

Parental Obligation, Adoption and Abortion: Critique of Porter and Nozickian Alternative

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1 Introduction

Biological parents, gamete donors and IVF doctors all play a key role in bringing into existence the child who is the result of their genetic material and medical dexterity. The fact that biological parents who have given their children up for adoption, gamete donors and IVF doctors relevantly contribute to the causal chain that results in a child means that they feature very prominently in causal accounts of parental obligation. Indeed, they do so to such an extent that a standard criticism of causal accounts is that they overstate the parental obligations in these cases. Lindsey Porter's bifurcated causal account of parental obligation, a recent and interesting addition to the literature on parental obligation, promises to rectify this. Moreover, Porter's theory of parental obligation has important consequences for the debate on abortion, since, according to her, it turns out that "adoption is not a genuine alternative to abortion ... even setting aside the physicality of pregnancy" (p. 63),¹ because biological parents who have given their children up for adoption might someday be required to fulfill substantial parental obligations. I believe that the kind of problem case that Porter offers to illustrate and back up her thesis on adoption and parental obligation, one in which the adoptive parents suffer an unforeseen misfortune (p. 72), does call attention to a real concern that must be seriously considered. Moreover, I am not insensitive to the advantages that the bifurcated causal account offers for dealing with such cases. Nevertheless, I think that Porter's bifurcated causal account runs into very serious trouble when dealing with gamete donors, IVF doctors and biological parents who give their children up for adoption:

¹ Unless otherwise stated, references are to Lindsey Porter, "Adoption is Not Abortion-Lite," *Journal of Applied Philosophy*, Vol. 29, No. 1, 2012.

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in all three cases it places excessive demands on them regarding their obligations to the children they have contributed to bringing into existence.² In this article, I will argue that we can effectively address the worries stemming from cases such as the one used by Porter to illustrate her concerns on adoption and the responsibility of the biological parents, while at the same time avoiding the problem that I have identified above. In order to achieve this, my constructive proposal consists in adapting for our present purposes the closest continuer schema as developed by Robert Nozick.³ Devoid of the philosophical substantive content for which it was originally designed, and deployed to address our concerns on parental responsibility, the closest continuer schema will preserve Porter's suggestion regarding the parental obligation of biological parents in the kind of problematic adoption cases she has in mind, while avoiding placing unwarranted demands on biological parents, gamete donors and IVF doctors. In doing so, Porter's contention concerning the parental responsibility of biological parents who give their children up for adoption will become weaker and, in my view, more sensibly qualified. Whereas it is true that in some cases we might underestimate the responsibility of biological parents towards their children in cases of adoption, it is wrong to maintain as a general principle that "makers—that is, 'birth parents' and other causers—do not and cannot cease to be obliged to their birth children, even when adoption takes place" (p. 76).

Finally, in line with the explicit motivation of Porter's original contribution (pp. 63–64), this paper is neither a defense nor a criticism of abortion, but simply seeks to further clarify matters concerning parental responsibility and adoption, which do play a role in the debate on abortion.

2 Porter's Bifurcated Causal Account of Parental Obligation

For the purposes of this article, I grant Porter that her bifurcated causal account of parental obligation is the best option on offer and will not rehash the arguments in favor and against the different contenders in the debate on parental responsibility. I will also follow Porter in putting the emphasis on parental obligations, rather than parental rights (p. 64); given the nature of the problem cases that concern us here, the emphasis on obligation seems eminently right.⁴

² The nature of the causal role of gamete doctors, IVF doctors and biological parents who give their children up for adoption will be discussed in Sect. 2.

³ Robert Nozick, "Personal Identity through Time," in his *Philosophical Explanations* (Cambridge, Mass.: Harvard University Press, 1981), pp. 29–70. Nozick (*ibid.*, p. 655 n. 5) acknowledges a precursor to his closest continuer schema in Sydney Shoemaker, "Persons and Their Pasts," *American Philosophical Quarterly*, Vol. 7, No. 4, 1970, p. 278 n. 18; and "Wiggins on Identity," *Philosophical Review*, Vol. 79, No. 4, 1970, p. 542.

⁴ Neither Porter's article nor mine deal with cases where the children are either mature enough to assert an interest of their own concerning who will fulfill the parental obligations owed to them or, alternatively, have developed such an interest, even if they are not in a position to articulate it. To do so would be beyond the scope of both our papers, but this is certainly a complication that will arise in many practical cases. I am grateful to an anonymous referee for drawing my attention to this point.

2.1 Causal Accounts: Two Problems

In keeping with Porter's discussion of parental obligations, I will consider parental obligations as role obligations, that is, the obligations ascribed to the role of parent;⁵ parental obligations (and rights) stem from occupying such a role (p. 64). Once this has been established, one can argue that bringing about a child's existence is the right criterion for identifying who fills the role of parent and one can justify the parent's obligation towards the child accordingly: a child's vulnerability and susceptibility to harm are the result of her existence and, therefore, the right basis for determining parental obligations (p. 66).

There are two important criticisms of causal accounts that are at the heart of the motivation for Porter's bifurcated causal account.⁶ Causal accounts of parental obligation appear incapable of dealing with the following two problems:

First, adoptive parents do not cause their children to exist, yet still seem to be parents with parental obligations. Second, ... what about the doctor who provides IVF treatment? She seems to have caused a person to exist; is she the IVF baby's parent? This seems wrong. (p. 66)

The problem concerning adoptive parents is obvious enough and will only be addressed when developing the bifurcated causal account. However, the problem of excessive inclusivity is not limited to IVF doctors, but extends to gamete donors and, perhaps, to other contributors to the causal chain that brings about the existence of the child (for instance, matchmakers). Here Porter's strategy is two-fold: to get the theory of causation right and then to develop her bifurcated causal account of parental responsibility (pp. 68–71).⁷

2.2 INUS Causation

Porter tentatively advocates J. L. Mackie's INUS causation (Insufficient Necessary link in an Unnecessary Sufficient causal chain) as the right theory of causation to be used in causal accounts of parental responsibility.⁸ The key idea is this:

⁵ In this essay, I will follow Porter in not distinguishing between the role of mother and that of father, but simply treating them as gendered ways of referring to the role of parent (p. 76 n. 4).

