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## **Families in Separation Contexts - Ethical Challenges and How to Meet Them**

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## Introduction

Many children in Western countries experience a separation of their parents as a significant event in their childhood or adolescence. Due to changing social values and law reforms, separation and divorce rates have increased significantly during the last half century and have stabilized at a high level (Amato & James, 2010; Ambert, 2009; Langmeyer & Walper, 2014; Prioux, Mazuy, Barbieri, Mandelbaum, & Dutreuilh, 2010; Walper, 2009). To analyze these changes and their impact on children, parents and society, numerous empirical studies have been conducted. Research indicates that children of separated parents are, statistically speaking, disadvantaged compared to children whose parents are still together. For example, children of separated parents tend to have more behavioral problems, less sustainable social relationships and a poorer school performance (Averdijk, Malti, Eisner, & Ribeaud, 2011; Barrett & Turner, 2005; Potter, 2010; Sun & Li, 2002).

In this book, I want to approach the topic of parental separations from a different angle, however, namely in my capacity as a philosopher and not as a social researcher. Cases of parental separations are not only a widespread social phenomenon in Western societies; they are also relevant from an ethical perspective. Children are among the most vulnerable members of society. They are dependent on others - most notably their parents, but also state and society - to be provided with the care and resources they need for their wellbeing and development. While raising a child is, according to this understanding, a collective endeavor, primary responsibility<sup>1</sup> for child rearing is still assigned to parents (and not to, say, professional nannies in state-run institutions as Plato famously suggested). This is because children must be raised in the context of ongoing care and flourishing relationships to have their emotional needs met, and these so-called relationship goods can only be realized within families (provided that they are intact). Yet, parental separations pose a potential threat to the structures of care and dependency that constitute the social institution of the family.

Thereby, I take a parental separation to be more than the legal act of divorce. It is also more than the decision to end a romantic relationship, whether marital or not. Rather, a parental separation is a process that is associated with profound changes in the relationships and living circumstances of the family: The parents are no lovers anymore; they move to separate residences and begin to live separate lives - perhaps in another city or with another partner. Everyday family life, as it used to be, has come to an end.

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<sup>1</sup> Throughout this book, I will use the notions of responsibility, duty and obligation interchangeably.

This upheaval provides an opportunity to overcome problems and to rearrange family life so that the children involved can cope with the new situation. But there is also a considerable risk that a parental separation is harmful to the children involved - when the parents have continued conflicts to which the child is exposed, for example, or when the family experiences economic hardship (Davies et al., 2002; Fincham, 1998; Cummings, Simpson, & Wilson, 1993; Aseltine, 1996; McLanahan & Sandefur, 1994). Under such unfavorable, yet common, circumstances parents often fail to provide their children with the resources and care they need for their wellbeing and development. However, this is what parents are required to do in virtue of being entrusted with primary responsibility for child rearing.

When parents in separation contexts fail to meet their parental duties, this has an impact on both children and society. Children in such separation contexts often suffer from a lack of emotional security and stability. They are therefore unable to adjust to the changes in family life, and this affects their wellbeing as children and sometimes even their wellbeing as adults (Amato & Sobolewski, 2001). When children in separation contexts have behavioral problems, fragile social relationships or a poor school performance, this may also have far-reaching social consequences. Conservatives see high separation and divorce rates therefore as the main reason for societal decline (Blankenhorn, 1995; Popenoe, 1992; Spaht, 1998).

This short outline was meant to show that there is a tension between empirical facts suggesting that a parental separation is potentially harmful to the children involved and ethical considerations regarding child rearing responsibilities and family values. This discrepancy between how things are and how they ought to be shows that, at the present time, parents, state and society fail to promote the wellbeing and development of children in separation contexts. This calls for change. But how can we protect children from the potential harms of a parental separation?

So far, philosophers have hardly addressed this question, which is surprising since family ethics have become popular in academic philosophy in the last decades. As has been shown, cases of parental separations are morally and socially relevant, but up to now family ethicists did not acknowledge this. Instead, legal scholars, political activists and social scientists have addressed the question of how we should deal with parental separations. In what follows, I will briefly sketch the debate in order to be able to position myself.

