

C25

## CHAPTER 25

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# GAMETE DONATION AS A LAUDABLE MORAL MISTAKE

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C25.S1

## 1. INTRODUCTION

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C25.P1

WE can see altruistic actions as falling into three different kinds. Some specific altruistic actions are required; other altruistic actions are such that it's morally required to do some of them—but no one of them is itself morally required; and other altruistic actions are *deeply supererogatory*, in that they are morally good things to do, they are not morally required, and it is not the case that it is morally required to do a certain amount of such things in one's life.

C25.P2

An example of the first kind of action is this: Anne has some medicine for which she has no use, and Bill, her acquaintance, needs the medicine to live. Anne can give it to Bill at virtually no cost to herself; she does not anticipate that she or anyone else will need it in the future. Anne is morally required to provide the medicine to Bill.<sup>1</sup> Actions of the second kind are ordinarily charitable and helping actions. Each of us (who is not desperately needy herself) should do some things to help those less fortunate. But there is no particular form that this help must take.<sup>2</sup> Actions of the third kind are various. Here is a simple example. Chris is a middle-class person in the United States. He gives away half of his after-tax income to UNICEF. This particular action is not morally required. Nor is it morally required that he ever perform actions of this magnitude of giving.<sup>3</sup>

C25.P3

We typically see altruistic actions as wonderful things to do. In particular, we see the deeply supererogatory as wonderful to do. This is manifested in how we might talk to a friend or acquaintance who has just announced that she is leaning towards doing a deeply supererogatory thing. We might say, "Good for you! That's wonderful. You're going to make such a difference. If only more people would do what you're doing." This seems to be an appropriate way to respond to such an announcement.

C<sub>25</sub>.P<sub>4</sub> In this chapter, I will develop and examine a view on which some deeply supererogatory actions are not simply wonderful things to do. While being wonderful things to do, these actions are also moral mistakes. They are actions that each person should not perform, and they should not perform them *for moral reasons*. Nevertheless, these actions are morally permissible, and they are morally good things to do. In order to develop this more general view, I will first develop a specific view about sperm and egg donation, as an instance of a deeply supererogatory action which is also a moral mistake. In discussing that view, I will draw out some general lessons about the relationship between what one is morally obligated to do and what one should do, all things considered, and about the nature of moral reasons.

C<sub>25</sub>.P<sub>5</sub> This paper thus has three goals:

- C<sub>25</sub>.P<sub>6</sub> • to develop a view about gamete donation and put it forward to be taken seriously
- C<sub>25</sub>.P<sub>7</sub> • to develop the more general view that many deeply supererogatory actions are moral mistakes, though they are morally permissible
- C<sub>25</sub>.P<sub>8</sub> • to draw out some general lessons about the relationship between *what one is morally obligated to do* and *what one should do, all things considered*, and about the nature of moral reasons.

## 2. RECONCILING TWO APPARENTLY CONFLICTING ATTITUDES ABOUT GAMETE DONATION

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C<sub>25</sub>.P<sub>9</sub> Why might anyone think that some deeply supererogatory actions, while being wonderful things to do, are moral mistakes? To understand the moral picture I want to examine, let's consider the views of a woman, whom I'll call Julie, regarding anonymous sperm and egg donation. Julie finds herself of two minds about sperm and egg donation. On the one hand, Julie thinks this:

C<sub>25</sub>.P<sub>10</sub> Every person who donates sperm or eggs is making a mistake. They are causing children to exist—their children—who will grow up completely isolated from them. They will have no relationship with these children, they will never know if these children are doing well or poorly, and they will not be available to these children if the children need anything from them. Furthermore, they are placing blind faith in strangers to raise their children well. A person should not risk her child's well-being in that way. A person should not cause her own child to be created and then have no further relationship with him. And a person should not be unavailable to her child if he might need help.

C<sub>25</sub>.P<sub>11</sub> Julie's views about sperm and egg donation thus appear to be very harsh. On the other hand, she also thinks the following:

C<sub>25</sub>.P<sub>12</sub> It is wonderful that sperm and egg donation is practiced regularly in the United States. This practice makes it possible for people who are unable to conceive on their own to have children; it makes such a good difference in these peoples' lives. (These may be couples struggling with fertility problems, same-sex couples, or single women.) This practice creates loving, happy families that would not otherwise have been created. When a person is a sperm or egg donor, he or she is doing a tremendously wonderful thing for the people he or she helps to become parents.

C<sub>25</sub>.P<sub>13</sub> Do Julie's thoughts contradict each other? I want to consider the idea that Julie's two reactions, though they appear to be in conflict, could both be correct. I want to examine what a view would look like on which Julie is right that donating sperm or eggs is a mistake, indeed that it is a mistake for moral reasons, but she is also right that it is a generous, wonderful thing to do for someone else, and she is right that it is wonderful that this regularly happens.<sup>4</sup>

### 3. FLESHING OUT THE VIEW

C<sub>25</sub>.S<sub>3</sub>

C<sub>25</sub>.P<sub>14</sub> Julie's view is that, all things considered, one should not be a gamete donor.<sup>5</sup> In her view, there are compelling reasons against being a gamete donor: that one would be putting blind faith in strangers to raise one's child, that one would not have a relationship with one's child, and that one would be unavailable to one's child if he needs one's help. She believes that these reasons are of the right type to render this something one should not do, and no other considerations cancel or override these reasons. Her view is that the fact that donating would enable someone to have a baby is a reason in favor of the action, it is indeed a weighty reason, but it is not the kind of reason that can undermine or outweigh the existing reasons not to do it.

C<sub>25</sub>.P<sub>15</sub> Nevertheless, Julie thinks that being a gamete donor is *morally good*. She thinks it is morally praiseworthy. She thinks it is wonderful that people do this, and she thinks it is wonderful of people to do it.

