefer *Parental Licensing* over *Ideal Orphanage*. The main conclusion we can draw is that once supporters of the *Status Quo* engage in the justification of the distribution of risks harms to children and

adults that it determines, they may only appeal to implausible principles, while more plausible principles justify *Parental Licensing*. Within the reframed debate about parental licensing I have presented in the previous chapter can defenders of parental licensing do not need to rely on symmetries with already licensed activities, but on a range of plausible distributive views, while supporters of the *status quo* have to appeal to implausible assessments of the harms at stake in child-assignment. Even if my argument did not conclusively convince opponents of parental licensing that the *status quo* determines an unjustifiable and indefensible distribution of risks of harms, it is helpful insofar as it shows that supporters of the *status quo* may not simply present negative objections to parental licensing: instead, as much as advocates of parental licensing, they have to provide a positive argument to justify the distribution of risks of harms determined by their preferred child-assigning system. In other words, even if reframing the debate about parental licensing as a debate about the justifiable distribution of risks of harms to children and adults might not produce a general agreement in favour of parental licensing, it does make an important contribution by helping to clarify the moral considerations at stake, the burdens of proof, and how different positions can claim to meet these burdens of proof.

1 Assigning a child as a social risk

The previous chapter has shown that once we consider some plausible facts about the implementation of different child-assigning systems, we can conclude that each system produces different amounts of different harms to children and adults. In particular, I have illustrated the effects that the *Status Quo*, *Parental Licensing*, and an *Ideal Orphanage* would have in terms of the rate of child maltreatment, familial deprivation, defined as the harm suffered by children who are removed from the custody of their competent biological parents, and parental deprivation, defined as the harm suffered by those competent biological parents who have their children wrongly removed from their custody. We must note, however, that even if we can predict the rate at which each harm produced by each child-assigning system will occur, which I have synthesised in the table in the previous chapter, and which is reproduced here, we do not know which specific children and adults will be harmed if we implement one of the child-assigning systems. To be more exact, we cannot identify which individuals will be harmed at the moment when we implement the

child-assigning system. If the state assigns the custody of a child directly to her biological parents without running any screening, it can predict that ten children will be maltreated but it cannot *ex-ante* identify *which* ten children will be maltreated. If the state, instead, licenses biological parents, it can predict that because of the mistakes that the screening procedure will make, two children will be maltreated and 50 would-be competent will suffer parental deprivation, but it cannot *ex-ante* identify *which* children and adults will be harmed. If the state raises all the children in ideal orphanages, it knows that all children suffer familial deprivation and all the adults suffer parental deprivation, but it cannot identify which children will be maltreated. For this reason, we can qualify the claim that each child-assigning system determines a certain distribution of harms by saying that each child-assigning system determines specific rates of different harms that will affect a certain number of children and adults whose identity we cannot know before implementing the system. In other words, we are under a "natural veil of ignorance" that makes it impossible to know the identity of the maltreated children and the adults deprived of the chance to parent a child.

	The Status Quo	*Parental Licensing*	*Ideal Orphanage*
Maltreated Children	10	2	1
Children Suffering Familial Deprivation	0	50	1,000
Adults Suffering Parental Deprivation	0	50	990

We can consider implementing a child-assigning system as a specific case of social risk as defined by Johann Frick (2015). Social risk characterises some of the decisions that institutions might make and that pose a risk of harm to a group of individuals in order to avoid other harms for the same group of individuals, and the following conditions obtain:

(1) "The risky action or omission will affect a large number of individuals. Because of this, it is virtually certain that some people will end up being burdened by it."

Given that the different child-assigning systems would be applied to a rather large number of children and adults, for example all those who live in a state, it is virtually certain that some children will be maltreated under any child-assigning system. Moreover, while under the *Status Quo* no adult suffers parental deprivation, *Parental Licensing* does impose this harm on some adults, while *Ideal Orphanage* imposes this harm on all adults. The choice between child-assigning systems, therefore, cannot be guided by the simple principle that the state should not harm anyone, since some harms are unavoidable; instead, we need to answer the difficult question of which harms we might justify in order to avoid other harms and which not.

(2) Some of the harms at stake are considerably more severe than others.[45]

In the case of child-assigning systems, we can easily assume that the harm of child maltreatment is substantially more severe than familial deprivation and parental deprivation: the loss suffered by a maltreated child is clearly more severe than the loss suffered by a child who is removed from the custody of her competent biological parents, but is not maltreated, and the one suffered by would-be competent parents who have their children wrongly removed from their custody. I assume that this assessment of the harms at stake is shared by any reasonable person and that any defence of a specific child-assignment system has to be built on such an assumption: this chapter considers how, in starting from this assumption, possible arguments in favour of each child-assigning system can be built.

(3) The action-type in question is rare, or rarely affects the same people many times; as a result, we cannot assume that over time almost everyone will benefit from a principle that permits actions of this type to be performed.[46] (Frick 2015, p. 179)

[45] I have rephrased and simplified the original formulation by Frick because he considers cases where we might impose a risk of severe harm to give a smaller benefit. Nonetheless, in the previous chapter, I have shown that we have good reasons to consider all the losses at stake as harms, and not as losses of a pure benefit. For this reason, we can reframe the discussion of social risk as an analysis of the risk of the different harms at stake, without referring to benefits to some people.

[46] Later I show that even if we believe that individuals can be compensated later in life for the harms thy have suffered in the past, any child-assigning system produce all-things-considered victims, i.e. individuals who are not benefitted by that system and would have been better off under a different system.

Commonly, the state determines which adults have legal custody of a child when she is born, following the indications of the specific child-assigning system that it has chosen. Therefore, each person is affected by each child-assigning system a limited number of times: as a child, when she is assigned to the custody of her legal parents and, as an adult, when she asks to parent her biological child. For this reason, individuals who suffer a harm under a specific child-assigning system, either because they are maltreated or deprived of their biological parents as children or because they are deprived of their biological children as adults, cannot be compensated because of other effects of the same child-assigning system. In other words, each child-assigning system produces some victims of harm who would not have been harmed under a different child-assigning system: some children who are maltreated under the *Status Quo* would not have been maltreated under *Parental Licensing*, while some of the children who suffer familial deprivation and some of the adults who suffer parental deprivation under *Parental Licensing* would not have suffered such harms under the *Status Quo*. For this reason, there is no child-assigning system that benefits overall each and every individual: when we choose one system, we have to assume that some individuals who will be harmed would have been better off under a different child-assigning system. This consideration makes the formulation of a possible justification for the *Status Quo* and for *Parental Licensing* a philosophically interesting enterprise, since we need to justify some harms that could have been avoided by choosing the other system, which in turn would have produced harms to other people.[47]

The last characteristic feature of social risk is that the risky action in question is intuitively permissible. Instead of assuming that each child-assigning system is intuitively permissible, in this chapter I ask which system the state should choose on the basis of a plausible account of how we should manage social risk. I also assume that, in order to justify a specific child-assigning system, the state has to show that this system determines the morally preferable distribution of risks of harms to children and adults; consequently, the state has a duty to implement this system. The other children-assigning systems are unjustifiable, and therefore the state may not implement them.

[47] If we adopt the intra-life perspective on conflicts of interests between children and parents that I have briefly presented in the Introduction, we might doubt that child-assigning satisfies this condition for social risk. In fact, we might think that since trade-offs between children and parents can be reduced to intrapersonal conflicts between the interests that a single person have at the different stages of her lives, there are not overall victims of a specific child-assigning system. In the next section I explain better why this claim is false and how even if we adopt an intra-life perspective we have reasons to support Parental Licensing.

The characterisation of assigning children to the parental custody of some adults as a social risk is helpful for my analysis for two reasons. First, since child maltreatment is virtually certain to occur, when we evaluate different distribution of risks of harms to children and adults, we can leave aside, for the sake of simplicity, the considerations about the distinctive wrongness of parental risk I have presented in the previous chapter and focus on the severity of actual child mistreatment. The concern with the specific wrong of parental risk that I discussed before provides a *further* ground to care about the protection of children that we should consider, but I do not directly factor this into my normative analysis for the sake of clarity. Second, thinking of assigning a child to the custody of a parent according to a determinate criterion as a case of social risk, permits me to locate the analysis of the moral preferability of child-assigning systems within the well-established discussion of the morality of risk management and the permissibility of implementing socially risky policies. In the next section, I consider our normative commitments about social risk in general, and apply them to the particular case of child-assigning systems.

Before doing that, I have to bring into discussion the intra-life trade-offs and compensations briefly mentioned in Chapter 1, and ask how they apply to the harms to children and adults I am considering. As mentioned earlier, although in developing an account of justice of parent-child relationships I have been treating parents and children as two separate groups, all the current parents have been children and most of the current children will be parents: we may consider, then, their respective interests not as the interests of two different groups of individuals but as the interests of most individuals at different stages of their lives. To frame this claim in terms of the harms I have described, we can say that individuals suffer these types of harms at different stages of their lives, and potentially any individual might suffer these harms: any individual might be maltreated as a child and be deprived of family relationships during her childhood and might suffer parental deprivation during her adulthood. Many other types of harms, by contrast, affect only certain groups of individuals and not others: consider the harms respectively produced by sexism, racism, and homophobia to women, racial minorities, and homosexuals. Other types of harms affect, or are more likely to affect, different groups of people at different stages of their lives: for instance, women are more likely than men to develop osteoporosis in old age, while men are more likely than women to suffer autism starting in childhood.

Child maltreatment and parental deprivation, instead, can be suffered by anyone at different stages of their lives. When we consider these harms, then, we may claim that to determine whether an individual is all-things-considered harmed, we should look at her entire life and consider the different types of harms she might suffer and avoid, and the different benefits she is able to enjoy. We commonly believe that intra-life compensation is possible and, more specifically, that we can impose a harm, or a risk of a harm, on a person, to avoid a more severe harm, or a risk of a more severe harm, to the very same person. Consider the classical case of surgery on an unconscious patient: if we consider every infringement of bodily integrity as harm, we conclude that a surgeon may harm a patient (by infringing her bodily integrity) in order to avoid a more severe harm, or a risk of a more severe harm, like a medical condition.[48] For this reason, we can claim that the harms under consideration when assessing the merits of different child-assigning regimes are, at least theoretically, mutually compensable. It seems that we might justify a certain harm earlier in life, like the harms to children I consider, to avoid a harm later in life, like the harms to adults I consider. In other words, being at greater risk of being maltreated as a child could be the justified price to pay in order to avoid the harm of being at greater risk of being denied the opportunity to parent as an adult. In the next section, I reject this type of reasoning about child maltreatment and that while this trading is theoretically possible, it is not prudentially rational nor morally permissible in this case.

2 Theories on the distribution of harms under social risk

In this section, I consider how the different theories of the justifiability of harm imposition under social risk deal with the case of the assignment of parental custody. I argue that supporters of the *Status Quo* can build a justification of their preferred child-assigning system only by relying on implausible distributive principles or on implausible accounts of intra-life trade-offs and compensation. By contrast, more plausible views on social risk provide a convincing argument for why the distribution of harms determined by *Parental Licensing* is morally preferable to the one determined by Parental Licensing and, therefore, for why the state should implement it. For the sake of simplicity, I will leave the assessment

[48] For an account of the justifiable imposition of a (*prima facie*) harm to prevent a greater one, see Shriffin (2006).

of *Ideal Orphanage* to the last section, where I sketch an argument for why we might prefer *Parental Licensing* over the *Ideal Orphanage*: this argument, alongside concerns about the actual feasibility of *Ideal Orphanage*, supports the claim that *Parental Licensing* is the child-assigning system that the state should implement.

2.1 Straightforward aggregation: a possible argument for the *Status Quo*

Straightforward aggregative views,[49] like classical utilitarianism, hold that in evaluating an action that produces different harms to different people, we should sum the losses it imposes on different people to obtain an aggregate quantity of badness, the overall badness of the action's consequences. The rightness or wrongness of the action depends not on how it affects each individual, but on the net balance of aggregated losses that results from that action.[50] When applied to the evaluation of child-assigning systems, aggregative views require calculating the aggregated harm produced by each system and then conclude that we should implement the system that determines the smallest aggregated harm.

Calculating the aggregated harm of each system is not easy: first, we have to collect the relevant information about the amount of each harm determined by each system, as the following table shows:

	Status Quo	*Parental Licensing*	*Ideal Orphanage*
Aggregated Harm	(10 x child maltreatment)+ (10 x parental deprivation)	(2 x child maltreatment) +(50 x familial deprivation)+ (50 x parental deprivation)	(1 x child maltreatment) + (1,000 x familial deprivation) + (990 x parental deprivation)

Second, we have to determine the relative severity of each harm. This assessment is difficult, or at least it is difficult to make fine-grained judgements in some cases; for example, it seems intuitively true that *child maltreatment* is substantially more severe, as a

[49] I qualify aggregative views as "straightforward", because later I consider so-called "limited" aggregation. In this way, I intend to avoid ambiguities about these two different views.
[50] For a recent defence of straightforward aggregation, see Horton (2017, 2018).

harm, than *familial deprivation* and *parental deprivation*, but how much more severe a harm is it? In other words, how many adults deprived of the valuable opportunity to raise their biological children equate to the badness of a maltreated child? How many children who suffer the loss of not being raised by their competent biological parents equate to the badness of a maltreated child? To reply to these questions, straightforward aggregative views require a fully developed axiology of harms, which assigns an exact weight to the disvalue of each harm, in order to conclude which is the preferable child-assigning system. Supporters of *Status Quo*, nonetheless, might argue that, even if we do not know the exact severity of each harm, we should agree that since *Status quo* is the only system that does not produce great aggregated familial and parental deprivation, it produces the overall smallest aggregated harm, although it produces the highest aggregated child maltreatment. They would go on to argue that *Parental Licensing* and *Ideal Orphanage* determine a great amount of familial and parental deprivation, which does not justify their lower amount of child maltreatment; in other words, they sacrifice some of the interests of too many children and adults in order to save too few children from maltreatment, while the *Status Quo* sacrifices a justifiable number of children, who will be maltreated, to avoid the great harm of wrongly removing many children from the custody of their competent biological parents.

If we accept this assessment of the aggregated harms, supporters of the *Status Quo* can claim that straightforward aggregation recognises as morally preferable their preferred child-assigning system and they provide a justification for why the state should implement it, rather than *Parental Licensing*. I do not commit myself to the claim that this calculation of aggregated harms is clearly mistaken and that supporters of the *Status Quo* are wrong in establishing that their preferred child-assigning system does produce the smallest aggregated harm. Instead, I will claim that determining the aggregated harms of each child-assigning system does not settle the question of which child-assigning system is morally preferable.

In fact, besides concerns about the operability of aggregative views, which, as I have just said, require a considerable evaluative effort, we commonly hold that they produce moral results that we find morally wrong. Thomas Scanlon has presented a famous case to show the untenability of aggregative principles. Jones has suffered an accident in a TV broadcasting station and is receiving extremely painful electrical shocks; if we turn off the

power to save him, billions of viewers will miss the last half hour of the World Cup final. Assuming that the aggregated benefit for TV watchers is higher than the benefit for Jones to be saved from pain, aggregative views hold that we should leave Jones suffering for the sake of creating greater aggregated positive value, Scanlon claims that we share the strong intuition that such a conclusion is clearly morally mistaken (1998, pp. 235-236). Moreover, our rejection of aggregation seems to apply not only when we need to decide whether to let a person suffer a harm or to benefit many more people, as in Scanlon's original case, but also when we need to give priority to certain harms over others. In a case in which we need to decide whether to invest a certain amount of money, or time, to save someone, Smith, from death or many people from a sore throat, and we realise that relieving people from a sore throat would produce a greater aggregated benefit, we believe that we should save Smith regardless of how many people are being harmed by having a sore throat.

In a nutshell, we have two main reasons to reject the results of straightforward aggregation: it fails to respect the principle of the separateness of persons and it is not justifiable to all affected individuals. First, aggregative principles treat a plurality of people as a single individual who has to decide which harms to undergo in order to avoid a greater harm. However, we take it as a basic moral principle that, while an agent can and may accept a harm for himself to avoid a greater harm and we can even impose a harm on someone else to avoid a greater harm for that same person, as illustrated by the surgery case mentioned earlier, we may not sacrifice one individual to avoid less severe harms to many other people.[51] More precisely, the fact that by imposing a harm on a person, or letting her suffer a harm, we can save many people from a less severe harm is not a valid reason to do so, because while individual prudence works, or may work, on straightforwardly aggregative terms, morality may not. Second, as argued by the contractualist tradition, moral agents, and public institutions in particular, have a duty to justify their choices to all people affected by them.[52] In the two previous cases of Jones in the transmitter room and of Smith and sore throats, we commonly think that we cannot justify to Jones and Smith our choices of letting one person suffer an extremely severe harm to avoid a greater aggregated harm composed of a plurality of less severe harms. In other words, Jones and Smith have a

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[51] The concept of the "separateness of persons" has been originally introduces by Rawls (1999, pp. 19-24). For a general discussion of this principle, see McKerlie (1988) and Brink (1993). For a detailed analysis of separateness of persons and aggregative views, see Hirose (2013).

[52] On the idea of justifiability to each person as an objection to aggregation, see Scanlon (1998, pp. 229-241), Parfit (2003), Voorhoeve and Fleurbaey (2012), Frick (2013).

valid complaint against the decision to let them die, while the people who are suffering a sore throat do not. These two reasons do provide a convincing ground to reject straightforward aggregation in general, and the type of justification of the *Status Quo* we might build on it. In other words, these reasons give a negative argument against the *Status Quo*. In what follows, I consider accounts of social risk that are not vulnerable to these objections and can provide a positive justification for *Parental Licensing*.

2.2 Limited aggregation and comparable harms

Before considering more closely the contractualist objections to interpersonal aggregation, I want now to consider a qualified aggregative view, commonly defined as "limited aggregation", according to which we may aggregate claims against certain less severe harms to more people to outweigh fewer more claims against more severe harms to a limited number of people, but we may not aggregate claims against any type of harms in the same way (Tomlin 2017, Lazar 2018, Tadros 2019, Ruger forthcoming). Consider a case in which we can either save Collins from death or many people from tetraplegia: in such a case, unlike in the Jones and Smith cases, it is not intuitively evident that we should save Collins regardless of the number of people who would suffer tetraplegia: tetraplegia is a very severe harm and, in some sense, it is morally and prudentially comparable to death.[53] Advocates of limited aggregation claim that this case is profoundly different from Scanlon's transmitter room case and the Smith case; since the harms at stake are comparable in severity, we may aggregate the claims against tetraplegia to outweigh Collins' claim against death. In other words, when the harms are comparable in severity, numbers *do* count: avoiding a certain number of less severe, but comparable, harms makes it justifiable to accept a smaller amount of more severe, but comparable, harms. While we may not let Smith die to save many people from a sore throat, because the harms are incomparable in severity, we may, and should, let Collins die to save many people from tetraplegia. Limited aggregation does not deny that in Smith's case the aggregated badness of many people's sore throats is greater than Smith's death, but it argues that the amount of sore throats we might avoid is irrelevant in deciding whether or not we should save Smith. By contrast, the amount of

[53] On the notion of harms comparability see Norcross (1997) and Voorhoeve (2014).

tetraplegia we might avoid is relevant in determining whether or not we should save Collins: if the aggregated badness of tetraplegia to many people is greater than the badness of Collins' death, we should let her die to save many people from tetraplegia.

So, rejecting straightforward aggregation does not necessarily mean that interpersonal aggregation is always wrong; rather, it means that aggregation is not always the right way to determine whether we may impose a harm so as to avoid other harms: only in those cases in which the harms are comparably severe is the action that produces the smallest aggregated harm the morally preferable one. Moreover, unlike straightforward aggregation, limited aggregation does not require a fully determined axiology of harms that tells us the exact disvalue of each and every harm; instead, it requires a more limited axiology that tells us which harms are comparably severe and which not, and how many claims against a less severe, but comparable, harm outweigh a claim against a more severe harm. In Smith's case, for example, we do not need to know exactly how much worse death is than a sore throat to know that we may not sacrifice one person to save many people from a sore throat: the intuitive incomparability in severity of the harms at stake is sufficient to tell us that we may not let Smith die. In Collins' case, though, since the harms at stake are comparable, in order to know which is the morally preferable distribution of harms and whether we should let Collins die, we need to know precisely how many claims against tetraplegia outweigh Collins' claim against death.

We can consider now how limited aggregation can reply to the two normative objections I have mentioned against straightforward aggregation. First, limited aggregation does not seem to be vulnerable to objections based on the principle of the separateness of persons: when the harms at stake are comparable in severity, prioritising multiple claims against less severe harms over fewer claims against more severe harms does not necessarily treat a plurality of people as a single individual who has to decide which sacrifices are prudent to accept in order to avoid greater harms. Even if we agree that justice and morality do not work on straightforwardly aggregative terms, as prudence does, we might agree that the principle of the separateness of persons is compatible with aggregation when comparable harms, like death and tetraplegia, are at stake[54]. Second, it is not clear whether limited

[54] For a discussion on whether numbers always count when the same or similar harms are at stake, see Taurek (1977) and Otsuka (2004).

aggregation is vulnerable to the contractualist objection, namely, that it fails to justify its result to any person affected by them: may we justify to Collins our choice to let him die? Does he not have a valid complaint against this choice? As we will see in the next section, the answer to these questions is probably negative, but, nonetheless, we have reasons to treat limited aggregation as a rather plausible account of permissible imposition of harms. For these reasons, I am interested in how limited aggregation would handle the choice between the different child-assigning systems.

As we have seen, according to this view, claims against less severe, but comparable, harms may be aggregated to outweigh fewer claims against more severe harms. Supporters of the *Status Quo* might be tempted to claim that parental deprivation is, in fact, comparable in severity to child maltreatment. They would, then, argue that we may aggregate the multiple children's claims against familial deprivation and adults' claims against parental deprivation to determine whether this aggregated claim outweighs children's claims against maltreatment. Finally, as we have seen in the previous section, they would conclude that once we have added together familial deprivation, parental deprivation, and child maltreatment, the *Status Quo* produces a smaller aggregated harm than *Parental Licensing* and, for this reason, it is the morally preferable child-assigning system.

This reasoning is formally in line with limited aggregation, but we can present a rather simple objection against it. Child maltreatment, on one side, and familial and parental deprivation, on the other, are not comparable harms: as I mentioned earlier, child maltreatment is clearly the most severe harm at a stake, but it is also an extremely more severe harm than family and parental deprivation. Supporters of the *Status Quo* might be right in calculating the aggregated harms of each child-assigning system, but they may not claim that familial and parental deprivation are comparable in severity to child maltreatment. Claims against familial and parental deprivation are precisely those types of claims that, according to limited aggregation, we may not aggregate to outweigh a claim against child maltreatment. Just as we may not let Smith die to save many people from a sore throat, so we may not let eight children suffer maltreatment to save another 50 children from being removed from their competent biological parents (we are assuming they would be given in adoption to competent adoptive parents) and 50 adults from having their children wrongly removed from their custody. I do not need to develop, or appeal to,

a fully worked-out account of harm comparability to make this point. If we believe, with advocates of limited aggregation, that claims against tetraplegia may be aggregated to outweigh fewer claims against death, while claims against a sore throat may not, we have to conclude that claims against familial and parental deprivation may not be aggregated to outweigh claims against child maltreatment. I have assumed that both familial and parental deprivation are important harms, but compared with child maltreatment, they clearly do not look as severe as tetraplegia compared with death. I do not claim either that parental deprivation looks as trivial as a sore throat compared to death. However, familial and parental deprivation are sufficiently less severe than death to make interpersonal aggregation morally inappropriate. To sum up, even if we assume that limited aggregation is the right account of permissible harm imposition, a plausible understanding of the severity of the harms at stake does not permit us to aggregate claims against familial and parental deprivation to outweigh fewer claims against child maltreatment and, therefore, does not provide a valid justification for the *Status Quo*. So far, I have shown that supporters of the *Status Quo* have to either appeal to an implausible view of the distribution of harms, namely straightforward aggregation, or adopt a more plausible view, namely limited aggregation, but deploy an implausible assessment of the comparable severity of child maltreatment, familial deprivation, and parental deprivation.

2.3 Contractualism and harm imposition under social risk

The discussion of harm imposition that I have conducted so far has considered hypothetical cases involving known, or identifiable, victims of harm: we know that we can either save one specific individual, Jones or Smith or Collins, or many other people. Nonetheless, as was mentioned in the first section, child-assigning is a specific case of social risk in which the state poses a determined level of risk of different harms to a huge number of individuals so that it is virtually certain that some individuals will be harmed. More specifically, unlike in Jones', Smith's and Collins' cases, before implementing a child-assigning system we do not know which children will be maltreated, or which children will be wrongly removed from their biological parents, or which adults will have their biological children wrongly removed from their custody. For this reason, I should now consider

views that reject aggregation in the case of certain victims and directly assess the justifiability of harm imposition under social risk.

Contractualism, broadly understood, rejects both straightforward and limited aggregation, claiming that an action is morally permissible only when it is licensed by a principle that can be justified to any person affected by the action, and nobody holds a valid complaint against that principle (Scanlon 1998, ch. 5). Contrary to what aggregative principles hold, we can never justify sacrificing some known, or identifiable, victims of harm to save more people from a less severe harm. However, simply rejecting aggregative principles leaves unanswered important questions about social risk. Consider a case in which we can administer a vaccine against a disease that provokes tetraplegia to a broad population. This vaccine also produces a very small risk, let's say 1%, of death: given that the population is sufficiently large, it is virtually certain that massive vaccination will produce some deaths (this is the first characterising feature of social risk). May public institutions enforce compulsory mass vaccination? In the contractualist literature, we can find two main approaches to this question. So-called "ex-post contractualism", as originally presented by Scanlon, argues that an action is permissible only if it can be justified to all the people affected by it even *after* the action has been performed, and we can justify the action only if no one has a valid complaint against it *after* it has been performed (1998, pp. 208-209)[55]. In the case of mass vaccination, ex-post contractualists would conclude, then, that since there will almost certainly be victims of death caused by it and they will have a valid complaint against it, the state may not enforce compulsory mass vaccination. It is important to note that ex-post contractualism about social risk does not rely on the moral significance of the distinction between actions and omissions: the idea is not that while we may *let* people suffer a harm to avoid more numerous less severe harms, as in Collins' case, we may not *impose* a harm on a person to avoid more numerous less severe harms to others. Instead, ex-post contractualism claims that, independently of whether the harm is produced by an act or an omission, both Collins and the non-identifiable persons who will die because of the vaccine hold an equally valid complaint that makes the actions in question impermissible. Ex-post contractualism can been assimilated to prioritarianism about possible outcomes: in the case of social risks, we can justify a choice only if it produces the smallest risk of the most severe harm, which will then determine the smallest amount of the most severe harm.

[55] See also Moreau (1998) Ruger (2018).

In other words, we should give absolute priority to the reduction of the most severe harm, and to the avoidance of the risk of the most severe harm, over the avoidance of comparatively less severe harms (Scanlon 1998, pp. 223-229, Holtug 2018). Ex-post contractualism requires only a very limited axiology of the harms at stake that tells us the ranking in severity of harms: knowing this, we should choose the state of affairs with the smallest risk of the most severe harm and, consequently, the smallest number of victims of the most severe harm. The results of applying ex-post contractualism to the case of child-assigning systems are clear. Given that child maltreatment is substantially worse than parental deprivation, every child holds a valid complaint against a child-assigning system that permits that she gets maltreated; therefore, we should implement the system that produces the smallest amount of child maltreatment. In other words, we should give absolute priority to avoiding child maltreatment over avoiding parental deprivation. Ex-post contractualists, then, clearly prefer *Parental Licensing* over the *Status Quo*.

A number of philosophers have noted, however, that ex-post contractualism produces a "moral gridlock" since almost any action taken by the state will produce some victims of severe harm to whom the state may not, on the view at hand, justify its choice; more specifically, ex-post contractualism would ban many choices made by public institutions that unavoidably involve a small risk of extremely severe harm, but that we find, nonetheless, intuitively permissible (Broome 1978, Ashford 2003, Fried 2013). Consider again the case of mass vaccination against tetraplegia: most of us believe that it is permissible, and probably even mandatory, to enforce a vaccination plan that will kill few unidentified persons to save many people from tetraplegia (Pierik 2018).

