

## The Practical Standpoint on Procreation\*

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In my Midwestern, Protestant community, it wasn't uncommon for people (even teenagers!) to talk about the hopes and dreams they had for their future children, to pray for them, and to sometimes even write them letters. (My own father wrote me a blessing which my mother later turned into a cross stitch.) And while it was more common for expecting parents to talk explicitly about their love for their as-of-yet unborn child, it wasn't strange for persons who weren't expecting a child – persons who were years away from wanting to have a child at all – to think about their future children as appropriate objects of care and attention.

The attitude that these prospective procreators hold toward their future children can represent a kind of ideal parental attitude. Their hopes are held behind a Rawlsian veil of ignorance.<sup>1</sup> They don't know what their children will be like, only that their children will be *theirs*. They're able to imagine a wide array of paths that would be valuable for *any* child, untethered to the expectations we attach to persons with particular genetic features (e.g., what women are capable of, what athletic or artistic persons can hope to aspire to, etc.).<sup>2</sup> The future they imagine for their child is open in a way that can be hard to maintain after their particular bundle of joy is here. To these prospective procreators, their future children are persons whose future existence

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<sup>1</sup> John Rawls, *A Theory of Justice*, (Cambridge: Harvard University Press, 1971).

<sup>2</sup> Imagine parents dreaming that their child will become president of the United States one day. When they find out that their child's sex is female, that hope may already be disappointed – either because they don't envision a life of political leadership for her future or because they recognize the political realities that make it more difficult (and costly) for women to attain high political office.

holds a special place in their thinking – a place which has the power to guide the very actions they take to create those persons in the future.<sup>3</sup>

Derek Parfit famously argues, however, that if some version of genetic essentialism is true, that is, if a person's identity depends on the particular sperm and egg from which she originated, then what procreators do will also determine *which* person they create. That procreators cannot act differently without creating a different child altogether is the crux of what Parfit calls the non-identity problem. Whatever steps prospective procreators take on behalf of their future child – finding a suitable parenting partner, waiting until they are financially secure, screening embryos for congenital diseases – all affect the identity of the person they eventually create. Procreators can alter *which* person comes into existence, but there is no future child whose identity is determinate and whose wellbeing they can rationally hope to improve by their actions. If genetic essentialism is true, then the practice of writing to (or harboring hopes for) one's future child is incoherent.<sup>4</sup> There is no determinate person that prospective procreators are writing to, no determinate object, yet, of their hopes and prayers. It's a mistake, then, for prospective procreators to think about their future child as guiding the very choices that will determine *which* person becomes their child in the future.

That people may be engaged in an incoherent practice wouldn't itself be a surprise.

What's striking is that the prevailing problem in procreative ethics blocks our even beginning to account for some of the actual attitudes and practices associated with procreation. It's important

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<sup>3</sup> In my church community, this was also a common practice to do for one's future spouse. One's future spouse could turn out to be any number of people, but in another sense, as *one's future spouse*, that person could serve as a kind of regulative end over the process by which one comes to meet and be with that person in the future.

<sup>4</sup> Elizabeth Harman, "I'll Be Glad I Did It' Reasoning and the Significance of Future Desires," *Philosophical Perspectives* 23 (2009), 177–199; Derek Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984); Kieran Setiya, "The Ethics of Existence" *Philosophical Perspectives* 28 (2014), 291–301; Jay Wallace, *The View from Here* (New York: Oxford University Press, 2004). Much of the non-identity literature has focused on the rationality of backward-looking attitudes. For example, does it make sense to regret an action that was necessary for the existence of a person one loves?

to notice, though, that where we choose to *begin* our moral investigation is itself a choice with practical consequences. The presupposition of the non-identity problem is that creating a person can only wrong her if she has been badly affected by her creation. For Parfit, the surprising conclusion is that a person cannot be badly affected by her own creation, because being created can never make a person worse off than *she* would have been.<sup>5</sup> Starting with the metaphysics of personal identity and harm belies a prior consequentialist commitment: the morality of what a procreator does turns on the outcome of what she does, or the consequences of her actions, for the particular person she creates.

The focus on harm as the locus of moral inquiry can quickly lead to one of two extreme positions. If we accept the conclusion of Parfit's non-identity problem, that it's impossible to harm and so impossible to wrong someone by creating her, then, at least with respect to the created person, procreators can do no wrong. Parfit allows that procreation is morally serious, even morally hazardous, but only when we account for procreators' actions from an impersonal, utilitarian framework. Yet, if procreation is morally serious for anyone, surely it's serious, and sometimes hazardous, for the very person brought into existence. But if instead we accept that it's possible to harm someone by creating her (e.g., if harm includes some non-comparative bads), then it's difficult to see how a person *wouldn't* be harmed, or at least put at risk of harm, by her creation. After all, the so-called gift of life is at best a "mixed bag" – human beings will inevitably

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<sup>5</sup> She's not worse off than she was before she was born, because before she was born she didn't exist at all. She's also not worse off than *she* would have been had her procreators acted differently. Had they acted differently, a different sperm and/or egg would've combined to form a different person. Her existence depends on her procreators' acting exactly as they did.

suffer pain, disease, and injury, and even the best lives will eventually end in death.<sup>6</sup> If a person's procreators are accountable for these ills, then it may often (if not always) be wrong to procreate.<sup>7</sup>

On one extreme, procreators can do no wrong, and on the other, they can't but do wrong – yet neither extreme is borne out in our ordinary experience of procreation. And though the facts about what's true aren't held hostage to our actual practices, when we're asking how we should think about those practices, it's not helpful when our philosophical account of them makes a serious moral evaluation a non-starter. That both extreme positions fail to track our actual experience of procreation and the place of procreation in our lives isn't yet an argument against them, but it does give us reason to look for a different starting point for a philosophical account of procreation.

I'm going to present an alternative way to think about procreation that helps us see why the Midwestern parents weren't making a mistake. There is a meaningful sense in which their attitudes were really about someone. Their future children may not have had a determinate biological or genetic identity, but they did have a determinate moral identity as the child they were trying to create, an identity that serves as a constraint, or regulative end, over how they are created.

If we want an account of procreation that focuses on *how* procreators comes to act rather than the outcome of their actions, Kant's moral theory is a natural place to start. My aim in this paper is to build an account of procreation that is Kantian in spirit. To do so, I will borrow a distinction Kant makes between taking up the theoretical and practical standpoints, and I will show that we can make progress in our procreative ethics by taking up the *practical* standpoint on

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<sup>6</sup> Seana V. Shiffrin, "Wrongful Life, Procreative Responsibility, and the Significance of Harm," *Legal Theory* 5, no. 2 (1999): 117–48. Seana Shiffrin argues that a person can be harmed by her creation if she suffers some non-comparative or absolute bad.

<sup>7</sup> David Benatar, *Better Never to Have Been* (Oxford: Oxford University Press, 2006). David Benatar argues for a global anti-natalist position, or that procreation is *always* wrong.

procreation. My strategy is one of mutual illumination. By taking on board Kant's standpoint distinction, I'll show that we can get traction on some difficult procreative issues, and, in turn, we get a better understanding what his theory requires. If, in the end, a Kantian account captures the moral stakes of procreation better than our other theories, then we have a good practical reason to adopt a Kantian framework over an outcome or harm-based framework.

### §1 The Procreation Problem

Creating a person is an important and serious endeavor that is a deeply embedded part of our lives. For many people, having a child is an integral part of what constitutes a meaningful life. It's an event to be celebrated when it happens and mourned, or a source of grief, when it doesn't. We orient individual lives, local communities, and political states around families and family-building because families matter to us – not just the families we're born into, but the families we build. And for many people, building a family involves procreating. People go to great lengths to *create* children, not merely to become parents, which they might do by adopting already-existing children.<sup>8</sup> And even when persons adopt a child or put their child up for adoption, it's not uncommon (and we don't think it strange) when they want to find or meet their biological parents or child. We are profoundly shaped by our creators, not just genetically, but by their presence or absence in our lives.