C<sub>25</sub>.P<sub>16</sub> I suggest that we can understand Julie's view as the view that being a gamete donor is a *morally permissible moral mistake*. On this view, one should not be a gamete donor, for moral reasons, but if one does so, this is morally permissible; it is even morally good.<sup>6</sup>

C<sub>25</sub>.P<sub>17</sub> On this view, a gamete donor's action falls into the category of the *deeply supererogatory*: these actions are morally good actions, they are not morally required, nor is it morally required to perform a certain amount of such actions in one's life. There is a particular burden involved in these actions—that one will have children from whom one will be isolated—and one is not obligated to accept any amount of such burdens to help others.<sup>7</sup>

C<sub>25</sub>.P<sub>18</sub> How does a donor's action differ from Chris's, as we initially understood his action? Chris announces he is probably going to donate half his after-tax income. I said that an appropriate reaction of a friend would be to say, "Wow, it's wonderful that you're doing that. Good for you! If only more people would do that!"

C<sub>25</sub>.P<sub>19</sub> What would be the appropriate reaction of a friend to Daria, if Daria announces that she is probably going to sign up to be an egg donor? On Julie's view, a friend should not say "Wow, it's wonderful that you're doing that. Good for you!" A friend should rather say, "I think you would be making a mistake. Think about what this would mean. You would have children out there in the world, but you would never know them. You would have no relationship with them. People you know nothing about would be raising them. And what if one day they needed your help? You would never know." At least, this is how a friend should respond if the friend cares that Daria make good choices.<sup>8</sup>

C<sub>25</sub>.P<sub>20</sub> Let's continue to elaborate and clarify Julie's view. It might seem that Julie's view depends on an empirical psychological claim, such as this: sperm and egg donors will grow to regret their choices one day, when they realize that they have children out there in the world from whom they are isolated. If this empirical claim is true of someone, it seems it would indeed be a compelling reason against becoming an egg or sperm donor. But Julie does not make this general empirical psychological claim. Julie's view is not that donors in fact will regret their choices, though it does follow from her view (it seems) that regretting the choice would be an appropriate reaction to the fact that the choice was a mistake.<sup>9</sup>

C<sub>25</sub>.P<sub>21</sub> One aspect of Julie's view is that it holds that there can be morally permissible mistakes. This should not be controversial, however. Morally permissible mistakes are commonplace. Suppose I took all of the money currently in my wallet, and I burned it. This would be morally permissible. But it would be a mistake: all things considered, I should not do it. For another example, I should have gone to the gym when I woke up on Monday morning. I was planning to go, but I just didn't. This was a mistake, but it wasn't morally wrong. What's more interesting about Julie's view is that she thinks that there are morally permissible mistakes that are *morally good things to do*, and she thinks that there are morally permissible mistakes in which the sources of the mistake are moral considerations—that is, there are morally permissible *moral* mistakes. I will say more about this aspect of the view later, in talking about the fourth objection I will consider to the view.

C<sub>25</sub>.P<sub>22</sub> Julie's view is not simply that it is bad for the donor to be isolated from his or her children (that it makes his or her life worse), nor that it is bad for the child. She does think that there is a respect in which the donor's life is worse, and a respect in which the child's life is worse. But she does not think that either of these considerations is the heart of the matter. Julie's view is thus different from David Velleman's view.<sup>10</sup> Velleman argues that people have an interest in understanding themselves through understanding their genetic ancestors, and that a child isolated from a genetic parent is in that way deprived of an important route to self-understanding. There is something to what Velleman says; this is something lost to a child raised in isolation from one or both of his or her genetic parents. But Velleman draws the strong conclusion that it is morally wrong to donate

sperm or eggs, to conceive with donated gametes, or (I believe) to assist in this process in any way, such as a doctor does. But Velleman does not discuss the questions: how seriously bad for someone is it to be cut off from this one particular route to self-understanding, and how much can other aspects of a good life outweigh and compensate for this badness? It seems that it needn't be very bad for someone to be cut off from this particular route to self-understanding. And it seems that other aspects of a created child's life could greatly compensate for, and could outweigh, this downside, enough to make the practice of donation morally permissible.<sup>11</sup> In light of these considerations, Velleman's argument fails. A proponent of Julie's view can reject Velleman's argument and conclusion for these reasons. Julie's view does not hold that sperm or egg donation is morally wrong.

C<sub>25</sub>.P<sub>23</sub> Consider the public policy implications of Velleman's view. If we became convinced of Velleman's view, we would think that it would be better if there were fewer instances of children being created through anonymous donations. We might think that it would infringe people's rights to regulate donation. But we could be in favor of public education programs about the downside of donation, of children being cut off from this means of understanding themselves.<sup>12</sup> At least, we would *hope* that fewer children were created through anonymous donations.

C<sub>25</sub>.P<sub>24</sub> What are the public policy implications of Julie's view? Remember, in Julie's view, it is a good thing that anonymous sperm and egg donation occurs, because it helps couples struggling with fertility problems to have children, and it causes happy families to be created which would not otherwise exist. Julie does not think it is a bad thing that these donations occur. She would not be in favor of a campaign to convince people not to donate. She does not hope that fewer donations occur.<sup>13</sup>

C<sub>25</sub>.P<sub>25</sub> How can Julie simultaneously think that donation is a mistake and also that it is good that it occurs? In Julie's view, the weighty reasons not to donate are agent-relative reasons. When Daria considers whether to donate, Daria has these reasons not to donate. If I am Daria's friend, and I believe I should help her to see what reasons she has, then I should try to get her to see these reasons. But those who are sufficiently removed from Daria, who don't care particularly about whether Daria makes the choices she should make—these people, on Julie's view, don't have compelling reason to want Daria to refrain from donating and indeed have a significant reason to want her to donate, because she would be helping some people. Compare Daria with a couple who want to use her donated eggs to create a child they would raise. On Julie's view, Daria has the following reasons not to donate: she would be isolated from her child, she would not be available to her child if the child needed her help, and she would be putting blind faith in strangers to raise her child. None of these considerations apply to the couple: they would not be isolated from their child, they would not be unavailable to their child, and they would not be putting blind faith in anyone else to raise their child. On Julie's view there are agent-relative reasons that a prospective donor has not to donate,<sup>14</sup> but there are no parallel reasons that confront couples who seek to raise children created via donation; and there are no parallel reasons for third parties to oppose the practice of donation.<sup>15</sup>

## 4. OBJECTIONS TO JULIE'S VIEW

C<sub>25</sub>.S<sub>4</sub>

C<sub>25</sub>.P<sub>26</sub> In this section, I will discuss some objections to Julie's view. Some of the objections hold that Julie's view is not *true*. Other objections hold that Julie's view is not even *coherent*.