Ex-ante contractualism grounds this intuition on the view that we should assess and justify social risk *before* the action is actually performed and before the risk pans out: we should consider whether any single individual who is equally exposed to the risk of being the victim of the most severe harm may reasonably reject the imposition of the social risk in question and whether she holds a valid complaint against the action, in this case against the compulsory mass vaccination plan (Frick 2015). We should hypothetically ask any person, before running the vaccination plan, whether she accepts undergoing a very small risk of death to be saved from tetraplegia: given that it seems that no reasonable person would answer negatively, compulsory mass vaccination can be justified to each and every person

who will be affected by it and, therefore, is permissible. In other words, in the case of mass vaccination there is no Collins, i.e. an *ex-ante* identifiable person, who has to be sacrificed to save many people from tetraplegia and to whom we may not justify our choice of running the vaccination plan; there will be instead some people who will die, who we cannot know *ex-ante*, and who would have reasonably accepted to undergo mass vaccination.

I should emphasise that ex-ante contractualism differs both from imposed prudence and limited aggregation.

First, ex-ante contractualists do not claim that agents, and public institutions in particular, may impose on others any type of prudent risk-acceptance: the principles of the separateness of persons and of respect for others, which animate contractualist accounts, prohibit imposing on others everything we may find rationally prudent for us. Ex-ante contractualists, instead, argue that in those specific cases where the harm we want to avoid, like tetraplegia, is less severe but nonetheless comparable to the one whose risk we accept, like death, and the risk for the most severe harm is sufficiently small, any reasonable person would accept the risk and, therefore, public institutions may impose this risk on its citizens. Moreover, ex-ante contractualism has implications beyond those reached by adopting classical prudence principles, like the one operating in the surgery case: not only may we impose on an identified person a less severe harm to make her avoid a more severe harm, for instance by infringing their bodily integrity to save her from a medical condition, but we may also impose a risk of a more severe harm on many people, and therefore a more severe harm on some unidentified persons, to save them from a comparable, but less severe, harm, as in the vaccination case.

Second, although some of the practical implications and assumptions of both ex-ante contractualism and limited aggregation are similar, there is a fundamental difference between the two views. Ex-ante contractualism argues that an imposition of very severe harms is permissible only when the victims are non-identifiable before we act, since no one holds a valid complaint against our action, but, contrary to limited aggregation, it argues that both Smith and Collins, who are *ex-ante* identifiable victims, do hold a valid complaint that makes letting them die impermissible. In other words, ex-ante contractualism is committed to the claim that we may not sacrifice a specific person, like Collins, to save

many other people from a less severe harm: we may not justify this decision to the victim, since she holds a valid *ex-ante* complaint against this decision. Nonetheless, we may impose a certain risk of severe harm on a high number of people to avoid less severe, but comparable, harms to the very same people: the resulting victims of this risk imposition do not hold an *ex-ante* complaint against our choice, since they would have reasonably accepted being exposed to that risk.

I can now turn to examine how ex-ante contractualism handles the choice between child-assigning systems. Ex-ante contractualism, unlike limited aggregation, clearly claims that we may not view the aggregate claims of parents against parental deprivation to outweigh the claim of a specific child against maltreatment; consequently, we may not let a particular identifiable child suffer maltreatment to avoid many adults suffering parental deprivation. The question now arises: Is the fact that maltreated children are non-identifiable before we actually implement a specific child-assigning system relevant for our moral assessment?

We have seen that in the case of tetraplegia and death, this is, indeed, relevant: we may impose death on a non-identifiable victim to save many people from tetraplegia, but not on an identified victim, like Collins. However, this reasoning works only when comparable harms are at stake. We may not impose a small risk of severe harm on many people in order to save many of them from an incomparably less severe harm: if we could implement a mass vaccine against sore throats that determines a small risk of death, ex-ante contractualists conclude that, since someone might reasonably reject to take this vaccine, we may not enforce compulsory mass vaccination, even if the victims of death are not *ex-ante* identifiable. While in the original, tetrapelgia vaccination case, no one has an *ex-ante* complaint against being vaccinated, in this sore throat vaccination case at least some people do: we cannot *ex-ante* justify our choice to let some non-identifiable people die to save many people from a sore throat. So, if we think that parental deprivation is not comparable to child maltreatment, as I have claimed before, we should reason in the same terms: we cannot *ex-ante* justify our choice to let some non-identifiable children suffer maltreatment to save many adults from parental deprivation. It may be that the comparison in severity between death and a sore threat is not exactly the same as the one between child maltreatment and parental deprivation; it is possible that child maltreatment is closer in severity to parental deprivation than a sore throat is to death. However, as I have said

before, contractualist views do not require a fully determined axiology of harms to determine which is the preferable state of affairs. I think that assuming that parental deprivation, compared to child maltreatment, is more similar to a sore throat than to tetraplegia when these are compared to death, is sufficient to defend the claims I have made about the application of ex-ante contractualism proposed here.

2.4 Why adopting the intra-life perspective should not change ex ante contractualists' defence of parental licensing

If we now bring into our discussion the observations about the temporal dimension of harms to children and adults and the possibility of intra-life compensation summarised in the first section of this chapter, the picture becomes more complex. Supporters of the *Status Quo* may argue that, since many individuals are potentially exposed to both child maltreatment and parental deprivation at different stages of their lives, if we hypothetically asked people under which system they would prefer both to be raised as children and, once they are adults, to be assigned a child, they would, or could, trade some safety against child maltreatment to secure some more safety against parental deprivation.[56] Consider again the case of the anti-tetraplegia vaccine: we think that all reasonable people would choose *ex-ante* to have the vaccine administered precisely because they would renounce a small degree of safety against death (remember that the risk of death is very low) to get complete safety against tetraplegia. Similarly, supporters of the *Status Quo* might claim that *ex-ante* any reasonable person would renounce a small degree of her safety against child maltreatment to enjoy a higher safety against parental deprivation: more specifically, any reasonable person would accept a 1% risk of child maltreatment and complete safety against familial and parental deprivation under the *Status Quo* to be saved from the 5% risk of familial and parental deprivation under *Parental Licensing*. If this is true, supporters of the *Status Quo* can claim that ex-ante contractualism, combined with considerations of intra-life compensation, does identify the *Status Quo* as the morally preferable child-assigning system and provides a justification for it.

[56] Weinberg (2015, ch. 5) devises a similar original position to identify principles of permissible procreation in which individuals trade their safety against bad life conditions, determined by the procreative choices of their preocreators, and the extension of their freedom to procreate.

Against this possible way of reasoning, I reiterate the consideration about the severity of harms at stake: child maltreatment is such a severe harm that many people would not accept to renounce some safety against it to acquire a somewhat higher chance to not suffer parental deprivation later in life, i.e. to make it more likely that they get assigned their biological child to their custody. Remember that in the contractualist framework, a single individual holding a valid complaint against an action is sufficient to make the action impermissible; *a fortiori* we may not license as permissible an action against which many people hold a valid complaint. If we can find a single individual who can *ex-ante* reasonably reject the *Status Quo* because it fails to protect her from child maltreatment, ex-ante contractualism has to conclude that the *Status Quo* is unjustifiable.

In addition to this basic consideration, I believe that there are some further reasons for why agents involved in an ex-ante contractualist assessment of child-assigning systems would have reason to give priority to safety against child maltreatment over safety against parental deprivation.

First, child maltreatment creates effects which last for a considerable amount of time, commonly throughout one's whole life, while parental deprivation has a more limited temporal extension: people are harmed by the lack of an opportunity to parent only once they are adults who are old enough to want to embark on the project of parenthood. In general, individuals do and have reason to prioritise avoiding harms with longer-lasting effects over avoiding harms with shorter-lasting ones.

Second, although as I granted in Chapter 1, the opportunity to parent a child is distinctively important to many adults, and although would-be competent parents who lack an opportunity to parent do suffer a severe harm, adults can also find value and meaning even if not of comparable importance, in other types of intimate and affective relationships, like romantic ones and friendships. By contrast, children who are maltreated are almost invariably irreversibly harmed and it is extremely difficult for them to develop any meaningful and valuable life-plans (Monnat and Chandler 2015, Doyle and Cicchetti 2017)

Third, while it is important for all individuals not to be maltreated during their childhood, not all adults deeply value the opportunity to parent a child; this means that a hypothetical

agent who has to choose the child-assigning system under which she will live her entire life has to contemplate the possibility that she will *not* be interested in parenting. Therefore, she will discount the importance of avoiding parental deprivation by the likelihood that she will not take parental deprivation as a severe harm. By contrast, she is certain that avoiding child maltreatment will be extremely important to her. This means that any reasonable agent would give some further priority to avoiding child maltreatment over avoiding parental deprivation.

Fourth, we might claim that the interest in parenting, and consequently, the interest in avoiding parental deprivation, is special, since parenting constitutively involves the interests of another person, namely, a child. Children's interest in not being maltreated, by contrast, is exclusively self-concerning: the importance for a child of avoiding child maltreatment does not involve considerations about the wellbeing of other persons. We generally think that, even from a prudential standpoint, those interests of ours whose satisfaction involves the life and the wellbeing of another person matter less than our exclusively self-regarding interests. (In Chapter 6, I analyse this thought more fully and I derive more radical implications from it; so far, I simply argue that the fact that safety against child maltreatment is important exclusively for self-regarding reasons gives it further priority over the protection of the interest in parenting, which involves the life and wellbeing of a different person.)

Fifth, we might believe that moral agents have a prudential interest in not committing moral wrongs, and even in being prevented from committing moral wrongs: the life of a wrong-doer goes in a way worse than the life of a person who does not commit severe moral wrongs (Dworkin 2011, ch. 9)[57]. Consequently, people would have an interest in being prevented from committing child maltreatment; if true, the *Status Quo* is the one that least protects such an interest, because it allows the highest number of incompetent adults to parent a child.

To sum up, then, although under ex-ante contractualism, people have to assess *ex-ante* how the different risks at stake would affect people's complete lives and can sacrifice the

[57] This moralized conception of people's wellbeing is in line with what Dworkin (2011) calls "having a good life" in opposition to "living well".

interests of one stage of their lives over the interests of a different one, for the reasons I have exposed, some people would reasonably give priority to the safety against child maltreatment over safety against parental deprivation.

All these reasons show that *Parental Licensing* is morally preferable to *Status Quo*. By minimising the level of child maltreatment, the defender of *Parental Licensing* can justify its results to all the persons affected: if reasonable people were asked according to which child-assigning system they would have reason to live both as children and as adults, they would choose a system that gives them the highest safety against child maltreatment. It is clear that *Parental Licensing* results in less child maltreatment than the *Status Quo*, although it produces higher familial and parental deprivation. Nonetheless, maltreated children under the *Status Quo* hold a valid complaint, since some of them would have *ex-ante* reasonably rejected this system, while neither competent adults who are wrongly prevented from parenting, nor children who are removed from their custody under *Parental Licensing* hold a valid complaint against this system, because all of them, in virtue of the reasons presented above, would have *ex-ante* reasonably accepted it.

In concluding this section, I would also like to recall what I said in the previous chapter about the wrongness of parental risk and the importance of avoiding it. If we believe that, in addition to the considerations about the justifiability of harm imposition under uncertainty I have just presented, parental risk that does not materialise as actual child maltreatment also wrongs children, and public institutions should take measures to avoid it, then we have a further argument to abandon the *Status Quo* and to support *Parental Licensing* which determines a lower level of parental risk.

3 What about *Ideal Orphanage*? The harm of being parentless

So far, I have considered mainly how different accounts of the justifiability of the distribution of social risk assess the *Status Quo* and *Parental Licensing* to answer the question of which of these two child-assigning systems is morally preferable. I can now briefly consider what we might say about *Ideal Orphanage* and in particular about familial deprivation. Although it does not seem particularly urgent to defend Parental Licensing *vis-*

à-vis Ideal Orphanage, since virtually no one actually defends this arrangement, it is helpful to run this comparison because *Ideal Orphanage* has been presented as a theoretical alternative to the family that we have to consider in presenting a defence of the family (Munoz-Dardè 1999, Gheaus 2018): in other words, defending the existence of families entails also showing that families are morally preferable to the *Ideal Orphanage*.

As we have seen, all the accounts I have presented, with the exception of straightforward aggregation, support the view that we have a duty to minimise child maltreatment, even when it means letting more adults suffer parental deprivation and familial deprivation. But do we think the same is true when we compare child maltreatment and the loss suffered by children who are raised in a public orphanage and are deprived of the value of being raised by some competent parents who can provide them with individual affective care? In other words, do the same considerations I have adduced in favour of *Parental Licensing* over the *Status Quo* speak in favour of *Ideal Orphanage* over *Parental Licensing*?

To approach this question, I must first specify that the loss suffered by these children is not quite the same as the familial deprivation I have been considering so far: the latter regards those children who could have been adequately raised by their biological parents but have been wrongly removed from their custody and are assigned to adoptive parents. Children who are raised in a public orphanages, by contrast, suffer a more severe harm: not only are they not raised by their biological parents; they are not raised by parents at all. As we have seen in Chapter 1, the individual affective care that children receive from competent parents, independently of whether they share biological ties with them, is a crucially important good for the child; once this good is ensured, we have good child-centred reasons for why biological parents, and not others, should raise the child.

On closer inspection, then, the type of familial deprivation suffered by children under *Parental Licensing*, who are assigned to adoptive parents, and the one suffered by children under *Ideal Orphanage* are not the same: not having parents at all, which we can call "being parentless", is a much more severe harm than being raised by adoptive parents instead of by one's own biological ones, i.e. the type of familial deprivation I have considered so far. This distinction has not been necessary to compare the *Status Quo* and *Parental Licensing*, since the only concern was that some competent parents were wrongly denied a licence and

some children ended up being deprived of the value of being raised by their own biological parents. Nonetheless, this distinction becomes relevant when we want to compare *Parental Licensing* with *Ideal Orphanage*, because we have to establish whether being parentless is comparable in severity with child maltreatment. For the moment, I only subscribe to the plausible assumption that a child who is maltreated by her incompetent parent fares worse than a child who is parentless because he is raised in an ideal orphanage, but he is not maltreated by public carers: in other words, child maltreatment remains a more severe harm than being parentless. I sum up the effects of *Parental Licensing* and *Ideal Orphanage* on children in terms of maltreatment and parentless children in the following table:

Parental Licensing	*Ideal Orphanage*
2 maltreated children	1 maltreat child
0 parentless child	1,000 parentless children

As we have seen, ex-post contractualism argues that when we need to decide which action to take, we should always minimise the amount of the most severe harm at stake, because only in this way can we ensure that nobody has a valid *ex-post* complaint against our decision and that we can *ex-post* justify our choice to all the affected people. In the case of a child-assigning system, therefore, it is clear that we should choose *Ideal Orphanage*, because there is only one maltreated child, against the two of *Parental Licensing*. This seems one of the implausible implications of ex-post contractualism denounced by ex-ante contractualists: since it looks only at the most severe harm at stake, it underestimates other comparable harms that we might avoid, because it does not permit any type of *ex-ante* assessment of the risks, and the resulting harms at stake. It is not clear, however, that in choosing between *Parental Licensing* and *Ideal Orphanage* we should be completely insensitive to how many children will be left parentless.

The explanation of our scepticism about this application of ex-post contractualism should be clear by now: the harm of being parentless seems less severe, but comparable in severity,

to the risk of child maltreatment. Again, I cannot offer a worked-out argument for this claim and I need to rely on our intuitive comparison of the two harms; we can draw a similar comparison between being parentless and being maltreated on one side, and between tetraplegia and death on the other. Even if I have granted that *Ideal Orphanage* minimizes child maltreatment even more than *Parental Licensing*, it unavoidably generates a very severe harm to each and every child by depriving him of the relationship with a parent.

Moreover, I should note that the five reasons I have provided in section 3, for why many people would give strict priority to protection against child maltreatment over protection against parental deprivation do not apply to the harm of being parentless: first, children who have no parents cannot establish similarly valuable bonds with adults; second, all children have an interest in having parents, and therefore, protection against being parentless is important to anyone; third, being parentless has negative effects which last for a considerably long time, i.e. our whole life; fourth, children's interest in having parents does not regard other people's wellbeing; fifth, our decision to assign children to parents or to raise them in an orphanage does not affect children's interest in not committing moral wrongs.

If the harm of being parentless is, then, comparable to child maltreatment, ex-ante contractualism argues that we should determine how people would assess *ex-ante* the two harms at stake. We can plausibly claim that all reasonable people would be willing to sacrifice some safety against maltreatment to get more safety against the prospect of being parentless; in particular, they would sacrifice their safety against child maltreatment, accepting the risk to rise from 1/1000 to 2/1000, to move from being certain they will be parentless to being almost certain they will be raised by parents. If this is true, it follows that everyone would prefer *ex-ante Parental Licensing* over *Ideal Orphanage* and therefore that no one hold an *ex-ante* valid complaint against the effects of *Parental Licensing*. So, while minimizing child maltreatment is a strict priority compared to protecting adults and children from familial and parental deprivation, and no reduction of the latter harms may justify a higher amount of the former, when we compare child maltreatment with being parentless we believe, I claim, that protecting many children from the perspective of

growing without parents may outweigh our duty to save a few more children from maltreatment.

If all the assumptions I have made so fare are right, ex-ante contractualism provides a good justification for implementing *Parental Licensing* rather than *Ideal Orphanage*. I cannot develop this line of argument more fully here, but I hope to have emphasise that considerations about the severity of being parentless, and the reasonable solutions of intra-life trade-offs between the interest in not being maltreated as a child and the interest in having parents, can provide a convincing ground for arguing that *Parental Licensing* is, in fact, morally preferable to *Ideal Orphanage*. On top of these purely normative reasons, we should also add the scepticism about the feasibility of an *Ideal Orphanage* that could actually determine the very low level of child maltreatment I have assumed. Nonetheless, to repeat, my claim is that even if an *Ideal Orphanage* were feasible, we have reasons to believe that it is not justified, since there is a morally preferable child-assigning system, namely *Parental Licensing*.

Conclusion

In this chapter I have argued that we can consider child-assigning as a special case of social risk, because any child-assigning system determines risks to a large number of children and adults which are virtually certain to materialise as actual harms. I have, then, considered how different accounts of the justifiability of harm imposition would view the choice between the *Status Quo* and *Parental Licensing*. Straightforward aggregation can support and justify the *Status Quo*. Straightforward aggregation, however, is a deeply unappealing moral view because it requires a fully determined and accurate axiology of all the harms at stake and, more importantly, because in a number of cases it produces results that we find deeply morally mistaken. In particular, straightforward aggregation violates the two fundamental moral principles of the separateness of persons and the duty to justify an action to all the people affected by it. Limited aggregation holds that only claims against comparable harms may be aggregated to outweigh fewer claims against more severe harms. However, child maltreatment is incomparably worse than parental deprivation and, therefore, we may not aggregate claims against parental deprivation to outweigh fewer claims against child maltreatment. Limited aggregation provides a convincing argument against the *Status Quo*,

but it cannot provide a positive justification for *Parental Licensing*. Contractualism claims that what makes an action, and a public choice in particular, permissible is its justifiability to any person affected by it, and that both straightforward and limited aggregation cannot justify their results to some victims. When we apply contractualism to social risk, or the imposition of harms under conditions of uncertainty, two different approaches are possible. Ex-post contractualism argues that we should justify one action to all the affected people after the action has been performed: we can do that only by creating the smallest amount of the most severe harm. Ex-post contractualism, then, would clearly prefer *Parental Licensing* over the *Status Quo*. Ex-ante contractualism, in turn, argues that we should justify one action to all affected people before we perform it, i.e. when people know the risks to which they are all exposed, but ignore who will suffer the actual harms. I have argued that, since child maltreatment is incomparably worse than familial and parental deprivation, reasonable people would not sacrifice some safety against child maltreatment to gain more safety against parental deprivation. I have added that considerations about intra-life compensation do not change this verdict. I have concluded by sketching a comparison between *Parental Licensing* and *Ideal Orphanage* that would need further development. In particular, I have noted that children under *Ideal Orphanage* would suffer the loss of not having parents at all. If we consider such a loss less severe than, but comparable to, the one suffered by a maltreated child, we can build an *ex-ante* contractualist argument for why each reasonable person would prefer to live under *Parental Licensing* rather than under *Ideal Orphanage*. A careful analysis of the different harms at stake in child-assigning clearly indicates that supporters of the *Status Quo* may ground a justification of their preferred system either on implausible views, like straightforward aggregation, or on implausible view about the comparative severity of harms and about intra-life trade-offs. By contrast, more plausible views clearly reject the *Status Quo*, and in particular, ex-ante contractualism, which accommodates our basic intuitions about the just distribution of social risk, provides a convincing justification for *Parental Licensing*.

Chapter 5

Parental Licensing in the Real World: Identifying Some Main Concerns about the Implementation of A Licensing Scheme

In the previous chapters I have provided a defence of parental licensing, showing that if we endorse some plausible assumptions about parents' interests, children's interests, and how it is just to weigh these interests when they conflict, we should be in favour of a parental licensing scheme, i.e. the adoption of a scheme that determines whether biological parents are able to adequately raise a child and, on this basis, denies or grants them the legal custody of a child. I have argued that various objections to this argument, including the one that points to the fact that any licensing scheme will produce some mistakes, fail to show that licensing all would-be prospective parents is unjustified. But as I have observed at the start, the argument I have provided is conditional on the possibility of devising a parental licensing scheme that is sufficiently reliable; I have also proceeded against the assumption of just background conditions, which ensure the absence of wrongful discrimination and a just division of the labour and the costs related to child-raising. Moving from this principled defence towards an argument for parental licensing as an implementable policy proposal requires some further steps: we need to ask what kind of test would be sufficiently reliable, and what challenges arise concerning parental licensing if the assumption of ideal background conditions is relaxed.

This chapter takes some steps towards addressing these issues. Its main aim is not to provide a fully worked out policy proposal, but rather, to identify the main challenges and worries that can be raised about the implementation of parental licensing in the real world, where epistemic constraints are inevitable and injustice is present. The chapter is structured as follows. Section 1 lays out a framework for devising and assessing the reliability of a licensing scheme; this framework distinguishes four different tiers of any such scheme. The section also uses the framework to formulate a preliminary blueprint for a defensible parental licensing scheme and to compare the proposed scheme to those defended by others in the literature on parental licensing. Sections 2 through to 5 deal with three different classes of mistakes and problems in the implementation of a parental licensing

scheme, concerning, respectively, problems around the scheme's denying licenses to competent would-be-parents (2 and 3), problems around the scheme's granting of licenses to incompetent parents (4), and problems that arise when some adults are incompetent parents as a result of different injustices they have suffered (5). As this chapter shows, it is important to disentangle and treat separately different types of problems with regard to both competent would-be-parents who are denied licenses and incompetent parents who are granted licenses (i.e., the cases discussed in sections 2, 3 and 4), depending on whether they arise from inevitable shortcomings of any tests, from avoidable mistakes or wrongful acts which those who design and execute the tests commit, or as a result of background injustices such that well-designed procedures may be said to have unjustified results.

1 A framework for devising and evaluating parental licensing schemes and a proposal

An essential part of a parental licensing scheme is a reliable test or screening procedure, that is, a test that achieves the aim of the scheme – that of minimising child maltreatment – sufficiently well, and that does not violate other requirements which we can plausibly say should constrain us in the pursuit of this aim (e.g. a test should not be unnecessarily intrusive, or unduly costly). This section lays down a four-tier framework for devising and assessing a parental licensing scheme – indeed, any licensing scheme - of which a test is only a part, and, with this framework at hand, puts forward a proposal for a parental licensing test which is compared with other proposals that have been made by parental licenses defenders.

1.1 The four tiers of licensing schemes

I submit that, in order to devise and evaluate licensing schemes in general, the following, four-tiered framework is helpful, which distinguishes between 1) the *ultimate aim* of licensing, 2) the *competence* that the licensing scheme aims to detect, 3) a series of *facts* that we take as reliable proxies to determine whether an individual is competent or not; 4) the *tests and checks* that are needed and effective to ascertain the facts described above.

In the case of the parental licensing scheme I favour, the ultimate aim, i.e. (1), is to prevent child maltreatment. In order to pursue this aim, a parental licensing scheme must determine what qualifies as competence of those who engage in the activity that imposes a risk of maltreatment on children (2). Moreover, (3) in order to determine whether an individual would, in fact, be a competent parent, a licensing scheme will have to identify which facts about him are relevant for him to be deemed competent in the sense at hand. Finally, (4) a parental licensing test and screening procedures must be put in place which ascertains the facts that determine parental competence as defined by reference to the ultimate aim of licensing.

The discussion of chapter 1 provides the material for my proposal for a parental licensing scheme, where 1) and 2) are concerned: as I said in Chapter 1, I assume that the justified aim of a parental licensing scheme is the avoidance or minimisation of child maltreatment, defined by reference to a subset of the well-being and agency interests of children. In particular, I said, child maltreatment occurs when i) a parent physically or sexually abuses his child, ii) fails to provide his child with adequate material conditions, like food, housing conditions and medical attention, iii) fails to ensure that his child have decent psychological, cognitive, and emotional development. As for (2), as I have noted already, the relevant standard of parental competence, given the aim of avoidance of child maltreatment, is relatively undemanding. Let me now say something more about (2), drawing on remarks by LaFolette, and about (3) and (4), partly drawing on the view by other defenders of parental licenses and on current licensing schemes for adoptive parents.

As originally noted by LaFollette (1980), parental competence in the relevant sense involves parents' having knowledge, judgement, dispositions, abilities and skills in order to display the minimal concern for their children's wellbeing that ensures adequate parenting and avoid child maltreatment. More specifically, a competent would be parent i) knows which actions violate child's physical integrity, has self-control over his parental conducts, and has a general strong disposition to not harm his child; ii) has the knowledge and the ability to provide his child with decent material conditions. He knows about children's material needs and how to meet them (how much a child should sleep, what she should wear, how she should be fed etc). He can also ensure to have access to these goods, either by purchasing them himself or by receiving them from others. iii) A competent parent

knows about the developmental needs of his child and how to meet them. He can teach her child basic norms of behaviour, self-respect and respect for others. He can also teach basic skills for having a decent life: norms of hygiene, communicative skills, etc.. He is willing to make his child socialize with a number of adults and children, and to make him interact with others in a number of different social contexts.

Turning to 3), a non-exhaustive list of relevant facts that reliably tell us whether an individual has the parental abilities presented above would include the following: i) the candidate has not committed serious criminal offences against children in the past, and is not committed to practices that are physically harmful for the child (for instance, he does not consider excessive corporal punishment as a legitimate pedagogic tool; he is not committed to female genital mutilation.); ii) the would-be parent presents behavioural signs that prove he has the capacity for self-control, psychological and emotional stability and the capacity and commitment to establish a minimally stable affective relationship with the child; iii) the would-be-parent correctly replies to questions about children's material needs, manages correctly fictional situations where a child is in need or danger; iv) he can rely on a sufficiently stable income that covers the morally required costs of parenting which parents should, on our account of parental justice, bear; v) the candidate correctly replies to questions about children's developmental needs; he knows about appropriate child-raising at different stages of the child's life in terms of psychological closeness, assistance, emotional support, etc., and vi) is not committed to keeping his child out of normal socializing dynamics, for instance by constantly keeping him in the house, not exposing him to interactions with other children and adults

Finally, then, in order to know these type of facts described above, we need to run specific checks and tests (we are now focusing on 4)). The tests and checks which can be used to assess the facts that a screening procedure for licensing parents should ascertain, mentioned above, include the following: i) a check on the criminal record of and police reports about the candidate; ii) a check on the candidate's income and other financial resources; iii) a set of theoretical and practical tests aimed to certify the candidate's knowledge about children's material and developmental needs; iv) a home-study to verify living conditions; v) an individualized assessment by a specialist, using interviews, that aims to detect the candidate's relevant behavioural traits, to further test his knowledge about

children's needs and his commitment to adequately raise a child; vi) if possible and applicable, a check on the candidate's past parental experiences: this may reveal instances of child maltreatment that are not present in the would-be parent's criminal record or police reports.

The table below summarises the four-tier structure of licensing schemes, comparing licensing drivers with parental licensing for illustration.