David Velleman explains the importance we attach to the procreator-offspring relation in terms of a person's self-knowledge.<sup>9</sup> Part of what it is to know oneself is to know what's possible for a person like oneself by seeing how our biological relatives live their lives. I might recognize

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<sup>8</sup> David Velleman, "Family History," *Philosophical Papers* 34, no.3 (2005): 357–78. Velleman makes this point well. Not only do people go to great lengths to have biologically related children, but they are prepared to do so in a way that will block their offspring from knowing one of her biological parents.

<sup>9</sup> *Ibid.*, 67.

my stubbornness in my dad, or my analytic mind in my mom. They bear witness to what's possible for me, or, as can easily also be the case, what I don't want to become. Velleman is right to see value in the role that our genetic relatives play in helping us understand ourselves, but I don't think self-knowledge alone can be the complete story, nor is it the most basic explanation for why the relation between procreators and their offspring matters. We care about knowing our procreators simply to know *them*. They are, and always will be, the persons who brought us into existence and we will always be the persons they created – whether or not they are the persons who parent us.<sup>10</sup> There's practical significance to creating a person, a significance that both goes beyond the morality of harms and benefits and that isn't fully explained by the importance of knowing ourselves better.

That we often care about the persons who created us and the persons we ourselves create is clear. The moral question is whether there's any normative basis for the importance many people assign to both their creators and their offspring. That is, whatever psychological mechanism explains *why* we care about the procreator-offspring relation, it's worth finding out whether there's a moral basis that explains why we should care.

On Kant's account, the procreator-offspring relation matters because procreators put themselves in a relation of duty to the persons they create. In Kant's brief discussion of procreation and children in the *Metaphysics of Morals*, he doesn't challenge the permissibility of procreation, but he does make it clear that procreation is morally hazardous for created persons. We are not free to create persons and destroy them or leave their fate to chance, because procreation issues in the creation of a *free being*. That is, the child created is a *person*, even before she has the rational capacities that, for Kant, typically characterize a person. What's more, her

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<sup>10</sup> A woman I met in Los Angeles made a documentary about her search for her biological or genetic father, an anonymous sperm donor < <https://www.thankyouforcomingmovie.com/>>.

existence is brought about without her consent by other persons' actions. As a consequence, the child has a coercively enforceable right, or moral claim, against her procreators for the care she needs to become a mature person, someone able to manage herself, or to act on her own as a free being.<sup>11</sup>

In this passage, Kant makes two curious, but subtle moves. First, the creation of *persons* is understood practically, or in terms of how other persons ought to act, not theoretically, or in terms of what the world is like. From the practical standpoint, procreators incur obligations to their offspring in virtue of what they're doing, not in virtue of what their offspring is like. Second, when Kant talks about the moral claim of one's child as the claim of a person, it's clear he also thinks the child doesn't yet have the characteristics of a person who can set and pursue ends. The child's claim stems from her humanity, even though she, ostensibly, doesn't seem to have 'humanity' in her yet.<sup>12</sup> If parents have duties *to* their children, then there seems to be conceptual space in Kant's theory for us to have duties to persons who, for a time, do not have the features that typically mark out our humanity. Whatever grounds the obligations that parents have to their children, then, may also ground procreators' obligations to their *future* children.

For Kant, 'person' picks out a "subject whose actions can be imputed to him," or someone who can be considered the author of her actions.<sup>13</sup> An action can be imputed to a subject when it is the product of a subject's *free choice*, or when the subject is not determined to

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<sup>11</sup> Immanuel Kant, *The Metaphysics of Morals*, translated and edited by Mary Gregor (Cambridge: Cambridge University Press, 1996), 64–65 (6:280–82). This is an innate right, or a moral right she has without any further act or law of the state.

<sup>12</sup> Tamar Schapiro, "Childhood and Personhood" *Arizona Law Review* 45, (2003): 575–94. Tamar Schapiro argues that young children lack both proficient and attributable rationality, that is, they're neither very good at reasoning nor can their actions be imputed to them as stemming from their own principles or values. If a child's humanity grounds our obligations to her, then her humanity can't be fully understood in terms of *her own* rational capacities, because she doesn't adequately possess them (in either sense).

<sup>13</sup> Kant, *Metaphysics of Morals*, 16 (6:223). Though Kant uses 'he' and 'him', I take him to refer to men and women. I will use the female pronoun to indicate that *both* sexes are implicated.

action by impulse or inclination (though, in human choice, she can be affected by inclination). Such actions are called *deeds*.<sup>14</sup> A person is someone who can act from her judgment about what would be good to do, where that judgment is constrained by standards of good reasoning, or the moral law.<sup>15</sup>

Morality, in turn, demands that we treat persons *as* persons, or as beings who can determine their own lives (their beliefs, values, and actions) for themselves. This obligation is famously represented by Kant's second formula of the categorical imperative: "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means."<sup>16</sup> Kant's formula has a kind of intuitive appeal. There seems to be something morally problematic about using persons merely for one's own ends or one's own gain – even, potentially, *creating* a person merely to serve one's own interests.<sup>17</sup>

Behind Kant's second formula is the idea that persons *exist* as ends in themselves. Persons have what Kant calls absolute worth, or worth that doesn't depend on (or isn't conditioned on) their usefulness as a means to some other end.<sup>18</sup> If a person's existence has absolute worth, and if

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<sup>14</sup> *Ibid.*, 13 (6:213). I'm appropriating Kant's use of 'deed' to keep clear that we're interested in whatever subset of actions are imputable to an agent as actions she has authored. Deeds do not include acts that stem from what Kant calls 'animal choice', or choice which is fully determined by inclination or impulse.

<sup>15</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals*, translated and edited by Mary Gregor (Cambridge: Cambridge University Press, 1997), 57–58 (4:448). Insofar as we take our actions to be *ours*, we must think they come from us (our reason) – not elsewhere. Kant puts it this way: "Now, one cannot possibly think of a reason that would consciously receive direction from any other quarter with respect to its judgments, since the subject would then attribute the determination of his judgment not to his reason but to an impulse. Reason must regard itself as the author of its principles independently of alien influences; consequently, as practical reason or as the will of a rational being it must be regarded of itself as free, that is, the will of such a being cannot be a will of his own except under the idea of freedom, and such a will must in a practical respect' thus be attributed to every rational being."

<sup>16</sup> *Ibid.*, 41 (4:429). It's often referred to as the Formula of Humanity. The categorical imperative is the representation of our relation to the moral law as imperfectly rational beings. That is, it represents the 'ought' of morality.

<sup>17</sup> Benatar, *Better Never to Have Been*. Benatar's anti-natalist argument relies on Kant's second formula. He argues that persons can never be created for their own sake, only for the sake of other persons. To create her, then, will count as treating her as a 'mere means'. In what follows, I will show that Kant's moral theory needn't impugn procreation altogether.

<sup>18</sup> *Ibid.*, 40 (4:428). In his preamble to the second formula, Kant puts the point this way: "Now I say that the human being and in general every rational being *exists* as an end in itself, *not merely as a means* to be used by this or that will at



persons must be treated as ends, then you might think that we ought to create *more* persons.<sup>19</sup> On Kant's account, however, the value of persons is regulative, not additive. You don't realize the value of persons by making more of them, the way you might realize the value of happiness by trying bring it about that people are either happier or that more people are happy. You realize the value of persons by how you *treat* them.