⁶ I will use the term "causal accounts" to refer to causal accounts generally, with "bifurcated" always used to qualify Porter's own causal account version. For the purposes of this article, I do not need to distinguish among the different options on offer under the general notion of causal account other than Porter's.

⁷ It must be acknowledged that there are defenders of causal accounts who clearly think that such accounts will contravene established views and practices, and that this is justified; see, for instance, James Lindemann Nelson, "Parental Obligations and the Ethics of Surrogacy: A Causal Perspective," *Public Affairs Quarterly*, Vol. 5, No. 1, 1991.

⁸ J. L. Mackie, "Causes and Conditions," *American Philosophical Quarterly*, Vol. 2, No. 4, 1965. There is no contention on Porter's part or mine that hers is an exhaustive discussion of the merits of the different theories of causation in relation to causal accounts of parental moral obligations.

Something's being an INUS condition for some event E means that that event was a necessary part of the conditions that *in fact* occurred, and that are jointly sufficient for E. So for example, lightning may be the cause of the house's catching fire, even though the house might've caught fire otherwise, or might not have caught fire if other facts were different, because, given how things actually went—the lightning struck the aerial just so, the timber frame was very dry, etc.—the lightning was a necessary link in the actual, sufficient chain of events. (p. 69)

In addition to this, we must consider that what we are looking for here is not only a *sufficient* set of conditions, but also a set that contains a *minimal* number of specifications. That is to say that the set of INUS conditions must contain *all and only* those conditions that need to be specified for a given outcome (p. 69).⁹ In the light of this, we can conclude that, for instance, matchmakers are not really causes since they are not INUS conditions on account of their not being a necessary part of a minimally specified set of conditions; the same will be true of midwives and doctors caring for the pregnant woman. Nonetheless, Mackie's theory of causation is still too permissive for a viable theory of parenthood to be successful: in addition to biological parents, it will include gamete donors and IVF doctors as parents; and, conversely, as will any other theory of causation, it yields an account of parental obligation that is too restrictive: it still fails to pick up adoptive parents as parents (pp. 69–70).¹⁰

2.3 The Bifurcated Causal Account

At the heart of Porter's bifurcated causal account of parental obligation lies the division of the role of parent into parent as *maker* and parent as *carer*:

[T]here are two very distinct roles we can and often do mean to pick out when we say "parent". On the one hand, "parent" can mean progenitor: a parent is the maker of a baby. On the other hand, "parent" can mean carer: a parent stands in a unique and invaluable social, personal, love relation to the child. There are two distinct moral roles that a biological parent who raises her child fulfils: the role of parent (understood as a social role) and the role of maker (a metaphysical role). (p. 70)

The improvements of the bifurcated causal account over other causal accounts present themselves. Firstly, on this account we have no problem in allocating a role to adoptive parents: they are parents in the role of carer of the child and, consequently, adoptive parents have a moral obligation to care for the child that they have agreed to adopt. The role of parent as carer has attached to it the set of moral obligations that we typically associate with parenthood. Secondly, those who fulfill the role of parent qua maker but not qua carer are not saddled with the moral obligations that we normally expect of parents; this is true of gamete donors, IVF

⁹ See A. J. Dale, "INUS Conditions," *Analysis*, Vol. 44, No. 4, 1984.

¹⁰ I would like to thank Robert Templing for discussing with me matters concerning the metaphysics of causation in the present context.

doctors and, importantly, of biological parents who give their child up for adoption. Thirdly, when biological parents do not give their children up for adoption, they unproblematically fulfill both roles.¹¹

So far, so good: the bifurcated causal account seems to remedy the excesses of causal accounts concerning both their permissiveness and restrictiveness. But while the bifurcated causal account does allocate to adoptive parents the parental moral obligations that are uncontroversially expected of them, the same cannot be said regarding the allocation of moral obligation to those in the role of makers. Porter takes it to be an advantage of her bifurcated causal account that it requires a degree of parental moral obligation from biological parents who give their children up for adoption, *without* taking anything away from the adoptive parents in this regard, something causal accounts would be unable to do given their inability to acknowledge any role for adoptive parents. I disagree with Porter on this point: I think that the moral obligations that the bifurcated causal account imposes upon biological parents whose children have been consensually adopted are excessive. Moreover, I argue that the parental moral obligations that, on Porter's own admission, the theory exacts from gamete donors and IVF doctors are unacceptable. In Sect. 4, I will develop my criticisms, but first, in the next section, I will make the best possible case for Porter's defense of the parental moral obligation of biological parents whose children have been adopted.

3 Porter on Maker Obligation and Adoption

3.1 Maker Obligation: Prima Facie and Permanent

I will now explain the nature of the moral obligations of makers that Porter advocates and then show her account at work in the kind of case that best supports her position. There are two aspects that are central to Porter's understanding of makers' moral obligation to the child to whose existence they have causally contributed: (i) it is a prima facie obligation to parent and (ii) it is a permanent obligation (pp. 70–71). Of course, there will be cases where this prima facie obligation is overridden by very sensible motivations stemming from the welfare of the child, such as when the child is given up for adoption owing to concerns on the part of the biological parents as to their capacity to attend to the child's wellbeing. And in those cases, the makers will not be parents.

Nonetheless, that makers will not be parents (in the sense of fulfilling the role of carers) does not mean that they are exonerated from *all* obligations towards the child. Precisely, a key point of the bifurcated causal account is that it allows for full parental responsibility on the part of adoptive parents (since they become carers of the adopted child), while keeping biological parents of an adopted child morally

¹¹ Henceforth, for simplicity, I will use "maker" to refer to the role of parent as maker when this role does not overlap with the role of parent as carer, or is discussed independently of the carer role; I will use "parent" to refer to the role of parent as carer whether or not it overlaps with the role of parent as maker: an adoptive parent is a "parent" in this sense and so is a biological parent who does not give her child up for adoption.

accountable for his wellbeing (since they cannot withdraw from their role of makers). Moreover, the role of maker is one permanently stuck to the those fulfilling it, since “[t]here is no way to quit being a maker” and in virtue of being a maker “a particular person [is] irrevocably morally bound to a particular child, in a way that no other persons (save other makers) are so bound” (p. 71).