	1 Ultimate Aim	2 Competence: Fitness, Knowledge, Judgment, Abilities, Dispositions	3 Facts Proving Competence	4 Specific Tests and Checks Verifying the Facts
Driving License	Avoiding car accidents	Physical and sensorial fitness; Knowing road signs; Ability to adequate speed, avoid obstacles; Recognizing risks, prudent disposition etc..	The candidate correctly identifies road signs; Correctly replies to theoretical questions; Respects road regulations while driving; Stops when there is a danger, etc..	Eyesight and hearing tests; Driving and road safety knowledge exams; Practical driving test in which an examiner gives indications, observes how the applicant drives and executes instructions, etc.
Parental Licensing	Avoiding child maltreatment	Non-abusive conduct, self control and emotional stability; Providing decent material conditions; Knowledge of developmental needs and the disposition to secure them.	The candidate has not committed serious offenses against children in the past; Is not committed to harmful practices; Shows sufficient self control; Has a sufficient income; Replies correctly to questions about children's material and developmental needs.	Check on the candidate's criminal record and on police reports about him; Check on his income and housing conditions; Interview with and evaluation by a specialist; If possible, assessment of her previous parenting experiences.

I will provide a few more details about my proposed licensing scheme in 1.3 below. First, however, it will be helpful to mention some other proposals advanced by others.

1.2 Assessing competing proposals for parental licenses tests

While the four-tier structure of licensing schemes sketched above might look rather abstract and artificial, it is, I submit, a very useful tool for the design and evaluation of parental licensing schemes and the design of tests in particular. Knowing what the ultimate aim of parental licensing is not enough for identifying a justifiable parental licensing scheme; instead, we need to evaluate the possible choices we should make about 2), 3), 4) and the connection between each with the ultimate aim of licensing (1) and with each other. In the next few sections of this chapter, I show how the four-layer framework for thinking about parental licensing is also helpful in predicting and explaining the different mistakes that a screening procedure might make. Before turning to that, this subsection uses that framework is useful for comparing the parental licensing test I have proposed with two main alternatives that have been advanced in the literature on parental licensing.

While LaFollette does not specify the content of the test that would-be parents should pass in order to get a license, Mark Vopat and Jack Westman have proposed screening procedures for would-be parents that partially resemble the one I have just presented.

In developing his view, Vopat (2007) starts by looking at the screening procedures that applicants for adoption currently have to undergo in Canada and the US; the tests and checks that any adult should pass to get a parental license, on his view, would require the following: a drug test; a proof of residence and employment (or, alternatively, receipt of welfare benefits); that the adult is least eighteen years of age and has attained a high school diploma; that the adult passes a background check that shows he has not been convicted of domestic violence or violence against a minor, or had another child in his care need protection; that he signs an agreement that they will not neglect or abuse his child.

Westman (1994) presents a more minimalist test that requires checking that the candidate has attained adulthood, i.e. they are older than eighteen; the signing of an agreement to care

for and nurture the child, and to refrain from abusing or neglecting her; completion of a parenting course.

By applying the framework presented above to these two proposals, I think it emerges that some of the proposed tests and checks are not, in fact, well justified. In particular, there are three respects in which my view differs from these proposals, in such a way that my sketched proposal is better justified within the overall defence of the parental licensing scheme offered thus far.

First, while I agree that the candidate must be mature enough to take the parental role, age should not be considered as a strict requirement, because some adults who are younger than eighteen would adequately raise a child. Furthermore, both Vopat and Westman overlook the fact that also being too old can impair one's parental competence. The candidate's age should be taken into account by the specialist who has to evaluate whether the candidate has the necessary physical and psychological fitness and maturity to assume the parental role: this more complicated assessment can give us more reliable results about the candidate's parental competence role than the default, strict age-based disqualification proposed by Vopat and Westman.

Second, Vopat proposes a drug test as a good proxy to know would-be parents capacity for good perception and judgement: adults who consume drugs are often unable to correctly interpret the surrounding circumstances and, consequently, might both fail to take appropriate actions to care for their children – for instance, they fail to realize that their children need to be fed, or might directly impose physical harm the child because they are completely unaware of what they are doing or of the consequences of their actions. Vopat adds that if a would-be parent is not willing to give up drugs to pass the screening procedure, he shows a lack of will power that may be indicative of a more general negligent or abusive personality. I believe that by taking the drug test as a strict requirement, we may disqualify some-would be parents whose parental competence is not affected by occasional consumption of soft drugs. Again, the individualized assessment by a specialist should certainly take into consideration whether the candidate consume substances (and not just drugs, but alcohol too), how often he consumes them, whether he is addicted to them or makes only occasional use of them, and how these facts interact with other elements of her

personality. On the basis of this more accurate analysis we can determine whether a person who consumes substances is, in fact, likely to maltreat a child or not.

Finally, while the signing of a public commitment to adequately parent one's child might be a justified requirement in order for someone to obtain the legal custody of child, I think it is important to note that this is not part of a screening procedure for licensing properly defined. The justification for such a measure is not that would-be parents who sign this commitment prove to be competent, but that the state should make parents particularly aware of their parental duties, and create mechanisms to enforce them *ex-post*, such as punishing maltreating parents not only for the crime of child maltreatment but also for having broken the commitment they signed. To better see this point, consider a system in which procreators do not have to undergo any screening but have to sign the public statement in question: under such a system we would not say that the state licenses biological parents, but, rather, that parents acquire a further commitment-based obligation they do not currently have.[58]

1.3 Some further details concerning the proposed licensing scheme

Although my proposed licensing scheme is by no means fully spelled out, I conclude this section by outlining a few further important details of the scheme.

First, when should adults get a parental license? I propose a licensing scheme with two options: i) Adults themselves can apply for a license and undergo the screening procedure before conceiving a child, before they accede to reproductive technologies or during the early stage of the pregnancy; ii) When a woman reports her pregnancy, the relevant authorities contact the biological parent(s) and reminds them that if they want to become the legal parents of their biological child they need to undergo the screening procedure: as I have argued in Chapter 2, the legitimate expectations of procreators' require that the state inform its citizens about the existence and the characteristics of the parental licensing

[58] Someone might argue that signing the commitment in itself might deter the parent to commit maltreatment in the future. I cannot discuss the plausibility of this psychological claim and I simply reiterate that while this measure could be a justifiable way to prevent child maltreatment, it does not constitute a check on the competence of would-be parents.

scheme ahead of time. This mechanism would strongly disincentivize adults from procreating if they do not already have a parental license and, therefore, are not sure that they will have the right to raise their child. As we saw in Chapter 1, is very important for children to establish a close affective relationship with her parents as soon as possible before her birth: for this reason, would-be parents should ideally obtain a license before the birth of the child. In those cases in which adults have conceived a child without a license, the state would urge them to get one before the birth of the child, and in the case they do not it may give them an extension for a brief time after the birth of the child.

Second, parents who fail the screening procedure and are denied a license have the right to apply again for obtaining one. The state may regulate the application process by determining the actual application procedures, but it should always give the possibility to adults of undergoing the screening procedure multiple times. Adults change over time and they can develop the parental competence they were missing: for this reason, licensing parents cannot be a one-shot system, but has to allow the same adults to apply at different stages of their lives.

Third, parental licensing should screen *the set of adults* who want to jointly parent a single child. If a single adult, for instance, the biological mother of a child, wants to parent a child alone, the system is straightforward in requiring her to pass the screening procedure and to get a parental license. If, instead, a couple or a group of adults want to jointly parent a single child,[59] requiring that each of them individually pass the screening procedure is not sufficient nor necessary. This position seems justified for a number of reasons.

For one thing, it is possible that a parent, who would be a competent parent if he parented a child alone, may be included in a group of would-be parents that is overall incompetent, for instance because either it includes other incompetent would-be parents or there are negative dynamics between the would-be parents: consider a competent would-be parent who wants to parent a child together with her violent partner or a case in which two would-be parents have a very bad relation with each other that would likely result in psychological abuse for the child. These cases show that certain individual features, such as violence, not only make an individual incompetent to parent a child; they also render every

[59] I do not discuss here what is the maximal number of legal parents that a child may have. For a discussion of this issue, see Grill (2019).

parental group in which this individual is included overall incompetent. These cases also show that the fact that each of the child's would-be parents has an individual parental license is not sufficient to guarantee that the child will be parented adequately.

A further reasons for testing the competence of the aspiring parental unit (whether an individual or group) is that it is possible that individuals who would be individually incompetent parents, for instance because of their lack of economic resources, knowledge or physical abilities, may form a competent would-be parental group: consider a group of would-be parents who individually do not have the necessary economic resources to adequately parent a child, but who jointly have such economic resources, or a would-be parent who lacks certain physical or sensory capacities, e.g. sight, and would be an incompetent single parent, but wants to parent a child together with her partner who has this ability. To sum up, when a couple or a group of adults wants to raise a child together, the state should run a screening procedure that aims to determine whether the members of the couple, or the group, are likely to cooperate in ensuring the child an adequate upbringing or not; therefore, the state should implement a system of individual licenses for single parents and collective licenses for couples and parental groups.

With this sketch of a parental licensing scheme and test at hand, the rest of this chapter identifies and examines several worries and challenges about the implementation of the scheme.

2. Competent would-be parents who are denied licenses: how many false negatives are acceptable?

A general worry about the proposal of licensing parents is that any screening procedure the state can employ will make some mistakes, and in particular, it will wrongly qualify some competent would-be parents as incompetent and, consequently, wrongly bar them from raising a child. These are cases of so-called false negatives, mentioned already in Chapter 3. In his defence of licensing, LaFollette quickly dismisses this worry by showing how the analogous worry about wrongly barring competent would-be physicians does not stop us from licensing physicians: the moral urgency of avoiding harms to children and patients

makes the worries about mistakes less powerful. In Chapter 3, I have shown how the sheer fact that the licensing scheme produces *some* false negatives cannot ground an objection to parental licensing if we reject aggregative principles about the right allocation of risks and harms, as we should. But even if we accept that conclusion, we still face two important questions concerning false negatives in order to devise a defensible licensing scheme. The first question is *how many* false negatives are acceptable; the second is whether there *are certain types of false negatives* that, because they are the outcome of wrongful acts, are always unacceptable. In this section and the next I explore these two issues, respectively. Before proceeding, let me give a somewhat more detailed general characterization of *false negatives* and *false positives*, and show how using the framework developed in section 1 should be of guidance for attempting to minimise mistakes that the licensing test makes.

2.1 Identifying false negatives and false positives

Any screening procedure would detect some competent would-be parents as incompetent (false negatives) and incompetent would-be parents as competent (false positives). A false negative occurs when the procedure wrongly detects one, or more, elements indicating likelihood of future maltreatment while these are not, in fact, present; whereas a false positive occurs when the procedure fails to detect one, or more, such element. The fact that mistakes produced by a licensing test are failures to correctly detect the relevant elements that are the bases for a prediction about the future behaviour of a would-be parent means that it would be a mistake to think that if, say, a would-be parent does not present any of the features that are indicative of maltreating behavioural patterns and he is identified as competent by the procedure, but then ends up maltreating her child, the procedure has produced a false positive.[60]

[60] Consider two cases in which we run a check on the candidate's criminal record. Candidate 1 has committed a violent crime, which has been correctly registered in his criminal record. The licensing procedure fails to register this crime and grants him a parental license. Later he physically maltreats his child. In this case the procedure has failed to detect a relevant feature that was detectable at the time of the test, and, therefore, has produced a false positive. Candidate 2, by contrast, has not committed any violent crime nor has dispositions such that he is at high risk of doing so when he applies for a parental license. The licensing procedure identifies him as a competent would-be parent and grants him a parental license. Later he commits physical abuse against his child. In this case, the procedure has merely failed to foresee future maltreatment, but has not produced a false positive, since it has not failed to detect a relevant feature which was detectable at the time at which the license was granted.

Using the four-tier framework presented in section 1 helps us see that false negatives and false positives can occur as a result of mistakes at any one level in the design of the screening procedure and in the execution of the checks and tests.

First, if we subscribe to an excessively broad conception of child maltreatment, we will develop an overdemanding conception of parental competence. As I have said before, child maltreatment refers to the failure to meet children's basic needs and respect their fundamental rights; a number of issues about children's needs and rights are quite controversial and they must be excluded from an account of child maltreatment. If, by contrast, policy-makers adopted an inflated conception of the set of children's basic needs and fundamental rights, many more adults would be disqualified as incompetent by the screening procedure. Suppose, for example, that policymakers are committed to the view that any infringement of child's bodily integrity that is not justified for health reasons constitutes a form of child maltreatment: they would then design a procedure that disqualifies those parents who want to have their sons circumcised for religious reasons as incompetent. While circumcision of male children might be, in fact, wrong, denying the right to parent to those adults who are committed to male circumcision would, on the view I am defending, clearly counts as a false negative.

Second, we might identify a set of facts about parents that do not work as reliable proxies for parental incompetence. Consider the requirement of being older than eighteen to get a parental license: as I noted in the previous section, this requirement would misclassify some young competent would-be parents as incompetent. Current screening procedures for adoptive parents are (rightly) accused of committing many mistakes of this kind (Botterell and McLeod 2014). By imposing requirements like a relatively low maximum age, an excellent health status, being married, in a stable romantic relationship, or in a heterosexual relationship, the state currently wrongly screens out many competent would-be adoptive parents. Note that the worry mentioned here stands even if we believe that there are good reasons to require would-be adoptive parents a higher standard of quality of parenting than mere avoidance of child maltreatment: the facts just listed are not good proxies for the target of good parenting. Procedures based on these facts, by disqualifying older adults, single and homosexual would-be parents as incompetent, fail to detect the very standard of parenting competence which the scheme aims to secure, given its

underlying aim. Thus, in designing a justified parental licensing scheme, policymakers should work carefully in order not to include reference to such features and not to adopt tests that seek to ascertain them. (The next section discusses how the mistaken inclusion, into the scheme, of irrelevant facts that is motivated by or reflects some form of wrongful discrimination generates special reasons of concern for licensing advocates.)

Third, even if we adopt a defensible conception of children's needs and of what constitutes parental competence, and even if we identify good proxies for detecting a sufficiently high risk that these needs will be unmet, we might devise inefficient or flawed tests and checks, and produce false negatives this way. For instance, we might implement a multiple-choice test about knowledge of children's needs that deploys overcomplicated language, or we might devise interviews with a child welfare specialist that puts too much pressure on the candidates. In these cases, the way in which the tests are designed incorporates certain unnecessary features that result in false negatives: a test that used simpler language or an interview conducted in a more relaxed atmosphere would give more accurate results about parental competence. False negatives can also be produced because the officers involved in parental licensing might collect and evaluate the data of the tests and the checks incorrectly: they can be lazy, unprofessional, or distracted. Some criticism against the current screening for would-be adoptive parents point to the fact that procedures such as interviews and home-visits put excessive pressure on applicants: many would-be good adoptive parents are currently screened out just because of this phenomenon (Botterell and McLeod 2014, 2019).

Since all these different occurrences of false negatives harm competent would-be parents, by depriving them of the value of parenting, the state has a duty to limit the possibility of these mistakes by considering carefully the four-tier structure and by training the officers involved in the licensing procedure, giving them the needed training and incentives to do a careful job. Policymakers have a further duty to constantly revise the screening procedure in light of new evidence about the preventive detection of risk of child maltreatment: if they discover that a specific test produces many false negatives, for instance an overcomplicated theoretical test about child's needs, they have a duty to abandon it and to devise a more reliable one.

We have to assume, however, that despite all the efforts to avoid false negatives, because of some unavoidable limitations of our abilities to detect parental competence, a certain rate of false negatives is unavoidable, especially in the very execution of the less automatic tests and checks, like the interview with and psychological assessment of the candidate. Surely, if many, if not all, possible screening procedures for parental licensing disqualified *too many* would-be-competent parents, this would put pressure on the defence of parental licensing in the real world. Jurgen De Wispelaere and Daniel Weinstock present an argument against parental licensing based on these very grounds: parental licensing is objectionable because it underestimates the *number* of adults who would suffer the cost of parental deprivation because of the failures of the screening procedure.[61] The claim by De Wispelaere and Weinstock poses a difficult challenge to licensing advocates which can be reframed as the two following questions: "How many false negatives may we accept in parental licensing?", and "Is there an amount of false negatives that would make parental licensing unjustified?" I now turn to these addressing these concerns.

2.2 How many false negatives are acceptable?

In rough terms, the reliability of a screening test is assessed by two parameters: sensitivity and specificity. Test sensitivity indicates the proportion of true positives correctly identified as such, while test specificity indicates the proportion of true negatives correctly identified as such. In other words, the sensitivity of a test is its capacity of detecting positives and specificity is its capacity of detecting negatives. A screening procedure that is extremely sensitive but scarcely specific is extremely reliable in predicting which would-be parents are competent, while it is not so reliable in detecting would-be incompetent parents; a test that is extremely specific, but scarcely sensitive, by contrast, is extremely reliable in detecting would-be incompetent parents, while it is not reliable in detecting would-be competent ones.

[61] This is not the only criticism they advance: as discussed in Chapter 2, they also argue parental licensing overlooks the cost of being barred from the valuable option of parenting.

To clarify these concepts, consider the scenario I mentioned in Chapter 3, in which there are 990 would-be competent parents and 10 incompetent ones.[62] A possible Test 1, with a sensitivity of 95% and a specificity of 80%, will classify 940 competent parents as competent, 50 competent parents as incompetent, 8 incompetent parents as incompetent, and 2 incompetent parents as competent.

A crucially important fact about these two parameters is that "there is an inverse relationship between the two measures: tightening criteria to improve one will have the effect of decreasing the magnitude of the other" (Kirkwood & Sterne 2003, p. 430). Once we have ruled out clearly unreliable tests, any improvement of the specificity of a test determines a decrease of its sensitivity and any improvement of the sensitivity of a test determines a decrease of its specificity.

To illustrate this fact, consider a case in which we want to raise the specificity of Test 1 up to 90%: we will have a new test, Test 2, that has a lower sensitivity, let assume,[63] of 85. This test would classify 841 competent parents as competent, 149 competent parents as incompetent, 9 incompetent parents as incompetent and one incompetent parent as competent. If, instead, we wanted to raise the sensitivity of Test 1 up to 97%, we would have a Test 3 with a specificity of, let assume, 70%. This test would classify 960 competent parents as competent, 30 competent parents as incompetent, 7 incompetent parents as incompetent, and 3 incompetent parents as competent. The following tables show the results of the tests described.

Test 1 (95% sensitivity, 80% specificity)

	Competent	Incompetent	
Classified as Competent	940	2 (false positives)	=893
Classified as Incompetent	50 (false negatives)	8	=107
	=990	=10	

[62] These are the incidences of competent and incompetent parents reported by Mangel (1988).
[63] This is speculative, because the degree to which a parameter increases with the other decreasing depends on the nature of the specific test; for the scope of my analysis is sufficient to show that there is an inverse relation between the two parameters.

Test 2 (85% sensitivity, 90% specificity)

	Competent	Incompetent	
Classified as Competent	841	1 (false positive)	=793
Classified as Incompetent	149 (false negatives)	9	=207
	=990	=10	

Test 3 (97% sensitivity, 70% specificity)

	Competent	Incompetent	
Classified as Competent	970	3 (false positives)	=943
Classified as Incompetent	30 (false negatives)	7	=57
	=990	=10	

Given the inverse relationship between test sensitivity and specificity, advocates of licensing face the difficult dilemma of whether they should maximise sensitivity, and ensure that would-be competent parents do receive a license, or specificity, and thereby ensure that incompetent would-be parent are denied a license. De Wispelaere and Weinstock argue that, given the relatively small rate of child maltreatment, any possible screening procedure would have insufficient sensitivity and therefore would disqualify an unacceptably high number of would-be competent parents as incompetent. They claim that if we implemented Test 1, "the cost of rescuing [8] children out of 10 from abuse- denying 50 innocent individuals or couples the opportunity to parent- is hardly trivial"[64] and they add that "in reality, most tests perform considerably worse [than Test 1], so we should expect even more false [negatives] to emerge" (2012, p. 201).

Leaving aside any disputes about the estimated specificity and sensitivity of various

[64] I have had to modify the numbers originally considered by De Wispealaere and Weinstock to present clearly and in a simple way the differences between the three tests. They consider a test with 95% specifity and 90% sensitivity, that would actually save 9 children from maltreatment at the cost of disqualifying 50 would-be competent parents. Improving the sensitivity of this test would require us to consider decimal numbers and, consequently, complicate the exposition of the results of this test: for instance a test with 95% sensitivity that save 9.5 children from maltreatment and give a license to 0.5 incompetent parent. For this reason, I have chosen to modify the numbers, but this does not affect at all the reconstruction of De Wispealaere's and Weinstock's claim. In fact, *a fortiori* they would reject a test with the same specificity as the original one and an even lower sensitivity, like Test 1, which saves 8 children at the cost of wrongly disqualifying 50 would-be competent parents.

versions of the licensing test, I suggest that defenders of parental licenses can and should reply to this challenge by deploying the same reasoning advanced in Chapters 3 and 4. Different screening procedures distribute differently opportunities to benefits and risks of haram to different individuals; a higher sensitivity results in a lower total amount of parental deprivation, but also causes a higher number of cases of child maltreatment through the decrease of specificity; by contrast, a higher specificity results in a lower number of cases of child maltreatment, but also causes a higher amount of parental deprivation, through the decrease of sensitivity. So, the question about which screening test we should prefer can be addressed by the anti-aggregative account I have presented in Chapter 4. There I compared the different distribution of risks of harms to adults and children determined by different child-assigning systems; here we have to compare the different distributions of risks of harms to adults and children determined by different screening procedures that we can employ to license parents.

If we carefully consider the unequal negative impact that child maltreatment and parental deprivation have on the life of a person, and we reject aggregativist views on harm and risk allocation because they fail to respect the principle of separateness of persons and the state's duty to justify its choices to all the parties affected by them, we have good reasons to maximise sensitivity at the cost of reducing specificity, i.e. we have reasons to maximise the rate of would-be incompetent parents at the cost of disqualifying more would-be competent parents as incompetent. As I showed in Chapter 4, a family of anti-aggregative views, such as limited aggregation, ex-post and ex-ante contractractualism, even when accompanied by considerations of intra-life trade-offs between safety against child maltreatment and parental deprivation, support this claim. Even if being barred from parenting constitutes a massive cost for those would-be parents who are the victim of a false negative, we have a more urgent duty to reduce child maltreatment by increasing specificity than to prevent parental deprivation by increasing sensitivity. So, if we reject aggregation, as I think we should, we should prefer Test 2 over Test 1, and Test 1 over Test 3.

If we look closely at the reason for why De Wispelaere and Weinstock are uncomfortable with the amount of false negatives produced by Test 1, it does appear to be implicitly based on an aggregative commitment: the aggregated cost suffered by fifty adults who are

wrongly barred from parenting is definitely higher than the benefit of saving eight children from maltreatment, and therefore a screening procedure that produces such a result is unacceptable. However, as already noted, if we reject aggregativet reasoning about allocation of risks of harm, as we should, their concern loses plausibility: the state is justified in imposing the cost of parental deprivation on the 50 adults who are victims of false negatives in order to save 8 children from maltreatment. My argument, in fact, actually supports an even stronger claim: the state is required, and not only justified, to impose the cost of parental deprivation to 149 victims of false negatives to save 9 children from maltreatment.

Does this claim entail that *any* number of false negatives is justifiable? The answer is negative: the state has a duty to avoid false negatives that result from failures of the screening procedures and that are not justified by an increase in specificity and a reduction of false positives. Only when the state faces the dilemma-like choice of either maximizing specificity or sensitivity, it can justify a higher number of false negatives; in other circumstances, however, it has a duty to eliminate them.

For example, consider again the strict age-based requirement proposed by Vopat and Westman: as I have already noted, it would produce some false negatives, but it is not clear that this would be necessary to produce a higher level of specificity that could not be achieved by other means, for instance by adopting an individualized assessment by a specialist. In this case, then, the false negatives produced by the screening procedure cannot be justified as a morally required cost for reducing false positives: the state may not employ this strict requirement. As another example, consider, by contrast, the check on the candidate's criminal record: although it can generate some false negatives – say, of adults who were unjustly convicted or who have profoundly changed their dispositions towards children - it is nonetheless justified by the imperative to increase specificity. A possible screening procedure that did not include a check on the candidate's criminal record would produce many false positives; the state, therefore, has a duty to introduce this check that derives from its duty to maximise specificity and in this case the victims of false negatives in this case would be bearing morally justified costs. We can make similar claims about the more informal elements of the screening procedure, like the individual interview with and assessment by a specialist: policymakers should revise or eliminate procedures that are

clearly unreliable - for instance, those that allow workers to be unprofessional because they lack supervision - while they also have to find ways to maximize the specificity of protocols, for instance by asking workers to be very scrupulous in the evaluation of the candidate's behaviour. These considerations need to be supported by strong empirical evidence from different fields like statistics, behavioural psychology, and social work management that I cannot survey here, but I think that the duty of prioritizing specificity gives the morally right guidance to policymakers involved in the design of screening procedures.

Hopefully, in a well-functioning parental licensing scheme, the impact of the morally justified cost of false negatives on individuals would not be too great. For one thing, as mentioned earlier, adults who have failed the screening procedure and have been denied a license may later reapply. If someone has been the victim of a false negative, he can ask to undergo the screening procedure again, have her case revised and obtain a license when it has been established that a mistake was committed; would-be competent parents are very likely to be granted a license eventually. The effects of false negatives are not irrevocable. Moreover, the state arguably incurs an obligation of compensation towards those adults who have been victims of false negatives: when the state recognizes that it has wrongly denied a license to an adult, it owes a special apology and some form of compensation. Although these considerations do not make the harm of parental deprivation less severe, they may help defuse our concerns about parental licensing.

3 False negatives and wrongful discrimination

Besides the worries about the number of false negatives which I have just addressed, if we look back at the different cases of false negatives, we can see that we find some of them particularly concerning not only because they deprive would-be competent parents of the goods of parenting, but also because they instantiate wrongful discrimination – discrimination that is wrongful independently of its barring access to the good of parenting - and they aggravate pre-existing injustices.[65]

[65] The issue of wrongful discrimination in parental licensing has been generally overlooked. Botterell and McLeod (2019) address this point but do not present a characterization of the possible instances of wrongful

Consider two parental licensing procedures: the first establishes that only people who are married or in a stable romantic relationship are eligible for a license, while the second bans LGBTQ adults, or adults in homosexual relationships, from obtaining a license. As mentioned earlier, both these procedures are mistaken in taking being single or being LGBT as valid proxies for the assessment of risk of child maltreatment, because the available evidence does not support the claim that single parents[66] or gay parents are likely to maltreat their children (Averett et al. 2009). Single and LGBT would-be competent parents who are denied a parental license under these procedures will both suffer the severe wrong of parental deprivation. Nonetheless, we tend to think that barring gay parents from parenting is particularly wrong, or more precisely that barring LGBT people from parenting involves a further form of injustice compared to the case of single parents.

Consider now two cases in which an officer is assessing two candidates through an interview. In the first case, the officer, out of a mix of distraction and laziness, wrongly reports that the candidate displays violent attitudes that make him likely to maltreat a child. In the second case, she grounds her judgement, consciously or unconsciously, on a negative bias towards members of the candidate's racial group. Again, although both would-be parents suffer the harm of parental deprivation, we intuitively think that the adult who is disqualified because of a negative bias towards her race suffers a further form of injustice.

It is rather obvious that the distinctive injustice in question refers to the phenomenon of wrongful discrimination. Rather roughly, we can define "wrongful discrimination" as the disadvantageous treatment of the members of a socially salient group on the basis of some features or facts that should be irrelevant for the treatment in question. I cannot provide and defend here a fully developed account of the nature of wrongful discrimination. My aim in what follows is, instead, to show that we have reasons to treat false negatives that

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discrimination that might occur under parental licensing, nor provide a careful normative assessment of these possible cases. In this section, I aim to fill this gap.

[66] About single parents I have to clarify that I am not denying the claim, which is supported by substantive empirical literature, that single parents are *more* likely to maltreated their children, and more specifically to be negligent, than parents who are in a romantic relationship (Gelles 1989, Mulder et al. 2018). Instead, I claim that on non-comparative terms single parents, unlike aggressive or ignorant ones, are not likely to maltreat their children: for this reason being a single parent cannot be used as a reliable proxy for future child maltreatment.

result from or constitute wrongful discrimination differently from other false negatives. In particular, I suggest that the duty to maximize specificity, which I defended in the last section, is constrained by the obligation to eradicate wrongfully discriminatory false negatives.