We aren't required to make a person's existence our *productive* end, or something to bring about; we are required to make a person's existence a *regulative* end, or a constraint on how we pursue our other ends. If I have the regulative end of being frugal, for example, my end isn't to make more money; rather, I have as a constraint on my pursuit of other ends that I do so without spending too much money. I might go to IKEA rather than Pottery Barn for a new couch, or even look for a used couch on Craigslist. For a person's existence to serve as a regulative end in my actions, I must (somehow) constrain my actions in light of them. If I don't, if I fail to respect the humanity *in her*, then I don't just act wrongly, I wrong the person whose existence did not serve as a regulative end or constraint over my actions.

That *existing* persons could serve as a constraint on what we should do doesn't yet explain how a person who doesn't exist could constrain another person's actions. The problem with applying Kant's moral theory to procreation, and what makes procreation especially difficult, is that it's not an action that's done *to* an existing person. If treating humanity in a person doesn't obligate me to create more persons, how could a person who doesn't yet exist serve as an end that bears on my creation of her? A procreator would still have to act in ways that treat herself

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its discretion; instead he must in all his actions, whether directed to himself or also to other rational beings, always be regarded *at the same time as an end.*"

<sup>19</sup> Parfit, *Reasons and Persons*, 385–90. The utilitarian moral framework, for instance, leads to what Parfit calls the repugnant conclusion, namely, that we are obligated to create more people just to increase the overall happiness that exists in the world.

and other, already-existing persons, as ends, but it's not clear how her actions could be constrained by the *prospective* personhood of her offspring.

## §2 The Solution

Rather than trying to explain how a person could regulate someone's actions before she exists, we should, on Kant's view, revise the terms of the problem. The difficulty of explaining how a person's non-existence could regulate how she's created only gets traction because we're looking at procreation from both the theoretical and practical standpoints at the same time. That is, we're trying to understand how a physical or biological process could issue in a new moral subject, rather than seeing procreation as an activity undertaken *by* persons who have made another person their productive end.

Within Kant's framework, we can't understand the creation of persons, or free beings, if we think of procreation in terms of the biological reproduction of organisms. That procreation is an event in the sensible world (the world as we understand it through our experience of it) is not in question. But what remains a mystery is how such an event could ever give rise to a being who is *not* just a sensible thing.<sup>20</sup> How could a *free being*, a being whose actions are *not* necessarily determined by any antecedent cause, be created *from* an antecedent cause (a natural event) in accordance with a law of nature? That such a being is created through a physical process in time seems to give rise to a contradiction – the person is both determined by an antecedent cause and free from determination by any antecedent cause.<sup>21</sup>

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<sup>20</sup> Kant, *Metaphysics of Morals*, 64 (6:280). Kant writes, "For the offspring is a *person*, and it is impossible to form a concept of the production of a being endowed with freedom through a physical operation."

<sup>21</sup> *Ibid.* This isn't just a problem for human procreators, but for understanding how God could create free beings. Kant writes: "All that one can require of reason here would be merely to prove that there is no contradiction in the concept of a *creation of free beings*, and it can do this if it shows that the contradiction arises only if, along with the category of causality, the *temporal condition*... is also introduced in the relation of supersensible beings."

Whatever we make of Kant's ultimate reconciliation of the two standpoints with respect to our freedom, his use of the two standpoints still points us in a helpful direction. When reasoning is aimed at different ends – when we're doing science, or when we're trying to figure out what to do – different kinds of facts are made salient. The contradiction we run into when thinking about the physical production of free beings doesn't just reveal the limits of our reason, it also reveals something about what facts matter when we're asking what procreators owe their offspring.

### 2.1 The Theoretical Standpoint on Procreation

The theoretical use of reason is aimed at understanding the laws that govern the nature of objects, the kind of reasoning we do when doing science.<sup>22</sup> If we understand procreation from a medical or scientific point of view, or the theoretical standpoint, then procreation is just the physiological process by which human beings reproduce. This process can be understood in terms of our sexual anatomy, the genetic contribution of each sex via sperm and egg cells which combine to form a new organism with predictable development stages (zygote, embryo, fetus, newborn infant) – all driven by an evolutionary drive to propagate the species. What it doesn't tell us, and what for Kant it *cannot* tell us, is how this biological process could result in a *person*. This is because, at least on Kant's theory, we can't have theoretical cognition of our freedom, which is to say, we can't determine whether a given object is actually free. We can't point to particular objects, including various stages of a human organism, and say of it: okay *now* the

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<sup>22</sup> In Kant's *Critique of Pure Reason*, he distinguishes between five different uses of reason (six if you include speculative use as a distinct use from the theoretical use), where each use has a different aim and, correspondingly, a different standard for what constitutes cognition, or well-supported objective representations about a subject matter. Reason alone cannot produce objectively valid theoretical cognition; it must depend on sensible intuition. The project of the *Critique of Pure Reason* is to show how you can still have *a priori* theoretical cognition that also depends on sensible intuition. Importantly, however, the practical use of reason, concerned with how we should act, *can* produce cognition without appeal to sensible intuition.

embryo, the fetus, or the infant is a free being and so has the moral standing (and with it, claims) of a person.

Again, setting aside the problem of our metaphysical freedom, the shift away from thinking about procreation as just a biological process is important for figuring out what to do. Insofar as we're thinking about procreation as the creation of a person, we're employing a practical concept in our reasoning about what to do, not a theoretical concept employed when doing science. 'Human being' and 'person' are not obviously coextensive. 'Person' picks out beings with a rational (or free) will, not the particular biological features that make rationality possible for human beings. We can't understand the creation of a person by appeal to biological processes that happen over time because 'person', for Kant, doesn't pick out a biological creature at all.

From the theoretical point of view, a person has to exist (with certain features characteristic of persons) before she is a candidate for moral claims on others because, when we're trying to understand the world as it *is*, we have to wait for the subject to appear in the catalogue of objects that exist in the world. That is, from the theoretical standpoint on procreation, our focus is on what the object (the created person) is like, or *when* she becomes a person – a question that is a familiar problem in procreative ethics. We don't talk as much these days about ensoulment, but we do talk about when personhood or life begins. Some think it begins at conception, while others think it begins when a fetus can feel pain or when it develops a spinal cord. And some think a fetus becomes a person at the quickening, or when it first asserts its own agency in the womb.

Our inability to determine when human organisms become persons reveals the tension that arises when we try to answer the question about what an object fundamentally *is* (considered under natural or physical laws) while also trying to figure out what to *do* (where at least some

objects are considered under the law of freedom). When we try to ascribe personhood based on some physical assessment of an organism's capacities, we run into difficult questions about what threshold of rational capacities is sufficient for personhood (or freedom), whether those capacities are multiply realizable, and how to account for the moral status of human beings who don't seem to meet certain thresholds of rational agency.<sup>23</sup> We recognize that beings *like us* tend to be subject to and the bearer of moral claims, but there is variety among beings in our class. Not all human beings are demonstrably rational (very young infants, those with very severe cognitive disabilities), and such persons don't neatly fit into a standard Kantian account of the kinds of beings who have moral claims on us.

And though disagreement about when and why a human organism becomes a person may seem like it's ultimately an epistemic problem, if we take seriously Kant's distinction between the theoretical and practical standpoints, the real problem is that the question of how a human organism becomes a person is an ill-formed question. Whether an organism is a person to whom we have obligations isn't fundamentally about her biology. It's about the moral relation she stands in to other persons. The problem isn't an epistemic one, it's that we can't answer a moral or a practical question from within the theoretical standpoint. For that, we need to take the *practical* standpoint on procreation.