C<sub>25</sub>.S<sub>5</sub>

### 4.1. First Objection

C<sub>25</sub>.P<sub>27</sub> “On Julie's view, a gamete donor has a special relationship with her genetic child. But this is false. The donor's relationship with the child is no different from the fertility doctor's relationship. Both played a causal role in the creation of the child. That is all.”

C<sub>25</sub>.P<sub>28</sub> We can see that this objection is mistaken by considering some cases in which what a donor should do is different from what a fertility doctor should do. Suppose that Ellen has decided to be an egg donor, she meets the couple to whom she is supposed to donate, and she learns that they are homophobic. Ellen thinks to herself: “Oh no! This is a terrible environment for a child. They will instill bad values. But more seriously: what if the child is gay?” Ellen should refuse to donate to this couple; it would be morally wrong for her to go forward. By contrast, suppose that Fiona is a fertility doctor who learns that a couple she is treating, using an egg donor, is homophobic. Fiona has the same thought as Ellen, but she also thinks, “I am a doctor; I will not select my patients based on their moral views.” It is morally permissible for Fiona to continue to treat the couple.<sup>16, 17</sup>

C<sub>25</sub>.P<sub>29</sub> Fiona and Ellen have different moral obligations in this situation. A proponent of Julie's view could argue that part of what explains this difference is that Ellen has a special obligation to the child who would be created, while Fiona does not.

C<sub>25</sub>.P<sub>30</sub> In considering this case, it is again important to recognize the *agent-relative* nature of the reasons Julie's view highlights. The donor's special reason to be concerned about the kind of home in which the child will be raised is an agent-relative reason. The donor has a special reason (and perhaps a special duty) to take an interest in the circumstances of *this child's* upbringing. But while this provides the donor a special reason to be wary of donating, it provides no reason to the prospective parents to be wary of using donation as a means of conceiving a child. Of course, all prospective parents have strong reasons to think carefully about how their children will be raised, and to think realistically about whether they can be good parents and can provide a good environment for their children. But this does not single out parents who become parents through gamete donation; it does not make gamete donation problematic in any way. Indeed, people who have chosen to conceive via donation have already settled for themselves that they want to become parents, so presumably have already settled for themselves that they believe they will be good parents.

C<sub>25</sub>.P<sub>31</sub> And while these concerns may provide a special reason for a donor to be wary of donating, they do not provide any reason for disinterested others to be wary of donations

occurring. Indeed, there is some reason to think that it's better that *planned parenthood* occur than that *unplanned parenthood* occur; those who plan to be parents are somewhat more likely to be good parents. Parenthood that arises out of donation is always planned parenthood.

## C<sub>25</sub>.S<sub>6</sub> 4.2. Second Objection

C<sub>25</sub>.P<sub>32</sub> “We can see that a gamete donor has no special relationship with the created child by recognizing that the created child was *meant to be* the child of the parents who will raise him. There was a *plan* to create this child, to be raised by these particular parents. Were it not for *their desire* to have a child, this child would not exist at all. Although it did not happen in the usual way, this child is literally the product of their mutual love—in that their mutual love is no doubt the basis of their desire to have a family together. And the gamete donor too had this intention. (Particularly in the case of an egg donor, for whom a recipient couple is usually settled at the time of a donation, the donor donated in order that *this couple* would have a child.)”

C<sub>25</sub>.P<sub>33</sub> The second objection gets something right.<sup>18</sup> In fact, the second objection brings out an important and beautiful truth, which explains why there is a special moral relationship, from the moment of conception, between a child created through gamete donation and both of the parents who are intended to raise the child, even given that one or both parents have no genetic relationship to the child.

C<sub>25</sub>.P<sub>34</sub> But in order to reject Julie's view, the second objector must hold not only that children of donation are meant to be with the parents who raised them—which is clearly true on one reading—but that this relationship *exhausts* the meaningful parental relationships involved in donation. While the second objector makes an excellent case—a correct case—that there *is* a special relationship between the created child and the parents who will raise him, this simply does not rule out that there is also a special relationship (perhaps less significant, but still there) with the gamete donor.

## C<sub>25</sub>.S<sub>7</sub> 4.3. Third Objection

C<sub>25</sub>.P<sub>35</sub> The third objector elaborates on the second objection:

C<sub>25</sub>.P<sub>36</sub> “Not only was the child *meant to be* the child of the parents who will raise him or her, but it is morally important that he or she be *only theirs* and have no other morally significant parental relationships. After all, when two people in love want to have a child together, there is an injustice if they are unable to do so. In the case of infertility or a same-sex couple, this is a naturally arising injustice; it is not an injustice caused by the state or some people; but it is an injustice nonetheless. The process of gamete donation is redressing this injustice. But if it turns out that the created child has a morally significant relationship with its genetic parent, the donor, then an injustice



remains: this couple does not get to be parents in the same way that others do. Rather, they have to contend with this other person being in the moral picture too. For reasons of justice, there is no morally significant relationship between created children and gamete donors.”

C<sub>25</sub>.P<sub>37</sub> I think the third objector gets something right. When two people want to become parents, they do typically want a child who is *just theirs*. It is worse for them that there be a third party, a virtual stranger to them, who has a morally significant relationship with their child. However, the objector’s claim is that *because it would mean that donor-assisted reproduction does a better job of righting an injustice*, there is no morally significant relationship between donors and created children. I am not convinced that moral reasons work in this way.

#### C<sub>25</sub>.S<sub>8</sub> 4.4. Fourth Objection

C<sub>25</sub>.P<sub>38</sub> “Julie’s view doesn’t make sense. On her view, it is a mistake to be a gamete donor—one should not be a gamete donor—because of concern for the created child. But these are *moral considerations*. So, her view is that gamete donation is *morally wrong*. But then it is not supererogatory!”