3.2 Maker Obligation and Adoption: Problem Cases

Porter readily accepts that there is no comparison between the moral obligations towards an adopted child of the adoptive parents, on the one hand, and those of the biological parents, on the other, since it falls to the former to fulfill all the everyday tasks associated with parenthood (p. 71). What, then, is the relevance of the permanent maker obligation in cases of adoption? The full strength of maker obligation with respect to an adopted child becomes apparent when those responsible for the adopted child suffer from a severe misfortune. Let us imagine a case where the biological parents have given their child up for adoption for all the right reasons, but the adoptive parents suffer an accident that renders them unable to care for the adopted child. According to Porter, in such a situation the maker obligation of the biological parents comes to the fore: the biological parents must step back in, since “the makers of the child are obliged to assist” (p. 72). In other words, the agreement between the biological and the adoptive parents to the effect that the latter become the parents (*qua carers*) cannot undo the obligation of the former (*qua makers*); an obligation that becomes salient in cases such as the one just discussed.

At this point, Porter has shown that her bifurcated causal account can allow for the adoptive parents to fulfill the role of parents, but also continue to hold the biological parents accountable in their role of makers. Moreover, she has given a vivid portrayal of the taxing demands that maker obligation can potentially impose on biological parents even in cases of adoption. Finally, since in her view maker obligation is a permanent, unshakable one, she concludes that

when faced with an unwanted pregnancy, and when the lack of want is explained by a lack of want of parenthood (as I assume it usually is), women have but one option: abortion. Adoption simply doesn’t do it. (p. 76)

4 Criticisms of the Bifurcated Causal Account

I concede that cases such as the one discussed by Porter raise a real concern that we must address. But I contend that her bifurcated causal account of parental obligation overstates the maker obligation of both gamete donors and IVF doctors, as well as that of biological parents who have opted to give up their children for adoption. I also maintain that if we were to take the consequences of Porter’s maker obligation seriously, the results would be very detrimental for both current reproductive medical practices and adoption procedures.

4.1 Gamete Donors and IVF Doctors

To demand, as Porter does, that gamete donors and IVF doctors should fulfill the role of maker with respect to the children that they have caused to exist flies in the face of our practices and intuitions; moreover, if we were to take these moral obligations seriously, it would be disastrous for two roles that are very important with regards to reproductive practices.¹²

First of all, our current practices concerning gamete donation and IVF, as sanctioned by law and enacted by the competent institutions, do not reflect in any way the maker obligation that Porter requires from gamete donors and IVF doctors. Let us remind ourselves that, according to Porter, a maker obligation, even in cases when parental obligation is taken up by someone else, consists in being “obliged to the child, in the big and life-changing ways that we pre-theoretically think parents are: the child’s wellbeing is and will always be the maker’s concern” (p. 70). There are neither legal nor practical dispositions put in place so that gamete donors or IVF doctors have the remotest chance of fulfilling anything like what Porter’s maker obligation demands of them.

Secondly, it is obvious that currently there is a high level of public acceptance of gamete donation and IVF. Relevantly for the purposes of this paper, when there is public controversy surrounding these practices, it never seems to involve the avoidance on the part of donors or doctors of some moral obligation towards the children that these practices have helped to bring into existence.¹³ Therefore, I do not think that there is any evidence to suggest that maker obligation stemming from the bifurcated causal account corresponds to our intuitions, as Porter maintains (p. 72).¹⁴

Thirdly, it should be emphasized that if we were to take seriously maker obligation as defended by Porter in this context, very substantial changes would be needed in the practice of gamete donation and IVF. To begin with, mechanisms would have to be put in place so that maker obligation could be fulfilled by donors and doctors. Furthermore, the moral obligations stemming from the maker role would in all likelihood detract many from either donating gametes or working as IVF doctors. Gamete donors would be put in a very difficult position regarding their

¹² To be clear, Porter only mentions that “a similar story [to that of gamete donors] can be told for IVF doctors” (p. 73), rather than fully developing the implications of maker obligation for IVF doctors. Here, I am discussing the obvious consequences that her view of maker obligation would have for IVF doctors, given the causal role that Porter attributes to them (p. 69).

¹³ Recent developments concerning the rights of sperm donors to meet their biological offspring in cases where the donors are acquainted with the parents are irrelevant for the purpose of this article, since (as explained in Sect. 2) my focus here is on parental obligations, not rights. See, for instance, Diane Taylor, “Sperm Donors Who Know Parents Can Apply to See Children, Court Rules,” *Guardian*, January 31, 2013.

¹⁴ It is certainly true that Porter’s bifurcated causal account entails a less demanding view of parental responsibility on the part of gamete donors than that in David Benatar, “The Unbearable Lightness of Bringing into Being,” *Journal of Applied Philosophy*, Vol. 16, No. 2, 1999; and Nelson, op. cit. But that Porter improves on these inflationary accounts of the gamete donors’ parental obligation does not mean that hers is not in itself highly inflationary. For a rebuttal of Benatar and Nelson, see Tim Bayne, “Gamete Donation and Parental Responsibility,” *Journal of Applied Philosophy*, Vol. 20, No. 1, 2003.

obligation towards their genetic offspring, which surely would limit their readiness to donate, if not stop it all together. As for IVF doctors, they would occupy a unique position in the medical profession regarding their commitment, which would be not to their patients as such, but rather to the children resulting from their treatments. Moreover, given the number of children that IVF doctors help to bring into existence throughout their professional lives, any kind of maker obligation would seem completely unrealistic.¹⁵ It is not hard to imagine that this would hugely discourage many doctors from working as IVF doctors.