## 2.2 The Practical Standpoint on Procreation

Kant explicitly says that a child's innate right against her creators for their care is a right that she has *in* her creation and *as* a person. How, then, can the practical standpoint help us

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<sup>23</sup> Kant, *Lectures on Ethics* (27: 459); *Metaphysics of Morals* (6:443). Not just human beings – animals are left out of the picture (at least as beings *to whom* we can have moral obligations). Though Kant does recognize that our own interactions with animals (keeping them as pets, using them for work) can generate certain duties, like an indirect duty of gratitude.

make sense of that? The first step is to make it clear, as way of ground clearing, that we're not in the business of determining whether the child is in fact a free being, when she acquires freedom, or when she attains the status of a person (in her own right). When we take up the practical standpoint, we don't need to be able to point to a being and say of it, 'this creature is free', because our obligations don't depend (and cannot depend) on our theoretical cognition of other beings' freedom.<sup>24</sup>

Our obligations, both to ourselves and others, start in the will of the acting agent, or the agent for whom the obligations are binding. Obligations bind persons with a rational will, or persons who already have some control over what they do and who can act for reasons or on a judgment about what would be good to do. So long as a person is operating in that capacity, she already has in her own reason the standards by which she must determine herself to act. If she's constrained by other persons, it's not the *theoretical* assessment of their personhood that kicks in her obligations to them, it's that those persons show up as objects in her willing.

To say we can't have duties to a person until that person has certain recognizable physical traits, even until she exists at all, is to smuggle the theoretical point of view into the practical use of reason. To see a problem at all is to assume that the source of a duty is the object to whom it is owed, and so we can't be constrained until that thing appears. The practical import of the concept of 'person', however, is that it shows up in the reasoning of beings who are already capable of having such a concept, or that *persons* employ the concept of 'person' in their reasoning about what to do.<sup>25</sup> The physical object (the human organism) isn't the ground of my duty to her;

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<sup>24</sup> If our obligations depended on a prior theoretical cognition of a being's freedom, we'd never have any obligations at all because such cognition is impossible. Whether Kant's right about the possibility of determining whether a being is free, his moral theory can't consistently require it because it's not possible by the lights of his larger theory of cognition.

<sup>25</sup> Michael Thompson, "What is it to wrong someone? A puzzle about justice". Michael Thompson argues that *both* the wrong-doer and the wronged must be capable of sharing the same bipolar concepts (concept of duties, wronging) for one being to wrong the other (in whatever respect) – like a shared legal system, social practice, etc. Morality writ

my duty to her is grounded in my own conception of her *as* a person, which has as its source the moral law within *me*.

My actions are constrained not by the physical presence of such persons, then, but by my own self-regulation as a person who lives and acts among others. When I walk down the hall, I shouldn't plow into you, not because I have some theoretical cognition of your freedom, but because you come under *my* practical concept of a person, and I see you as an object that isn't to-be-plowed-into. You could, for all I know, turn out to be a Replicant or a Cylon, and though the question of your actual freedom would be unknowable for me, I still act wrongly if I plow into you while *thinking* you are a person.<sup>26</sup> Whether you would be wronged by my plowing may depend on whether you in fact are a person (so there may be an epistemic gap in knowing when I've wronged you or just acted wrongly), but either way, there would still be an identifiable problem on my end.

We shouldn't, then, simply point to a biological process that issues in a human organism to make sense of the *practical* relation between a procreator and her offspring, or to determine the moral claims the offspring has on her procreators and the corresponding duties those procreators have to their offspring. If we look at procreation from the point of view of biological reproduction, procreation is just the combination of some cells. Why would a groups of cells that was formed from one of my cells generate a moral obligation for me to take care of this thing?<sup>27</sup>

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large would require that we non-accidentally share such concepts, and so can, in principle, wrong any creature like us. He thinks Kant's account of reason best explains how we could share such concepts, but only if we also accept the strange metaphysics that lie behind it.

<sup>26</sup> These are androids from *Blade Runner* and *Battlestar Galactica*, respectively. Both the movie and television series challenge viewers to consider whether humans have obligations to these androids (e.g., to not torture or kill them). The humans don't know (and perhaps cannot know) whether the androids are free in Kant's sense, or whether they have the capacity for practical or moral reasoning.

<sup>27</sup> You might think here about Hume Law's. You can't point to some cells and figure out our moral obligations to it, because you can't derive an 'ought' from an 'is'. We need to first know the *moral* concept that applies to that group of cells, if there is one.

If someone else created a child from one of my skin cells (which is now in the realm of possibility), would I thereby be obligated to care for the child, just because that child's genetic origin can be traced back to me?

That I have a demanding obligation to some child *just* in virtue of our genetic connection would indeed seem mysterious if we only viewed procreation from the standpoint of biology. As a human organism, I could be part of the genetic origin story (or efficient causal story) of a new organism, whether or not I had any intentional involvement in its creation. But importantly, there's another story we can tell that isn't about a child's biological or genetic origin, but her practical or moral origin. A created person isn't just a group of cells, and her origins aren't, for practical purposes, some sperm and egg. When humans reproduce, their actions are imputable to them as *deeds*, or as actions that they author (whether that's sex, IVF, cloning, or some future method of assisted reproduction). The product of their actions is *theirs*, not necessarily in terms of legal ownership, but in moral ownership. They are morally responsible for their offspring because their offspring's existence is the result of *their* deeds, not because they are the efficient biological cause or genetic origins of some human being. From the practical standpoint, the moral claim of one's offspring doesn't depend on the particular genetic features that make her uniquely her, but that her existence is the object or end of some other persons' imputable actions.

This point is not unique to Kant. We already have the distinction between the theoretical and practical standpoints built into our actual practices. When a child asks her parents where she came from, her parents can tell two different kinds of stories. The parents might tell the child a story about two persons who love each other, whose love led to her creation. They may, for the time being, leave the causal mechanisms involved unexplained, or tell a causal story that stands in for the biological story the child might not be ready for (a stork brought you to us). If they don't tell the biological story, they haven't failed to answer the child's question. They have still



told her the story of her creation, because that story isn't just about, or even primarily about, the combination of sperm and egg cells. If the parents had only told her the biological story (the journey of two cells), then the child's creation story wouldn't be complete. The birds and bees talk isn't just about biology and human anatomy, it's also about the practical relation between persons. An essential component to a child's creation is that she is the product of creators, persons whose creation of the child is imputable to them as moral agents.

The moral landscape of procreation changes when we see it not simply as an evolutionary drive or biological imperative, but as an activity that can be self-consciously undertaken by persons. What makes a child, potentially even a future child, the bearer of a special moral claim against her parents before she has demonstrable rational capacities isn't the mere fact that she's a member of the human species, but that she's the product their deeds, deeds "by which [her procreators] have brought a person into the world."<sup>28</sup> It matters, practically, that we don't get babies from storks or people-seeds implanting in our carpets.<sup>29</sup> Persons create persons, and it's the deeds of procreators that issues in a morally-defined relation between them and their offspring.

### §3 Procreation as Person-Creation

In practical reason, we understand actions in terms of what the acting agent is doing, or what her end or purpose is, because an action can't be understood as an event in the world that's unconnected to an author.<sup>30</sup> I'm not merely moving my fingers, I'm typing, or better, I'm writing

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<sup>28</sup> Kant, *Metaphysics of Morals*, 64 (6:281).

<sup>29</sup> Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs* 1, no. 1 (1971): 59. Thomson's thought experiment about people-seeds implanting in one's carpet reveals the limits of relying on analogies to understand procreation. Procreation just isn't analogous to anything else we do, so we cannot rely on analogies to determine what obligations constrain how we go about it.