C<sub>25</sub>.P<sub>39</sub> This objector relies on a natural thought, captured in this principle:

C<sub>25</sub>.P<sub>40</sub> (1) If, all things considered, one should not  $\phi$ , and the reasons against  $\phi$ -ing—in virtue of which one should not  $\phi$ —are *moral reasons*—then  $\phi$ -ing is morally wrong.

C<sub>25</sub>.P<sub>41</sub> While this principle is intuitively attractive, it is false. Consider Samantha, who is trying to decide between staying home to read a silly novel and going to a talk by an old classmate. The classmate would appreciate seeing Samantha in the audience, but Samantha wouldn’t enjoy the talk. Let’s suppose that (a) it is morally permissible for Samantha to stay home. Now, Samantha has to decide what to do. It’s possible that neither of the following claims is true: (b) all things considered, Samantha should go to the talk, and (c) all things considered, Samantha should stay home. It could be that neither is true; but one of those claims could be true. (c) could be true. Or, for all we’ve said, (b) could be true. It could be that *both* (a) and (b) are true: it’s morally permissible for Samantha to stay home, but all things considered, Samantha should go to the talk. This could be the case, even though, if (b) is true, then the *reason* that Samantha should go to the talk is a *moral reason*: it is *that her classmate would be happy to see her there* (or *that it would be loyal to her classmate to go*). What this shows is that sometimes a consideration which is properly described as a moral consideration does settle that one should do something, all things considered, without making that option morally obligatory.<sup>19</sup>

C<sub>25</sub>.P<sub>42</sub> (Note that I do not claim that the case of gamete donation, on the moral story I told above, is analogous to Samantha’s case. In Samantha’s case, there is something morally



*good* about the option she should, all things considered, take. In the case of gamete donation (according to the arguments I was considering), there is something morally *bad* about donation, which makes it the case that, all things considered, one should refrain from donating. There are significant differences between the nature of our reasons in the two kinds of cases.)

#### 4.5. Fifth Objection

C25.S9

C25.P43

“An action cannot be both, on the one hand, praiseworthy and a morally good thing to do, but also, on the other hand, a mistake which is a mistake in virtue of moral considerations.”

C25.P44

While the fourth objector doubted that Julie’s view could maintain that gamete donation was *morally permissible*, the fifth objector doubts that Julie’s view can maintain that gamete donation is *a morally good thing to do*. The fifth objector endorses:

C25.P45

(2) If, all things considered, one should not  $\phi$ , and the reasons against  $\phi$ -ing—in virtue of which one should not  $\phi$ —are *moral reasons*—then  $\phi$ -ing is not a morally good thing to do and  $\phi$ -ing is not a praiseworthy thing to do.

C25.P46

This is a natural thought, but it is mistaken. Consider the following case. Tom has some gift cards for ice cream, which he could give to some schoolchildren. Tom has three options: go straight home, which is easiest for him; go a bit out of his way and give the coupons to some kids who live near a somewhat expensive ice cream shop, so that five kids can get free ice cream; or go a bit more out of his way and give the coupons to some other kids who live near a cheaper ice cream shop, so that ten kids can get free ice cream. Let’s suppose furthermore that it’s morally permissible for Tom to go home: he needn’t do any good deeds today, and he doesn’t owe anyone these gift cards. It’s supererogatory for Tom to give the gift cards to any of the kids. Finally, let’s suppose that, all things considered, Tom should take the third option: he should go out of his way to the farther school and enable ten kids to have ice cream. (Note something important here: that was a further, substantive stipulation. It is not always true that an agent should do the most good that he or she can do.<sup>20</sup>) Given all of these stipulations, this case provides a counterexample to (2). The counterexample is given by Tom’s second option: going a bit out of his way and enabling five kids to get ice cream. All things considered, Tom shouldn’t do this. The reasons against doing it, in virtue of which he shouldn’t do it—that more kids would get ice cream if he went more out of his way, to the other school—are moral considerations. But, nevertheless, if Tom takes the second option he is doing a morally good thing, and he is praiseworthy. He’s benefiting some kids whom he was not morally obligated to benefit.<sup>21</sup>

C25.P47

So, the fifth objection fails.

## 4.6. Sixth Objection

C25.S10

C25.P48

The case of Tom taking his second option is importantly morally different from the case of Dariah becoming a gamete donor. Both are doing something morally good and helping some people, though it is not what they should do, all things considered. But in Tom's case, this is because he has an alternative which is even morally better, on which he helps more people. Tom is praiseworthy for taking his second option and he'd be *more praiseworthy* if he did what he should do, all things considered. By contrast, Dariah's case may appear to raise a puzzle, which gives rise to a new objection. It may appear that, on Julie's view, while being a gamete donor is praiseworthy, there is a *morally better action*—refraining from being a gamete donor—which is not praiseworthy at all. After all, refraining from being a gamete donor does not involve *helping* anyone. It just involves continuing one's life as usual. The sixth objection is that Julie's view cannot be true because:

C25.P49

(3) It cannot be the case that one action is morally praiseworthy while a morally better action is not morally praiseworthy

C25.P50

In this case, I am happy to concede that the objector's claim is true; I will not take issue with (3). However, I deny that Julie's view violates (3). Rather, properly understood, Julie's view holds that if Dariah considers gamete donation but then is moved by the thoughts that she would be isolated from her child, that she would be putting blind faith in strangers to raise her child, and that she would not be available to her child if her child needed her help, and Dariah refrains from donation *for these reasons*, then Dariah is praiseworthy. It's true that the praiseworthiness of Dariah for refraining does seem different from the praiseworthiness of Dariah in the case in which she donates. The kind of praiseworthiness that a person merits when she makes a sacrifice to help others is but one species of praiseworthiness. The objector might reformulate the objection by appeal to this claim:

C25.P51

(4) It cannot be the case that one action is morally praiseworthy *in the special way that making a sacrifice to help others is morally praiseworthy* while a morally better action is not morally praiseworthy *in the same way*

C25.P52

But this claim I do deny.