3.1 Socially salient groups and wrongful discrimination

Let me begin by identifying the range of cases in which false negatives are said to involve or reflect wrongful discrimination. If by "wrongful discrimination" we mean the disadvantageous treatment of a person on the basis of certain features that are morally irrelevant for the treatment in question, we would conclude that any false negative constitutes a form of wrongful discrimination. In this broad sense, each and every false negative is an instance of wrongful discrimination, as licensing always treating differently different people, and those who are mistakenly denied a license are given disadvantageous treatment (they are denied the good of parenting they seek) on the basis of features or fact that is irrelevant for that treatment.

However, we generally believe that LGBT adults and the victims of negative racial biases suffer a more severe form of wrongful discrimination than can be one captured by the broad definition provided before. The reference to "socially salient groups" is crucial for understanding why. Following the account of wrongful discrimination proposed by Kasper Lippert-Rasmussen, we can say that "a group is socially salient if perceived membership to it is important to the structure of social interactions across a wide range of social contexts" (2014, pp-30-31). Treating someone disadvantageously because of her membership in a group of individuals that in many social contexts is perceived as distinct, and where this distinctiveness, or salience, influences many social interactions, characterise the specific type of discrimination that we find particularly worrying in parental licensing. Following Lippert-Rasmussen, we can claim that being the victim of a mistake made by a specialist merely out of distraction is irrelevant to any interaction in the social sphere except the very interaction between the candidate and the specialist under consideration: in other words, the features that ground the wrongful discriminations, in this case the misinterpreted behavioural traits, are not relevant for many interactions in the social world. By contrast,

the racist bias of the professional who wrongly assumes that members of a certain race are likely to maltreat their children is grounded on considerations about the race-group of which the applicant is a member, and in our current world, many social interactions take as relevant membership to a particular race. Members of racial minorities have suffered and keep suffering a number of different instances of disadvantageous treatment because of their race: in personal relationships with members of the other races, in the work environment, in the justice administration, etc. Similarly, being or being perceived as LGBT is taken as relevant for many social interactions, and more precisely, membership in this group has been and still is a ground for a number of disadvantageous treatment: LGBT people are more likely to suffer physical violence and bullying, in many countries same-sex marriage is not permitted, etc. By contrast, being single does not seem to have a comparable importance for our social interactions, and especially it does not relate to many, pervasive forms of disadvantage. This seems true, despite the fact that our institutions and social practices are, in fact, disadvantageous for unmarried adults and adults who are not in stable monogamous romantic relationships, as adults are subjected to strong expectations to be in a romantic relationship and if they do not, they face different forms of stigma, married people enjoy fiscal benefits, our economic structure makes it harder for single parents, especially single mothers, to raise a child without the support of a partner (Brake 12, Chambers 2017). Even if people who are not in a stable romantic relationship do constitute, in some sense, a socially salient group, the different instances of discrimination suffered by LGBT people are in general more serious partly because the social salience of the LGBT community is higher than the one of "loners".[67]

Why should a disadvantageous treatment that affects members of a socially salient group be distinctively wrong? Roughly speaking, the reason to focus on socially salient groups is that the different forms disadvantageous treatment that are grounded on certain features of the victim and are embedded in a solid and extensive system, or structure, of other forms disadvantageous treatments. Even when the individual loss is the same, namely – in this case - parental deprivation, as in the case of the disqualified romantically unattached and LGBT applicants, or in the victim of the psychologist's distraction and the victim of her racist bias, we find that the disadvantageous treatment in question is distinctively wrongful

[67] As this example suggests, social salience is a matter of degree. More precisely, social salience is scalar in two dimensions: perceived membership in a group can be more or less important and it can be relevant in certain domain and not in others. Moreover, the social salience of a group may change over time.

when it is an element of a more complex and pervasive pattern of discrimination traceable to the social salience of the disadvantaged group. Our concern with and disapproval of wrongful discrimination goes beyond the assessment of the isolated losses of any singular individual who suffers disadvantageous treatment: it tracks a more structural phenomenon that is understandable only by reference to socially salient groups.

In most cases, being the victim of a group-based wrongful discrimination does determine an overall disadvantaged position for individuals of the discriminated group vis-à-vis non-members. Black people suffer from poverty, violence, unemployment, et at a higher rate than white people. If we have a licensing procedure that wrongfully discriminates against black people, parental deprivation will make black people even worse off and aggravate the inequality they suffer vis-à-vis non-blacks. Moreover, denying parental licenses to members of a socially salient group in virtue of the claim, or the bias, that they are likely to maltreat their children will aggravate other forms of wrongful discrimination they already suffer by reinforcing the stigma against them in a number of social contexts such as the work environment, the criminal administration, etc.

A further reason that makes wrongful discrimination in parental licensing particularly worrying is that is carried out by the state or state-authorised officials. The state has more demanding duties of justice to avoid discriminating people on the basis of their membership to socially salient group than individuals in their private lives and relationships. Institutional discrimination is especially wrong for three reasons. First, the goods allocated by the state are usually more important for people's lives than the ones allocated by individuals: in the context of parental licensing, we have seen how the opportunity to parent a child is extremely important for many adults. Second, the state holds an expressive power that is incomparably stronger and more pervasive than the one held by single individuals: if the state sends the message that members of a certain socially salient group are likely to maltreat their children, it usually produces effects on the perception of the socially salient group whose negative force is substantially greater than those resulting from the sum of different instances of private discrimination. Third, citizens tend to adapt their evaluative standards to the ones held by the state: it is not only the case

that institutional discrimination is more harmful than private one, but institutional discrimination is also likely to buttress and promote private discrimination. [68]

In the light of these considerations, "discriminatory false negatives", i.e. false negatives that are caused by some form of form of wrongful discrimination against the members of a socially salient group, should be viewed differently from "technical false negatives", i.e. false negatives that are produced by failures of the screening procedure that do not depend on forms of wrongful discriminations against members of socially salient groups.

3.2 Handling discriminatory false negatives

It is undoubtedly possible for screening procedures to wrongfully discriminate in a number of different ways. For one thing, a screening procedure might explicitly include requirements that wrongfully discriminate against certain socially salient groups, for instance by automatically excluding all LGBT people from obtaining a license. In other cases, the discrimination could be more indirect, for instance, by running overcomplicate theoretical tests about child's needs a screening procedure might wrongfully discriminate against adults with an unprivileged educational background but who have all the necessary knowledge to adequately raise a child. As I argued in the previous section, policymakers have a general duty to design a reliable screening procedure that avoids false negatives; such a duty seems even more compelling when false negatives are the products of wrongful discrimination.

Although this response might have some plausibility, it is not entirely convincing and we should take seriously the risk that in our world, if some states were to introduce parental licensing, they would implement licensing procedures that, in their very design, have clear discriminatory effects. This risk is highlighted by the evidence we have of informal wrongful discrimination taking place in the child maltreatment report system: public workers are more likely to report cases of maltreatment if they involve parents from racial, cultural or religious minorities out of a bias that they are more likely to commit child maltreatment (Cooper 2013, Miller et al. 2013). Licensing advocates should worry that the

[68] On the expressive power of the law and the related states responsibilities, see MacAdams (2017).

same phenomena would occur if we implemented universal parental licensing: existing biases would make some employees wrongly disqualify some would-be competent parents from these social groups as incompetent. True, defenders of licensing would add that, before implementing universal parental licensing, the state has a weighty duty to train those officials who will be involved in the licensing procedure by informing and making them aware of the possible biases they could employ in their work; a substantial amount of cooperation and cross-supervision between the workers is also recommendable in order to immunize the biases of individual workers. However, licensing advocates have to concede that under current unjust circumstances, even after the efforts described, the introduction of parental licensing might determine some, if not several, instances of informal wrongful discrimination.

These and perhaps other considerations suggest that in many societies there is a high risk that if we implemented parental licensing, it would have significant wrongfully discriminatory effects on several would-be competent parents. Even if some mistakes could be avoided by a more careful design of the procedure, along the line of the four-tier structure I have presented in section 1, and by employing unbiased public personnel, we should admit that these conditions are unlikely to obtain in many societies. So any defender of parental licensing in the real world should take a stance on the justifiability of wrongfully discriminatory false negatives.

One view would be that although the risk of being the victim of wrongfully discriminatory false negatives is worse than that of being the victim of a technical false negative, this should be weighed against the harm of child maltreatment. Furthermore, it might be said, in light of our anti-aggregative commitments, the duty to prevent child maltreatment may also require us to accept some amount of wrongful discrimination against would-be parents. The argument would claim that if the only alternatives are the *status quo* or a licensing scheme that reduces child maltreatment but has clear discriminatory effects, we should prefer the latter option over the former. This conclusion, however, is too quick; there are three reasons, in particular, why I believe it is mistaken.

First, as I noted earlier, the state may justify only those false negatives that are strictly necessary to improve the specificity of the licensing procedures. Although parental

licensing is very likely to have clear discriminatory effects in certain societies, discriminatory false negatives can be never considered *as a necessary* cost to increase specificity and reduce child maltreatment. Asking public workers to be strict in their evaluations of candidates will predictably produce more false negatives than a more relaxed system, and these negatives are justified by the increase in specificity of this procedure; by contrast, barring LGBT people from obtaining a license or having workers who make crucial choices out of their racial biases does not have any effect on the improvement of the specificity of the procedure and the consequent reduction of child maltreatment. For this reason, wrongful discrimination is always an unjustified cost to would-be competent parents, and the state may not impose it on them.

Second, the state has a general obligation to fight against wrongful discrimination, particularly when public officials and workers commit it. While the issue of technical false negatives arises only when we introduce parental licensing and the only relevant harms that the state has to weigh are those of parental deprivation and of child maltreatment, in the case of discriminatory false negatives the state has strong independent obligations to minimize wrongful discrimination and very weighty obligations not to introduce more discrimination through its policies. While we may justify some parental deprivation caused by technical false negatives, these obligations prohibit the state to accept any form of wrongful discrimination in parental licensing.

Third, while I do not take a stance of the severity of being the victim of wrongful discrimination *vis-à-vis* the severity of child maltreatment, we should note that the first condition for interpreting child-assigning as a social risk does not obtain in the case of discriminatory false negatives. As mentioned in Chapter 4, social risks affect a large number of people and are virtually certain to materialize as actual harm to certain individuals whom we cannot identify before performing the risky action; every child-assigning system affects a large number of adults and children, determines parental deprivation to adults and maltreatment to children whom we cannot identify before applying the system in question. While this condition obtains in the case of technical false negatives, which randomly affect would-be parents, it does not in the case of discriminatory ones. If we implemented a screening procedure with clear discriminatory effects, members of socially salient groups would be certain or know that they are extremely likely to suffer parental deprivation. If we

barred LGBT people from obtaining a license, any would-be competent LGBT parent would know that he is certain to suffer parental deprivation. If public workers are influenced by their racist biases in the assessment of candidates, members of racial minorities know that they are disproportionately likely of being wrongly denied a parental license. In the case of discriminatory screening procedures, therefore, we face a certain number of non-identifiable children who will be maltreated and certain groups of adults who are either certain or disproportionately likely to suffer parental deprivation. Under these circumstances, then, we may not justify *ex-ante* the risk of suffering parental deprivation to victims of wrongful discrimination, since they know they are either certain or very likely to be harmed. As we have seen, under ex-ante contractualism the imposition of a risk is justifiable only if no person, given what she knows, holds an ex-ante valid complaint against it: victims of wrongful people discrimination do hold a valid ex-ante complaint against a discriminatory licensing schemes that makes it unjustifiable

4 False positives: incompetent parents who get a license

When the screening procedure fails to detect some signs of likelihood of child maltreatment, it produces a false positive and, consequently, the state assigns the child to the legal custody of a parent who is likely to maltreat her. While it is obvious that false negatives constitute a problem for defenders of parental licensing, the possibility of false positives does not constitute a special worry for a defence of parental licensing *vis-à-vis* the *status quo*. Even if it is true that if we implement parental licensing we could not completely avoid the possibility of assigning a child to an incompetent parent, the *status quo* on parental licensing is certain to produce these bad results on a greater scale: if we automatically give the legal custody of a child to her procreators without any checks, we are certain than more children will end up being maltreated than if we implemented some sort of screening, as long as the latter produces some true negatives, i.e. it correctly identifies some incompetent parents. Therefore, simply pointing to the fact that a parental licensing scheme will fail to fully achieve its ultimate aim, by leaving some incompetent parent off the hook, while it may prevent these outcomes by running a more careful screening, is not a valid ground to argue for the preferability of the *status quo*. If it is true that any screening procedure will fail some children, by permitting some instances of maltreatment, parental licensing, however inaccurate, still fares better than the *status quo* in terms of child maltreatment prevention.

Even so, we should be careful in designing a screening procedure that does not produce many false positives. False positives frustrate the achievement of the ultimate aim of parental licensing, by allowing a higher rate of child maltreatment than we have weighty reason to avoid. Generally speaking, a licensing procedure produces a false positive because it overlooks some elements that are relevant for avoiding child maltreatment. The four-tier structure of the screening procedure I have presented in the previous section is a helpful tool for policy-makers engaging in the design of a parental licensing procedure: they should keep in mind that false positive mistakes can be produced at different levels in the design and the execution of the tests and checks. I do not need to provide an exhaustive account of all the possible false positives, and I simply offer some observations in what follows.

First, a licensing scheme might subscribe to an incomplete account of children's basic needs and fundamental rights and, consequently overlook some important components of child maltreatment. Such a procedure would fail to recognize some children as maltreated and, therefore, would grant a license also to those adults who are not able to avoid that specific instance of child maltreatment. Similarly, a procedure might subscribe to an incomplete account of parental competence, by overlooking some important knowledge, abilities or skills that an adult must have to adequately raise a child. For instance, if we overlooked children's need to be minimally socialized with other children and adults and failed to recognize that competent parents must be committed to support their child's socialization, the resulting screening procedure would grant a license to parents who would completely exclude their children from minimal meaningful interactions with individuals outside the family, for instance by making her spend most of her time inside home, not allowing her to develop minimal friendships, etc.

Second, the procedure might miss some relevant facts that reliably reveal parental competence. For example, we know that a competent parent is able to respect her child's physical integrity; but if we failed to notice that would-be parents who have committed violent crimes against children in the past are likely to maltreat children under their legal custody in the future, we would produce a screening procedure that grants a license to some violent adults who are, in fact, likely to physically abuse their children.

Third, we might use tests and checks that miss some relevant facts: for instance, a check that considers only the violent crimes against children present in the candidate's criminal record and completely ignores other types of crimes and other types of sources, like police or child welfare reports that did not evolve into a criminal convection. A procedure based on such a test would produce some false positives because, by missing some relevant pieces of available information, it would grant a license to some incompetent would-be parents who have showed aggressive behaviours but who have an empty criminal record.

So far, we have identified features of the screening procedure in virtue of which it may produce some false positives. A fourth and final kind of reason in virtue of which false positives may be produced is that those responsible of *running* the tests and checks may run them poorly: if a public worker checks the candidate's criminal record negligently or the specialist is very distracted during the interview with her, for example, these tests and checks, no matter how well designed, are likely to produce some false positives. The specific licensing procedure I have presented in the previous section, in conjunction with recommendations and incentives for public workers involved in parental licensing to be careful in their job, aims to be a proposal that minimizes the number of false positives.

Additionally, policy-makers should update and revise the procedure in light of new available evidence that can strengthen the capacity to detect risk of child maltreatment. For instance, if they find out that the account of child maltreatment on which they have been relying is under-inclusive, they have a duty to revise it and change the procedure accordingly; if we get evidence that a particular psychological test, which at the moment is not included in the procedure, is reliable in detecting abusive or negligent behavioural traits, they should include it.

Although the presence of false positives does not undermine the rationale for licensing parents, nor provides a good argument to prefer the *status quo*, it might ground some special worries about parental licensing. It seems a deep misfortune that a policy aimed to save children from maltreatment, unavoidably condemns some of them to this destiny. The claim in question is not that parental licensing condemns some children to maltreatment, while the same children would not have been maltreated under *status quo*; as I have remarked, licensing schemes that produce many false positives save some more children

from maltreatment that the *status quo*. The claim is, instead, that a child who gets maltreated by a parent who got a license because of a false positive mistake suffers a distinctive wrong that she would not have suffered if she were maltreated by her biological parent under *the status quo*. Alternatively, we might claim that the scenario in which a child is maltreated by a parent who got a license because of a false positive is more regrettable, in impersonal terms, than the one in which a child is maltreated by her biological parents under the *status quo*. The rest of this section takes seriously this possibility, which it explores, and asks what implications it has for the defence of parental licenses.

What might support our judgement that a child who gets maltreated by a parent who got a license because of a false positive mistake suffers a distinctive wrong that she would not have suffered if she were maltreated by her biological parent under the *status quo*? To begin with, we should notice that the intuition at stake cannot be captured by reference to the classic distinction between *doing* and *allowing* harm. This is because we cannot claim that while under the status quo the state simply allows that some biological parents maltreat their children, under parental licensing it directly harms the child when it makes a false positive and gives a license to an incompetent parent: under both the scenarios the parents are the ones who actively harm the child. We also cannot claim that while under the *status quo* the state *lets* some biological parents abuse their children (i.e. does not prevent them from doing so), under parental licensing the state *authorises* some parents to maltreat their children. Under parental licensing, when the state commits the mistake of a false positive, it does not permit parents to maltreat their children; having committed a mistake in assessing the competence of a would-be parent is compatible with removing the child from his custody once he has committed maltreatment (and with punishing the parent if punishment is appropriate). The distinction does not lie either in the different causal contribution of the state in the production of the harm of child maltreatment: when the state gives a license to an incompetent parent, it does not thereby facilitate nor makes it more likely that that parent maltreats her child than it does, under *status quo*, by allowing a biological parent to parent her child his child.

Our intuitive reactions can be captured, instead, by a more fine-grained distinction. Although, as I argued in Chapter 3, the state, by determining a legal framework that identifies which adults have the right to parent a particular child, necessarily intervenes in

the formation of the child-parent relationship and assigns children to the parental custody of particular adults, we can notice that there are two different senses in which parental licensing and the *status quo* allow for child maltreatment. Under the *status quo* the state automatically recognizes the right to parent to all the procreators who are willing to parent their biological children; under parental licensing, however, the state gives the legal custody of a child to a specific adult on the basis of an assessment of her parental competence. We might claim therefore that when the state intervenes to assess the competence of would-be parents, it assumes *a greater responsibility* for the child-assignment that results from its assessment; on the contrary, under the status quo the state does not have this very specific responsibility, since it does not take the choice on the basis of a case-to-case assessment of would-be biological parents.

If we consider the implications in terms of compensatory obligations of the state to maltreated children and the case of false positives in current screening for would-be adoptive parents, we can give some further support to the claim just made. When a child gets maltreated by her adoptive parents and we realize that the screening procedure made a false positive mistake, we believe that we have strong reasons to feel sorry for the child and that these reason do not completely apply to children who are maltreated by their biological parents. Furthermore, we might believe that the state owes children who were maltreated by their adoptive parents a special apology and greater compensation. Given that under the *status quo* the state does license adoptive parents, it has a stronger responsibilities for child maltreatment committed by adoptive parents than for maltreatment committed by biological ones. Notice that this claim does not necessarily imply a version of the *Asymmetry View* between adoptive and biological parenting according to which the state has a more stringent duty to protect children in need of adoption than biological children. Independently of what we believe about asymmetrical duties of child-protection, the principle I have proposed simply claims that when the states *does* implement robust child-protection policies, children who are left unprotected suffer a specific wrong, that would not have materialized if those robust polices were not put in place, and are owed a special kind of compensatory obligations.

If this claim is correct, false positive mistakes do raise a specific worry for licensing advocates *vis-à-vis* supporters of the *status quo*: licensing all would-be parents, and not just

adoptive ones, would unavoidably expand the specific type of wrong I have described to many more children who will get maltreated *because of some false positive mistakes of the licensing procedure*. This conclusion sounds correct and has interesting implications for licensing advocates, but it does not affect the justifiability of parental licensing. The specific wrong to the child resulting from false positive mistakes, which would be absent if we did not license parents, has incomparably less moral relevance that the aim of reducing child maltreatment: we clearly cannot accept an even slightly higher rate of child maltreatment just to avoid the specific wrong to children who are victims of the failures of protective policies. For the very same reason, we currently believe that the unavoidable presence of false positives does not make screening adoptive parents unjustified. Reducing the risk and the rate of child maltreatment is incomparably more important than avoiding the specific wrong to children left unprotected by child-protection policies. To sum up, in terms of harms and wrongs to children, and even if we include the very specific wrong just described, parental licensing remains clearly morally preferable than the *status quo*.

Note, however, that if we endorse the line of argument elaborated up to this point, we have to concede that if the state implements parental licensing, it acquires special compensatory obligations towards maltreated children that it would not have had if it did not implement parental licensing. One implication of this may be that the state should design special programs to readdress maltreated children's situation and to express its special concern with the instances of child maltreatment that it has authorized because of the failures of the licensing procedure. Both these claims seem plausible.

5 Incompetent parents under unjust circumstances

To conclude my defence of parental licensing, it is necessary to mention a different kind of case from those mentioned thus far: under unjust circumstances, it is plausible to think that many would-be parents lack parental competence because they have suffered severe forms of injustice; licensing parents under these circumstances would mean barring these individuals from the goods of parenting. While there is a sense in which the cases at hand involve no mistake – incompetent parents are recognised as incompetent here – the fact that their *incompetence* is the result of unjust conditions seems to create a problem for the

justifiability of parental licenses. Consider adults in our societies who would fail a well-designed screening procedure because they have committed serious crimes against children, they have developed violent attitudes, they are very poor, or they lack minimal understanding of children's needs and it is very difficult for them to educate themselves about them. Some of these adults will surely be in this position because they have lived under terribly unjust conditions which have had permanent effects on their ability to adequately raise a child: they have suffered poverty, in many case they were maltreated as children, they were indoctrinated into cultures that do not respect children's fundamental rights, they lacked minimally good educational opportunities, etc. Social scientists have studied the impact that the different forms of injustice, suffered by adults especially during their childhood, have on their parental abilities and the mechanisms of the intergenerational transmission of child maltreatment (Langevin et al. 2019). This evidence poses a further difficulty for advocates of parental licensing: parental licensing, in fact, would add to the injustice suffered by these parents the deprivation of the goods of parenting. Those adults seem to suffer, then, a double injustice: may and should the state deny these parents a parental license?

We should start by noticing that according to a strict interpretation of the "conditionality assumption" I presented in Chapter 1, these adults do not seem to suffer a severe loss: in fact, parenting is only valuable for those adults who can adequately raise a child. The adults in question, who really cannot adequately raise a child, therefore would not lose anything valuable if they are barred from parenting. The case of victims of injustice, however, shows that the strict interpretation of the conditionality assumption is implausible. Victims of injustices who end up being unable to adequately raise a child *can* complain of being deprived of the goods of parenting, in the following sense: they have been deprived of the chance of developing those abilities that are required to establish a healthy parent-child relationship. This deprivation is unjust both because it constrains their liberty or autonomy, as they are not permitted to pursue an option many of them cherish; and because, as we have seen, for many adults parenting is a particularly valuable option for different reasons. Licensing advocates cannot simply reply that denying a license to these adults is costless for them, since they do not lose anything valuable: these adults have suffered different injustices and the impossibility or difficulty for them to establish healthy parent-child relationships does constitute a great cost.

Advocates of licensing parents may, nonetheless, reply that although not being able to parent is a great cost for victims of injustices, being *barred by the state* does not: if someone lacks the valuable opportunity to adequately raise a child because of her parental incompetence, he does not suffer a further harm if the state impedes her to actually parent a child. To consider this point we should clarify better our understanding of parental competence. If incompetent parents are those adults who are likely to maltreat their children, we need to specify the background that we assume is in place when we establish whether a specific adult will maltreat her child or not. As I have anticipated, different accounts of parental justice determine how child-related costs, not only in terms of economic resources, but also free-time, forgone job opportunities and opportunities to practice activities different from parenting should be distributed between parents and the state. Our conception of parental competence should not require parents more than their fair share and disqualify as incompetent those adults that would adequately raise a child if they were duly supported in their parental role. Although I have not taken a stance on this debate, the cases of victims of injustice presses us to say that the past history of adults matters for determining what is their fair share of child-related costs: adults who grew up in poverty, lack of basic education and violence have a compensatory right to receive extensive and robust parental support. This support can take the form of monetary subsidies, in-kind benefits, special parental training, psychological assistance, and mentoring, among other things. We have good evidence that these types of interventions have an important impact in enabling adults to adequately raise a child: for this reason, the adults who have suffered severe injustice and are, in fact, incompetent, once all this is taken into account, are fewer than we might originally think. Many poor adults would do a good parental job if they were given more economic resources; many adults who do not have a clear understanding of children's needs would benefit from parental training and mentoring; many parents with psychological issues would be competent parents if they received adequate psychological care and guidance. (Waldfogel 1998).[69] All these adults may not be considered as incompetent by a screening procedure.

[69] Dwywer (2018), on the contrary, argues that certain social and familial contexts are so irremediably harmful to children that greater funding would not make a relevant positive contribution in terms of child maltreatment and we should, instead, massively remove children from toxic environments, even if doing so means breaking their relationships with their biological parents and their communities.

Nonetheless, we have to assume that some adults who have been the victims of injustice will be likely to maltreat their children even after the state has implemented all the required policies to support parents. Many adults who have developed persistent violent attitudes as a reaction to the violence they have suffered are unlikely to change them; many adults who have inherited practices and childrearing styles that are very harmful for children, like insulating the child from minimal socialization outside the family, are unlikely to respond to the evidence of the negative effects of their actions. As I said earlier, these parents do genuinely qualify as incompetent: they are very likely to maltreat their children even once the state has fulfilled its obligations of parental support. These adults present a thorny case for advocates of licensing, who should reply to the question: "Should the state deny these "irremediably incompetent" would-be parents the right to parent their biological child?" Although it might sound rather harsh, the answer is, I believe, affirmative: if letting these adults parent a child determines an unavoidable high risk of child maltreatment and the state cannot implement measures to help these adults to overcome their parental incompetence, we have a duty to protect the children from child maltreatment by denying their procreators a parental license. The argument for this claim is rather straightforward. The state has failed these adults by allowing the different injustices they suffered and has compensatory obligations towards them; however, letting them parent a child is not a permissible form of compensation; it is an unjustifiable failure to protect children from maltreatment.

In concluding, I would like to point to two final considerations that might mitigate the harshness of my proposal. First, the state may grant to these adults some rights to develop some sort of relationship with their biological child if they have one, for instance occasional visits, and information about the development of the child. My argument has only established that the state should not confer on these adults the bundle of rights and authority assumed in Chapter 1. Second, the irremediable parental incompetence to which I have referred should not be interpreted as completely irreversible over time: parents who have strong violent attitudes and for which parental support would not be of help at a certain stage of their lives may still undergo a longer process of transformation that might lead them to become competent parents; they may then apply again for a parental license, undergo the screening procedure and obtain a parental license. This option certainly does not eliminate the injustices suffered by these adults and the deprivation they suffered

because they were unable to establish a healthy parent-child relationship, but it does make the proposal of parental licensing relatively less harsh to them.

Conclusion

In this chapter I have considered different issues related with the actual implementation of parental licensing and I have argued that concerns and worries about the implementation of the proposal do not ground a definitive case in favour of the *status quo* and against parental licensing. Instead, a careful analysis of these worries and concerns allows us to develop a defence of parental licensing that provides more details about the policy and to formulate an account of further moral obligations that a state who wants to license parents has and of the background conditions that makes parental licensing justifies. First, the state has a duty to employ reliable tests and checks that do not generate a high number of false positives and false negatives; to do that, we need to carefully consider the four-layers structure of the screening procedure and ensure to make justifiable choices based on empirical evidence in its design. Second, when we face the choice between minimizing false negatives of false positives, the anti-aggregative account of the allocation of harms to adults and parents commits us to minimize false negatives at the cost of raising false positives. Third, adults who have failed the screening procedure have a right to reapply for a license and to have their case reconsidered: such a right would mitigate the negative effects of false negatives. Fourth, the state has a duty to ensure that the screening procedure does not discriminatory against members of socially salient groups by wrongly disqualifying them as would-be incompetent parents. Discriminatory false negatives are never justified and the state is not permitted to introduce a licensing scheme that has clearly discriminatory effects. Fifth, the state has a special obligation of apology and compensation to those children who have been maltreated by parents who got a license because of a false positive. Sixth, we should ensure that we require would-be parents to assume only their fair share of child-related costs: parents should be considered incompetent only if they cannot adequately raise a child once the state has implemented the morally required policies of parental support; therefore, the state is justified to introduce parental licensing only once it has implemented these policies. Seventh, we should recognize that many adults who were victims of injustice would do a good job if they receive robust public support; for this

reason, the state should not disqualify them as incompetent. Finally, a group of adults will certainly be irremediably incompetent, i.e. they will be incompetent because of the injustice they have suffered and the state cannot help them in their parental job. Although they constitute a tragic case for advocates of licensing, the state has a duty to deny them a parental license and bar them from parenting their biological children.