It is obvious that our society values very much the benefits provided by gamete donation and IVF treatments, benefits that can hardly be compared to anything else that life has to offer for those who enjoy them. Therefore, we must have an extremely powerful and conclusive motivation for changing our practices, intuitions and beliefs concerning gamete donation and IVF if such changes would make these procedures vastly more difficult. Porter has not offered anything of the sort. In conclusion, the disastrous implications of her bifurcated causal account for gamete donation and IVF treatments count as a strong reason against it.

4.2 Biological Parents and Adoption

Earlier I conceded that problem cases involving unsuccessful adoption of the sort provided by Porter do point towards a serious concern as discussed by her. For now I will take as a given that serious concerns of this kind only appear in cases that, however important in and of themselves, are marginal in relation to most cases of adoption to such an extent that they cannot be considered motivation for changing our practices and beliefs regarding adoption; I will develop and defend this point later. Granted this, then the same criticisms that I have leveled against the bifurcated causal account of parental obligation with respect to gamete donors and IVF doctors apply to the maker obligation that Porter's account demands from biological parents of adopted children. Neither the legal and practical dispositions that governed adoption, nor our intuitions and beliefs that are consistent with the acceptance of such practices, seem to back Porter's contention on this issue. On the contrary, practices and intuitions appear to pull in the opposite direction from that of the maker obligation.

If we were to take such a maker obligation seriously in this context, the consequences for adoption practices, as we understand them today, would be very detrimental. It is quite obvious that our adoption agencies would be required to change their procedures dramatically in order to facilitate the kind of contact that would allow biological parents to satisfy themselves regarding the wellbeing of the adopted child (see Sect. 3). This would have two implications: first, it would make international adoption very impractical; second, it would be problematic for the adoptive parents, since they would have to allow not only contact, but some sort of supervision by the biological parents as well; a supervision that, moreover, would come with the obligation to act if there were concerns about the wellbeing of the adopted child. In fact, I believe that the expectation is the opposite: that once a child

¹⁵ I am grateful to Anneli Jefferson for this observation.

has been given up for adoption, biological parents should step aside unless they are allowed by the adoptive parents to do otherwise. Indeed, the requirements of maker obligation on the biological parents could be seen as an infringement of the adoptive parents' parental rights. But even if the adoptive parents are willing to allow some sort of contact or link between the adoptive child and her biological parents (such as sending them photographs of the child), there is absolutely no assumption that the biological parents will be required to encourage, much less demand, such contact. If this point is indeed true, it shows a further problem for maker obligation as developed in the bifurcated causal account: it compels biological parents of adopted children to act in the opposite way from what is generally agreed to be the right course of action.

Analogously to my previous discussion of gamete donors and IVF doctors, given how much we value the benefits of adoption, unless we have a very strong motivation to implement measures that would make adoption more difficult, we ought not to; and the fact that Porter's bifurcated causal account requires such dramatic disruption of our adoption procedures counts as a reason against it.¹⁶

4.3 Problematic Cases of Adoption

I now turn to cases in which adoption fails to secure the wellbeing of the child given up for adoption. I have previously stated that these cases ought to be taken seriously, since they point to a real worry. I have also contended that cases where there is a real worry are marginal.

Three initial considerations are in order to understand my analysis of the problem cases that I will introduce below. In my view, the effectiveness of such cases to back up the notion of maker obligation as understood by Porter depends crucially on (A) the time gap between the moment when the child is given up for adoption and the occurrence of the misfortune to the adoptive parents or guardians. The same is true of (B) the geographical separation between the biological and adoptive parents. (C) The availability of information on said misfortune for the biological parents is also a key element in our responses to such cases.

Let us examine a few hypothetical cases. Two points are common to all these cases: one, the adoption arrangement was entirely satisfactory for the child in question; two, the adoptive parents die in an accident and the adopted child is left without anyone to care for her.

¹⁶ Porter marginally and briefly considers the implication that her proposal would require biological parents to remain in contact with their adopted offspring. She tentatively argues that they "ought to be willing to make 'open' adoption arrangements" (p. 78 n. 41). Porter here seems to soften the implications of maker obligation in comparison to the rest of her text; however, I believe that those in the role of makers should not merely be *willing to make*, but rather *decisively seek* arrangements to see that the maker obligation is discharged, given the nature of such an obligation. Furthermore, the permanent nature of maker obligation appears to place a rather unreasonable demand on the life project of the biological parents who have given their child up for adoption: they would be obliged to make elaborate plans, both financially and otherwise, for the possibility that their maker obligation might some day kick in with full force. Moreover, the situation for the biological parents in cases where it is best for the child that they step out of the picture is most undesirable: they will be condemned to hoping (but not knowing whether) they have fulfilled their duty (p. 78 n. 41).

- Case 1.1: (A) the accident happens within days of the adoption taking place,
(B) the adoptive family lives near the biological parents' location and
(C) the biological parents learn about it.
- Case 1.2: as in Case 1.1, but (C') the biological parents do not learn about it.
- Case 2.1: (A) the accident happens within days of the adoption taking place,
(B') the adoptive family lives far from the biological parents' location and
(C) the biological parents learn about it.
- Case 2.2: as in Case 2.1, but (C') the biological parents do not learn about it.
- Case 3.1: (A') the accident happens years after the child has been given up for adoption,
(B) the adoptive family lives near the biological parents' location and
(C) the biological parents learn about it.
- Case 3.2: as in Case 3.1, but (C') the biological parents do not learn about it.
- Case 4.1: (A') the accident happens years after the child has been given up for adoption,
(B') the adoptive family lives far from the biological parents' location and
(C) the biological parents learn about it.
- Case 4.2: as in Case 4.1, but (C') the biological parents do not learn about it.