## 4.7. Seventh Objection

C25.S11

C25.P53

The seventh objector picks up on my acknowledgment that on Julie's view, the reasons against donation, in virtue of which one should not donate, are moral reasons:

C25.P54

"A child created through gamete donation wouldn't have existed at all if it weren't for the donation, so there can't be any reasons *stemming from the interests or welfare of the child* against donation."

C<sub>25</sub>.P<sub>55</sub> The objector is assuming that there can't be a reason against an action, stemming from the interests of a particular person, if that person is not made worse-off than he would otherwise be by the action. This principle has some initial plausibility, but it is false. I argue elsewhere that people can be harmed by their creations, indeed impermissibly harmed, even though their lives are well worth living.<sup>22</sup>

C<sub>25</sub>.P<sub>56</sub> It is easy to see that the objector's line of thought is deeply implausible. Suppose that Ellen is deciding whether to donate eggs to a particular couple, and then she learns that the husband is an abusive alcoholic. He's just verbally abusive, not physically abusive. It happens that Ellen has studied this topic and knows that while children of verbally abusive alcoholics experience much pain and hardship, their lives are certainly worth living. Ellen then concludes that the child she will help to create, her genetic child, will not be worse off than not having existed, so it's just fine to donate her eggs to this couple. Something has clearly gone wrong in Ellen's reasoning.

## 5. MY CONCLUSIONS SO FAR

C<sub>25</sub>.S<sub>12</sub>

C<sub>25</sub>.P<sub>57</sub> I've developed Julie's view and defended its coherence. I think it should be taken seriously as a possible view about gamete donation.

C<sub>25</sub>.P<sub>58</sub> I've argued that principles (1) and (2) are false, despite their initial plausibility:

C<sub>25</sub>.P<sub>59</sub> (1) If, all things considered, one should not  $\phi$ , and the reasons against  $\phi$ -ing—in virtue of which one should not  $\phi$ —are *moral reasons*—then  $\phi$ -ing is morally wrong.

C<sub>25</sub>.P<sub>60</sub> (2) If, all things considered, one should not  $\phi$ , and the reasons against  $\phi$ -ing—in virtue of which one should not  $\phi$ —are *moral reasons*—then  $\phi$ -ing is not a morally good thing to do and  $\phi$ -ing is not a praiseworthy thing to do.

C<sub>25</sub>.P<sub>61</sub> In the face of learning that (1) is false, we might worry about how we can understand the relationship between *what is morally wrong* and *what one should not do, all things considered*. Do they have nothing to do with each other? We need not go so far. For example, I have not challenged the claim that morality is overriding; I do endorse:

C<sub>25</sub>.P<sub>62</sub> *Morality is overriding*: If one's  $\phi$ -ing is morally wrong, then one should not  $\phi$ , all things considered.

C<sub>25</sub>.P<sub>63</sub> But I have pointed out the following:

C<sub>25</sub>.P<sub>64</sub> • When we ask, about some moral considerations against  $\phi$ -ing, "Are these reasons sufficient that they win out?" this may raise either of two questions: "Is  $\phi$ -ing morally wrong?" or "Is it the case that, all things considered, one should not  $\phi$ ?"

- C<sub>25</sub>.P<sub>65</sub> • Some acts should not be performed, all things considered, but are not morally wrong (such as burning the money in my wallet), and for some of these acts, the reasons in virtue of which they should not be performed are *moral reasons*.

C<sub>25</sub>.P<sub>66</sub> In the next section, I will discuss two related issues about the nature of moral reasons.

## 6. WHAT MORAL REASONS CAN DO

C<sub>25</sub>.S<sub>13</sub>

C<sub>25</sub>.P<sub>67</sub> One thing that emerges from our discussion so far is that the following claim is false:

- C<sub>25</sub>.P<sub>68</sub> (5) Moral reasons only function to determine which actions are morally permissible and which actions are morally wrong; their contribution to that issue exhausts their import.

C<sub>25</sub>.P<sub>69</sub> It is easy to see that this claim is false. The mere existence of supererogatory actions undermines (5). Some actions have something to be said for them, morally, but are not morally required. For these actions, moral reasons in favor of them are doing additional work beyond rendering them morally permissible as opposed to morally wrong.

C<sub>25</sub>.P<sub>70</sub> Once an agent knows that she has several morally permissible options, what is the agent's position? A naive and mistaken picture would hold that moral reasons have no further import for this agent, and that at this point she should choose which action to perform based solely on other factors, such as what is best for her. This picture would imply the following deeply unattractive view:

- C<sub>25</sub>.P<sub>71</sub> (6) It is never the case that a supererogatory action is the action that an agent should perform, all things considered, because of its morally good features.

C<sub>25</sub>.P<sub>72</sub> The view would imply that each supererogatory option is either a mistake or is such that it is no more supported by an agent's reasons than some other option she has. (Or, unusually, we might have a supererogatory action that an agent should perform, but for reasons that have nothing to do with its morally good features.) The view implies that a person's moral reasons, taken together, never favor a supererogatory option above her other options. That is false.

C<sub>25</sub>.P<sub>73</sub> A picture according to which moral reasons are silent after they settle which actions are morally permissible and which are morally wrong is particularly unattractive if it furthermore holds that once these are settled, the only reasons available to do any further work are *prudential* reasons. It would then turn out that every supererogatory action is a mistake—something one should not do, all things

considered—for prudential reasons. (Or if a supererogatory action is not a mistake, that has nothing to do with its morally good features.) By contrast, the correct view is that sometimes, all things considered, one should perform a supererogatory act, even though that act is not the act that is *best for the agent* out of the morally permissible acts (and one should do so *because of the features that make it a morally good thing to do*).