Chapter 6
Revisiting the Dual-Interest View: Why Children's Overall Best Interest Constrains Adults' Interest in Parenting

My main defence of parental licensing, which I completed in the last chapter, granted to critics of parental licences the so-called *Dual-Interest View* of justice between children and parents. As mentioned in the Introduction and in Chapter 1, most scholars working on the ethics of the family now consider this view as an important starting point for any plausible account of justice of parent-child relationships; they also employ it to object to child-centred views, which are accused of generating implausible judgements about i) cases in which we have to determine who should parent a child, i.e. which adults have a right to parent a specific child, and ii) what rights and duties parents have in discharging their parental role.

My main aim thus far in the thesis has been to show that we can and should defend *Parental Licensing* even if accept the *Dual-Interest View* as it is widely formulated.

However, I believe that the *Dual-Interest View* has been imprecisely formulated and insufficiently examined, and that while some of the basic intuitions it promises to capture are correct, a plausible formulation of it is in fact much less accommodating of parents' interests at the expense of children's than is generally assumed. This chapter provides a critical analysis of the *Dual-Interest View* that spells out these convictions. While this analysis is not aimed at defending parental licensing – as I mentioned, I see the main defence of parental licensing as having been accomplished by this point – it contributes to a better understanding of what justice between parents and children requires, and it indirectly strengthens the case for parental licensing: if the arguments of this chapter are correct, then what parents owe to children is even more demanding than is assumed in the licensing procedures I have defended, and the appeal to parents' interests as countervailing considerations is insufficiently weighty for such objections to parental licensing to be effective.

The chapter proceeds as follows. In section 1, I provide some preliminary considerations to clarify the scope and the aim of the view in question. In sections 2 and 3, I show that under the general label of the *Dual-Interest View*, we find two distinct claims: one about the nature of the interest in parenting; the other about its weight. While these two claims are related, there is no logical or practical necessity to either embrace or reject both of them since they do not constitute a logically or practically indivisible package. I argue that while the claim that adults' interest in parenting is fundamental is convincing and has interesting normative implications, we have good reasons to challenge the claim that the interest in parenting may outweigh the promotion of the best interest of the child. In section 4, I propose, instead, a principle according to which, since the interest in parenting necessarily entails an interest in exercising power over children, it may never take priority over a child's overall best interest. I conclude by showing the practical implications of this principle and defending it from possible objections.

1 What is the *Dual-Interest View* about?

As mentioned at the outset of this thesis, in the recent literature on family justice and the ethics of parent-child relationships, a broad consensus on and a systematic appeal to the so-called *Dual-Interest View* (DIV) has become dominant (Clayton 2006 pp. 54-57, Brighouse and Swift 2006, 2014b, Hannan and Vernon 2009, Shields 2016). The DIV is generally considered as a necessary assumption for any plausible normative theory, account, or view about parent-child relationships; this is in contrast with both purely parent-centred views, which to my knowledge no one defends currently,[70] and strictly child-centred views, which some scholars do endorse, and which are, at least nominally, in play in various social policies.[71] Defenders of the DIV accuse child-centred approaches of producing deeply counterintuitive and implausible judgements about a number of cases. In a nutshell, child-centred views claim that children's interests are always of paramount importance and that our accounts of the justice of parent-child relationships should be justified exclusively by

[70] Proprietarian accounts of parental rights, based on the idea that parents own their children because they have created them, are the closest views to straightforward parent-centred views on justice of parent-child relationships, although they generally admit that children have rights that constrain their parents' actions; see Hall (1999) and Narveson (2002).

[71] For child-centred views in moral and political philosophy, Brennan and Noggle (1997), Noggle (2002), Vallentyne (2003), Archard (2004), Goodin (2005). The main reference of the "best interest of the child" as a legal principle that regulates "all actions concerning children" is Article 3 of the UN Convention of the Rights of the Child (1989).

appeal to considerations about the promotion of children's interests, while the DIV claims that in theorising about child-parent relationships we should give proper consideration to both children's and parents' interests.

In order to analyse the DIV, we need a fuller description of the interests of parents and children which, according to this view, have distinctive significance. In my discussion thus far, while I have assumed that parents and children have an interest in parent-child relationships (including in biological parent-child relationships), my focus has mostly been on a subset of particularly urgent children's interests, since my aim was to defend licensing as a policy needed to do justice to those interests. The focus of the DIV, by contrast, is on the interests that children have above the minimal threshold I have focused on, and on the interest in parenting in general, including aspects of these interests I have not considered so far. The rest of this section spells out these interests in greater detail.

1.1 The interest in parenting: a more complete definition and a broader scope

As we saw in Chapter 1, it is plausible to hold that many adults have an interest in parenting. The opportunity to establish and develop a close, affective and authoritative relationship with a child makes an important positive contribution to the lives of many adults. My defence of parental licensing has specifically focused on the interest in establishing and maintaining a parental relationship with one's biological child and the considerable loss suffered by adults who are wrongly prevented from doing so. The DIV addresses not only this aspect of the interest in parenting, but also the specific interest that parents have in discharging the parental role, understood as the interest in making choices about one's own child's life. Parents have an interest in being the ones who decide which school their children attend, what food they eat, with whom they associate, etc. The interest in exercising the parental role can be jeopardised in at least two different ways. First, parents might *be prevented* by the law or other individuals from making important choices about their children's lives: imagine again a state that implements a mandatory public canteen service in which children get all their meals and parents have a legal duty to send their children to these canteens. Second, parents may not have the *moral liberty* to exercise the parental role: it may be that an account of parental moral duties specifies how

parents should behave so extensively that it practically deprives parents of the chance to make any important choice about their children's lives.[72] I assume, like others, that a *desideratum* for a plausible account of parental duties is that it takes parents' interest in making choices about one's own child's life seriously, by not imposing overdemanding legal or moral duties, i.e. duties that practically deprive parents of the chance to make important choices about their children's lives.

The appeal to the interest in parenting thus understood can be deployed to address two different questions related to justice of child parent child relationships: "Who should raise a child?" and "How should parents raise a child?" The first question is the one I have addressed in my thesis, examining the morally relevant considerations that determine which adult, or adults, have the right to parent a specific child. The second question asks what duties and rights parents have in discharging their parental role. These two questions are clearly connected. More precisely, to determine who has the right to parent a child, we need to have at least a minimal conception of the duties that parents have towards their children: in this thesis, for example, I have argued that considerations about the urgent duty not to maltreat one's child supports parental licensing, which constitutes part of an answer to the first question. Nonetheless, an answer to the first question does not require a complete account of parental duties and rights: the minimal duty not to maltreat one's child, on which I have built my defence of parental licensing, clearly leaves unaddressed many duties that parents have beyond the minimal satisfaction of children's basic needs. As for the second question, it is orthogonal to the first: determining who has the right to parent a specific child does not tell us much about the duties and the rights that parents have. Therefore, since the two questions do not fully coincide, and I am interested in exploring the implications of the DIV, and its rejection, for a number of issues related to the justice of child-parent relationships, I will keep these two questions separate.

Not all DIV advocates apply the DIV to address both these questions, however. Adam Swift and Harry Brighouse, in their "Parents' Rights and the Value of the Family" claim that their account of the nature of the interest in parenting grounds a version of the DIV that has implications for both the first and the second question about justice of child-parent relationships. In their book *Family Justice,* however, they take an asymmetrical

[72] On the excessive restriction of moral options as a form of overdemangigness, see van Ackeren (2018).

position: while they maintain their account of the nature of the interest in parenting and the application of the DIV to the first question, they assume a child-centred view about the interest and the right to make choices about one's own child's life. Sarah Hannan and Richard Vernon (2009) are even clearer in arguing for a version of the DIV that appeals to the interest in parenting to answer exclusively the question "Who should parent a child?", while they embrace a child-centred role-based account of the rights and duties parents have towards their children.

In this chapter, I consider versions of the DIV that apply to both of the main questions I have mentioned. I do not claim that the DIV should be equally applied to both questions, nor do I accuse supporters of asymmetrical versions of the DIV, such as Brighouse and Swift's (2014b) and Hannan and Vernon's (2009), of being inconsistent. Nonetheless, since my aim, in the fourth section of the chapter, is to object to a formulation of the DIV that can be applied to both the questions of justice of child-parent relationships and to propose a child-centred alternative that also applies to both questions, for the sake of completeness I consider the implications of the DIV for both questions.

1.2 The overall best interest of the child

While my defence of parental licensing has assumed a rather minimal and incomplete account of children's needs, interests and rights, formulations of the DIV provide a more exhaustive conception of children's interests. More precisely, the DIV defines the relationship between adults' interest in parenting and what we might call the best interest of the child. Although the notion of the "best interest of the child" plays an important role in different accounts of justice to children (Buchanan and Brock 1989 ch. 5), and even in child law (UN Convention of the Rights of the Child, art. 3), it is not very clear to what exactly it refers. For the purposes of this chapter, I assume that children have an interest in a number of different goods, such as physical and psychological health, physical integrity, care and affection, free time, the development of autonomy, education, acquisition of relevant skills that will determine an advantage in the job market in the future, etc. I also assume that the claim that children have an interest in these goods is compatible with a neutralist conception of justice to children. Finally, I assume that children have a *prima facie*

entitlement to being provided with the maximal possible amount of these goods, where this means that if there are no compelling moral reasons against their receiving these goods, all the agents who are responsible for children's upbringing should provide them with what we might call "optimal rearing conditions", i.e. an upbringing that ensures children the maximal provision of these goods.[73] Against this picture of what children are entitled to, the DIV aims to establish that adults' interest in parenting is a morally relevant consideration that in many cases countervails children's entitlements to optimal rearing conditions.

To assume children's entitlement to optimal rearing conditions is not to overlook the fact that judgements about what these conditions require, precisely, are complex, since in some cases the maximal acquisition of one of these goods is incompatible and conflicts with the maximal acquisition of another good. In these cases, we face an intrapersonal trade-off between different children's interests. Consider, for instance, a child's interest in free time and in good education, which now we can redefine as the interest in maximal free time and in optimal education. If we had to provide children with the largest possible amount of free time, we could not give them the best possible education, and *vice versa*; in fact, if we maximised children's free time, by letting them spend all their time as they wish, we would severely reduce the time they spend at school and, consequently, diminish the quality of their education. Similarly, if we wanted to maximise the quality of children's education, we would probably need to require children to spend more time at school, and therefore we would significantly reduce their amount of free time. Providing a convincing account of how to solve these intrapersonal trade-offs is an interesting and complex philosophical enterprise, which I do not need to carry out here. We can assume, however, that there exists a single optimal point, or multiple optimal points, of satisfaction of all children's interests. This is what I we can refer to as "the child's overall best interest".[74] Although in many cases it is extremely difficult, perhaps impossible, to determine what is the overall best interest of a child, this concept is important, so I will argue in the next two sections,

[73] The question of *how much* we owe children is generally unexplored in the literature. Clayton (2015) provides an overview of some possible views on this issue: in this chapter I assume a *prima facie* version of what he calls "maximalism in custodial conduct" (2015, pp- 250-251) , i.e. the view according to which children are entitled to the best upbringing if there are not weightier countervailing reasons.

[74] The process needed to find this optimal point, or points, would be a reiteration of the process employed to solve the trade-off between the interest in maximal free time and optimal education: to find the optimal point, we would need to apply this type of solution to all of the child's interests.

for a precise formulation and analysis of the DIV. In my discussion below, for the sake of simplicity, I will consider scenarios in which at most two conflicting interests of the child are at stake, and it is evident which scenario is best from the perspective of the child's overall best interest.

1.3 The aim of the DIV: supporting firmly held convictions

As I have anticipated, the DIV aims to support a set of judgements about the acquisition of the right to parent and the content of this right that are firmly held by most people.[75] Liam Shields (2016) offers a useful typology of the main firmly held convictions about the acquisition of the right to parent and the right to retain custody of one's child. First, the minimally decent family should be the favoured vehicle for child-rearing, even if alternative modes of child-rearing would be best in terms of the child's interests. Second, it would be wrong to reshuffle custody of babies at birth so that children are reared by those other than their adequate biological parents, even if doing so would be best in terms of the child's interests. Third, it is impermissible to change child custody when the current parents provide a minimally good upbringing, even if doing so would be best in terms of the child's interests. These three convictions provide a reply to the question "Who should raise a child?" and are based on the intuitive judgement that in respect of these issues, the interest in establishing and developing a parental relationship with a child matters and that we should not consider exclusively what is in the child's overall best interest.

On top of these considerations, we also generally assume that parents' interest in making choices about their children's lives is relevant when addressing the question of the content of parents' rights. More precisely, we generally believe that parents do not have a duty to maximally promote their child's best interest, and in particular, they do not have a duty to always make the best choices about their children's lives. To test our intuitions about this claim, consider the following case. Anne is Ben's mother and she needs to decide in which school to enrol him. The options available to her are the following: school A, which is

[75] The right in question involves both some moral liberties, i.e. the lack of an opposite moral duty, namely the duty not to parent a child, and some moral claims that determine duties of non-interference for the state and strangers, namely duties not to obstacle the formation and the development of the child-parent relationship.

optimal, and school B, which is good, but would give her child a slightly worse education than school A. Anne prefers school B, because it is the school she attended as a child and she would like to share this aspect of her life with her child. Many of us believe that Anne may send Ben to school B, although it would be better for him to attend A, precisely because she does not have a duty to make the best choice about her child's life.

DIV supporters claim that these convictions are generally firmly held and that any plausible account of justice of child-parent relationships needs to be able to support, defend, and explain them. They also reject child-centred views as deeply implausible because they are claimed to be unable to do this: child-centred views, it seems, entail the opposite conclusions, namely that we should prefer institutional or collective modes of child-rearing over the family, if this were in the best interest of children; that we should assign children at birth to the best available parents; that it is in principle permissible to change the custody of a child from a decent current parent to a better available one, if doing so is best for the child; and that parents have a duty to always make the choices that best promote their children's interests.

By contrast, as the next two sections illustrate, the DIV claims to support the firmly held convictions described above, and to do so by appealing to the specific interest which adults have in parenting, rather than by appealing to other interests that parents may have not *qua* parents. To illustrate: we could support some of the firmly held convictions by arguing, for example, that adults have an interest in avoiding social stigma, and since having one's biological child removed from one's own custody causes deep social stigma against the parents, removing children from decent parents is wrong. On this line of reasoning, however, the interest in avoiding stigma, rather than the interest in parenting, would be our ultimate reason for endorsing the conviction that children should not be removed from their decent parents. This is not the kind of reasoning the DIV pursues.

2 The interest in parenting as a fundamental interest: the *Irreducibility Claim*

The work of Harry Brighouse and Adam Swift is undoubtedly one of the most important reference points for the formulation of the DIV.[76] Here I do not focus on all the details of Brighouse and Swift's argument, since my aim is to define the common core of the different versions of the DIV which is well captured by Brighouse and Swift.

Brighouse and Swift argue that adults have a weighty interest in establishing an intimate, close, affective and authoritative relationship with a child and that such an interest grounds a fundamental right to parent. According to their definition, a right is fundamental "if it is owed to a person in virtue of their simply being a person, and its justification is grounded in the benefits it will bring to that person and not to others." (2006, p. 87). Brighouse and Swift employ an interest-protecting conception of rights according to which the function of rights is to protect important interests and generate in others duties to respect such interests.[77] Since my interest here is to explore how we should consider the interest in parenting and the child's best interest in order to determine which rights and duties parents have, for simplicity's sake, I will frame Brighouse and Swift's account in terms of a fundamental interest in parenting that adults have independently of the benefits that being parented brings to children.

Brighouse and Swift contrast fundamental rights with instrumental ones, i.e. rights whose justification is grounded in the benefits that such rights bring for someone other than the right-holder.[78] It should be clear that in this formulation the "someone other" in question is the child. The claim concludes, then, that the interest in parenting is fundamental because its significance and value cannot be entirely reduced to the benefits that recognition of such an interest gives to the child.

To get a better grasp of this claim about the fundamental nature of the interest in

[76] Their argument is originally and more fully presented in Brighouse and Swift (2006); the same argument with some modifications is presented also in Brighouse and Swift (2014b).
[77] "We will give an account of the *parental interest* in the parent-child relationship that we believe justifies some such rights", Brighouse and Swift (2006) p. 87, italics mine.
[78] Similarly in Brighouse and Swift (2014b), p. 87: "We think that adults have a right to parent in a stronger sense. Their right is fundamental, not derivative, in that it is grounded in their own interest in being a parent".

parenting, it is useful to look at how instrumental interests work. The example of paradigmatic instrumental rights and interests that Brighouse and Swift have in mind involves individuals discharging fiduciary roles:

> When someone is given power of attorney over an elderly relative, whether by voluntary transfer or by a judicial ruling, that person now has some rights over the relative's affairs (for example, she may be given the right to buy and sell his property). But the person holding and exercising the rights, as trustee or fiduciary, possesses them not because they promote her well-being but because her possessing them is *instrumental* to the well-being of the person for whom she is acting as fiduciary. (2006, p. 54, italics mine).

In the case of most fiduciary relationships, then, the interest in entering into such a relationship, and in making choices about someone else's life, is entirely instrumental in the sense that their significance and value can be totally reduced to the advantage that the recognition of these interests determines for the interests of someone other than the interest-holder, in this case the person for whom, or on behalf of whom, the right-holder is acting. According to Brighouse and Swift, therefore, parenting constitutes an exception among fiduciary relationships: although it clearly is a fiduciary relationship, i.e. a relationship in which someone takes care of someone else and makes important choices about her, adults have a non-fiduciary interest in entering this relationship and in discharging the role of parents. In other words, adults do not have an interest in parenting *exclusively because* the recognition of this interest is beneficial for children's lives, but also because assuming and discharging the parental role makes a distinctive positive contribution to their lives.[79]

With this point in mind, I can now provide a clear formulation of Brighouse and Swift's claim about the nature of the interest in parenting and its relationship with children's interests. The DIV is characterised by endorsement of the following:

> *Irreducibility Claim*: adults' interest in parenting is fundamental, i.e. its significance and relevance cannot be entirely reduced to the contribution that the recognition of such an interest makes in protecting and promoting the child's best interest.

With this characterisation of the DIV at hand, we can now ask which kind of child-centred

[79] Brighouse and Swift (2006), p. 95; Brighouse and Swift (2014), p. 92.

view it is opposed to (i.e. which child-centred view rejects the *Irreducibility Claim*), and whether this claim succeeds in supporting the firmly held convictions the DIV sets out to defend.

Brighouse and Swift oppose child-centred views according to which the interest in parenting, like the interesting in entering and discharging any type of fiduciary role, is completely instrumental. More precisely, these views claim that the significance and relevance of adults' interest in parenting are entirely reducible to the contribution that the recognition of such an interest makes in pursuing the child's overall best interest. Although this claim has not been clearly defended in these terms in the literature on parent-child relationships, Brighouse and Swift argue that a number of liberal philosophers support it.[80]

Brighouse and Swift's arguments for the *Irreducibility Claim* can provide the material for two main objections against these child-centred views, which they do not explicitly present but that are in line with the conclusion of their argument.

First, child-centred views fail to give *appropriate* consideration to the interest in parenting. By way of comparison, consider the debate about the value of democracy: there, instrumentalists claim that democratic procedures are valuable and individuals have an interest in having an equal say about political matters exclusively because democracy produces better results in terms of substantive justice than other political regimes. Non-instrumentalists accuse instrumentalists of mistreating and lacking respect towards citizens in claiming that their participation in democratic procedures is only instrumentally valuable. Citizens have a claim to have their interest in democracy recognised as fundamental and not as a mere means for achieving good political outcomes (Wall 2007, Viehoff 2017).

The second objection against child-centred views we can level by appealing to the *Irreducibility Claim* is that, in its absence, we fail to treat the interest in parenting as an object of distinct normative concern. To see this, consider the hypothetical scenario in which we face a choice between two possible child-raising systems: in the first, children are raised in a collective arrangement where no adults take specific care of a specific child, while in the second, there are families in which specific adults parent specific children, and suppose that

[80] Brennan and Noggle (1997), Shapiro (1998), Noggle (2002),

the two systems are equally good for the children, i.e. they serve children's interests to the very same degree. In such a scenario, child-centred views must conclude that the two child-raising systems are equally valuable and that political decision-makers have no ground to prefer one to the other. DIV advocates, by contrast, can claim that the second scenario should be implemented because, besides meeting children's needs as well as the first scenario, it also meets many adults' fundamental interest in parenting.

These two points, which I have derived from the *Irreducibility Claim,* do seem plausible and I do think that a sound account of justice of parent-child relationships should be able to accommodate them; therefore, child-centred views that deny the *Irreducibility Claim* are implausible.

The DIV is also commonly invoked to support the firmly held convictions about parent-child relationships I presented earlier, so we now need to ask: Can the *Irreducibility Claim* explain why we should prefer families over alternative child-raising arrangements that would be better in terms of the child's best interest?[81] Does the *Irreducibility Claim* give us reasons for why we may not remove children from the custody of their adequate parents and assign them to even better ones? Does the *Irreducibility Claim* give support to the idea that Anne may send her child to suboptimal school B? I now argue that the answer to these questions is negative. In fact, all the firmly held convictions rely on a comparison between the weight of the interest in parenting and the child's best interest that we cannot derive from the *Irreducibility Claim* alone. The convictions are based on the idea that in certain cases the interest in parenting is more important than the child's best interests. But the *Irreducibility Claim* does not say anything about the relative weight of the two interests at stake; it only identifies adults' interest in parenting as fundamental, alongside the child's best interest.

In favour of the conclusion that protecting parents' fundamental interests may be done at the expense of children's overall best interest, we may reason as follows: when a fundamental interest of a person who discharges a fiduciary role conflicts with a non-fundamental interest of an individual for whom that fiduciary role is discharged, the former

[81] Note that before I showed only that the *Irreducibility Claim* argues that we should prefer families over an equally good collective child-raising system.

takes priority over the latter. In light of this principle, which we would endorse alongside the *Irreducibility Claim*, we might be tempted to conclude that when the fundamental interest in parenting conflicts with a non-fundamental interest of a child, the former takes priority over the latter.[82] Although this point sounds initially plausible, its plausibility turns on an ambiguity of the adjective "fundamental". When we define an interest as fundamental, we normally assume that such an interest is also very weighty. Adopting this understanding of "fundamental", we could then think that when an adult's interest in parenting, which is very weighty, conflicts with a child's interest, which is not so weighty, the former takes priority over the latter. But Brighouse and Swift's definition of fundamental interests makes no reference to their weight, but only to their non-instrumental relationship with other people's interests. In this sense, also those interests of children that are not very weighty are fundamental. In the cases described by the firmly held convictions, then, we face a conflict between fundamental interests and, without any specific claim about their weight, appeal to the *Irreducibility Claim* and the stated principle cannot support the desired conclusions. So, while the *Irreducibility Claim* seems plausible and does have some normative implications, an appeal to it does not support the firmly held convictions presented above. To produce such support, the DIV needs to adduce a certain view about the respective moral weight of adults' interest in parenting and of the child's best interests.

3 The interest in parenting weighs more than children's overall best interest: *The Anti-Priority Claim*

We have seen how the *Irreducibility Claim* fails to provide a good explanation of, or a justification for, the firmly held convictions. Shields (2016) recognises that DIV advocates need a more robust account of the interest in parenting and presents one main condition that an account of the interest in parenting has to meet in order to be able to support the firmly held conviction: "the parental interest must be weighty enough to countervail the supra-threshold improvements in terms of the child's interests" (2016, p. 3). The threshold Shields refers to is that of children's basic needs, which I have already referred to. The DIV would now hold not only that parents have interests that are fundamental, as stated by the

[82] In other words, children's interest in optimal conditions, once it is ensured that children are adequately raised.

Irreducibility Claim, but also that in some cases the interest in parenting weighs more than the advancement of the child's overall best interest, and that in those cases we should prioritise the protection of the former over the pursuit of the latter.[83]

Let me recall the firmly held conviction I have presented and show how it requires a judgement about the weight of the interest in parenting. First, in order to justify that families are the preferable child-raising arrangement, even if alternative arrangements, like a collective one, that better promote the children's overall best interest are available, we have to claim that adults' interest in establishing parental relationships with children weighs more than the child's overall best interest. Second, in order to justify that children should not be removed at birth, or later, from the custody of their decent biological parents and assigned to better parents, we have to claim that parents' interest in raising their biological children weighs more than the children's best interest. Third, in order to claim that Anne may send her child to her preferred suboptimal school B, we have to claim that her interest in making choices about her child's life weighs more than her child's overall best interest - in this case, his interest in optimal education.

While the first two claims are clear, I need to explain better what the third one means. In Anne's case, we can assume that the gain for Ben in terms of educational quality is smaller than the loss suffered by Anne in having to send her child to school A in terms of her ability to make choices about her child. In this case we assume that Anne would suffer a high "parental" cost even if she sent her child to school A not because of a legal obligation, but simply out of respect of a moral duty. DIV advocates argue that an account of parental duties according to which Anne has a duty to send her child to school A as long as the gain for him is smaller than the parental loss for her, is clearly overdemanding. The DIV, therefore, concludes that Anne does not have a duty to send her child to school A and, more generally, that parents do not have a duty to make the best choices for their children when making these choices means a huge cost in terms of limiting their moral liberty to discharge their parental role.

As we are now characterising it, the DIV, besides being committed to the *Irreducibility*

[83] Schoeman (1980), p. 18; Clayton (2006), p. 55; Hannan and Vernon (2009), p. 179; Brighouse and Swift (2014), p. 95.

Claim, is then also committed to:

> *The Anti-Priority Claim*: the child's overall best interest does not always take priority over the interest in parenting.

Note that this principle does not claim that the child's overall best interest is morally irrelevant, or that there is no need to justify suboptimal outcomes for children. Indeed, the DIV would be implausible otherwise. Instead, it states that protecting the interest in parenting can outweigh the *prima facie* children's claim to optimal conditions: parents may justify suboptimal outcomes for their children by appealing to their interest in parenting and the importance of parenting for them.

Some child-centred views oppose the *Anti-Priority Claim*. A straightforward rejection of such a claim states would state that the promotion of the child's overall best interest, no matter how small is the gain for the child, always takes priority over the protection of the interest in parenting. Peter Vallentyne's famous account of the ground of the right to parent a specific child is probably the clearest representative of the child-centred view just presented. Vallentyne (2003) claims that an adult has a right to parent a child only if i) the child would not benefit more by being raised in a collective or institutional arrangement, and ii) she is the best willing available parent, i.e. she will promote the best interest of the child better than any other adult would do. Vallentyne's account clearly denies the *Anti-Priority Claim* but some clarifications are important. In fact, the account does not seem to reject all the firmly held convictions. The first of Vallentyne's conditions tells us that if a collective child-raising system were better for children than giving anyone the right to parent, we should implement the collective system. The second condition tells us that a child should be raised by the "best available, or willing, parent": if more than one adult is willing to parent a child, the pursuit of the child's overall best interest is the consideration that should decide the matter, and adults' interest in parenting can never take priority over it. However, note that Vallentyne's account addresses only the conditions for the acquisition of the right to parent: it is a view that aims to reply only to the first of the questions: "Who should raise a child?", but not the question: "How should parents raise their child?". A version of Vallentyne's child-centred view that also aimed to answer the latter question would conclude that the protection of such an interest never takes priority

over the pursuit of the child's overall best interest and, therefore, parents have a *prima facie* duty to make the best choices for their children;[84] in the case I presented above, Anne has a duty to send her child to school A. The DIV holds that these child-centred judgements are clearly mistaken and the *Anti-Priority Claim* provides a more plausible framework to address issues related to the acquisition and the content of the right to parent.