There are, on the one hand, conservative advocates of family values who think that a parental separation is bad for children in any circumstance. They argue that we have to prevent parental separations from happening in order to protect children (Blankenhorn, 1995; Popenoe, 1992; Spaht, 1998). On the other hand, there are liberals and feminists who tend to discount the

harms of a parental separation to the children involved. In opposition to the conservatives, they think that parents should not be restricted in their freedom to leave an unsatisfying relationship (Ehrenreich, 1996; Pollitt, 2000; Struening, 1996).

Both positions are unconvincing for the very same reasons. Conservatives and liberals oversimplify reality when they claim that a parental separation is either inherently bad or rather unproblematic. Their arguments are not empirically sound. Recent empirical studies show that the realities of families in separation contexts are more complex than they assume. Depending on the circumstances that accompany the parental separation, different separation processes are possible that lead to different outcomes among children (Amato, 1994; Amato, 2000). Besides that, conservative as well as liberal scholars have been criticized for putting their arguments forward for ideological reasons rather than out of a serious concern for children's wellbeing (Scott, 2001).

In this book, I will try to overcome these deficits by formulating arguments that are based on ethical considerations and informed by empirical social research. Thereby, the undeniable fact that children are vulnerable human beings who must be cared for and protected from harm speaks in favor of putting children's wellbeing center stage. I will examine why the wellbeing of children in separation contexts is put at risk and what we can do to avoid those risks. However, this requires an understanding of what it means to live a good life as a child.

Like most other philosophers, I adopt an objective theory of wellbeing according to which the wellbeing of individuals is promoted by the realization of certain objective goods (Bagattini, 2019). I assume that for children to live good lives they must be able to enjoy three different kinds of goods. They first need generic goods, such as adequate nutrition, housing, health care and education (Gutmann, 1980). These generic goods can, in principle, be supplied by anyone, such as nannies, teachers, nurses etc. By contrast, the second class of goods can only be provided in the context of stable and close relationships (Keller, 2007). The parent-child relationship is paradigmatic in this regard. Parents are in a privileged position to provide their children with spontaneous love, intimacy and shared family experiences. Children need these so-called familial relationship goods for a healthy emotional development (Brighouse & Swift, 2014; Seglow, 2013).

Generic goods and relationship goods are often considered important for children to develop into well-functioning adults. Yet, Ramesh Raghavan and Anna Alexandrova rightly criticize that a theory of wellbeing for children should be more than a theory for emerging adults (Raghavan & Alexandrova, 2015). If we only conceive of children as emerging adults, we might fail to ensure that they have a good childhood. I therefore assume that for children to live good

lives they must also be able to enjoy what Anca Gheaus (2015), Samantha Brennan (2014) and Collin McLeod (2010) call the goods of childhood. They thereby point to different goods, such as a sense of being carefree, unconditional trust, physical affection and the capacity to experience spontaneous joy.

Unlike generic and relationship goods, the goods of childhood are not inherently relational. They do not have to be provided by others. Rather, children can enjoy them in virtue of having special capacities. Nevertheless, there appear to be both enabling and disabling social conditions. To promote children's wellbeing therefore also means that we must ensure that children grow up in a social environment in which it is possible for them to experience these goods (Gheaus, 2015).

With this working definition in mind, we can come back to the research question: How can we protect children from the potential harms of a parental separation? The quick, but unsatisfying answer is the following: We have to ensure that children are able to enjoy the various kinds of goods that I have just mentioned. If we take up the conservatives' suggestions and try to prevent parental separations from happening, we might fail to do so since children could end up being caught in dysfunctional family relationships. If we do not restrict the freedom of parents who want to separate, such as the liberals propose, we might run the risk that parental separations end up in broken families.

In this book, I will defend a moderate position that acknowledges both the parents' autonomy to pursue individual happiness in their romantic relationships as well as the children's need for stable and close family relationships. I will argue that parents should be allowed to separate, but this does not mean that they can do whatever they want. Rather, I propose that to meet their parental duties the parents must separate in such a way that their children are provided with continuity of care and close family relationships as this is what children need to be able to adjust to the changes in family life.