C25.P74 Note that while it is a mistake to think that all supererogatory actions are mistakes, there is an interesting class of supererogatory actions that are mistakes. In the next section, I'll propose the view that many supererogatory actions are *moral mistakes*. (That is, all things considered, the agent should not have performed the action, and the reasons against acting in virtue of which this is true are *moral* reasons.) But the class of supererogatory actions that are *prudential mistakes* is also very interesting. There may even be a special kind of honor or praiseworthiness that comes with making this kind of mistake, sacrificing oneself for others to such a degree that it goes beyond what one all things considered had reason to do.<sup>23</sup>

C25.P75 What I have emphasized in rejecting (1) is that moral reasons can continue to have force *beyond* settling what is morally wrong and what is morally permissible. This is most obvious when it comes to moral reasons to do something because it would have *good consequences*. This is the classic case of the supererogatory action: there's a way one can help someone but it isn't morally required. What I have suggested, which is more controversial, is that moral reasons of a different kind can exhibit this phenomenon. Consider moral reasons *against* acting a certain way, which behave like *constraints*; these include for example reasons against lying, reasons against breaking promises, and reasons against killing. (These are not reasons against acting a certain way simply because there would be bad consequences of acting that way.) Sometimes these reasons make an action morally wrong. Sometimes these reasons are present, but they fail to make an action morally wrong. I have proposed that these reasons are not *silent* after failing to make an action morally wrong; they still have force, and they can make an action something that, all things considered, one should not do. This is the claim I deny:

C25.P76 (7) A moral reason that functions in a constraint-like way only exerts force in determining whether the action in question is morally wrong. If the action is morally permissible, then there is no further import of the constraint-like reason against it.<sup>24</sup>

C25.P77 On Julie's view, the reasons against gamete donation are like this. That the agent would be isolated from her child, that she would not be available to her child if her child needed her help, and that she would be putting blind faith in strangers to raise her child, are all constraint-like reasons against being a gamete donor; but they do not make gamete donation morally wrong; nevertheless, they do make gamete donation something that, all things considered, one should not do.

## 7. SHOULD WE SEE OTHER SUPEREROGATORY ACTIONS AS MORALLY PERMISSIBLE MORAL MISTAKES?

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C<sub>25</sub>.S14C<sub>25</sub>.P78

Having presented and defended Julie's view, I want to turn now to consider a somewhat radical suggestion. Perhaps, appropriately understood, many deeply supererogatory actions have the character that Julie thinks gamete donation has. This is the view I want to examine: that many deeply supererogatory actions are morally permissible moral mistakes. On this view, these actions are ones that the agents, all things considered, should not perform. But nevertheless, it is morally good that agents do perform them, and it's appropriate to wish that agents would perform more of them.

C<sub>25</sub>.P79

Let's consider Chris again. He announces that he is probably going to donate half of his after-tax income to UNICEF. Chris is middle-class in the United States. He is not wealthy. I said at first that a friend, hearing this announcement, might reasonably react as follows: "Wow, it's wonderful that you're doing that. Good for you! If only more people would do that!" On the view I am now exploring, a friend who reacts this way is failing to be a helpful or properly engaged friend. In particular, if Chris wants to think his choice through with his friend, then what the friend owes Chris is a response more like this: "I think you would be making a mistake. Think about how hard it will be for you to live on half your income. Think about what you and your family will have to give up. Sure, I know you *could* do it. But that's a big sacrifice to make!" In fact, that's the way a lot of people would respond to Chris's announcement.<sup>25</sup>

C<sub>25</sub>.P80

Consider another type of deeply supererogatory action: risking or sacrificing one's life to save more than one other person, in an emergency situation. Someone who does this is lauded as a hero. Such a person is praiseworthy: he or she has done a wonderful thing for the people he or she has saved. But suppose it is an emergency situation with some time to ponder built in. Suppose Evan, a bystander, before rushing into a burning building with two people inside, says "I'm going to go in there!" What should Evan's friend say to him? A friend might well say, "Don't do it, don't risk your life. Think of your family."

C<sub>25</sub>.P81

Note that on the proposed view, the reasons that both Chris and Evan should refrain concern their special relationships to their loved ones. These, again, are *agent-relative* reasons. They are reasons that the agents should refrain from acting, but they are not reasons that third parties should wish the agents to refrain from acting. On the proposed view, risking one's own life to save two or more strangers may be a morally good thing to do but also a moral mistake: one shouldn't do it because of *moral reasons* given by one's special relationship with one's loved ones; but if one does it, one has done a praiseworthy, wonderful thing.

C<sub>25</sub>.P82

On the view we're considering, we should have the following attitude toward some cases of deeply supererogatory actions: it's great that someone does something like this,

and it would be great if more people would. Things would be better if we could convince more people to act in these ways. However, were we to try to convince them, we would be convincing them to do what they have most reason not to do.

## 8. CONCLUSION

C<sub>25</sub>,S<sub>15</sub>

C<sub>25</sub>,P<sub>83</sub> I have developed the following view about gamete donation, which I think should be taken seriously:

C<sub>25</sub>,P<sub>84</sub> Potential gamete donors have serious moral reasons against donation: they would have children from whom they would be isolated, they would be unavailable to these children if the children needed their help, and they would be putting blind faith in strangers to raise their children well. But gamete donation has such good effects—it enables people who want to become parents to be parents, and it enables families to exist that would not otherwise exist—that gamete donation is morally permissible, despite the reasons against it; in fact, it's a morally good thing to do. Nevertheless, gamete donation is a moral mistake: all things considered, one should not be a gamete donor, for moral reasons.

C<sub>25</sub>,P<sub>85</sub> I have also suggested the more general view that many deeply supererogatory actions are moral mistakes, though they are morally permissible.

C<sub>25</sub>,P<sub>86</sub> I have argued that these claims are false:

C<sub>25</sub>,P<sub>87</sub> (1) If, all things considered, one should not  $\phi$ , and the reasons against  $\phi$ -ing—in virtue of which one should not  $\phi$ —are *moral reasons*—then  $\phi$ -ing is morally wrong.

C<sub>25</sub>,P<sub>88</sub> (2) If, all things considered, one should not  $\phi$ , and the reasons against  $\phi$ -ing—in virtue of which one should not  $\phi$ —are *moral reasons*—then  $\phi$ -ing is not a morally good thing to do and  $\phi$ -ing is not a praiseworthy thing to do.