My own analysis of these eight cases yields a number of conclusions, but two not totally unrelated caveats must be acknowledged from the outset. One, that these conclusions will be relevant insofar as the responses to these cases by other readers coincide (or come to align themselves) with mine, but the possibility of divergent responses as a result of different intuitions and judgments being elicited by these cases must certainly be taken into consideration. Two, that the possibility of empirical studies showing other people's responses to be different from mine must also be considered.¹⁷

If the first worry were to materialize, it would be problematic: it would show that readers who have followed the arguments of this article (and perhaps have reflected on these matters independently) have very different reactions from mine to the problem cases under scrutiny. Therefore, on the face of it, analysis of and reflection on the problem cases would not seem to be a promising avenue for making progress on the matters under discussion in this work.

If the second worry were vindicated by empirical research, it would compromise my position insofar as my arguments rely on the intuitions and views of the wider population. Given how prominently in my criticisms of Porter I have taken strength from (I) current practices of gamete donation, IVF treatments and adoption, (II) the absence of popular controversy about the aspects of such practices relevant to the present discussion and (III) people's valuing of such practices, if empirical evidence were to emerge showing that my inferences from (I), (II) and (III) are wrong, this would be bad news for my position. However, considering what my own

¹⁷ See, for instance, Joshua Knobe and Shaun Nichols, eds., *Experimental Philosophy* (Oxford: Oxford University Press, 2008).

observations of current practices are, and the positive popular endorsement of them, such results would be very surprising.

Leaving these two worries aside, I will proceed to discuss what I believe these cases show and implicitly, but not naively, assume that my responses to these cases will resonate with those of others. I certainly have no reason to suspect otherwise. Three main conclusions result from reflection on my reactions to these eight cases.

First, maker obligation seems strong in Case 1.1; this would be consistent with this case showing the shortest temporal and geographical gap between time of adoption and location of the biological parents, on the one hand, and time of the accident and location of the adoptive family, on the other.

Second, if the biological parents do not know about the accident, no negative judgment of the biological parents seems to be forthcoming. Importantly, at least some sort of negative analysis of the biological parents' moral obligations should obtain if Porter's view on maker obligation is right. The fact that it does not further supports the idea that there is no expectation that the biological parents should monitor whether or not the adoption arrangement continues to be satisfactory, so long as they thought that it was so in the first place.

Third, in cases where the information is known, the size of the temporal and geographical gaps attenuate the moral obligation of the biological parents to step in. On reflection, the importance of the temporal gap can be ascribed to the development of emotional ties to the adoptive parents and a corresponding attenuation of said ties to the biological parents. As for the significance of the geographical separation, it can be attributed to the implication that such separation will impose financial and logistical problems for the biological parents to reconnect with their offspring.

Strikingly, if in these cases we substitute the biological parents of the adopted child with either a gamete donor or an IVF doctor, and modify the case set-up accordingly, it does not seem that even in scenarios analogous to that of Case 1.1 will the response elicited in the case of adoption be replicated.¹⁸

Reflection on the responses to the cases described above does not support the exacting demands that maker obligation places on biological parents of adopted children. Moreover, it all points to this also being the case regarding gamete donors and IVF doctors. Furthermore, although it is true that Case 1.1 does back up the idea that there is a moral obligation of the biological parents towards their adopted child, Porter's notion of maker obligation simply cannot make sense of all the other cases described above.

Of course, it still might be that Porter is right and that Case 1.1 shows a fault in our otherwise very comfortable but fundamentally mistaken views and practices on adoption, gamete donation and IVF. Obviously, if this were the case, we should revise said views and practices. On the evidence of what I have shown until now, I

¹⁸ To make this point more prominent, in the context of an IVF treatment, we could imagine that there is an accident that not only kills the child's parents, but only leaves three survivors on the planet: the child, the IVF doctor and the obstetrician or midwife who helped with the eventless, smooth delivery of the child. Even in such a case, the IVF doctor does not seem to have a greater moral obligation to the child than the obstetrician or midwife, who are not causally responsible for the existence of the child in the relevant sense in which the IVF doctor is.

remain unconvinced of such a possibility. In the next section, I will put forward a proposal that makes sense not only of Case 1.1, but also of all the other cases, as well as our practices and endorsements of adoption, gamete donation and the role of IVF doctors as we know them today.

5 The Closest Continuer Schema and the Bifurcated Causal Account

My positive proposal consists in arguing that by adapting Nozick's closest continuer schema¹⁹ to take into consideration key aspects of Porter's bifurcated causal account, we can deal with situations such as the one described in Case 1.1, without incurring my previous criticisms of her account. I believe that this use of the closest continuer schema not only solves the problems that I find with Porter's account, but also, and crucially, allows us to have an account of parental obligation that fits much better with our practices regarding adoption, gamete donation and IVF.

5.1 Nozick's Closest Continuer Schema

I will introduce Nozick's closest continuer schema by using his own example:

The Vienna Circle was driven from Austria and Germany by the Nazis ... Suppose there were twenty members of the Circle, of whom three ended up in Istanbul. These three keep meeting through the war years, discussing philosophy. In 1943, they hear that all of the others are dead. *They* now are the Vienna Circle, meeting in Istanbul. Carrying on its discussions, they proclaim that the Vienna Circle lives on in exile. In 1945, however, they learn that nine members of the Circle had gotten to America, where they continued to meet, discuss philosophy, adhere to the same philosophical program, and so on. That group in the United States is the Vienna Circle in exile; the group in Istanbul turns out not to be the Vienna Circle but its Istanbul offshoot.²⁰

It appears that whether or not the Istanbul meeting of exiled members *is* the Vienna Circle, that is, whether or not it is the *continuation* of the group that used to meet in Vienna and came to be known as the "Vienna Circle," depends on whether or not the Istanbul group is the *closest continuer* of the Vienna Circle. If there were not a closer American continuer of the Vienna Circle, the Istanbul group would rightly regard itself as the continuer of the Vienna Circle, but since there is, it cannot.²¹

If we develop the kind of competing continuation puzzle just described involving the Vienna Circle, which is a collective, into the analogous puzzle that is typical of the personal identity and persistence of objects literature, the pressure to get a

¹⁹ Nozick uses interchangeably the phrases "closest continuer schema," "closest continuer theory" and "closest continuer view." It is clear that these phrases are synonymous, as he states that "[t]he closest continuer theory is merely a schema" (Nozick, op. cit., p. 69). In the present article, I will use "closest continuer schema" since it captures better than the other two expressions the content-free nature of Nozick's conceptual device.