<sup>30</sup> G.E.M. Anscombe, *Intention* (Oxford: Basil Blackwell, 1957). See Anscombe's influential discussion of intentions and action descriptions.

a paper. You're not just looking at some shapes on a page or screen, you're reading this paper. Whatever norms apply to our respective activities, they apply in virtue of what we're doing, practically understood, not in merely in virtue of the movements of our bodies as physical objects. When we're trying to understand the moral stakes of procreation, we can't simply point to the physical mechanisms of reproduction, we need to ask: what would it take for person-creation to go well if we consider it, not as a biological imperative of human animals, but as an activity undertaken by persons with a rational will? That is, what are the relevant norms or standards of procreation, given that it's an activity undertaken *by* persons that has as its object the production of *another* person?

From the practical standpoint, a person's creation is an event that's brought about in a distinct way. Persons don't merely cause the existence of new persons; their procreating is imputable to them as their action. It's an activity we can undertake on purpose. A created person, then, isn't just the effect of her procreators' actions, she is their *productive end*, or the aim of their actions (perhaps even if not ostensibly so).<sup>31</sup> The future child doesn't need to physically exist to bear on how her procreators' come to act, because once procreators have a person's creation as their productive end, that person's existence must *already* serve as a regulative end over her creation. That is, once persons are engaged in the activity of person-creation, they are already subject to whatever standards capture what it takes to successfully create a person.

Whether the object I take as my productive end should have the standing of a person (as a regulative end or a constraint) in my willing is a *practical* issue, not a theoretical one. Suppose we

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<sup>31</sup> The paradigm case of procreation is the intentional production of a person. But of course, other intentional actions result in a person, where her creation is foreseeable even if not planned. There is further question to ask about what obligations we have to persons we create via intentional actions but not on purpose. What distinguishes the practical standpoint, however, is that, unlike other genetic or causal accounts of parental obligations, a person doesn't seem to have any (special) obligation to a person created where she is not implicated by her own imputable action. A child that results from rape, or the misuse of someone's sperm or eggs, will not have special claim on her biological or genetic parent if their connection is *just* biological.

didn't take children, actual or prospective, to have the standing of beings whose value regulates their creation and our subsequent treatment of them. If we treated children merely as *things* up until they showed signs of personhood, then we would risk undermining their development in ways that hinder (or preclude) their becoming beings who can set and pursue ends of their own.<sup>32</sup> We would, in effect, undermine our own person-creation unless we took ourselves to be creating persons, where the nature of what we're creating both guides and constrains how we go about it.<sup>33</sup> You needn't create a person, but you cannot both create a person *and* fail to parent her, or to take responsibility for managing her life up until she can manage it for herself.

We can see the moral pieces of the puzzle, not in spite of the metaphysics of procreation, but as the practical consequence of procreation understood from the practical standpoint. It wasn't hard to get: if my *deed* puts this person into a state of dependence, a state where she cannot manage her own life, then she has a claim against me, and I have a duty to her, to care for her until she can manage her own life. If you're creating a person, you have to take seriously the fact that you're creating a *person*, where the moral value of the being to-be-created casts a kind of moral shadow backward on the very process by which she's created.

### 3.1 The Right to a Child Akin to a Thing

To get a better sense of *what* procreators owe their offspring, I'm going to turn now to Kant's political theory. That procreators have obligations to the persons they create isn't controversial from the ordinary or common sense view of procreation, where biological parents

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<sup>32</sup> Christine Korsgaard, "Creating the Kingdom of Ends: Reciprocity and Responsibility in Personal Relations," *Philosophical Perspectives* 6, *Ethics* (1992): 305–32. Korsgaard makes a similar point about the different perspectives we can take on the same person. We can see her as a determined product of her upbringing, or as a free person. Reciprocity requires that we take the latter point of view.

<sup>33</sup> Put another way: the very end you adopt contains a principle for the means necessary to bring it about. Willing the end of person-creation includes constraints that reflect what it takes to create a person, which include an obligation to care for the person until the point at which she can manage her own life.

are first in line to parent their offspring (either as their right or duty). Kant's interesting move is his further claim that procreators have the authority to *author* their offspring, analogous to the authority (and responsibility) they have to author their own actions well.<sup>34</sup> This right or authority is grounded in the prior duty they incur by procreating, a duty to stand as the acting-agent for the child until she is able to act for herself.

We should be wary of applying a harm-based framework to procreation in part because the kind of duties that procreators and parents have to their children is more like the duties a person has to herself than the duties she typically has to other persons. Procreative choices should be made *as if* one is making the choice for oneself. Procreators aren't thereby free to do whatever they like. They instead take on responsibility for the development of their offspring that mirrors the responsibility a person has to take care of herself.

In the *Metaphysics of Morals*, Kant's discussion of the child's claim against her parents shows up in his elucidation of a peculiar kind of right, the right to a person akin to a thing. On Kant's account, parents have a right to control their children, to direct their upbringing and have them brought back to their care, because parents cannot discharge their duties to their offspring without it. Parenting or child-rearing requires having a unique kind of practical authority over the child that, when all goes well, eventually shifts to the grown child. That authority makes the creator-created relation different from other ways we relate to one another: the creator has a (coercively enforceable) *right* to the child akin to a thing.

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<sup>34</sup> Just as Kant uses 'deed' to demarcate actions that are imputable to free beings or persons, I will use 'author' to denote the relation of responsibility that persons have *over* their own actions and, I will argue, over their offspring. Notice the etymological connection here between authority and authorship: Latin 'auctor' means the originator or promoter. Authority here needn't be seen as controlling, but rather, something like how an author *creates*. I think it's useful to think of procreative authority as a kind of person-authorship, where authority isn't a license to do as one pleases, but a responsibility to author or create *well*.

The right to a person akin to a thing is neither a right *to* a thing (a property right, or control over an object) nor a right *against* a person (a contract right, to coerce a person to some deed). It is a right that allows a person to, under the law, have another person treated *as if* that person were one's property. Besides being creepy on its face, the possibility that someone could hold a right to another person *as if* they were a thing seems to contradict the underlying moral foundation of Kant's political doctrine. The state's moral ground is our moral equality and freedom as independent persons. The state is meant to provide the moral backdrop that enables individuals to treat one another as *ends in themselves*, or as moral equals who are capable of and free to determine their own lives. In such a moral framework, what place is there for a property-like right to another person? What possible moral justification could it have?

Kant locates three instances of this right: the right spouses have to one another in marriage, the right parents have to control (or to rear) their children, and the right that masters have over their servants. In what follows, I'm going to focus on the former two cases. My aim isn't to defend Kant's particular conception of the right to a person akin to a thing, especially the content of that right vis-à-vis spouses, parents and children. Rather, I want to draw out an insight behind the right: we can use our social and political institutions to minimize moral risk in our personal interactions, including our procreative practices, by codifying a set of rights and responsibilities levied toward that end. What's more, those rights and responsibilities reflect a special kind of obligation we can have to another person: to treat her *as if* her needs and interests are my own. Parents aren't simply permitted to be partial to their children, to care more about their needs and interests than they do other for other persons. Parents are required to count their child's (even their future child's) needs and interests *as* their own.

The right to a person akin to a thing first appears in Kant's discussion of sex and marriage. A person's body occupies a strange space in both Kant's moral and political theory.

From the point of view of morality, a person and her body are *one* object, or what Kant calls a practical unity. That is, a person doesn't *have* a body, a person's body *is* her. Her body, then, isn't hers to do *whatever* she wants with (for instance, one shouldn't maim it, like castrating oneself to make a livelihood as a singer, or sell one's teeth).<sup>35</sup> Just as we all must respect *other* persons, so too must we respect ourselves, including our own bodies (hence his prohibition against suicide). The basic idea is that my body is the seat of my agency, and as such, it is both *mine* to do with what I will, and *my responsibility* to do with what I must.