But, besides simply asserting that sometimes the interest in parenting is weightier that the child's best interest, can we provide a more solid argument in favour of the *Anti-Priority Claim*? Matthew Clayton notes:

> The individual who is now a child will, in the course of a normal life, come to affirm a particular conception of the good, which may well involve founding a family. As individuals over the course of a life, we have interests as children and interests as adults. Granting the independent moral status of individuals does not allow us to conclude that we must prioritize the interests of individuals as children. Perhaps they are weightier. Nevertheless, it is not obvious that they always take priority over the interests we have as adults (2006, p. 55).

Clayton´s claim here relies on the life-time account of intergenerational justice that I outlined in Chapter 1 and deployed in my defence of parental licensing in Chapter 4. While I have argued that the consideration that many of those who are currently children will become adults is not a valid ground to reject the principle that we should minimise child maltreatment at the cost of failing to protect the interest in parenting, Clayton's remark concerns how we might apply the life-time account of intergenerational justice to the question of how we should weigh the interest in parenting *vis-à-vis* the overall child's best interest. Should we, if we endorse the *Lifetime View*, accept the *Anti-Priority Claim*?

Let me briefly recall the main contentions of the *Lifetime View* as proposed by Norman Daniels. First, since we all age and pass through different stages of life, interpersonal trade-offs between people at different stages of their lives can be reduced to intrapersonal trade-offs between different stages of the life of the same person: when we need to decide how to solve a conflict between interests of people at different stages of their lives, like children and parents, we may ask how a hypothetical agent would solve the conflict she faces between different stages of her own life. Second, the relevant domain of intergenerational

[84] Hannan and Vernon (2009) defend this claim.

justice is the bundle of goods that people enjoy over their complete lives. In light of these two assumptions, the *Lifetime View* concludes that the just allocation of scarce goods between people over the course of their lives is an allocation of equal resources that are distributed along the different stages of a life in the same way as a hypothetical prudent agent would distribute resources over the different stages of her own life (Daniels 1988, ch. 4).

Within the *Lifetime View*, one's interests as a child and one's interests as an adult, including the interest in parenting, are the main goods at stake for determining the justice of the parent-child relationship. These goods are obviously scarce since if we give more weight to the interests of a person as a child, we have to give less weight to her interests as an adult, including her interest in parenting, and *vice versa*. But how much weight does the *Lifetime View* assign to these two interests? Although it is difficult to provide a clear, complete, positive answer to this question,[85] it is clear that we can provide a convincing negative answer: since it would be imprudent to give absolute priority to one's own interests as a child over one's own interests as an adult, it is unjust, or at least not required by justice, to give absolute priority to children's interests over adults' ones. This negative answer is nothing but the *Anti-Priority Claim*. Since the *Lifetime View* is an extremely convincing account of justice between generations and, as shown by Clayton, it is undeniable that it supports the *Anti-Priority Claim*, this claim looks well-grounded in basic principles of distributive justice; accordingly, it seems difficult to challenge and reject this version of the DIV. Every account that aims to reject the *Anti-Priority Claim* needs to provide a good argument for why we should not weight adults' interest in parenting and the child's overall best interest according to the *Lifetime View*.

4 Arguing for the priority of the child's overall best interest

So far, I have argued that, while defenders of the DIV are right to endorse the *Irreducibility Claim*, that claim does not support all the convictions they aim to support; a defence of

[85] Clayton (2014) argues that, because the quality of our childhood deeply affects the quality of our later life-stages, we should devote a substantial amount of resources to our childhood, but we nonetheless should not give absolute priority to our interests as children.

those convictions requires endorsement of the *Anti-Priority Claim*, which might be viewed as a plausible implication of a *Lifetime View*. In the rest of this chapter, I aim to reject the *Anti-Priority Claim*, and by so doing, to cast doubt on the DIV as it is typically formulated. I also outline an alternative general justice principle that regulates child-parent relationships and defend this principle against the main challenges presented in the previous section - namely, the charges of being overdemanding and of being inconsistent with the *Lifetime View* of justice between generations - and some further objections.

4.1 Parenting as an exercise of power

In order to assess whether the *Anti-Priority Claim* is defensible, we should ask whether the respective weight of the interests of parents and children is the only thing that bears on the priority that should be assigned to those interests, or whether, besides considerations about the positive contribution to adults' lives, there is something special about the interest in parenting that affects how much weight we should give to such an interest. In what follows, I argue that the interest in parenting is, in fact, special because parenting constitutes an exercise of power over another individual, and a specific type of power. In light of this claim, I suggest that we need to rethink how we conceptualise the interest in parenting and assess how the fact that parenting constitutes an exercise of power over others is relevant to determine how much weight we should give to the interest in parenting *vis-à-vis* the child's overall best interest.

In order to see in which sense parenting constitutes a case of exercise of power, we must consider at least two basic facts about children's condition: first; they are unable to express valid consent; and second, they lack an established practical identity, i.e. a coherent set of preferences and values.[86] Accordingly, the type of power parents may and do exercise over their children also has two specific features: first, it is involuntary, because children have not consented to enter into a relationship of power with their parents; and finally, it is discretionary, because parents do not exercise power over their children in order to represent their children's specific values, since children do not have clear values.[87]

[86] For a detailed account of children's condition along these lines, see Schapiro (1990) and Hannan (2018).
[87] Hereinafter, when I say "power", I will refer to the specific type of power I describe here.

As a result of these features of children and of the nature of parents' power, parents differ from other fiduciary figures, such as legal guardians of adult or elderly individuals, who are temporarily or permanently incompetent, whose job is to represent the values and preferences that the person for whom they care has expressed in the past. Consider the fiduciary of an old person X who has to make a choice about the medical treatments that X will undergo, for instance whether she will receive a blood transfusion or not. In this case, the fiduciary should consider the specific preferences and values that X held and expressed in the past to assess what is the right choice to take. Parents, by contrast, cannot be guided by considerations about their children's past or present values and preferences, since children have not established them yet.[88] Therefore, my claim that parents exercise "discretionary" power over their children does not mean that parents' prerogative to make choices about their children's lives is not regulated by any normative principle and consequently parents are completely at liberty to make the choices they prefer about their children's lives. Instead, it means that parents cannot refer to their children's preferences and values as guiding considerations for their action. I should also clarify that the fact that parents exercise discretionary power over their children in the sense just described is not wrong, unjustified or regrettable: children actually need their parents to control them in a way that simply cannot consider children's values and preferences. In the next sub-section, I present a normative principle that regulates at least those relationships where someone exercises the type of power I have described. Other types of relationships in which an agent voluntary agrees to have power exercised over her, or in which such discretionary element is absent, would introduce some complications, like the principles of informed consent, respect for other people's will and opinions, that I cannot address here.

If parenting constitutes an exercise of power, it seems to follow that the interest in parenting entails an interest in exercising power over a child. By saying that, I do not mean that adults value the opportunity to parent a child because or primarily because it entails exercising power over a child. Normally adults' main motivating reason to parent a child not the prospect of exercising power over her, but the prospective enjoyment of the different goods that parenting brings; however, it remains true that the exercise of parental

[88] Clayton (2012) argues that parents should be guided by the child's future reasonable consent in a way that the exercise of parental power passes a retrospective consent test, i.e. the future adult that the child will become would consent to the choices taken by her parents.

power is a necessary condition for the enjoyment of such goods. A brief overview of three accounts of the goods of parenting helps to illustrate this point. The intimacy-based relationship goods of the kind that obtain between parents and children described by Brighouse and Swift (2006, 2014a, 2014b) are not present in the relationship between adults in which a person does not exercise power over the other; similarly, the positive desire to shape the identity of one's own child described by Page (1984) and the opportunity to exercise a form of creative self-extension presented by McLeod (2010b, 2015) can be realised only insofar as the parents exercise power over their children and make important choices about their lives. In fact, to be more precise, it is not the case that the goods of parenting and the exercise of parental power are merely connected contingently, that is to say, they happen to go together in the social arrangements with which we are familiar. There is, instead, a stronger relationship between them. Here I need not take a specific stance on the relation between the reasons to value parenting and the fact that parenting involves the exercise of power over children; instead, I assume the following point: if I have an interest in A and B is a strictly necessary condition for anyone to enjoy A, I can be said to have a derivative interest in B. By "strictly necessary" I mean that under any circumstances we can envisage, the only way for anyone to enjoy A is by ensuring that she also enjoys B. Given that exercising power over a child is strictly necessary for enjoying the various goods of parenting, we can conclude that the interest in parenting entails an interest in exercising power over a child.[89]

4.2 The *Priority Claim*

In the liberal tradition, broadly understood, it is commonly held that power over others who have not consented to enter into a power relationship needs some valid justification and is regulated by rather robust moral constraints. I do not discuss here the issue of the justification of power in general and of parental power in particular,[90] but I focus on a specific type of constraint that we commonly believe applies to the exercise of involuntary

[89] Similarly, in the case of emergency medical doctors, which I consider later, I think we would claim that since the exercise of power over an unconscious patient is a necessary feature of practising emergency medicine, we can claim that the interest in practising emergency medicine entails an interest in exercising power over patients.
[90] In the case of parental power, if we subscribe to the *Irreducibility Claim*, such a justification is grounded also on adults' interest in parenting.

and discretionary power over others. No matter what the specific justification for exercising power over others is, when we do so, our interest in exercising power is never more important than the overall best interest of the person who is subjected to this power. In other words, power-holders may not appeal to their interest in power to countervail the subject's *prima facie* claim to optimal conditions, or to justify suboptimal outcomes for the subject. In those cases in which someone exercises, or aims to exercise, power over someone else, we seem to subscribe to the following principle:

> *The Priority Claim*: when A exercises, or aims to exercise, involuntary and discretionary power over B, B's overall best interest always takes priority over A's interest in exercising power. Therefore, when these two interests are in conflict, we should pursue the former rather than protect the latter.

We generally subscribe to this principle in the case of standard fiduciary relationships, for example, doctor-patient ones. A medical doctor may not appeal to her interest in practicing medicine, in continuing to treat a specific patient and in making choices about her patients' lives to justify suboptimal outcomes for the patients. Imagine a surgeon who needs to operate on an unconscious patient with whom she has had no prior contact and about whose values and preferences she knows nothing: it is clear how in this scenario the surgeon who operates on the patient is exercising a form of "medical power" that is involuntary, since the patient has not consented to be treated, and discretionary, since the doctor does not know the patient's specific values and preferences and, therefore, cannot take them as guiding principles. In this paradigmatic case, we intuitively endorse the *Priority Claim*: the patient's overall best interest always takes priority over the surgeon's interest in practising surgery and we should promote the former rather than protect the latter. A doctor may not claim that since he has an interest in practising medicine, he should be free to operate on a patient when a more prepared doctor could perform the surgery better; similarly, he may not claim that he should keep treating a patient if she would benefit from being assigned to the care of a different doctor. In other words, when it comes to doctor-patient relationships, we generally think that the best interest of the patient is the ultimate relevant consideration that should determine who has a right to treat her.[91]

[91] In other medical cases, in which the patient has consented to being treated by a specific doctor or the doctor can know the patient's values and preferences, as I have said earlier, the normative picture is more

Brighouse and Swift assume that the *Priority Claim* is a basic tenet of liberal accounts of the exercise of involuntary power over others and it does apply to standard fiduciary relationships, while parenting constitutes a relevant exception (2006, pp. 81-83). However, as I have shown in the previous section, their adducing the *Irreducibility Claim* does not suffice to justify this exception: it is not clear why only adults' interest in parenting and not other interests – like the one in assuming the fiduciary role of a doctor – should count as fundamental, i.e. not completely reducible to consideration of other individuals' wellbeing. In the absence of a sound argument for treating the interest in parenting differently from the interest in occupying other fiduciary roles, we have reasons to apply the *Priority Claim* on all types of relationship where power is necessarily exercised.

We should, it seems, subscribe to:

> *The Priority Claim about Parenting*: the child's overall best interest always takes priority over adults' interest in parenting, i.e. in exercising power over their children. Therefore, when they conflict, we should promote the former rather than protect the latter.

Notice that this claim neither rejects nor is incompatible with the *Irreducibility Claim* and its implications. In fact, it is logically consistent to claim that although the value that parenting has for adults is not completely instrumentally reducible to considerations of promotion of the child's overall best interest, the child's overall best interest always takes priority over the adults' interest in parenting. Moreover, this claim is compatible with the two main implications of the *Irreducibility Claim* I have outlined: first, we should respect the interest in parenting as a distinct object of moral concern; and second, we should not be indifferent between a collective child-raising system and a parents-based child-raising system that are equally good for children: the *Anti-Priority Claim* does not discard that we might have reason to prefer the second option.

However, accepting the *Priority Claim* about parenting does commit us to rejecting the idea

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complicated and the *Priority Claim* interacts with other principles, such as respect for the patient's consent and values. However, we do not face these complications in the case of parent-child relationships, since children cannot consent, nor have they established preferences and values.

that we should support all the firmly held convictions on the grounds of respecting adults' interest in parenting. In particular, going back to the examples used in section 2 above, the *Priority Claim* commits us to believing that adults' interest in parenting is not a valid ground to deny that we should implement a collective, or a robot-based, child-raising system *if* they were more beneficial to children than decent families; nor can it support the view that we should deny that at birth we should assign children to the best available parent, or remove a child from the custody of decent parents, *if* doing so were in the child's overall best interest; finally, the *Priority Claim* commits us to believing that parents have a *prima facie* duty to make choices that promote their children's overall best interest. So, Anne, whom we mentioned earlier, should send her child to school A, since she cannot appeal to her interest in parenting to justify the suboptimal choice of school B. Anne is no different from a doctor who may not appeal to her interest in practising medicine to justify the performance of a suboptimal medical procedure on a patient.

5 Defusing some objections to the *Priority Claim*

I can now consider and reply to the main objections to the *Priority Claim* about parenting, some of which I have already anticipated. First, I show how the accusation of establishing an overdemanding conception of parental duties faced by the *Priority Claim* is mistargeted. Second, I note that the *Priority Claim* is, indeed, incompatible with an application of the *Lifetime View*, but I argue why this view is not appropriate to address the interest in parenting. Third, I show how claims about the non-instrumental value of democracy do not apply to parent-child relationships because they are deeply asymmetrical. Finally, I consider three objections based on the idea that parents have a duty to exercise power over their children, on the idea of parental supererogation, and on our relationships with animals.

5.1 The overdemandingness objection

It is important here to note something which I believe is right and which makes the view I am defending much more palatable than it may seem at first. The *Priority Claim* rejects the firmly held convictions only insofar as they are grounded on strictly parent-centred considerations, i.e. on considerations of the weight of the interest in parenting. So, it is open to defenders of the *Priority Claim* to hold that some interests that adults have not *qua* parents, but *qua* persons with other interests - such as the interest in avoiding severe psychological trauma or deep social stigma, mentioned earlier - might support at least some of the firmly held convictions. If removing a child from his birth mother produces an unavoidable severe psychological trauma or deep social stigma for her and the gain for the child is rather small, we have strong reasons not to remove the child from her custody.

Endorsing the *Priority Claim*, then, need not generate an overdemanding account of parental morality. Both the DIV and the *Priority Claim* are views about the specific interest *in parenting* and do not appeal to the interests that parents have not *qua* parents, but as individuals with various individual interests and moral claims, and are therefore silent on the issue of how much parents need to sacrifice to promote their children's wellbeing. The DIV affirms, and the *Priority Claim* denies, only that parents may not appeal to their interest in parenting to justify suboptimal choices with regard to their children's lives; instead, both views are silent on whether they may appeal to interests they have not *qua* parents, as well as which ones they may appeal to, and to what extent. Consider the claim that Anne may not appeal to her interest in making choices about her child's life as a justification for sending him to the suboptimal school B. If, instead, Anne claimed that she wants to send her child to school B rather than the optimal school A, because B is closer to her workplace, and therefore sending the child to B is more convenient for her, she would appeal to her interest in saving time, which is an interest she has not (necessarily) *qua* parent. Both the DIV and the *Priority Claim* are silent on this type of case: in this respect, they are both incomplete accounts of justice of child-parent relationships and they cannot provide a principle for many choices that parents make about their children's lives but that do not involve parents' interest in parenting, or their interests *qua* parents.

So, I submit that the *Priority Claim* about parenting is a rather limited and incomplete, yet

plausible, general child-centred principle of justice between parents and children that appeals to a convincing general normative principle on the exercise of power over others. By taking seriously the power element that necessarily characterises parent-child relationships, we can argue that it is false and, consequently, that we should reject the *Anti-Priority Claim* and the claim that parents may appeal to adults' interest in parenting to support the firmly held convictions. The overdemandingness challenge, then, appears to be mistargeted as an objection to the *Priority Claim*, once we properly understand its scope. In the reminder of the section, I reply to the two main challenges that I believe the *Priority Claim* faces and to three further objections.

5.2 The *Lifetime View* challenge

The *Priority Claim* faces an important challenge from the *Lifetime View*, which, as we have seen, is an extremely convincing account of justice between partially overlapping generations. Remember that since it would be irrational, and consequently unjust, to give strict priority to the interests people have at a specific stage of their lives (childhood) over the interests they have at a different stage (adulthood, and especially the interest in parenting), the *Lifetime View* would conclude that it is justifiable to give priority to the interest in parenting of an adult over her child's overall best interest in any case in which it would be intrapersonally prudent to do so (Clayton 2006, p. 55). It is clear, therefore, that the *Priority Claim* is in tension with the prescriptions generated by the *Lifetime View* about justice of child-parent relationships.

There are two possible ways of responding to this challenge. First, we can observe that not all children become adults who want to parent: therefore, we could not justify the *Lifetime View*, and the *Anti-Priority Claim* in particular, to every child. This argumentative move, however, is not promising, since analogous considerations can be raised against any possible application of the *Lifetime View*, even to cases in which such a view is applied convincingly, like the design of pension schemes, for instance. One might argue that a pension scheme designed according to the *Lifetime View* is not justifiable to a person who dies young and does not live to receive her pension. But all normative principles that aim to have some practical applications must appeal to general reasons and partially abstract

from the peculiarity of specific cases: the *Lifetime View*, in particular, necessarily employs some statistical approximations and this fact does not affect the rightness of its normative implications.

We can provide a more promising reply to the *Lifetime View* challenge by defending the claim, supported by Daniels himself, according to which the *Lifetime View* should not be applied to the distribution of power. Daniels presents a case in which an extremely economically efficient feudal system is in place: half of the population rule as masters and half work as servants, and every five years all members switch their social position. Daniels concludes that even if it were rational for each individual to live under such a system rather than a democratic one, the *Lifetime View* does not commit us to conclude that we should implement the changing-places feudal system (1996, p. 264). Very roughly, the exercise of power over others has a constitutive interpersonal element in virtue of which it is implausible to reduce interpersonal conflicts of interests involving the interest in exercising power over others to intrapersonal ones. Therefore, the *Lifetime View* is not a valid principle to allocate power over different people's lives.

Similarly, I argue that even if we can agree that, as agued by Clayton, it would be rational for both children and adults to subscribe to the *Anti-Priority Claim*, we should not invoke the *Lifetime View* to justify a certain allocation of parental power, and that the *Priority Claim* is a more convincing moral principle that regulates parental power over children. Someone may argue that the type of relationship represented by Daniels' feudal system and the parent-child relationship are relevantly different, and we should not derive normative considerations about the latter from the intuitions we have about the former. It might be said that while the feudal system includes autonomous persons who can and should relate as moral equals, children are beings who need to have involuntary and discretionary power exercised over them. So, while concerns about respecting at any point in time the equal status of adults might explain why we should reject the efficient feudal system, we cannot appeal to these concerns in the case of children and adults.

While this consideration is certainly true, it does not show that while Daniels is right in claiming that the *Lifetime View* does not justify the changing-places feudal system, we may not conclude the same about the allocation of parental power. The only way to reach this

conclusion would be to claim that the mere consideration that children are, in some sense, not morally equal to their parents, while fellow citizens are, entails that children's interests should not be taken as seriously as their parents. This claim is clearly wrong.[92]

In conclusion, there does not seem to be any convincing way to argue that while the *Lifetime View* should not be applied to the allocation of power among adults, it may be applied to the allocation of parents' power over their children. So, even if we endorse the *Lifetime View*, we should not derive these conclusions from it. I should clarify that I am not claiming that the *Lifetime View* supports the *Priority Claim*; I am suggesting, instead, that the two principles are compatible, because they have different scopes: while the *Lifetime View* assesses the weight of the interests that individuals have in a variety of goods, but not in power,[93] the *Priority Claim* is a principle about how we should treat adults' interest in exercising parental power. Just as the *Lifetime View* is silent on the allocation of power between equals, and therefore does not justify the changing-places feudal system, so it is silent on the weight of adults' interest in exercising power over their children, and therefore does not commit us to rejecting the *Priority Claim*.[94]

5.3 The democracy challenge

Above we have seen that we commonly subscribe to the *Priority Claim* according to which when A exercises involuntary and discretionary power over B, B's overall best interest always takes priority over A's interest in exercising power over her. This principle has straightforward intuitive applications to standard fiduciary relationship, such as doctor-patient ones. I claim that the principle also applies to parent-child relationships. I have shown that the *Priority Claim* is not vulnerable to the overdemandingness worry against

[92] It is worth noting that, as I stated at the outset, it is not necessary to defend the claim I have just criticised in order to defend the *Anti-Priority Claim*: the *Anti-Priority Claim* states that when the gain for the child is small enough, the interest in parenting takes priority over the child's overall best interest because the former outweighs the latter. It does *not* commit to the view that this is because, since children are not fully autonomous, their interests count less than those of adults.

[93] Actually, as argued by Clayton (2014), the *Lifetime View* is a convincing account of how parents should allocate economic resources between themselves and their children. It is clear that in this type of case, we face a conflict between the child's overall best interest and parents' interest in keeping money for them, which they do not have *qua* parents.

[94] However, as I will say, the *Lifetime View* is not silent on other issues of justice of child-parent relationships.

child-centred views that animates many advocates of the DIV, because it concerns only the weight of adults' interest in parenting and ignores other interests that parents have not *qua* parents. I have also argued that the *Lifetime View* should not be invoked to justify any specific allocation of power over others and, consequently, does not ground an objection against the *Priority Claim* about parenting. I now consider a possible challenge to the *Priority Claim* that draws on a position that has been defended with regard to another context in which people exercise power over others, namely, in discussions of the value of democracy and citizens' interest in ruling each other.

Some justifications of democracy defend it on non-instrumental grounds, i.e. as the preferable system through which to make political decisions not exclusively because it generates better outcomes for citizens. These justifications have to accept that participating in democratic procedures effectively amounts to an exercise of involuntary and discretionary power over one's fellow citizens[95] and, therefore, citizens' interest in having an equal say on political issues amounts to an interest in exercising power over others.[96] As in the case of parenting, the exercise of power over fellow citizens is not the ultimate object of the interest in democracy, but it is a necessary element of democratic procedures. Different justifications for the claim that individuals have an interest in democracy are available, such as the protection and promotion of each citizen's autonomy (Elster 2002) or the pursuit of relational equality (Christiano 2008) but all these justifications share the view that a necessary element of democratic procedure is the exercise of power over one's fellow citizens, so that the interest in democracy necessarily involves an interest in exercising power over fellow citizens.

Moreover, non-instrumentalists claim that such an interest may outweigh, and take priority over, citizens' overall best interest. To see this point, consider a society which has to choose between two political systems: i) a democracy in which any citizen has an equal say on political issues, and that achieves a sufficient degree of economic efficiency so that each citizen's basic needs are met; and ii) an epistocracy in which only citizens who have a solid knowledge of economics have a say on political issues, and that is economically much more

[95] I do not consider here whether having democratic power over fellow citizens is also discretionary in the sense specified before. We could claim that in taking democratic decisions, citizens should not be guided solely by general principles of justice, but also by considerations about fellow citizens' specific values and preferences: in this sense, democratic power would not be completely discretionary.
[96] This is the claim analysed and rejected by Arneson (2004).

efficient than democracy, so that any citizen would be economically better off if epistocracy, rather than democracy, were implemented.[97] We can also assume, for the sake of the argument, that the economic gain generated by epistocracy is so high that it would be effectively in each citizen's overall best interest to be ruled by epistocrats. However, non-instrumentalists would claim that even in these circumstances, democracy is all-things-considered preferable to epistocracy, because the interest in exercising equal power, which even suboptimal voters have, may outweigh each citizen's overall best interest, which is better promoted by the economic efficiency of epistocracy. If this view of the justification of democracy is sound, we should worry that the *Priority Claim* in its general formulation is not true, since there is a relevant exception, namely political democratic power: at least in this case, citizens' interest in exercising involuntary and discretionary power over others may take priority over the pursuit of citizens' overall best interest. I assume that these non-instrumentalist claims about democracy are true and I try to reply to possible objections to the *Priority Claim* based on such claims by showing that we should consider and treat differently the power that citizens exercise over each other in a democracy and the power that parents exercise over their children.

A first possible defence of the *Priority Claim* about parenting against this challenge focuses on an obvious difference between democratic collective decision-making and the individual decision-making that occurs in parent-child relationships, and in fiduciary relationships in general. While in democracies each citizen determines to a very small degree how political power should be exercised, in fiduciary relationships a single individual, or a small group of individuals, makes important choices about other people's lives. This reply is not really convincing, however. We can imagine an extremely small political community comprised of four people living on a desert island and a family made up of four adults who jointly raise a child and make choices about her life by voting. Even if in both cases each individual's choice determines the collective outcome to the same degree, it seems that there is a significant difference between the two cases. While non-instrumentalists are probably right in claiming that the interests of the four citizens in a democracy may outweigh the pursuit of the overall best interest of each of them, it is not clear that this consideration shows that we should conclude that the four parents' interest in parenting outweighs the child's overall best interest.

[97] For a recent defence of epistocracy, see Brennan (2016).

The relevant difference between a democratic vote and parental power does not lie in the number of individuals who exercise power over others, but in the nature of the power in question and the relationship between people who rule and people who are ruled over. Political power in democracies is mutual, or symmetrical, in the sense that each citizen at any one time rules over others and is ruled by others in turn, whereas in parent-child relationships, or in doctor-patient ones, power is structurally asymmetrical: parents rule over children, but not *vice versa*. A further qualification of the *Priority Claim*, then, may help us to save both the non-instrumentalist claims about democratic political power and the application of the *Priority Claim* to fiduciary relationships: the type of power in question is "structurally asymmetrical", i.e. power that one individual exercises over another individual who, in turn, cannot, and will not, exercise the same power over her. With this qualification in hand, we may conclude that the *Priority Claim* does not apply to collective decision-making and therefore save the non-instrumentalist claims about democracy, but it does apply to doctor-patient and parent-child relationships, where structurally asymmetrical power is exercised.

At this point, however, the defender of the democratic challenge to the *Priority Claim* can join forces with the *Lifetime View* challenge: pointing to the considerations that animate the *Lifetime View*, they could say that, although children do not exercise power over their own parents, they are likely to exercise parental power over other children in the future. While parental power is clearly asymmetrical at any given time, i.e. parents rule over their children, but not *vice versa*, it might be said to be "diachronically symmetrical", i.e. most children who are ruled by their parents now will rule over their children, and so on. Notice that the same is not true in the case of doctors and patients, since hardly any patients will exercise "medical power" over their current physician.[98] One may conclude that parent-child relationships, unlike doctor-patient ones, present diachronically symmetrical power,

[98] For the sake of analysis, we can imagine a society of medical doctors who take turns to look after each other, and therefore it can be described as a case of diachronically symmetrical power, and wonder whether these doctors should decide medical procedure through democratic voting or whether they should respect the *Priority Claim*. I do not think we have clear intuitions about this case. Even if we think that in such a case, and in general in relationships of diachronically symmetrical power, we should not rely on democratic voting, this does not undermine the thought that *at least* in those situations in which there is not a diachronic symmetry in power, like parent-child relationships, we should endorse the *Priority Claim*.

which in this respect is no different from democratic political power and should not be regulated by the *Priority Claim*.

As I have already shown, to reject this proposal we should not appeal to the consideration that many children will not be parents, since if we follow the *Lifetime View* suggestions, we have to accept the use of statistical approximations. However, if we may not draw conclusions about the allocation of power from Daniels' prudential life-span account in cases like the changing-places feudal system, in which individuals alternatively rule over each other, *a fortiori* we may not appeal to the *Lifetime View* in cases, like parent-child relationships, in which we might say there is a temporal chain of exercise of power by which any individual A, or most of the individuals, exercises power over B who, in turn, will exercise the same power over C, but not over A. To sum up, the *Lifetime View* should not be deployed to determine the allocation or the exercise of parental power, even if we define it as diachronically symmetrical, because given the constitutive interpersonal dimension of power, we should not apply the *Lifetime View* to allocate power over people's lives. We should conclude, therefore, that non-instrumentalist claims about democracy are convincing only when individuals mutually rule over each other at the same time, , not when there is a diachronic chain of exercise of power.