²⁰ Ibid., p. 32.

²¹ Ibid., pp. 32–33.

metaphysically sound answer only increases. If there are competing future person-stages that have a claim to be a given present person in the future, we have good reasons to try to solve such a puzzle if we can. Nozick's closest continuer schema is a conceptual tool designed precisely to be used in such cases.

While the closest continuer schema can be very effectively applied in cases such as the one presented above, we must be aware of some aspects that limit its applicability, but further support its plausibility. First, there must be a minimum degree of closeness for an identity relationship to be established.²² Second, there must be enough distance between the closest continuer and its nearest competitor for the closest continuer be regarded as such; in short, "it must decisively beat out the competition."²³ Both points seem eminently sensible. It could be that the closest continuer of the Vienna Circle was a group involving one exiled member and two students of two former members, plus seven other philosophers working in the tradition of the Vienna Circle. But although this group would indeed be the closest continuer of the Vienna Circle, it would not qualify to be its continuer, because it would not be close enough to it. By the same token, we can imagine two groups with four members in America and Turkey, with the Turkish group having two members who spent a couple more years in the Vienna Circle than all the others. While that could make the group in Istanbul the closest continuer, the difference between the two groups would not be big enough to deem the group in Turkey the continuer of the Vienna Circle.

A final third point of clarification will be much to our advantage. The closest continuer schema provides a framework to solve problems involving the discrimination among competing continuants but, in and of itself, does not resolve anything; in other words, it remains neutral regarding the criterion for solving the problem:

The closest continuer view helps to sort out and structure the issues; it does not, by itself, answer the question. For it does not, by itself, tell which dimension or weighted sum of dimensions determines closeness; rather, it is a schema into which such details can be filled.²⁴

So, for instance, it might be the case that the American group has more exiled members of the Vienna Circle than the Turkish group. But it could also happen that the American group departs further than their Turkish counterpart from the philosophical program of the Vienna Circle. Now, we can have two different competing criteria here: number of exiled members and fidelity to the original philosophical project. On the former criterion, the American group is the Vienna Circle; on the latter, the Turkish group is. The closest continuer schema is useful irrespective of the nature of the decision concerning which criterion should prevail or how to weigh the criteria. As for the personal identity puzzles that Nozick had in mind, the closest continuer schema can be used to implement either the psychological or physical continuity criterion. It is precisely its flexibility as a

²² *Ibid.*, p. 34.

²³ *Ibid.*, p. 40.

²⁴ *Ibid.*, p. 33.

problem-solving framework that makes it possible to take the closest continuer schema outside the debate where it was originally created and employ it for other purposes.

5.2 The Parental Obligation Schema

What I propose now is that the closest continuer schema can be deployed in problem cases where the controversial matter is not one of continuation, but one of ascription of moral responsibility among competing parties. More specifically, I contend that the closest continuer schema is ideally placed to sort out the controversies involving parental obligation at the heart of the present article.

Porter's bifurcated causal account of parental responsibility, for all its causal pedigree and labeling, has at its core two different criteria of parental responsibility: a *causal* one resulting in *both maker and carer* obligation, or *maker* obligation *only* in cases of adoption, and a *consent* one resulting in *carer* obligation in cases of adoption.²⁵ The closest continuer schema can deal with one criterion, or with several of them simultaneously or alternatively: such is its flexibility.

Key to Porter's bifurcated causal account is that in cases where the maker is not also the carer, both maker and carer have moral obligations towards the child, albeit admittedly carer obligation is in every respect what we commonly understand as parental obligation. Hence, in cases of adoption, the adopted parents will discharge the moral obligations associated with parents *tout court*, because they are the ones fulfilling the role of carer. But crucially, the biological parents, since they cannot possibly relinquish their role as makers, will remain morally obliged to their offspring as expounded in Sect. 3. So, in cases of adoption, there are two simultaneously morally bound parties to the child all along: biological and adoptive parents.

It is this aspect of simultaneous and permanent moral obligation towards the child that I think is wrong in Porter's theory of parental obligation. Moreover, I believe that this is the aspect that explains the divergence between what her account requires and the responses to the problem cases discussed in the previous section. Finally, it is this aspect that Nozick's closest continuer schema can remedy without losing the positive features of her account.

When the closest continuer schema is successfully deployed, one closest continuer is identified, then the relationship of continuation is established, with all the implications that this might entail, and all the other competitors are left out. Used for the purposes of identifying where parental obligations lie, the closest continuer schema, if successfully applied, will identify who will fulfill the role of parent and be morally responsible for the child (who is "closest"²⁶ to the parent role, so to speak), and all the other competitors for the role will be left out of the

²⁵ Porter does not discuss the source of carer obligation in cases of adoption beyond mentioning the idea of "parenting agreements" between the biological and adoptive parents, but it seems natural to assume that she must have in mind something along the lines of consent on the part of the adoptive parents (pp. 70–71, 76).

²⁶ Henceforth, for the sake of simplicity, when discussing the parental obligation schema I will drop the use of scare quotes for words such as "close," "distance" and the like.

relationship of moral obligation. In short, there will not be a case where two different parties have simultaneous moral obligations towards the child. But, as mentioned above, there is nothing precluding the closest continuer schema from taking into account more than one criterion of parental responsibility.

In what follows, I will describe an analogue of Nozick's closest continuer schema designed to deal with matters of parental obligation, which I will refer to as "the parental obligation schema." First, the *causal criterion* of parental obligation will be the *sole default criterion* of parental obligation. Bearing in mind that maker obligation stems from causation rather than consent, so far this falls right in line with Porter's contention that "maker obligation implies a *prima facie* obligation to take on the role of parent" and "that what we usually think of as parental obligation is, indeed, maker obligation" (p. 70).