Because a person and her body are practically intertwined, sex, conceived of as the *use* of another person's body for one's own pleasure, constitutes the use of her *person*. Our sexual desire for a person risks objectifying her: we come to see the other person as a thing, something which has value only for our own sexual gratification. Sex as merely the use of another's body for one's pleasure counts as using that person *merely* as a means. Unaccompanied by some further aim or end, sex is a violation of another person's dignity.

We run into trouble, though, because we're not just persons, we're biological organisms who are, for better or worse, sexual creatures. How, then, do we navigate our sexuality in light of our personhood? Though Kant was generally not opposed to our having very stringent moral obligations, he didn't think that sex was impermissible full stop. It's morally *risky*, but not morally prohibited. The solution to our sexual predicament as persons isn't that we have to stop having sex; the solution is that we should build into our social and political structures a kind of moral *scaffolding* for sexuality. That is, we can (and should) institutionalize a set of rights and responsibilities that help us treat our sexual partners as equals. That set of rights and responsibilities is, for Kant, the marriage contract, or the *right to one's spouse akin to a thing*.

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<sup>35</sup> 6:423.

Kant thinks sex requires a marriage contract, because only under the condition of marriage can a person have a *right* to one's partner akin to a thing, or a right to use her body for one's sexual pleasure, and for her to, in turn, have a right to one's body. Their use of one another's bodies is reciprocal, and because it's reciprocal, neither is subordinated to the other and their equal value as persons is upheld.<sup>36</sup> In having mutual rights to one another, the spouses also have a mutual responsibility to care for the other *as if* their spouse's needs and interests are their own. After all, if my spouse's body is *mine*, in a practical sense, then it is as much *my responsibility* as my own body is. I've gained an obligation to care for my spouse's body as much as I've gained a legal permission to make use of it. Spouses both regain their humanity because they operate as a kind of practical unity, each having practical authority over, and responsibility for, both bodies, or both persons, together.<sup>37</sup>

And though you can think Kant missed the mark when it comes to the specification of the marriage contract, or right to a one's *spouse* akin to a thing, we can still take away an insight into the space where individual morality and social and political morality meet. Though the source of our obligations isn't in our biology, the fact that we are *embodied* persons, and that with our embodiment comes certain risks, shapes the content of our obligations and how we should arrange our social and political institutions.

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<sup>36</sup> Despite his otherwise objectionable views about the inferiority of women when it comes to intelligence and leadership, both in a marriage and as citizens, he maintains a principled commitment to their *moral* equality. A woman's moral equality to her spouse serves as the impetus for requiring the right in the first place. Marriage is as much for the security of the woman, because it allows her to legally coerce her absentee husband's return. Kant also notes that the use of concubines and prostitutes, as well as morganatic marriages, upset the equality between partners that's required for the preservation of their humanity.

<sup>37</sup> Herman, Barbara, "Could it be worth thinking about Kant on Sex and Marriage?". Barbara Herman demystifies the point this way. The institution of marriage is supposed to guarantee sexual partners *equality under the law*. In doing so, the state helps define our moral regard for one another in a way that love alone cannot do. By taking on the legal obligations and responsibilities of marriage, partners maintain their regard for each other as persons, not merely as things or objects, because they are legally obligated to *care* for one another as persons.

Sex, among other things, is something we're going to do as human animals. It's not just that we can't help it – it also really matters to us. At the same time, sex is morally risky, and even well-meaning partners can risk treating each other badly.<sup>38</sup> The good news is that we're not just individuals who have to navigate the complicated terrain of sexuality on our own. We are a community of persons, and we can organize ourselves collectively in ways that help minimize the moral risk of activities we care about, including sex. We might, for instance, establish laws with respect to sexual assault and harassment. These laws don't just regulate when *not* to have sex, but they shape the landscape within which we can have sex that's less morally risky. They help us define our sexual regard for one another in ways that account for each other's status as ends in themselves.<sup>39</sup>

Even if we reject the details of his account of marriage, we can still take on board Kant's deeper point: we should design our social and political institutions in order to support our treating each other well. Our moral responsibility doesn't just show up at the level of individual choice, because individual choice happens within a larger social and political context. That same move can be applied to procreation. Procreation, like sex, is morally risky. But it's also really important to many of us. So, we should think about how our institutions can be shaped in order to provide a kind of moral scaffolding for procreation.

### 3.2 The Moral Risk of Procreation

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<sup>38</sup> An important lesson of the #metoo movement is that sexual violations are not always maliciously perpetrated. Someone can think they're doing nothing wrong and still *get it wrong*. Sex is one of those activities that, because it involves the use of another person's body, has the potential to go *very* wrong.

<sup>39</sup> Cite Herman "Is it worth thinking..." again, pg # for moral regard.



Procreation is morally risky because when a child is born, she is vulnerable in a special way. At birth, a child has not yet “mastered the use of [her] members or of her understanding.”<sup>40</sup> She is not yet able to act for herself. She doesn’t yet have her own point of view, and she can’t be held responsible for her actions. Yet, children can *become* persons who can act for themselves and who can be held responsible for their actions. They just can’t do it on their own. They need our help.

What’s more, a child doesn’t get into this predicament on her own. Other persons put her there *by* creating her. Parents have duties to their children once they’re born because creating a person isn’t finished at her birth. You cannot, by your own initiative and without her consent, put a person into the dependent condition of childhood *and* be indifferent to it. To be indifferent to the condition of one’s offspring is to make a mistake about what one has done. You haven’t made a table, or a manuscript, or a piece of art. You, through your imputable action, created a person, and what’s more, you’ve brought a person into the world who is not yet in a position to manage herself. Insofar as you’ve created a person, you’re not done until the being you’ve created is a person in the fullest sense – until she becomes her own master (of her body and her mind).<sup>41</sup> You are responsible for seeing your action through, which is to say, you’re responsible for caring for the child you create up until she can operate in the world as her own person.<sup>42</sup>

Herein lies the justification for codifying a scheme of parental rights: in order to fulfill their duties as procreators, parents must have the legal authority to control their children, to

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<sup>40</sup> Kant, *Metaphysics of Morals*, 65 (6:281); Tamar Schapiro, “What is a child?,” *Ethics* 109, no. 4 (1999): 729. Tamar Schapiro puts it this way, “[T]he condition of childhood is one in which the agent is not yet in a position to speak in her own voice because there is no voice which counts as hers.” Schapiro argues that Kant provides an ideal of mature agency against which children count as undeveloped agents, or an important deviation from the ideal.

<sup>41</sup> *Ibid.*, 65 (6:282).

<sup>42</sup> Christine Korsgaard, “Two Arguments Against Lying,” *Argumentation* 2, no.1 (1988): 27–49. There may not be some bright line that designates when the child’s maturation attains. Where we draw the line is a practical question about what would be best to do, not a theoretical question about when someone becomes a fully free person.

direct their upbringing and have them brought back to their care, because parents cannot discharge their duties to their offspring without it. Parenting or child-rearing requires having a unique kind of practical authority over the child that, when all goes well, eventually shifts to the grown child. That authority makes the creator-created relation different from other ways we relate to one another: the creator has a (coercively enforceable) *right* to the child akin to a thing.

Kant describes the right to a person akin to a thing as “the right of a human being to have a *person* other than himself as *his own*,” where one’s own is understood “in the sense of usufruct..., to make direct use of a person as of a thing, as a means to my end, but still without infringing upon his personality.”<sup>43</sup> And unlike spouses, the right parents have to their children is not reciprocally held by their children. Only parents determine the course of the family. Parents and children, then, are not equals, and this inequality raises an important question: how could equally valuable persons have a relationship characterized by inequality without thereby violating the humanity of the child?