5.4 Three further objections

In concluding my defence of the *Priority Claim*, I consider three further objections to it.

First, someone may notice that, given the fact that children cannot survive, grow, and flourish without the guidance of adults, parenting constitutes a morally required exercise of power over children and, therefore, the *Priority Claim* is not a sound principle: it might be the case that when A has a moral obligation to exercise power over B, A's interest in exercising such a power may take priority over the promotion of B's overall best interest. This consideration does not work: as Lindsey Porter argues, when we choose for others without their consent, and even if we have a moral obligation to do so, we should make the best choice, or we should do our best to choose well (Porter 2014). When A cannot choose for oneself, as in the case of children, and B has a duty to choose for A, B has a duty to

choose well and cannot appeal to his interest in choosing for A to justify suboptimal choices for A. It is clear how the expression "choosing for someone else" corresponds to the type of power over others I have presented so far. Porter's claim seems uncontroversial in the case of morally required choices in standard fiduciary relationships; consider, for instance, an emergency doctor who is taking care of a severely injured unconscious patient and needs to decide which surgery to perform. In such a case, it is clear that the doctor has a duty to choose for the patient, and consequently to exercise power over her, but nonetheless we do subscribe to the *Priority Claim*: the emergency doctor cannot justify suboptimal outcomes for the patient by appealing to her interest in practising medicine. Analogously, I claim that parents have a duty to choose for their children, but that these morally required choices are constrained by the *Priority Claim*, i.e. parents cannot appeal to their interest in parenting to justify suboptimal outcomes for their children.

A second objection against the *Priority Claim* is that it seems to reduce the possibility of parental supererogation, i.e. acts that are beneficial to the child but that go beyond the call of parental duties. Imagine, for instance, a parent who makes huge sacrifices in terms of job prospects and the satisfaction of various important projects of her own to guarantee the best education for her child: it would seem unfair to claim that she is simply doing what parental duties require. We have to remember that the *Priority Claim* does not consider interests that parents have not *qua* parents, such as the interest in developing a professional career or investing money in one's own projects, and how we should weigh these interests *vis-à-vis* the overall best interest of the child. Only by formulating a more complete account of parental duties, which does consider these interests, can we assess our judgements about parental supererogation. Nonetheless, with respect to the specific interest in parenting, the *Priority Claim* does clearly entail that parental supererogation does not exist or, in other words, parents are never acting beyond the call of duty when they sacrifice their interest in parenting to promote their child's overall best interest. This is a conclusion I am happy to endorse. Recall the different aspects of parenting and the firmly held convictions that the DIV aim to justify in appealing to the weight of the interest in parenting. I claim that considerations about adults' interest in parenting alone cannot establish that when adults do not parent because a collective child-raising system which is more beneficial to children is in place, when a procreator does not parent her own biological child because there is a better available parent, and when a parent has her child removed from her custody because

doing so is in the child's overall best interest, they are acting beyond the call of duty.[99] Instead, they are simply respecting the moral requirements determined by the *Priority Claim*. Similarly, we would not say that a physician who frustrates her interest in practising medicine because doing so is in the overall best interest of a patient, for instance by refusing to perform surgery on a patient because a more qualified physician is available, is performing a supererogatory action; instead, she is simply respecting the moral requirements that the *Priority Claim* determines for the exercise of medicine.

A third and final objection to the *Priority Claim* points to the implausible implications that adopting it has in the case of animals. The relationships we have with many animals, such as pets, zoo animals and farm animals, seem to exhibit the type of power assessed by the *Priority Claim*. When humans establish one of the relationships I have mentioned with an animal, they exercise a type of power that is involuntary, since animals do not consent to enter into the relationship, and structurally asymmetrical, since humans exercise power over animals but not *vice versa*. Therefore, the interest in associating with animals that we may claim humans have amounts to an interest in exercising involuntary, asymmetrical power over animals. But is it true that the overall best interest of animals always takes priority over humans' interest in associating with them? Answering yes to this question has controversial but interesting implications for animal ethics.[100] To see this, note that associating with animals has three aspects that are analogous to the three aspects of parenting: establishing a close relationship with an animal; preserving this relationship; and making important choices about the life of the animal. At least in the case of the interest in establishing a relationship with an animal, the *Priority Claim* seems quite convincing: we may associate with a wild animal, for instance by bringing it to our house or to a zoo, only if doing so is in its overall best interest: the promotion of the overall best interest of the animal always takes priority over our interest in establishing a close relationship with it. Applying the *Priority Claim* on our relationships with animals would have other, more controversial implications, such as that, as long as humans' interest to associate with animals is at stake, a pet should be cared for by the best available carer, that we should

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[99] As I have already said, there could be alternative interests that adults have not *qua* parents, such as avoiding severe psychological trauma or deep social stigma, which under certain circumstances might support the firmly held convictions. This consideration, however, does not prove the *Priority Claim* to be false.

[100] One easy way to reply negatively to this question would be to claim that animals' interests count less than humans' interests because human beings have a higher moral status than non-human animals. I cannot address this thought in this chapter..

reassign pets to a different carer if doing so is in the overall best interest of the pet, and that carers have a duty to make the best choices for their pets.[101] Here I cannot develop these thoughts, but I simply claim that these considerations, however controversial, are not totally implausible and that the *Priority Claim* indicates an interesting field of research within animal ethics.

[101] As for parent-child relationships, the *Priority Claim* about relationships with animals would consider only the interest in exercising power over animals, not other interests that humans may have and that may require associating with an animal. Imagine a blind person who wants a guide dog, because it would make her daily life significantly better, since she would be able to be more autonomous, and assume that the life of the dog would be slightly better if it was cared for by a different owner. In this case, the *Priority Claim* does not conclude that the blind person should refrain from taking a guide dog, since her choice is justified by her interest in improving her autonomy, not in exercising power over the dog.

Chapter 7
Demands on Parents Beyond Licensing: The Child's Right to be Loved Unconditionally

The defence of parental licensing which this thesis has defended, as I have remarked several times, is based on a minimal account of children's rights and parental duties built around the concept of child maltreatment. With that defence in place, in the previous chapter I have turned to what obligations parents have to their children beyond the avoidance of child maltreatment. In particular, by subjecting to scrutiny the widely endorsed Dual Interest View, which the thesis had assumed up to that point, I have argued that we should subscribe to a child-centred view on justice between children and parents. While I have outlined some implications of that child-centred view for what parents owe children, I have not discussed at length the content of those obligations. I take up that task in this chapter discuss focusing in particular on one important, and, I will argue, quite demanding right which children have: children's right to be loved by their parents.

I do not suggest here that considerations about the child's right to be loved should play a role in parental licensing and, therefore, I do not propose that we revise the screening procedure I have outlined and endorsed in Chapter 5; instead, this chapter studies how the child's right to be loved plays a role in a plausible account of the *moral* right to parent a child. My arguments in what follows, nonetheless, tests our intuitions about the moral right to parent by considering some adoption cases and how we should regulate the right to adopt a child. (In line with what I have said already, note thatbelieving that the children´s right to be loved is relevant in adoption cases is consistent with not adopting it as a criterion for parental licenses for biological parents.) Taking a stance on the controversial topic of child's right to be loved is something that a complete account of justice between children and parents must do; this is the reason for this chapter´s exploration.

1 The child's right to be loved

The view that children have an interest in being loved by their carers (normally, their parents), and that this interest is weighty enough to ground a right, is intuitively compelling

and has been recently defended at length by Matthew Liao (2006, 2012, 2015). This claim has recently generated an intense debate among scholars working in the philosophy of childhood and the ethics of the family (Cowden 2012, 2016, Brighouse and Swift 2014b pp. 18-19, Ferracioli 2014, Cabezas 2016, Gheaus 2016, Pallikkathayil 2017, Wenar 2017). The question this chapter examines is whether the child's right to be loved implies that certain persons are not morally permitted to parent children, or - since the answer to this question is surely affirmative - *which* individuals are not morally permitted to parent children. The answer to this question depends, of course, on how should we interpret the child's right to be loved.

A natural way of interpreting this right is to characterise it as a right to affective care. Relying on this characterisation, Samantha Brennan and Colin Macleod, in their recent co-authored piece *Fundamentally Incompetent: Homophobia, Religion, and the Right to Parent*, provocatively argue that the child's right to be loved morally prohibits strongly homophobic individuals from becoming parents. This is so because there is a sufficiently high probability that such individuals will fail to provide affective care for their children, given that their children might be gay. Brennan's and Macleod´s argument is interesting for two related reasons. The first is that it yields controversial conclusions about the ethics of parenting (and potentially, about some public policies concerning parenting) starting from some relatively uncontroversial premises. The second is that, by teasing out some implications of children´s right to be loved in particular cases, Brennan´s and Macleod´s argument invites us to explore some important aspects of that right that we may otherwise miss. In this chapter, I am interested in Brennan´s and Macleod´s argument mainly for this second reason. In particular, taking Brennan's and Macleod´s conclusion as a starting point, in what follows I argue that the provision of affective care does not fully encompass the content of the child's right to be loved, which amounts to a right to be loved unconditionally in a specific sense that will be explained.

The chapter proceeds as follows: the next section summarises what I call the *precautionary* argument by Brennan and Macleod and it considers its implications in the case of adoption. Section 3 presents a case involving racist parents and shows how Brennan's and Macleod's argument generates implausible conclusions about this case. Sections 4 and 5, relying on Philip Pettit's analysis of robust goods, provide an account of unconditional parental love. I

show the merits of such an account and I explain how an appeal to unconditional love can improve Brennan's and Macleod's argument and avoid the problems related to the racist prospective parents' case. Section 6 presents some implications of my account of the child's right to unconditional love.

2 The right to affective care and the precautionary case against homophobic parents

Brennan's and Macleod's argument is based on three different sets of normative assumptions. These are: the claim that children have a right to be loved; the claim that parents have a duty to love their children; and finally, an account of parental rights and parental competence, according to which individuals have a moral right to parent a child only if they are able to fulfil their parental duties towards her, and in particular the duty to love her.

Brennan and Macleod define love towards children as consisting in affective care, i.e. in 'manifesting […] emotional support to children; being attentive to their emotions, concerns, and enthusiasms; and being moved and concerned by threats to their well-being in ways that are transparent to children themselves' (2017, p. 236). They argue that children have a right to be loved because the provision of affective care is necessary to meet various especially important interests of children. First, affective care contributes to present and future children's happiness, physical and psychological health, and the development of cognitive, emotive and social abilities.[102] Second, the provision of affective care is necessary to guarantee the appropriate moral development of the child: children need to be loved, valued and cherished, to naturally learn to value and respect themselves, i.e. to realize the sense of her own worth, and to see themselves as worthy of respect by others. Third, love constitutes an intrinsic good of childhood, i.e. a good that is particularly important during childhood, and facilitates the enjoyment of other intrinsic childhood goods, such as innocence, trust, and intimacy (Brennan and Macleod, 2017, pp. 236-237).[103]

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[102] For empirical research on the positive effects of parental love on the child's development, see: Raja et al. (1992), Tamis-Lemonda and Bornstein (1992), Carlson and Sroufe (1995), Luby et al. (2012).
[103] On the intrinsic goods of childhood, see: Macleod (2010a), and Gheaus (2015).

Note that, given the characterization of affective care that Brennan and Macleod provide, children's right to be loved determines only the *type* of treatment parents owe their children and does not imply anything specific about the *motivations* parents should be animated by in loving their children. Their discussion thus by-passes the debate over whether parents can be under a duty to love their children, as opposed to a duty merely to facilitate their coming to love their children. In his extensive defence of the child's right to be loved, Liao argues that parents should love their children spontaneously, not only as a matter of duty, and primarily for the child's sake (2015, pp. 123-129). Against Liao's claims, some authors have raised objections based on the consideration that, since we cannot fully control the motivations of our actions, parents cannot have a duty to control and determine the motivations out of which they give affective care to their children (Brighouse and Swift, 2014b, pp. 17-18, Cowden 2016, pp. 141-143).

Because Brennan and Macleod only focus on the type of treatment that the child's right to be loved requires from parents (namely, affective care), not the motivations from which parents should provide that treatment, they circumvent the thorny question faced by Liao's account. In this chapter, I follow Brennan's and Macleod's approach.

Finally, Brennan and Macleod maintain that an individual has a moral right to parent only if she is able to fulfil her parental duties, and there is a sufficiently high likelihood that she will be able to do so in the future. In particular, an individual has a moral right to parent a child only if she is able to love her child and she will be able to do so in the future. 'Being able to love' means having the necessary psychological resources, in terms of attitudes and self-control, to ensure the provision of the affective care that constitutes parental love (2017, pp. 234-235).

Armed with these relatively uncontroversial assumptions, Brennan and Macleod turn their attention to the particular case of homophobes. 'Strongly homophobic' parents are those individuals who have such a negative view of homosexuality that, if they had gay children, they would be unable to love them. 'Strong homophobia views homosexuality as deeply shameful and gives rise to attitudes of deep moral reprobation, contempt, disgust, and disrespect towards gay people', which are clearly incompatible with parental love for gay children (2017, p. 237). I want to spell out two further facts about strongly homophobic

parents that, although they are only partially described by Brennan and Macleod, seem to be crucial to explain why they are unable to love gay children.

First, for such parents, knowledge that their children are gay, together with their feelings for their children, would not be transformative experiences resulting in a change of their extremely negative views of homosexuality.[104] Strong homophobes, therefore, are by definition individuals who will certainly not love her child if she turns to be gay; from now on, when I refer to 'homophobic parents', I have strongly homophobic parents in mind.

Second, homophobic parents fail to fulfil their duty to love and respect their gay children in two different ways. First, by actual and direct mistreatment, such as withdrawal of affection, violent attitudes, open strong criticism, expression of disgust or indifference towards one's child´s life, and so on.[105] Brennan and Macleod present substantive empirical evidence about the negative effects that withdrawal of affection have on gay children parented by homophobic parents: they face a significantly higher risk of non-completion of high school, homelessness, drugs and alcohol abuse, and suicide (2017, pp. 238-239). Second, parents who systematically express homophobic considerations to, or in the presence of, gay children, even if their children have not come out, are also failing to love them in the sense at issue here. To see this, it is important to recall that parental love is particularly important for children because it promotes the development of child's capacity for self-respect. Homophobic parents, by systematically expressing their strongly negative views on homosexuality, expose their secretly gay children to an atmosphere that impairs the healthy development of their capacity for self-respect: these children constantly experience that their parents, who are their main references to form evaluative standards about themselves, treat an important element of their identity as something shameful, deeply morally wrong, or even disgusting, and such judgements are very likely to be interiorized by the children. It is, therefore, extremely unlikely that a gay child can appropriately develop self-respect in such a scenario.[106] The evidence of the specific effects

[104] On the transformative experience of having a child, see: Paul (2015), Austin (2017).

[105] This consideration interestingly shows that respecting a child is necessary but not sufficient for loving her: while open criticism and indifference might be compatible with the general form of respect we owe to other individuals, they are not compatible with the love parents owe their children.

[106] Someone could argue that a gay child might develop self-respect, and even pride about her sexual orientation, out of a rejection of, and revolt against, her parents' homophobia. However, I claim that, although such a child effectively respects herself, this phenomenon is not an instance of the appropriate development of child's self-respect for three reasons. First, many children do not develop this responsive

in terms of the impairment of the capacity for self-respect on secretly gay children raised by homophobic parents is more difficult to obtain by social studies, but we can assume that they are rather severe.

It is important also to identify three factual claims about homosexuality on which Brennan's and Macleod's argument implicitly relies, and which are important for my arguments below. These are: i) homosexuality cannot be detected before the establishment of a parent-child relationship because new-borns and young children have not yet developed a sexual orientation and many children and adolescents do not express their homosexuality, ii) sexual orientation can be known only when the parent-child relationship is already solidly established, and iii) parents cannot determine or reliably influence their children's sexual orientation.

These considerations play an important role in the argument because the fact that there is always a non-trivial probability that a child of a homophobic parent will be gay translates into the fact that there is always a non-trivial probability that a homophobic parent will not be able to love his child. The possible negative effects on the child of this non-trivial probability are severe enough to ground, on the view under consideration, what we could call a precautionary argument according to which homophobes lack a moral right to parent any child.

This *precautionary argument* can be helpfully reconstructed as follows:

1) Children have a right to be loved and parents have a corresponding duty to love their children;
2) Individuals have a moral right to parent a child only if they are able to love her and they are likely to be able to love her in the future;

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attitude and do interiorize their parents' homophobia. Second, children can develop such a responsive attitude only when they have a sufficiently clear identity and not before: therefore even those children who later develop self-respect by rejecting their parents' homophobia will have suffered an impairment of their development of self-respect during a significant part of their childhood. Third, we can say that even those children who do develop this responsive attitude have not enjoyed an appropriate, or healthy, development of self-respect: they develop self-respect out of a clear rejection of their parents' negative judgements on their identity, and not out of a natural response to their parents' appreciation of their identity. In section 5, I characterize better the idea of appropriate self-respect.

3) Homophobic parents are unable to love gay children;
4) There is a non-trivial probability that any child will be gay, and, therefore, there is a non-trivial probability that homophobic parents will be unable to love any child of theirs;

Therefore,

5) Homophobes lack a moral right to parent any child.

It is useful to notice here that the various harms that homophobic parents impose on children do not commonly materialize at the moment in which the parent-child relationship is established but later, normally during adolescence, when the child fully develops her sexual orientation and is exposed to her parents' homophobia. Therefore, the likelihood that the different harms caused by the violation of child's right to be loved materialize at T2 makes homophobes incompetent parents at T1, i.e. when they aim to start a parental relationship with a child, and explains why they do not have a right to parent any child at T1.[107] This explains why we should understand the argument at stake as a *precautionary* argument: the likely violation of the child's right to be loved in the future, normally during adolescence, makes it morally impermissible for homophobes to parent any child.[108]

Brennan and Macleod intend their conclusion to be about the *moral* right to parent, and not to directly justify policies by which homophobes are barred from having children and from parenting (2017, p. 239). However, their argument does seem to commit us to certain policy implications in particular in the case of adoption. More precisely, it would seem to imply that homophobes should be barred from adoption because there is always a non-trivial probability that the child whom they adopt will be gay and, therefore, will not be loved by them. Interestingly, some adoption agencies do indeed seem to put in practice the spirit of the precautionary argument. In a recent decision by the Alberta Children's Service

[107] I stress the temporal relationship that Brennan and Macleod draw between the violation of the child's right to be loved and the acquisition of the right to parent and adopt because in section three I present a different diagnosis.

[108] The 'child's right to an open future' famously described by Joel Feinberg has a very similar structure: while children are non-autonomous, the need to avoid curtailments of future adults' autonomy at T2 grounds autonomy-protecting children's rights at T1, see Feinberg (1980).

(which later was reversed), the agency rejected the adoption application by an Evangelical Christian couple, claiming that 'they would be unable to help a child with sexual identity issues' and 'their religious beliefs about sexuality constitute 'a rejection of children with LGBT identities' (Huncar, 2018).

A focus on adoption cases is particularly interesting for two reasons. First, because focusing on adoption cases permits us to consider clear, direct, and practical implications of this account of the moral right to parent and to test its plausibility, and it does not involve all the morally problematic considerations about the right to parent one's biological child. Second, adoption cases, as I will show, clearly reveal specific wrongs that parents can do to their children. I argue that we can generalize the same type of normative considerations we express about adoption cases, to the moral right to parent more generally.[109]

Let me conclude by highlighting what I take to be the two main merits of Brennan's and Macleod's argument. First, the argument establishes a normative conclusion that seems intuitively plausible and convincing: homophobes should not parent any child (and they should be barred from adopting any child). Second, it grounds these conclusions on the appeal to the rights of children rather than third parties' interests and claims: it is specifically the child's right to be loved that disqualifies homophobes as incompetent parents who lack a moral right to parent.[110] However, as I show in the next section, construing the right to be loved as a right to affective care generates implausible conclusion in other cases.

[109] As I have remarked several times, claiming that we can generalize our considerations about the right to adopt a child to the moral right to parent, and specifically to right to parent one's biological child, does not mean that we should, or may, impose, through the law, the same criteria to grant the right to adopt a child and the right to raise one's biological child. As argued by Botterell and McLeod (2014, 2015), we have good reasons to impose different assessment criteria for adoptive and biological parents. My argument focuses on the case of adoption to test our beliefs about the moral right to parent, and it does not entail that we should legally regulate the right to parent one's own biological child in the very same way as we should regulate the right to adopt a child.

[110] We could deny homophobes a right to parent, for instance, by claiming that granting them a right to parent constitute an offence to the LGBT community in general and not a harm to gay children in particular. Alternatively, we could say that, by transmitting homophobic views to their children, homophobes are threatening gay people's rights.

3 A troubling asymmetry: the case of racist parents

There are cases in which certain prospective parents are unable to love children who have certain morally irrelevant features,[111] but in which one of the conditions of the precautionary argument does not obtain, namely condition 4. Consider prospective parents who are white racists and who, for this reason, would be unable to provide affective care for a black child. Such parents would be unable to provide a black child with physical and emotional closeness, attentiveness to her emotions and concerns, and enthusiasm for her welfare. They would also likely expose her to strong stigmatisation, criticism or disdain her race, which is incompatible with affectively caring for her.

These prospective parents seem to be in a morally equivalent position to prospective homophobic parents. Like prospective homophobic parents, they lack a moral right to have children. Yet the precautionary argument does not allow us to reach that conclusion. To see why not, notice that racist parents can avoid the possibility of having a child for whom they will be unable to affectively care, i.e. a black child. Condition (4) of the precautionary argument- i.e. that there is a non-trivial probability that they will have a child who is black- does not apply in the case of racist prospective parents. White racists can avoid the probability of parenting a black child in different ways that seem to be *prima facie* morally permissible, or morally permissible *but for the fact* in question i.e. because these ways of coming to parent are chosen for racist reasons: by parenting exclusively their own biological children, by refusing gamete donation from black donors, or by selective adoption of white children.[112]

While the precautionary argument rules out a moral right for homophobes to parent because there is always a non-trivial probability that their children will be gay, it fails to rule out a moral right for racists to parent because they can ensure that they have white children

[111] I defer the discussion of which child's features are morally irrelevant to section 6. For the moment I refer to gender, race, and sexual orientation as paradigmatic examples of morally irrelevant personal features.

[112] I take racists as the clearest case of prospective parents who are unable to affectively care for children with certain features, but who can avoid having such children. However, the considerations I raise in what follows apply also to other cases: strongly sexist parents and parents who would not love a genetically ill child, for instance.

and it is virtually impossible that white children will become black.[113] Again, to clearly see the implications of the argument in this case, we can consider the right to adopt a child. Racist prospective adoptive parents might claim that they should be allowed to adopt white children because they can guarantee that they will provide these children with affective care in the future, they will not withdraw their affection from them, nor will they impair the development of their capacity for self-respect, by systematically exposing them to negative judgements about their racial identity. According to the precautionary argument, it would be wrong, then, to prevent a racist from adopting a white child because it would constitute a violation of his right to parent, i.e. to establish a parental relationship with a child whom he is and will be able to love.

This asymmetry seems both morally unacceptable and incompatible with a sound account of the right to parent for two reasons.

First, homophobes and racists are equally wrong about the basic consideration of the equal moral worth of all human beings. We commonly think that individuals who are morally responsible for comparably serious moral wrongs, such as homophobia and racism, should face comparable consequences in terms of their claims and liberties. It is difficult, then, to understand why individuals who share comparably wrong moral views should be treated differently when it comes to the moral right to parent and the right to adopt: racists may parent some children, homophobes may not parent any child. If we subscribed to this conclusion, we would inevitably treat racism as not being as serious a wrong as homophobia.

Second, Brennan and Macleod could reply that they are not committed to embrace this implication because their precautionary argument is not a complete account of the grounds of the right to parent; and some other principle can explain why racist parents should not be allowed to adopt a white child. Nonetheless, intuitively it seems that the request to adopt a child by homophobic and racist prospective parents both entail the very same type of moral wrong *to the child*. In other words, it seems to be true not only that both

[113] I put the point this way to accommodate for the possibility of transracialism, i.e. the non-identification with the race one is assigned at birth and the desire to change one's own racial traits. I assume, however, that the probability that a child will change race in this way is very low, and accordingly, that it will not be relevant for Brennan´s and Macleod´s argument.

homophobes and racists should be barred from adopting any child, but also that both of them lack a right to parent for the *same reason*, i.e. because they commit the same moral wrong to the child. A convincing account of the moral right to parent should be able to indicate the common ground for why both homophobic and racist parents wrong their children, and should not point to different reasons to explain our intuitions about the two cases.

The asymmetry between what the precautionary argument implies about homophobes and racist parents, then, should lead us to look beyond the precautionary argument. In the remainder of the chapter, I develop a different approach to working out implications of the child's right to be loved for who may parent children.

4 A right to unconditional love

Consider again the case of racially selective adoption, i.e. the case in which a racist requests to adopt a white child. I claim that we intuitively think that there is something morally wrong about such a request and that it would be morally wrong to satisfy it, i.e. to assign a white child to the racist couple. In this section, I want to begin by providing a basis for this intuitive conviction. I need to specify that claiming that racists lack a moral right to adopt any child does not necessarily entail that under any circumstances it would be impermissible to assign a white child in need of adoption to a racist prospective parent. In a case in which the two only available alternatives are letting the child live in extremely bad foster care or assigning her to the custody of a racist adult who would give her a decent upbringing, we may and should indeed choose the second option. Nonetheless, we hold such a conclusion only in extreme circumstances, like bad foster care and lack of non-racist applicants for adoption, and we do not ground it on a claim-right of the racist parent;[114] in other words, while in the case of non-racist applicant we think that barring her from adopting a child would be wrong *to the prospective parent,* we do not hold the same conviction in the case of a racist applicant.

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[114] In the scenario just described, we should conclude that the racist adoption applicant is merely at liberty to adopt a white child.

On Brennan´s and Macleod´s view, in justifying the claim that racists do not have a right to adopt a white child, we cannot appeal to the need to avoid the type of future harms to the adoptee that animates the precautionary argument. This is because racist parents are not likely to expose their white children to the negative effects of the withdrawal of affection, nor are they likely to impair the development of their children's self-respect by sharing their racist opinions and attitudes with them.[115] The wrongness of racially selective adoption thus does not lie in a present or likely future harm done to the adoptee.

Another possible explanation for its wrongness appeals to the claims and interests of third parties, namely, black people who can feel wronged by racially selective adoption. By demanding exclusively white adoptees, racist parents are expressing an extremely negative opinion about black people in general and black children in need of adoption in particular. One might adduce this as a reason for why racist prospective parents should be barred from making such a request and, therefore, should be barred from adoption. This argument, however, has two important weaknesses.

First, it cannot be plausibly expanded to other possible ways in which racists can come to parent a child, and therefore to the right to parent in general. In fact, while it can be argued that racially selective adoption is clearly disrespectful towards the black community, and probably the same could be said about refusing gametes from black donors, I think that the decision by white racist of parenting exclusively their own biological children for racist reasons cannot be plausibly defined as disrespectful towards the black community. I need to clarify that I am not claiming that the racists' choice to parent exclusively their biological children for racist reasons is all-things-considered morally permissible,[116] but only that the respect which racists parents owe to black people does not make such a choice impermissible.

Second, and more importantly, this argument, unlike the precautionary argument, refers to the claim of third parties not to be disrespected and it is not based on the interests and claims of the child. However, our moral objection to racially selective adoption cannot be reduced to the expressive wrongs that racist prospective adoptive parents commit against

[115] In section 5, I raise some doubts about this last claim.
[116] In section 6, I come back to this issue.

black people.[117] There is a surely also a specific wrong done *to the adopted child* in the case of racially selective adoption. Racist prospective adoptive parents, by requesting exclusively white adoptees, are effectively saying to the white child they adopt: 'We chose, and we love you because you are not black'.[118] As I explain in the remainder of this section, I think that by acting in a way that conveys this sort of message, racist adoptive parents are wronging the white child they adopt and, specifically, they are violating her right to be loved.