Second, the default *causal criterion* of parental obligation will be *overridden* by a *consent criterion* in the case of mutual agreement between biological and adoptive parents, where the former will agree to relinquish their parental obligations and rights in favor of the latter.²⁷ Here, the parental obligation schema both follows and departs from Porter's bifurcated causal account. Porter readily admits that biological parents qua makers are not the only ones who perform the role of parent: in cases of adoption the adoptive parents qua carers become the parents; and furthermore, in cases of adoption, she thinks of the maker obligation to parent as being overridden for the benefit of the child when adoptive parents take over (pp. 70–71).

However, for Porter, maker obligation is never extinguished even in cases of adoption and this is a clear and crucial point of divergence with my parental obligation schema: once the causal criterion is overridden by the consent criterion, the adoptive parents become the parents *tout court* and the biological parents cease to have any moral obligation towards the child. The parental obligation schema picks up only one of the candidates and then *exempts* all the other candidates from any parental responsibility.

At this point, we can see how the parental obligation schema improves matters: in locating the parental responsibility solely on the adoptive parents, it avoids the criticisms that I developed in Sect. 4 concerning unproblematic cases of adoption: adoption practices and regulations are designed in a way that do not allow for Porter's maker obligation to be fulfilled.

5.3 Cases of Severe Misfortune of the Adoptive Parents

What about cases where the adoptive parents suffer a severe accident or are victims of some serious misfortune? The next point addresses the problem cases discussed in the previous section. In cases where the default causal criterion has been overridden by the consent criterion, but the adoptive parents or guardians have suffered a misfortune that does not allow them to fulfill their parental obligations anymore, the parental obligation schema falls back on the causal criterion of

²⁷ In cases of forceful removal of a child from their biological parents' custody, the default causal criterion will also be overridden, with the assumption of parental responsibilities being taken over by a legal guardian (either an institution or a person).

parental obligation. However, this time the causal criterion is mediated by factors that distance the candidates from the role of parents. Following from my analysis of the cases discussed in the previous section, I identify three distancing factors: (a) temporal gap, (b) geographical distance and (c) availability of information about the misfortune of the adoptive parents or guardians. Given their structural similarities, I will first discuss (a) and (b); then I will move on to (c).

It seems that the *greater* the *temporal gap* between the moment of adoption and the time of the misfortune, the *smaller* the pull of *moral obligation* on the biological parents. Certainly, reflection on the problem cases presented earlier would seem to support this view; as was pointed out, this might be the case because the greater the temporal gap, the weaker any kind of emotional link between the biological parents and their offspring will be and, conversely, the stronger such link will be between the adopted child and his adoptive parents *qua* parents.

Analogously, reflecting on the problem cases, I am persuaded that the *greater* the *geographical distance* between the biological parents and adopting family, the *lesser* the pull of *moral obligation* on the biological parents. Here the explanation may come from the fact that the greater the geographical distance, the more limited any reasonable expectation is of the biological parents taking over the role of parents from the adoptive ones, for obvious financial and logistic reasons.

At this point, I must recall one of the limitations of the closest continuer schema, as explained earlier. For the closest continuer schema to pick up the closest continuer, the candidate in question must be *close enough* to the entity whose continuation is at stake; if it is not, the role of closest continuer will be left vacant. This seems eminently reasonable, since while a possible continuer might be the closest continuer, if it is too distant (that is, if the gap is too big), it is simply too far away to count as a continuer. Likewise for the matter under discussion here: while there might be a candidate closest to the role of parent, if the distance is too great, this candidate will not be picked up by the parental obligation schema to fulfill such a role.

When considering the temporal gap and the geographical distancing factors, we must note that they contribute gradually to the distancing of the biological parents from the role of parent. It is beyond the scope of this article to establish the cut-off point of parental responsibility for either each distancing factor or both combined. It is far from clear how precise such a cut-off point might be or whether establishing it with great precision and rigidity would even be desirable. However, on the basis of my reflection on the cases from the previous section, I would suggest that the cut-off point comes very soon: a relatively small temporal gap and geographical distance can exempt the biological parents from any moral obligation to their adopted offspring.

If am right in affirming that what causes geographical distance to be a distancing factor is the financial and logistic limitations implied by such geographical distance in relation to the biological parents taking over the role of parents, then other circumstances that might contribute to those limitations, should there be any, will also act as distancing factors. The same is true of the weakening of emotional ties in relation to the temporal gap.

With respect to the third distancing factor, namely, the information about the misfortune of the adoptive parents, matters are different from the temporal and geographical distancing factors. Information acts as a *switching-off* factor. If the biological parents do not come across the information about the misfortune of the adoptive parents, they are immediately exempted from the role of parent: the distance automatically becomes too great. So information is a pre-condition for the other two distancing factors to have any effect or relevance. But it is also true that the smaller the temporal and geographical gap, the more likely that the adoptive parents will come across the relevant information. Importantly, as discussed in Sect. 4, there does not seem to be any obligation for the biological parents to seek such information.

What happens then to the adopted child left on his own due to the misfortune of his adoptive parents and the moral exemption of his biological parents? Nobody will immediately occupy the role of parent. He should receive the care of whatever institution (government-related or otherwise) is best placed to help him. In this respect, he will be treated as any other vulnerable or helpless person. Of course, in seeking to provide the best possible arrangement, the child might be allocated to other adoptive or foster parents, or some other guardianship schema.

Finally, if other factors were to appear to have an impact on the moral obligation of biological parents in cases of adoptive parents' misfortune, they could unproblematically be input into the parental obligation schema analogously to (a), (b) or (c). Indeed, this is one of the advantages of the flexibility of a schema such as this one: it can, in the selection process, readily accommodate different factors.