C<sub>25</sub>,P<sub>89</sub> Because (1) is false, the following are true:

- C<sub>25</sub>,P<sub>90</sub> • When we ask, about some moral considerations against  $\phi$ -ing, “Are these reasons sufficient that they win out?” this may raise either of two questions: “Is  $\phi$ -ing morally wrong?” or “Is it the case that, all things considered, one should not  $\phi$ ?”
- C<sub>25</sub>,P<sub>91</sub> • Some acts should not be performed, all things considered, but are not morally wrong (such as burning the money in my wallet), and for some of these acts, the reasons in virtue of which they should not be performed are *moral reasons*.

C<sub>25</sub>,P<sub>92</sub> Finally, I pointed out that moral reasons have force beyond their contributions to the question which actions are morally permissible, and I claimed that even a constraint-like



moral reason can continue to have force in a case in which it does not render an action morally wrong; it may nevertheless render the action something that, all things considered, the agent should not do.

## ACKNOWLEDGMENTS

C25\_S16

C25\_P93

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## NOTES

1. I leave open that it may be permissible for Anne to ask for payment for the medicine; the point is that she is morally required to relinquish it somehow.
2. There is some disagreement about whether actions in the second category count as supererogatory; I think they do, but this doesn't matter for my purposes. Some people think that only actions in the third category are supererogatory; if they are correct, then all supererogatory actions are "deeply supererogatory" as I use the term.
3. I assume this is so, though some would disagree. See Peter Singer, "Famine, Affluence, and Morality," *Philosophy and Public Affairs* 1, no. 3 (1972): 229–243.
4. I want to set aside some issues that are not occupying Julie. First, Julie does not draw a distinction between "purely altruistic" gamete donation and paid gamete donation. In particular, Julie recognizes that someone who donates sperm or eggs for money can nevertheless truly be said to be motivated by the desire to help others. There are many paid activities which help others and have moral worth in virtue of helping others. Second, Julie believes that anonymous sperm or egg donation is a mistake because it creates children from whom the donor is ultimately isolated. She does not think that it is the physical burden of egg donation which makes it a mistake, though those burdens are real. (The donor must take hormones to stimulate egg production and must undergo an invasive egg extraction procedure.) She would have the same concern about egg donation were it as logistically easy as sperm donation. Third, Julie's concern about sperm or egg donation does not stem (at least not obviously so) from any concern that the sperm or egg donor is being exploited; her concern does not distinguish between well-off and impoverished donors.
5. I restrict the discussion to anonymous gamete donation unless explicitly stated otherwise. By "anonymous gamete donation," I mean donation in which the donor is anonymous *to the created child*, at least until the child is eighteen years old. This is compatible with some non-anonymity between the donor and the intended parents of the child.
6. A number of authors have argued that gamete donation is morally wrong, while others have argued that gamete donation is morally permissible. None of these authors has articulated a

view along the lines of Julie's view: that gamete donation is a moral mistake (one should not do it *for moral reasons*) but is not morally wrong.

Luara Ferracioli, "On the Value of Intimacy in Procreation," *Journal of Value Inquiry* 48 (2014): 349–369 argues that anonymous gamete donation is usually morally wrong because donors do not know that the recipient(s) of donation will be good parent(s).

Melissa Moschella, "Rethinking the Moral Permissibility of Gamete Donation," *Theoretical Medicine and Bioethics* 35 (2014): 421–440 argues that gamete donors have parental responsibilities they do not fulfill, and thus that gamete donation is morally wrong.

Rivka Weinberg, "The Moral Complexity of Sperm Donation" *Bioethics* 22 (2008): 166–178 argues that gamete donors have parental responsibilities for their genetic children, and that this probably makes gamete donation morally wrong.

Tim Bayne, "Gamete Donation and Paternal Responsibility," *Journal of Applied Philosophy* 20 (2003): 77–87 argues that gamete donors lack parental responsibility; or if they have it, then donation is nevertheless compatible with meeting this responsibility.

7. However, in saying this, I do not mean to suggest that the view holds that the mistake in gamete donation is merely the taking on of a particular burden.
8. Some people advocate for laws that would allow all children of gamete donation to find out the identities of their genetic parents once they are eighteen years old. An objector might hold that if such laws became widespread, then there would be little interest in the topic of my chapter: *anonymous* gamete donation. The objector's suggestion would be that the mistake present in gamete donation on Julie's view, that donors are isolated from their children, would not be present in such a legal regime. But Julie's worry would still largely remain. It would still be true for eighteen years that donors are isolated from their children, have no relationship with them, know nothing about them, and are not in a position to help them if they need help.
9. Strictly speaking, it does not follow from the claim that a certain choice is a mistake, that an agent who performs the choice should later regret it. Procreative choices in particular are often such that they were mistakes, but their agents are later reasonable in being glad to have made them. Consider a girl who chooses at age fourteen to conceive; later, in loving her child, she is glad to have conceived him and does not regret her choice, even if she understands it to have been something she should not have done. Anonymous donors are different; they do not know their children created through the donation, and they do not love them (at least, they often do not love them, or they do not love them with any knowledge of them). Still, donors could value these children, knowing that they exist, and for that reason not wish that they did not exist, and so not wish not to have donated. I discuss the *reasonable attachment to the actual* in "I'll Be Glad I Did It' Reasoning and the Significance of Future Desires," *Philosophical Perspectives* 23 (2009): 177–199 and "Transformative Experiences and Reliance on Moral Testimony," *Res Philosophica* 92 (2015): 323–339.
10. In "The Gift of Life," *Philosophy and Public Affairs* 36, no. 3 (2008): 245–266.
11. Furthermore, there are certain burdens that can come from genetic relatedness to one's parents: parents often have misguided expectations that children will be like them and follow in their footsteps; there is something to be said for having one or two parents without such preconceptions.
12. Though one might think that even such public education programs would be problematic for similar reasons that outlawing the practice would be problematic. Imagine a publicly funded campaign aimed at convincing women not to have abortions. See Sarah Stroud, "Dworkin and Casey on Abortion," *Philosophy and Public Affairs* 25 (1996): 140–170.