To show this, I will draw on Philip Pettit's claim that love is an unconditional, or robust, good:

> Love is a robustly demanding good. It requires the actual provision of care in response to the need of the beloved. But it also requires that this care should not depend on the beloved having certain contingent features […]. The care provided should not be forthcoming just so long as those contingencies obtain; it should be fit to survive over possibilities, however improbable, in which they vary. Love makes robust demands, requiring the provision of care in response to relevant prompts or stimuli, not just in actual circumstances, but in a range of merely possible scenarios (2015, p. 12).

To fully understand Pettit's claim, we need to distinguish between the thin good of care and the robust good of love. While to explain why we appreciate the good of care we can simply refer to the type of actual beneficial actions that and agent (the carer) performs towards another individual (the cared-for), in order to explain why we appreciate the good of love, Pettit claims, we need to consider the different scenarios, no matter how unlikely to obtain, in which an agent (the lover) provides care to another individual (the beloved). More precisely, while X cares for Y if X is responsive to the specific needs of Y, X loves Y if X cares for Y not only under current circumstances, but also in those possible scenarios in which Y has different features.

Pettit claims that his model fits with our common use and understanding of the term 'love': if a girlfriend does care about his boyfriend and is particularly responsive to his needs, but would stop to do so if he turned out to have a different name, we think that she clearly

[117] For a theory of expressive wrongs, see Khaitan (2012).
[118] By 'saying', I mean 'acting in a way that means'.

does not count as a loving partner (2015, p. 11). Moreover, Pettit himself claims that his model can well-capture the specific phenomenon of parental love: parents do not love their children if they give them affective care only under current circumstances, but also if they would do the same under different circumstances, and especially if their children had different features (2015, p. 34). It is important to notice that this characterization of parental love is crucially different from a characterization of it as affective care. Pettit argues that parental love can be defined only in reference to parents' behaviour in possible, non-actual scenarios.[119]

We can now ask how the unconditional, or robust, conception of parental love proposed by Pettit helps us in identifying the wrong to the adopted child in racially selective adoption. Racist parents, who have asked to adopt exclusively a white child, are effectively saying to this child: 'We would not give you affective care if you were black'. Such a message clearly shows that racist parents are conveying that they do not love the child they are adopting unconditionally. Therefore, if children have a weighty interest, and a right, in being loved unconditionally by their parents, the wrong to the adoptee that we face in racially selective adoption is clear: the adopted child is effectively deprived of the unconditional parental love to which she, like all children, has a right. I defer the defence of the child's right to be loved unconditionally to the next subsection; for the moment I simply assume that children have a right to be loved unconditionally to show how this assumption solves the problems with Brennan's and Macleod's argument which I brought out in the previous section.

Fully spelled out, the *robust good argument*, which appeals to the unconditional nature of love, runs as follows:

1) Children have a right to be loved unconditionally and parents have a correlative duty to love their children unconditionally;
2) An individual has a right to parent a child only if he is able to fulfil his parental duties towards her, and specifically the duty to unconditionally love her;

[119] Davis (2008) and Gheaus (2014) present a similar counterfactual description of parental love, but since they are interested in the morality of genes selection, they only consider cases in which a child could have had different traits among those which are genetically compatible with her procreators'. In what follows I show that we have good reasons to extend this analysis to any possible morally irrelevant features of the children, even those that could not be passed on by their procreators, for instance a different race.

3) Racists are incapable of unconditionally loving any child because they pose the condition that their child is not black on the provision of parental affective care;

Therefore,

4) Racists lack a moral right to parent any child.

Consider now how the above argument applies to the original case of homophobic parents. Homophobes who establish a parental relationship with a child not only expose her to the possible future harms described by Brennan and Macleod, but they are *presently* wronging her by depriving her of unconditional parental love. Homophobic parents are effectively saying to their child: 'We will not give you affective care if you are gay': the fact that they pose a condition, which could obtain or not obtain in the future, on the provision of affective care to their child demonstrates that they are failing to love her unconditionally. The robustness argument thus avoids the troubling asymmetry implied by the precautionary argument. Furthermore, unlike an argument that appeals to the interests of the black community in general, the robustness argument explains why the wrong of racist adoption is a wrong done to the *adoptee*.[120]

Someone might object that while the robust good argument succeeds in showing a specific wrong to the child that the precautionary argument fails to identify, it does not provide a convincing argument for the conclusion that racists lack a moral right to parent any child. The wrong of depriving a child of unconditional love does not seem sufficiently serious to deny an individual the right to parent any child, while the likely wrong of depriving a child with affective care does. Therefore, since racist parents wrong white children in the first way, but not in the second, they would have a right to parent, and adopt, white children. In reply to this line of argument, I claim that while the deprivation of affective care is certainly a more serious wrong to the child than deprivation of unconditional love, both wrongs are sufficiently serious to conclude that adults who will likely, or certainly, wrong children in both ways lack a moral right to parent any child (again, recall that this is compatible with saying that they may be allowed to parent a child if she is in need of affective care that

[120] I am not assuming here the controversial view according to which children can be wronged before conception; I only assume that once these children exist they are wronged by their unloving parents who conceived them in a way that is clearly incompatible with unconditional parental love. In section 6, I spell out some possible implications of the child's right to be loved unconditionally for procreative ethics.

cannot be provided by others). Otherwise, again, we should accept the asymmetry between homophobes and racists in adoption cases, which I have shown to be deeply mistaken.

5 An elusive right?

Someone might now object that the interests that underpin the right to unconditional love are elusive at best. While it is clear that children who have not yet developed their sexual orientation have a weighty interest in receiving the kind of parental affective care that Brennan and Macleod describe, it is rather unclear what the bad consequences that racist parents expose their white children to are. I reply to this question in two steps: first, I draw on Pettit's analysis of the distinctive value of the robust good of love. Second, I argue that unconditional parental love is so important for the appropriate development of children's self-respect to ground the child's right to be loved unconditionally.

Pettit claims that the value of the robust good of love cannot be entirely captured by what he calls 'debunking explanations', i.e. explanations that deny the distinctive value of love and reduce its value to the value of its contingent effects (2015, p. 111). The first debunking explanation he considers argues that love is valuable because it is the best means for maximizing the expected realization of the thin good of care. This answer suggests, counter-intuitively, that we value love only instrumentally (2015, pp. 111-115). To test our intuitions about this explanation we can consider a child-parent version of a case presented by Pettit. Anne is a white adult who discovers that her late parents were strongly racist and would have not given her affective care if she had been black. It is natural to think that Anne has reasons to regret the way in which her parents raised her because they merely gave her affective care, but they failed to unconditionally love her. If we subscribed to the debunking, instrumentalist explanation I have just presented, we should conclude that Anne does not have any reason to regret her childhood, since she enjoyed the same amount of the thin good of parental care as a child who has been unconditionally loved by her parents.[121]

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[121] Pettit (2015, p. 118) presents a similar case involving a person who discovers she has never been considered as a friend by another person she always considered a friend.

The second debunking explanation claims that we value love because it promotes 'assurance and peace of mind'. If a person A knows that she is unconditionally loved by B, A enjoys a greater peace of mind than if she were simply given conditional affective care; in fact she knows that whatever features she had, B would still provide her with affective care. This answer suggests that the fact that we enjoy the feeling of being assured that we will receive the thin good of care fully explains why we value the robust good of love (Pettit 2015, pp. 115-120). To see how this explanation fails to capture the entire value of unconditional parental love, I propose that we consider the following case, involving the lives of two white adults who have passed away: Beth and Claire. Beth was raised by a couple of parents who genuinely loved her unconditionally, while Claire was raised by a couple of racists who would not have given her affective care if is she had been black, but she did not know that. If we just cared about Beth's and Claire's peace of mind, we should conclude that their lives went equally well, since Claire never knew that her parents were racist and her peace of mind was not affected. However, it is more intuitive, I submit, to believe that Beth's life, thanks to her enjoying genuine unconditional love, went better than Claire's.

I do not take a stance here on whether unconditional parental love constitutes a distinctive component of people's wellbeing, in line with objective-list theories of wellbeing, or whether it has value over and above considerations of personal wellbeing; accordingly, we might interpret the loss suffered by Claire either as a harm, i.e. the set-back of a wellbeing interest objectively understood, or as a form of harmless wrong. My claim is that, as illustrated by the case of Beth and Claire, the value of unconditional parental love cannot be reduced to consideration of their levels of *subjective*, or experienced, wellbeing, which, given their ignorance about their parents' views on race, we assume are the same. Notice, nonetheless, that even those who subscribe to subjectivist accounts of wellbeing or to the so-called 'experience requirement', can agree that unconditional love contributes value to a person's life, even if not to her well-being.[122] To sum up, unconditional love is an

[122] A comparison with accounts of the value of autonomy can shed some light to the possible positions on the value of unconditional love I have sketched. Instrumentalist accounts, in line with first debunking explanation, claim that autonomy is valuable only because it promotes some other value, like happiness. Subjectivist account, in line with the second explanation, claim that autonomy is valuable because agents feel well when they act autonomously. The two hypothetical cases I have presented show that these accounts are unsatisfactory to explain the value of love. Objectivist accounts claim that autonomy is an objective component of individual wellbeing, which does not depend on people's experiences. Finally, we can have accounts claiming that the autonomy is not related to individual wellbeing, but is nonetheless important to

important good for people's lives and its value cannot be reduced either to the value of the affective care it produces nor to the subjectively positive feeling of being assured to be affectively cared for.

By rejecting the two debunking explanations of the value of love, we can conclude that parental love has irreducible, distinctive value over and above the value of parental affective care. Having clarified this, I can now consider a more specific argument for why children have an important interest in, and a right to, unconditional parental love. We should recall that one of the reasons for the claim that children have a weighty interest to be loved is that parental love promotes the *appropriate* development of child's self-respect (Rosati, 2006, Liao, 2015, pp. 79-82, Brennan and Macleod, 2017, pp. 233). Genuine self-respect requires i) the recognition that each person, independently of her contingent features, has intrinsic value and deserves respect, ii) the recognition than oneself is a person and, as such, has intrinsic value and deserves respect by oneself and by others and iii) the knowledge that the respectful treatment one receives should not depend on her specific features. This account of genuine self-respect is clearly related to the concept of recognition respect famously described by Darwall (1977): to respect someone, in this case oneself, means to give appropriate weight to his features that are relevant for one's deliberation and to act accordingly. Put differently, genuine self-respect requires not giving weight to one's own irrelevant features like one's own race.

I argue that unconditional love promotes the development of a child's genuine self-respect, which coincides with the appropriate development of self-respect, while conditional parental affective care fails to do so. A parent who unconditionally loves his child teaches his child that she has value *qua* person and her fundamental value does not depend on her contingent features: her race, her sexual orientation, etc. In virtue of this, the kind of self-respect this child develops fulfils the three conditions for genuine self-respect I have just spelled out. By contrast, a parent who provides his child with conditional affective care - for instance a racist parent of a white child - impairs his child's development of genuine self-respect: when such a child comes to realize that she has value, she is likely to do so for the wrong reasons. This is because two interrelated phenomena are likely to obtain: first,

people's lives. I claim that only these last two accounts can capture our intuitions about the value of unconditional love but I do not take a stance on which of the two is the correct view.

she will value herself because she thinks that certain contingent features of hers, like being straight or white, confers value on her, and therefore, secondly, she will value herself without fully recognizing that other persons, including persons different from her, have intrinsic value like he does. I do not claim that conditional affective care necessarily causes these two phenomena, but that it is very likely to do so. Consider again the case previously described: while Beth is likely to have appropriately developed self-respect, Claire is likely to have developed self-respect in at least one of the two wrong ways just presented because she has never been exposed to parental unconditional love and to the equal consideration of all persons' fundamental value it involves.[123] Genuine self-respect is certainly important for the child's life, and since parental unconditional love, not mere affective care, is crucial for guaranteeing the appropriate development of a child's self-respect, we have an explanation of why parental love is distinctively valuable and of our intuition about Beth's and Claire's case.

I would now like to spell out the differences between the argument I have just presented, the precautionary argument and the debunking explanations of the value of love. First, while Brennan and Macleod focus on the fact that a homophobic parent necessarily impairs the capacity of self-respect of their gay children, I argue that both homophobes and racists, by failing to love their children unconditionally, are very likely to impair the capacity of genuine self-respect of any child of theirs; children of racists and homophobic parents are not necessarily deemed to lack genuine self-respect, but we should conclude that parents who obstacle their children to develop genuine self-respect wrong them, even if they do not completely impede it.[124] Second, while the debunking explanations reduce the value of parental love to its instrumental contribution to the child's subjective wellbeing,

[123] It is important to note that according to the account of appropriate development of self-respect I have sketched, racists and homophobes actually fail to appropriately respect themselves: in fact, they both fail to realize that the ground of their own intrinsic value is shared with all other people, including gay and black people. I cannot analyse this controversial claim further, but I claim that independently of our stance on homophobes' and racists' capacity for appropriate self-respect, parents who fail to love their children wrongly jeopardize their children's development of appropriate self-respect.

[124] Unfortunately, given the qualified nature of the concept of self-respect I have presented, it is difficult to measure and get empirical evidence about the effects of the impairment of the development of genuine self-respect on the lives of children raised by homophobic and racist parents. Nonetheless several studies conclude that both homophobic and racist parents are likely to pass their discriminatory views to their children, Castelli (2009), O'Bryan (2004), Sinclair (2005). This evidence strongly suggests that children of racist and homophobic parents are unlikely to have appropriately developed the type of genuine self-respect I have described.

my argument claims that it plays a fundamental role for the appropriate development of the child's self-respect.

This account of the rationale of the child's right to be loved unconditionally also differs from standard accounts of the value of unconditional parental love in some important ways.

First, authors who defend the importance of unconditional parental love commonly refer exclusively to the positive effects that parents' provision of affective care, emotive support and physical closeness have on children's wellbeing (Gheaus, 2014, pp. 156-157; Liao, 2015, pp. 77-99). In doing so, they cannot explain the distinctive contribution made by unconditional love to children's lives *vis-à-vis* affective care which is conditional on certain features of children that cannot change during their lives, like race.

Second, various authors focus on the bad effects that the experience of *knowing* that one's parents took certain morally irrelevant features as relevant for their decisions either to conceive them or to parent them (Harris 2007, p. 156; Gheaus, 2015, pp. 159-160). This consideration resembles the 'peace of mind' explanation of the value of love presented by Pettit: knowing that a child's parents provide her with affective care on the basis of some morally irrelevant features of hers may negatively impact on her wellbeing. This consideration is certainly valid, but it fails to account for the wrong done to Claire, who did not know that her parents were racist. However, while the wrongness of the deprivation of parental love obtains even if the child does not know that her parents are conditionally caring for her, the positive contribution of parental love requires the child knowing that she is unconditionally loved.

Third, and more importantly, the fundamental idea that animates standard accounts of unconditional parental love is that parents should love their children 'as they are': parents should accept and cherish their children's actual specific features. My account, instead, argues that parents should love their children 'independently of how they are': morally irrelevant features should not play any role in parents' caring attitude towards their children. Consider again Brennan's and Macleod's claim that the provision of parental affective care promotes the development of child's self-respect and self-esteem. While they

think that is important for the child not to have parental care withdrawn *if* she happens to have certain features, I argue that children's development of self-respect is impaired by the provision of affective care that is conditional on certain morally irrelevant features *regardless* of whether the child happens to have them. Again, while the first type of accounts, allow parents to relate their caring attitudes towards their children to certain morally irrelevant features, like race, that constitute how their children are and will certainly be, my account does not.

6 Some implications of the account

Let me conclude with a few further remarks on the child's right to be loved unconditionally, both about what it excludes and what it implies.

A complete theory of this right to be loved unconditionally should provide a clear account of which type of children's features parents have to be considered as irrelevant for the provision of parental affective care. For the purposes of this chapter, I think it is sufficient to say that parents should love their children independently of the morally irrelevant features of the latter, such as their race, gender, sexual orientation, and health conditions. I cannot provide here an account of the features that can, instead, be morally relevant for parental love and I simply present two plausible candidates.

First, parental love seems compatible with its being conditional on some aspects of the moral character of the child, in the sense that a parent who will not love her child if he commits some extremely serious moral wrong does not seem to fail to love her child: parents who would not give their child affective care if he were a cruel criminal, are not failing to fulfil their duty to love her. I am not claiming that parental love towards a child who is a cruel criminal is impossible, inappropriate, blameworthy, or morally impermissible, but that a parent who is giving affective care to her child but would stop

doing so, if her child knowingly committed very cruel crimes, is not failing to love her child.[125]

Second, taking a child's age as a condition for the provision of parental care seems compatible with parental love. If a parent stopped to give his child affective care when she becomes an adult, he does not seem to fail to provide her with genuine parental love. We should recall that parental love plays a fundamentally important role during people's childhood because it makes a positive contribution to many aspects of children's lives. We can doubt that parental love is equally or significantly important for adults: while the love that old parents feel for their adult children is surely valuable, it is not the object of a fundamental interest of adults. In other words, while adults benefit from the love they receive by their parents, they do not have a right to be loved by their parents. Let me clarify that I am not claiming that parents do not have a duty to affectively care for their adult children, but that, if such a duty exists, it is not correlative to a right of adult children.[126]

With regard to some further possible implications of the child's right to be loved unconditionally I have so far described, it is worth mentioning four possibilities here.

First, as originally suggested by Brennan and Macleod, since the state has a legitimate interest in safeguarding the rights of children, it may mount advertising campaigns directed at parents on the importance of unconditionally loving one's child both by presenting positive and negative models of parenting (2017, p. 240).

Second, the child's right to be loved unconditionally can provide an argument in favour of the racial randomization in the adoption system, which has been proposed by Hawley Fogg-Davis (2005). On the basis of the arguments I have put forward, we could say that not only society would benefit from an adoption system that encouraged the formation of transracial families, for instance by reducing societal racism, but also that the adopted

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[125] Even a child who has committed extremely serious moral wrongs may deserve the form of 'recognition respect' I have described; nonetheless, I claim, his parents do not owe him the special attention, emotional support, and concern about his wellbeing that constitute affective care. As I have explained in footnote 106, affective care entails a special concern for a particular person that goes beyond the 'recognition respect' we owe to all the persons.

[126] For an account of the loving relationship between parents and adult children, see Richards (2010, pp. 216-227).

children themselves would get the benefit of knowing that their race is not a condition for their parents' love.[127]

Third, the child's right to be loved unconditionally seems to have implications for procreative ethics. Prospective parents who decide to parent exclusively their biological children because they would be unable to provide a child who has certain features, for instance a race different from theirs, with affective care, prove themselves of being unable to love their children, and therefore lack a moral right to parent. We can formulate a similar judgement about parents who actively try to avoid to have biological children with certain features because they would be unable to love them, for instance by selective abortion, pre-implantation screening, or genetic engineering. (Davis 2008, Gheaus, 2014). I do not have space to develop these considerations here; I should emphasise, however, that I have argued that the lack of a moral right to parent may have direct policy implications only in the case of adoption and, therefore, I am not proposing to interfere with the procreative choices of the parents I have just described, nor to regulate their right to parent their biological child. The argument I have presented, instead, simply claims that these parents are wronging their children by failing to unconditionally love them.

Finally, and probably most controversially, the account of the child's right to be loved unconditionally I have provided seems to qualify many current parents as unloving. Consider, for instance, how many biological parents provide their children with conditional affective care, i.e. they would not provide them with affective care if they were not their biological ones. Although this is hard to establish, it seems plausible that many biological parents do pose this type of condition on the affective care they provide their children with. I do not think that concluding that parents of which this is true are failing to genuinely love their children is too harsh to them; instead, it teaches an important lesson to

[127] In societies such ours, characterized by pervasive forms of racism, the picture is actually more complicated. In these contexts we have strong child-based reasons to prefer placing adopted children with parents of the same race: children can integrate more easily in the adoptive family, they are not object of special social stigma for having parents of a different race, etc.. The child's right to unconditional love, therefore, is only a *pro-tanto* argument in favour of racial randomization in adoption that needs to be weighed against the reasons against transracial adoptions that I have cited. For an account of the challenges of transracial adoption, see: Patton (2000), Briggs (2012), Treitler (2014, part II). I thank an anonymous reviewer for pressing this point.

biological parents: you should love your child independently of her being your biological offspring.

Conclusion

The child's right to be loved has implications for the scope of individuals who may parent children. In this chapter I have argued that the best account for working out what those implications are is an account that construes the child's right to be loved as a right to unconditional love. Such a right is correlative to a parents' duty to provide their children with affective care *independently* of their morally irrelevant features. In developing this account, I have drawn on Pettit's analysis of robust goods in order to describe the love that parents owe their children as unconditional. This account fits well with our ordinary understanding of parental love and avoids certain problems with Brennan's and Macleod's affective care-based account of the scope of permissible parenting. While Brennan and Macleod convincingly argue that homophobes lack a right to parent any child because they are unable to give affective care to gay children, an affective care-based argument commits us to conclude that the same is not true of racists. My argument avoids this asymmetry by identifying a common moral wrong that both homophobes and racists do to their children: they both provide their children with only conditional affective care and thus fail to love them unconditionally. For this reason, both homophobes and racists lack a moral right to parent any child. Finally, I have claimed that children have a right to be loved unconditionally because unconditional love makes a unique contribution to the appropriate development of a child's self-respect.

Conclusions

The proposal of requiring adults to prove their competence to adequately raise a child in order to obtain a license to parent their biological children is provocative and controversial. While some people find the idea intuitively appealing, many more people reject it as infeasible, overdemanding and disrespectful to aspiring parents and in particular to procreators committed to the particularly valuable project of raising their biological children. In very rough terms, while justice to children may seem to tell in favour of licensing, justice to parents opposes it. The general objective of my thesis has been to explore and assess in detail the judgements, evaluations, arguments, and principles that ground these two conflicting demands.

This thesis has started off by arguing that the debate between supporters and opponents of parental licensing requires a careful philosophical analysis that has been missing so far: while a number of authors have provided different arguments in favour and against this proposal, mainly by relying on symmetries and asymmetries between biological and adoptive parents, the debate has not tackled some fundamental questions that lie behind the question of whether licensing biological parents is indeed a requirement of justice for children and can be justified to parents. Neither the existing arguments for parental licensing nor the objections against it, which I have reviewed in Chapter 2, tackle these fundamental questions. A careful assessment of the justifiability of parental licensing requires us to develop a clear, even if incomplete, account of justice to children and adults, where this involves not only identifying the demands of justice to children and of justice to parents, but also defending a framework for weighing those demands when they conflict.

This thesis has attempted to provide this assessment; in particular, it makes two main contributions that it is hoped will help reshape the debate on parental licensing. First, it has argued that the state has to make a choice between different possible systems that determine which specific adults should have the legal custody of a specific child. Not only parental licensing, but also the *status quo*, under which procreators automatically acquire the legal custody of their children, are two of these possible systems: the debate about parental licensing, therefore, should be reframed as a debate between supporters of two competing

systems of child-rearing, where neither should be taken to be self-evidently defensible or presumptively justified. Relying on a set of speculative but uncontroversial assumptions, we can conclude that each child-assigning system distributes different risks of harm to children and adults: the two salient risks in question is the risk, for children, of being harmed by their parents – we know that under either system, a number of children will be maltreated by their parents; and, the risk, for would-be-parents, of being denied the permission to parent a child, typically, their biological child, even though they are competent parents. These are the fundamental concerns that animate advocates and opponents of parental licensing: while advocates point to the urgency of preventing child maltreatment, opponents claim that parental licensing underestimate the negative effects it would have on many parents. This thesis has assumed that a defensible view of justice to children and adults commits us to taking both these concerns seriously and to recognizing both the loss suffered by maltreated children and that suffered by adults who are deprived of the goods of parenting. Accordingly, in order to formulate convincing and well worked-out argument in favour of any one child-assigning system, its defenders need to justify the specific distribution of risks of harms it generates.

The second main contribution which this thesis makes lies in the argument that the *status quo* can only be defended by subscribing to aggregative views on the justifiable imposition of risks of harms, or by assuming an implausible view of the badness of child maltreatment. Aggregative views are indefensible, as they have clearly wrong implications in a number of case since they violate two basic normative principles: the separateness of persons, and the duty to justify actions to all the individuals affected by them. By contrast, more plausible views on how we should distribute risks support the judgement that we should prioritize the reduction of child maltreatment and, therefore, we should implement parental licensing, even if this will harm some parents who would not be harmed under the *status quo*. Justice to parents requires us to recognize and take seriously the great loss suffered by adults who are deprived of the valuable opportunity to raise children, but it does not commit us to conclude that the risk of such a harm is not justified to avoid a risk of greater harm, namely, that of child maltreatment. A defensible understanding of justice to children and adults and a defensible assessment of the justified distribution of the risks of harm at stake together provide a solid principled basis for the conclusion that we should license biological parents. As I have noted before, these arguments of the thesis have

significance even for those who are not convinced by my conclusions: they help delineate how a more fully constructed view in defence of the *status quo* would proceed: on that view, the distribution risks of harms which the *status quo* achieves must be claimed to be just: although I disagree with this claim, this would be a fuller defence of the *status quo* than the ones that have been provided so far.

Besides providing principled arguments in favour of parental licensing, a convincing defence of a licensing proposal needs to address several other issues.

For one thing, it needs to provide some guidance about the screening and licensing procedure; with regard to this, the thesis has sketched a framework that should help design a feasible and sufficiently reliable screening procedure for parents. This framework identifies four different levels that we should distinguish when designing any licensing scheme: the ultimate aim of licensing; the standard of competence, in terms of knowledge, skills, judgment and disposition, that must and may be demanded in light of the ultimate aim; the set of facts about candidates that are reliable proxies for their competence; and which actual tests and checks are suitable to verify these facts.

Moreover, a defence of parental licensing needs to address specific worries related to the implementation of such a procedure: even if we have granted that some false negatives are acceptable, how many of them are justifiable? Should the possibility that some adults will fail the procedure because they are victims of wrongful discrimination make us doubt the justifiability of licensing parents? What should we say about those societies characterized by deep unjust circumstances where many adults lack the required knowledge, dispositions and resources to adequately raise a child because they are the victims of severe background injustices? These questions identify important challenges that advocates of parental licensing must address. I have tentatively argued that these challenges do not constitute fatal objections to the justifiability of parental licensing, but that to meet them convincingly we have to spell out a series of conditions that the state should satisfy before implementing parental licensing, especially introducing policies that support would-be parents and effectively enable otherwise incompetent adults to raise a child; a state that implements licensing is also under stringent duties to minimize unnecessary false negatives, to constantly monitor the reliability of the screening procedure, to fight against forms of

wrongful discrimination, and to compensate those adults who have been wrongly denied a license. If a state were unable or unwilling to meet these conditions and to discharge these duties, a parental licensing scheme would, in fact, be deeply unjust to many adults.

While my defence of parental licensing has examined only some aspects of the specific issue of how we should regulate the acquisition of rights of parental custody over a child, and proceeds – I have tried to show – on the basis of relatively uncontroversial assumptions, a complete account of justice between parents and children must tackle many more issues, about some of which strong disagreement seems unavoidable and, indeed, unsolvable.

This thesis has considered two such issues. First it has asked how we should treat and weigh parents' and children's interests above the minimal threshold of safety from maltreatment. I have argued that once we realize that the interest in parenting unavoidably entails an interest in exercising power over children, we have good reasons to abandon the Dual Interest View that has been defended and widely endorsed in recent debates on the justification of the parent-child relationship, and support a child-centred view according to which the child's best interest always takes priority over parents' interests in parenting (but not over parents´ other interests). Second, the thesis has examined the claim that children have a right to be loved by their parents and argued that it should be understood as a claim about children's right to be loved unconditionally, i.e. as independently of the child's morally irrelevant specific features.

Although I have not argued that the licensing scheme defended in the first five chapters of the thesis should be revised in light of these two further, rather controversial sets of claims about justice for parents and children, if these are true we would be pressed to think more about their legal and policy implications. It is possible that we should adapt licensing procedures to protect less fundamental entitlements of children than those that protect them against maltreatment, and to enforce more demanding parental obligations. In other words, this thesis may have made what could turn out to be a first, but nonetheless useful, step, towards the defence of an even more controversial idea than the one canvassed here, i.e., the idea that the state should not recognize the right to parent a child to those adults who are unable or unwilling to give their children all they owe them.

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