5.4 IVF Doctors

In the case of IVF doctors, the parental obligation schema works very well and swiftly rectifies the excesses of Porter's bifurcated causal account. As Porter contends, the IVF doctors do have a relevant causal role in bringing into existence the children resulting from the treatment that they provide, but clearly their causal role is weaker than that of biological parents.²⁸ Hence, in the default causal criterion dimension, IVF doctors will be at a clear distance from the biological parents and, accordingly, will not be picked as parents; they will be fully exempted from parental moral obligations of any kind (including maker obligation) towards the children they help to bring about.

The thought that biological parents are closer to the role of parents than IVF doctors on the causal dimension of the parental obligation schema, based on the notion that biological parents are a "weightier" cause than IVF doctors, seems accessible enough. Hence, for present purposes, I do not need to go any deeper into the metaphysics of causation to show the plausibility of the schema working. Nonetheless, it might help to think of biological parents as the salient cause or, alternatively, to think in terms of causal degrees and consider biological parents as

²⁸ For the purposes of the discussion on IVF doctors, it does not matter whether we think of a biological parent as either a genetic or gestational parent; in both cases the causal role of the biological parent is stronger than that of the IVF doctor.

having a “higher” or “stronger” degree of causation than IVF doctors.²⁹ Obviously, the parental obligation schema can take into account theories of causation other than INUS; furthermore, it can likewise discern the closeness or proximity of the different candidates for the role of parent in relation to their degrees of causation for, potentially, any other theory of causation. Therefore, the parental obligation schema is helpful for rectifying the excessive permissiveness of theories of causation that might be appealing when dealing with parental obligations on other counts.

5.5 Gamete Donors

There are two ways of productively thinking about gamete donors by using the parental obligation schema. One, analogously to IVF doctors: the gamete donor is a lesser or weaker cause than the gestational mother; therefore, the gestational mother is closer to the role of parent and gets picked by the parental obligation schema, at which point the gamete donor ceases to have any moral obligation whatever in relation to the child resulting from his or her donation.³⁰

Two, gamete donors can be thought of as consenting in an analogous fashion to that of biological parents who give their child up for adoption: they agree to waive their moral rights and obligations regarding the offspring resulting from their gametes.³¹ As explained above for adoption, once the consent criterion kicks in, the gamete donor becomes exempt from any moral obligation towards the offspring. By pointing out the analogy between both cases in relation to the biological criterion being substituted with the consent criterion, I do not mean to underestimate the ontological differences between children and gametes; I simply posit that in both cases the parental obligation schema affects the criterion substitution move.

The first option has the strength of presenting causation in a way that seems right. Alternatively, the second option is immune to any controversy concerning the causal contribution of gamete donors vis-à-vis the gestational mother; moreover, depending on one’s views regarding gamete donation, one aspect of it, the waiving of rights and obligations concerning the resulting offspring, might be successfully dealt with. I believe that both approaches should be given due consideration; nonetheless, for the purposes of the present article, both options show the clear advantage of the parental obligation schema over Porter’s proposal.³²

²⁹ For a recent treatment of this aspect of the causation debate, see Matthew Braham and Martin van Hees, “Degrees of Causation,” *Erkenntnis*, Vol. 71, No. 3, 2009. Of course, problems related to the different causal contributions of several relevant causes are not in any way unique to the debate on parental obligation, but surface in many other areas of ethics.

³⁰ Naturally, the assignment of degree of causation will be easier in cases where there is one gamete donor instead of two. But it is beyond the scope of this paper to go into the discussion of all the possible scenarios involving one or two gamete donors and one or two intended parents. Likewise, I cannot discuss here the motivation behind the fact that in most legislation the spouse of the gestational mother is also taken to be the parent of the child; see Tim Bayne and Avery Kolers, “Toward a Pluralist Account of Parenthood,” *Bioethics*, Vol. 17, No. 3, 2003, p. 225.

³¹ Bayne, op. cit., pp. 82–84.

³² While the same causal versus consent criterion disjunctive could conceivably present itself with respect to surrogate or contract mothers, it seems to me that the second option is clearly the promising one

Finally, it is important to note that, with regards to both gamete donors and IVF doctors, we must not mistake the absence of any kind of moral obligation in relation to the child whose existence is partially due to them, on the one hand, with the absence of moral responsibility for their own actions, on the other. In other words, gamete donors and IVF doctors must be held accountable if their respective actions are part of some morally unacceptable process or result in some morally condemnable outcome. But this moral accountability, all things being equal, would be akin to that of any other person or doctor; it would not have the distinctive moral feature of having maker obligation, as proposed by Porter.

6 Conclusion

Porter asserts that adoption is not an alternative to abortion since there are certain cases where the biological parents who have given up their child for adoption are still required to discharge their parental obligations. The theoretical framework that supports this claim is Porter's bifurcated causal account of parental obligation. Her claim is true, but it is misleading if left unqualified by not taking into account properly the frequency and relevance of those adoption cases. First, the actual scope of the biological parents' moral obligation to their adopted child should be considerably reduced; it is certainly much smaller than what Porter's article would lead one to believe. Second, because of this, the number of cases where such moral obligation would obtain, even by a pessimistic estimate, represents a very small percentage of the cases where adoption takes place.

The problem lies in Porter's bifurcated causal account. I have argued that endorsing it means going against our current practices concerning adoption, gamete donation and IVF, as well as the intuitions and beliefs that support such practices. Moreover, I have contended that there is no good reason to accept Porter's account of parental obligation.

Finally, I have proposed that by adapting Nozick's closest continuer schema to deal with the allocation of parental responsibility, that is, to decide who fulfils the role of parent, we can avoid the pitfalls of Porter's bifurcated causal account, while still retaining the capacity to allocate parental obligation to the biological parents in the marginal cases of adoption where this is appropriate.³³

Footnote 32 continued

in this case, since trying to decide who would have the greater degree of causation might lead to very murky results. However, the discussion of surrogate mothers is beyond the scope of this article.

³³ I would like to thank Anneli Jefferson and an anonymous referee for helpful comments on previous versions of this article.