13. It seems that Julie does have reason to hope that reproductive technology advances, in certain ways. For example, it would be wonderful if a skin cell from an adult could be transformed into a gamete and if two such gametes could be combined to create an embryo. This could enable two women in a relationship to have a child to whom both were genetically related. Similarly, two men could conceive a child to whom both were genetically related (though a surrogate would have to gestate the child). And a heterosexual couple experiencing fertility problems could conceive a child to whom both were genetically related. Reproductive technology is indeed advancing toward this goal. (See Philip Ball, “Reproduction revolution: how our skin cells might be turned into sperm and eggs,” *The Guardian*, October 14, 2018.)
14. While Julie’s view does recognize an agent-neutral reason against gamete donation—that it creates a child who lacks a relationship with her parent—her view does not see this reason as particularly weighty; it is not what makes it the case that a donor should not donate, and it is not weighty enough to mean that prospective parents should not use gamete donation to create a child, nor is it weighty enough to mean that third parties should wish that gamete donation not occur.
15. Making an adoption plan for one’s child also may mean being isolated from one’s child, putting blind faith in strangers to raise one’s child, and being unavailable to one’s child if one’s child needs one’s help. Should Julie think that one should not make adoption plans for one’s child? No. Because there is already an existing child in such cases, there is often a compelling reason to go ahead with an adoption plan. But the considerations that move Julie do tell in favor of *open adoption* rather than closed adoption.
16. Melissa Seymour Fahmy, “On Procreative Responsibility in Assisted and Collaborative Reproduction,” *Ethical Theory and Moral Practice* 16 (2013): 55–70 offers a view that would ground disagreement with my claim. Fahmy argues that doctors who facilitate gamete donation should screen prospective parents to make sure they would be good parents.
17. In saying that it would be morally permissible for the doctor to continue to provide fertility treatments to the homophobic couple, I am not making the strong claim that doctors may ignore *all* evidence that people will be bad parents. Evidence that prospective parents would be physically abusive, for example, would make it morally impermissible for a doctor to provide fertility treatment.
18. It also provides a useful contrast between children of gamete donation and children of adoption. Children of adoption were not created in order to be raised by the parents who raise them. That such children may themselves yearn for their genetic parents may make more sense than that the children of donation would do so. For children of adoption, there was presumably at one time a real possibility that they would be raised by their genetic parents. But for children of donation, there was never any possibility that they would be raised by their genetic parents. Indeed, they would not have existed but for the plan that they be raised by the parents who raise them.
19. I argue for the existence of morally permissible moral mistakes in “Morally Permissible Moral Mistakes,” *Ethics* 126 (2016): 366–393 and “Morality Within the Realm of the Morally Permissible,” *Oxford Studies in Normative Ethics* 5 (2015): 221–244; I discuss related issues in “There Is No Moral *Ought* and No Prudential *Ought*,” in *Routledge Handbook of Practical Reason*, ed. Ruth Chang and Kurt Sylvan (London: Routledge, 2021), 438–456 ; and I use the notion of a morally permissible moral mistake to develop a view about the ethics of eating meat in “Eating Meat as a Morally Permissible Moral Mistake,” in *Philosophy Comes*

- to *Dinner*, ed. Andrew Chignell, Terence Cuneo, and Matthew C. Halteman (London: Routledge, 2015), 215–231.
20. For example, suppose that you are an amateur squash player and you've worked hard in preparation for the local Y's squash tournament. While you drive to the Y for the first match, you see some volunteers picking up trash in a public park. You could stop to join them, sacrificing your chance to play in the tournament in order to improve the park. Suppose that helping in the park is the most good you could do at this moment; it's nevertheless not true that you should do so: you should drive to the Y, given how important it is to you.
  21. The existence of these "second-best" supererogatory actions (such as Tom's giving the gift cards to five nearby kids) is underappreciated in discussions of the supererogatory. For example, in Terry Horgan and Mark Timmons, "Untying a Knot from the Inside Out: Reflections on the 'Paradox' of Supererogation," *Social Philosophy and Policy* 27 (2010): 29–63, the authors gloss the paradox of supererogation as arising because supererogatory actions are "morally best" (29). Similarly, Jamie Dreier, "Why Ethical Satisficing Makes Sense and Rational Satisficing Doesn't," in *Satisficing and Maximizing*, ed. Michael Byron (Cambridge: Cambridge University Press, 2004), 131–154 proposes that supererogatory actions are those that are required from the perspective of beneficence, and Douglas Portmore, "Are Moral Reasons Morally Overriding?" *Ethical Theory and Moral Practice* 11 (2008): 369–388 says "for there is a sense in which supererogatory acts are acts that agents morally ought to perform" (379). Paul McNamara, "Supererogation, Inside and Out: Toward an Adequate Scheme for Common Sense Morality," in *Oxford Studies in Normative Ethics*, ed. Mark Timmons (Oxford: Oxford University Press, 2011), 202–235 points out that sometimes a supererogatory action is not an agent's morally best option, that such an action can nevertheless be praiseworthy, and that this phenomenon is underappreciated.
  22. See my "Can We Harm and Benefit in Creating?" *Philosophical Perspectives* 18 (2004), 89–113) and "Harming as Causing Harm," in *Harming Future Persons*, ed. Melinda Roberts and David Wasserman (Dordrecht: Springer, 2009), 137–154.
  23. For more on prudential mistakes (things that one should not do, all things considered, such that prudential considerations explain why one should not do them), see my "There is No Moral Ought and No Prudential Ought."
  24. For more on the falsity of claim (7), see section II of my "Morally Permissible Moral Mistakes."
  25. Some people might respond to Chris's announcement by feeling threatened, thinking "If Chris is doing that, does that mean he thinks I should be doing that too?" They might try to talk him out of it to vindicate the reasonableness of their own choices. Someone who reacts for these reasons is reacting *understandably*, but he's not getting right *why* what Chris is doing is a mistake.