The answer, at least for Kant, is that the parent-child relation serves an important purpose which makes the non-reciprocal use of a child ‘akin to a thing’ legitimate. Kant goes on to add, “but [the parents’] end, the condition under which such use is legitimate, must be morally necessary.”<sup>44</sup> This morally necessary end, at least in the case of parents and their children, is the maintenance of the child until she reaches maturity or independence from her parents, or until she is able to act as a person who can set ends for herself.<sup>45</sup> Procreation, then, is an act *whereby*

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<sup>43</sup> Kant, *Metaphysics of Morals*, 126–27 (6:359). This was a new kind of right – neither a right to a thing nor a right against a person (to coerce her to some deed). Of the ‘right to a person akin to a thing’, he says, eloquently “We must now examine whether this concept, this ‘new phenomenon in the juristic sky,’ is a *Stella mirabilis* (a phenomenon never seen before, growing into a star of the first magnitude but gradually disappearing again, perhaps to return at some time) or merely a *shooting star*.”

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*, 127 (6:360). “Similarly, a man and a woman cannot beget a child as their joint *work* (*res artificialis*) and without both of them incurring an obligation toward the child and toward each other to maintain it.”

persons make themselves the author, or the stand-in agents, of another. Procreators' authority to control the child as *their own*, or as if their child is part of themselves (as their own bodies are), depends on the necessity of their end: not to create a person to begin with, but to not fail to, when creating a person, *also* take on responsibility for that child's care until she reaches maturity. Persons cannot, by their deeds, both create a new person and fail to incur responsibility for the extended creation of that person over time, authoring the child's life until the child can author her life for herself.

The language Kant uses here – treating the child as one's own – suggests that the procreators' duties to the child they create is more like the duties they have to themselves than the duties they have to others. Though a person has authority over her own body, her body is not her property to do with whatever she pleases. She still has duties to herself with respect to how she treats her body. Procreators, likewise, are on the hook for their child's preservation (like their own self-preservation), the development of child's physical and mental talents (like their own talents), and even the child's moral education (like their own perfection). Our duties to others tend toward: don't interfere with their external freedom, and, as a wide or imperfect duty, take their ends as one's own (or to take their happiness as one's end). That's the framework that drives both Parfit's non-identity problem and the antinatalists: if what we owe others is to avoid harming them and to sometimes help them, then we should avoid harming our offspring, and if we can, we should benefit them. But notice, that's the opposite of how we treat children – we massively intervene in their lives by controlling their bodies, their whereabouts, their access to

information, etc. And especially early on, but even as they mature, we don't take *their* ends as ours, we set ends for them.<sup>46</sup>

Kant's view isn't far from a natural way many parents think of their children. Their children are not (yet) fully separate individuals. As with spouses, the relation between them is a practical unity, or what we might call a unity for practical purposes. This unity is especially salient between the gestational mother and her offspring during pregnancy, but even after the procreators' child is born, caring for their child is like caring for themselves in its priority, importance, and level of invasiveness. It's not weird to choose for myself what I eat, when I go to bed, etc., though it'd be strange to have that kind of control over another person, even over a child who isn't my own. So why is it not strange to have this authority over one's child? Because, for a time, the child I create is an extension of me – she is part of my agential purview – in a way that other people are not and cannot be. I cannot have this control even over other people's children, who are as needy as (or more needy than) my own, because I don't stand in the same relation to them that makes them part of me (or part of my agential domain).<sup>47</sup>

Parenting is no small undertaking. Children aren't like pets or friends – they're not even like any other family relation. To parent a child is to, for a time, include that child in one's own person, to author both your lives in tandem. Parents' interests aren't subordinated to their children's, because their interests aren't fully separable. Their child's interests *are* their interests, so what's required for the child's survival, care, and education is in the parents' own interest to

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<sup>46</sup> We can't set ends for other adult persons, because no one can will an end *for* someone else. Yet, insofar as parents are the stand-in agents for their children, they can set ends for them, because their own will *is* the child's will, until the child can will for herself.

<sup>47</sup> The parental relationship is understood first in terms of what procreators owe their offspring. Adoptive parents may step into that role and take on those obligations, but we understand their scope or nature by what duties procreators incur by procreating.

provide. Far from granting parents too much license over their children, parents instead incur a great responsibility: to care for their child as if *they* are that child.<sup>48</sup>

A child's creation and upbringing is something like the practical analog of physical gestation. When a woman is pregnant, she and the fetus are, in one sense, one thing, but all the while, the fetus grows into a being that is physically viable on its own. The procreators' offspring requires a similar kind of practical (or moral) gestation: to be, in one sense, one unit with her procreators, but all the while to develop into a being who will be morally or practically viable on her own (able to act such that her actions are *hers*).<sup>49</sup> From the practical standpoint, the end of both procreating and parenting is the moral or practical viability of one's child, not simply conferring benefits or avoiding harm. We can evaluate a procreator's choices, then, by asking whether the choice is conducive to and aimed at the future child's practical viability.

We are now in a position to explain why the relation between procreators and their offspring is important, not in terms of their biological connection, but because a person never ceases to be the product of some other persons' *deeds*, regardless of who actually raises her. The relation of creator-created never changes or transfers. Even if a creator transfers legal responsibility to someone else, her moral responsibility for the child is not fully transferred. There may be cases where the procreator can only ensure that the child is adequately cared for by relinquishing the child to the care of another, but there will always be something *defective* about these cases.<sup>50</sup> Such cases don't go as they should, not because adoptive parents aren't fantastic

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<sup>48</sup> Paternalism to children isn't a problem on this view of children so long as it's coming *from the child's parents*. In that case, the parents are the acting-agents for the child. They don't overrule or usurp the child's practical authority; they are the custodians of that practical authority until the child is capable of taking over for herself.

<sup>49</sup> I am indebted to Jorah Dannenberg for the analogy.

<sup>50</sup> Velleman, "Family History". The moral ownership procreators have over the persons their own actions help create would explain why, on this view, anonymous sperm donation violates the rights of the children who are created as a result. The problem isn't just that children want to know themselves better, as Velleman argues. Rather, the problem is that the sperm donors, by their own deeds, helped create those children. Those children, plausibly, have some moral claims against them.

(and doing something great for the child), but because procreators can't fully alienate their responsibility for the person they create as a result of their own deeds.<sup>51</sup>

### 3.3 Procreative Choices

For Kant, parents held this authority-for-now position *from procreation* to the child's maturation. Admittedly, if you're procreating in the 18<sup>th</sup> century, your procreative options or choices were limited, but the same isn't true today. Reproductive technology has the means and choices available to potential procreators. We can do more than simply create a person: we can control when to have a child (preventing unwanted pregnancies and extending fertility), we can use or be genetic donors, we can have embryos tested for genetic traits before selecting which ones transfer to a woman's uterus, and we can use prenatal testing and selective abortion to avoid creating persons with undesired traits. However procreation is accomplished, it's still an imputable act of creation that puts procreators (and other agents)<sup>52</sup> in a special moral relation to their offspring. That relation is, in the act itself, already *between* persons – not as a matter of biological fact, but as a practical description of the relation between the created and her creator(s).

There's a question we can still ask about whether anyone *should* have the authority to put themselves into the creator-created relationship with another person.<sup>53</sup> But, if we take for granted

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<sup>51</sup> I. Glenn Cohen, "Artificial Wombs and Abortion Rights," *The Hastings Center Report*. Some opponents of abortion claim that artificial wombs would solve the so-called problem of abortion: women could choose not to carry a fetus to term, but the fetus could still live. The solution is an uneasy one, however, because the problem isn't just about the fetus's life. Artificial wombs keep the fetus alive, but they wouldn't dissolve the moral relation between biological procreators and their offspring. Cohen notes that the abortion controversy has centered on a woman's "right to not be a *gestational* parent, not a right not to be a *legal* or *genetic* parent." A woman may also have a right to not become a *moral* parent.

<sup>52</sup> Though I won't explore the topic here, this account raises further questions about the extent to which persons who assist in the procreative process are responsible for (and to) the persons they help create, from donors to medical professionals.

<sup>53</sup> We might recast the anti-natalist challenge, not as skeptical argument against the possibility of permissible procreation, but as a helpful challenge to how we think about the moral challenges endemic to procreating.

that people *will* procreate, as I think Kant does, then the morally pressing issue is what conditions must be met for them to do it *well*. What would count as getting it right or wrong, as authoring their offspring well or badly?<sup>54</sup>

Kant's moral theory provides the groundwork for working out the content of procreators' obligations to their offspring. I have argued that, from within the practical standpoint, the end of procreative choices should be the future child's eventual moral or practical viability. And while I haven't given an account of the specific content of procreators' obligations to their offspring, we are now in a position to see what issues we *won't* need to settle before we can do so. First, we don't need to vindicate the possibility that creating a person can harm her in order to explain how a person could be wronged by her creation. Whether a created person has been wronged by her creation depends on whether her procreators have authored her well, which in turn depends on how they came to act, not whether their offspring has been made better or worse off by her creation. We should ask, then, whether procreators take seriously that their actions will issue in the creation of a person, and importantly, whether they treat their child's existence (and eventual moral viability) as a regulative end over their creation of her. At the very least, are they prepared (and willing) to *care* for the person they create?<sup>55</sup>

That procreating is the *beginning* of the parent-child relation, in turn, provides additional moral context for the appropriate use of reproductive technology. For instance, whether it's permissible for procreators to use reproductive selection to determine the genetic traits of their children can't be settled just by appealing to whether it's good or bad for persons to have the selected trait. There needn't be anything inherently bad about being female or deaf for it to be

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<sup>54</sup> We can give a kind of transcendental argument for procreative duties: taking for granted that we *may* procreate, or even just that we *will* procreate, what else must we do in order to not also wrong the persons we create?

<sup>55</sup> I make a related argument in "Wronging Future Children." We can explain how it's possible for procreators to wrong their future children by appealing to their role obligations as prospective parents.

wrong for procreators to select for those traits in their offspring. The authority to author one's offspring is grounded by a morally necessary end, the eventual agential maturity or independence of one's offspring. If procreators are selecting a trait because they simply prefer it, or because they think persons who have or lack some trait are somehow inferior, then their authorship isn't guided by the very end that grounds it. Their authorship can be defective in virtue of *why* they're selecting the trait, even if their offspring isn't worse off because of it.

What's more, procreators' obligations to their offspring don't depend on the *personhood* status that their offspring has at the various stages of her development. How morality constrains what we do to or with embryos, for example, doesn't depend on the embryo's having the capacities of a person who can set and pursue ends. What matters is what procreators (or other actors) are up to. Are procreators selecting an embryo in order to create a person? Are procreators donating an embryo to other procreators? Are researchers studying the embryo for medical purposes? The constraints that bear on how we treat embryos when we (or others) are trying to create persons will differ from whatever constraints bear on how researchers should treat embryos that will soon be destroyed, because the persons in each case are engaged in different activities. Whatever the answers are to these questions, they are all questions about what some already-existing persons are *doing*, not merely what some organism *is*.

We can make a similar point about what attitudes are appropriate to have about early stages fetuses.<sup>56</sup> If a very young fetus dies, as many naturally do, it may not seem morally significant when the fetus is viewed merely as an early stage organism (i.e., when it is viewed from the theoretical standpoint). However, from the practical standpoint, though the young fetus was

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<sup>56</sup> As noted earlier, because we can't theoretically determine whether a creature is *free*, whatever decision we make about when a human organism counts as a person *independent* of the actions of others will reflect our practical need to figure out what we may do, not our assessment that the human organisms attain freedom at that stage of development.



not the beginning of a child who actually came to exist, for persons who were trying to create a child, that fetus was the object of their actions, if not their love. The death of the fetus may be appropriately mourned by its procreators, not because *it* was recognizably a person, but because the fetus was, for those procreators, the child they were creating.<sup>57</sup> The fetus matters, on this account, simply because it mattered *to them*.

Kant's framework enables us to preserve the intuition that it can matter, immensely, how we treat early stage human organisms. Their import comes from what we're doing, not just what they are. You can think, then, that procreators aren't acting strangely when they choose to put unused embryos up for adoption rather than disposing of them, or when they choose to dispose of them rather than donate them to research, or when they go to court to prevent a former partner from using an embryo to create a child with another person. How procreators conceive of their embryos, or what they're trying to do with them, matters for the appropriateness of how they treat them.<sup>58</sup>

## Conclusion

Applying Kant's moral framework to procreation helps us see why the Midwestern parents weren't making a mistake. Even if it seems strange or extreme to pray for or write to your future child, there's still a meaningful sense in which the decision to procreate is a decision *about*

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<sup>57</sup> Elizabeth Harman, "Creation Ethics: The Moral Status of Early Fetuses and the Ethics of Abortion," *Philosophy & Public Affairs* 28, no.4 (1999): 316. I agree with the spirit of Harman's view, that there may not be some objective fact about the moral status of *all* early fetuses. However, I disagree that procreators would only mourn its death because they held a false belief that the fetus would become an actual child in the future. They cared about their future child *now*, and it's appropriate for them to mourn the loss of the person they were creating.

<sup>58</sup> Elizabeth Harman, "Sacred Mountains and Beloved Fetuses: Can Loving or Worshipping Something Give It Moral Status?" *Philosophical Studies* 133, no. 1 (2007): 55–81. I agree with Harman that the love strangers may have for my fetus does not endow the fetus with a special status that bears on how I may treat it (though it may constrain how they may treat it). However, my own actions, or my own attitudes toward it, can endow the fetus with a moral status that constrains what's appropriate for me to do. The constraint isn't coming from the fetus, but from my own will.

someone in particular. If my imputable action is one of person-creation, then the very person I have as the object of my action is, in virtue of the role she has in my practical reason, a regulative end over the process by which I create her. That is, the decision to have a child already puts me in a moral relation to my future child. That future children may not have had a determinate biological or genetic identity, but she does have a determinate moral identity as my productive end. It makes sense on this view, then, that the Midwesterners might have hopes and aspirations for their future children, because just by having their future children in their thoughts, those children are already morally salient over how those procreators come to create them.

The account of procreation that I've offered here is not a response to Parfit's non-identity problem; it's an argument that if we start from within Kant's moral framework, the non-identity problem just isn't a morally *relevant* problem, at least not for the obligations that bear on prospective procreators. If we look at procreation as an imputable action of persons that puts them in a special practical relation to their offspring, then the moral relevance of their future child's indeterminate genetic identity falls away. We can account for the special relation between procreators and their offspring, including the value prospective procreators attach to their future children, just by appealing to the way in which a future person can and should show up as an object of her procreators' willing. Procreators shouldn't both create a person and fail to regulate their actions in light of what it takes to create a person *well*. That one's future child does not already exist with some determinate genetic identity does not mean that she cannot (or should not) play an important regulative role over the very process by which she is created. From the practical standpoint, insofar as persons are creating a person, the person to-be-created is already their responsibility, whoever she turns out to be.