As might have become clear, I will develop my arguments within a deontological framework. I assume that children's dependency for care and protection gives rise to significant duties for others to promote their wellbeing as children as well as their development into well-functioning adults.<sup>2</sup> Yet, when making suggestions for how to deal with ethical problems in separation contexts, I will not only consider children's wellbeing and the duties of parents, state

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<sup>2</sup> One could also analyze parental separations in terms of the rights that children have and that might be infringed (for accounts of children's rights see Brennan (2014) and O'Neill (1988)). I am not committed to either of these concepts since I want to draw general conclusions about how to deal with cases of parental separations and both kinds of approaches seem to point in the same direction in this context. For reasons of simplicity, I will talk about children's wellbeing rather than about children's rights. Yet, I want to emphasize that for the purpose of my arguments both concepts could be used.



and society to promote it. Rather, since I assume that the state in question is a liberal state, I will also take into account considerations of justice and equality.

Injustices within families as well as in separation contexts come about when child rearing responsibilities are unfairly distributed between parents, state and society as well as between women and men.<sup>3</sup> In the complex societies we live in parents have to invest huge amounts of resources to prepare their children for adulthood. This benefits society, while parents are unfairly disadvantaged if they do not receive adequate state support in return (Olsaretti, 2013). Thereby, women tend to be more disadvantaged than men. This is because couples usually decide to allocate child rearing responsibilities to women. As a result, they earn less money and have fewer employment opportunities in comparison to men, which renders them vulnerable to falling into poverty in case of a separation (Bonnet, Garbinti, & Solaz, 2021; Okin, 1989). Although I put children's wellbeing center stage, I also find these considerations important. I will therefore try to make suggestions for how we should protect children from the potential harms of a parental separation that are in accordance with, rather than in opposition to, considerations of justice and gender equality.

As already indicated, I will not only consider philosophical theories, but also current findings in empirical social research, which provide invaluable insights into the everyday realities of families in separation contexts. I will thereby adopt the methodological approach of "practical ethics" developed by Hugh LaFollette (LaFollette, 2005). He assumes that to answer practical ethical questions we have to bring empirical social research and philosophical theories into fruitful exchange. For an ethical analysis of parental separations, both perspectives are important. We cannot identify ethical problems in separation contexts without an awareness of the relevant empirical details. At the same time, we need philosophical theories to determine which facts are ethically relevant in this specific context. LaFollette's methodological approach of practical ethics enables philosophers to develop ethical theories that have an impact on reality. However, there are also methodological challenges arising from the brute fact that reality is highly complex.

There are different cases of parental separations varying with the children's age, with the parents' socioeconomic status, the family members' personality, the social and cultural background etc. There are many studies investigating different aspects of the complex realities of families in separation contexts, such as co-parenting styles or the role of social support

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<sup>3</sup> Throughout this book, I will speak of men and women or mothers and fathers when I want to address gender injustices. Otherwise, I will use gender-neutral language, speaking of parents, since I do not want to exclude non-traditional family forms with homosexual parents.

networks. These studies are conducted in different countries, in different social settings with different research methods and research questions. The research results are therefore diverse and sometimes even inconsistent. Yet, we need reliable empirical data to be able to identify practical ethical problems in separation contexts. Such as suggested by Paul R. Amato, one of the leading figures in empirical social research on children in divorce contexts, I will meet this methodological challenge by working with recent literature summaries as well as with meta-analyses which combine different studies and search for consistency in research findings (Amato, 2003).

The complexity of reality does not only pose a challenge to the use of empirical data but also to ethical theorizing. This is because any argument for how we should deal with parental separations requires some kind of generalization. Consequently, I will not be able to fully embrace the diversity of separation contexts by taking into account every empirical detail. Instead, I will try to formulate principles that apply to families in separation contexts more generally. Here is an illustrative example: Depending on their age, children in separation contexts have different needs. Small children may need fixed times when they see their parents since this gives them a feeling of security and stability. By contrast, teenagers may need more flexible parenting times as they become autonomous. However, despite those differences, one can say that, in general, children need parents who are attentive to their needs whatever these age-related needs are.

Although I try to capture a broad range of separation cases, I have to place some limitations to not further complicate already complex matters. Following Harry Brighouse and Adam Swift, I will regard children as “people who, because of their age, have not yet developed the capacities that characterize normal adulthood” (Brighouse & Swift, 2014, p. 58). I am aware that I thereby exclude grown-up children who might also experience a separation of their parents as something that causes turmoil in their lives. Nevertheless, I will focus on dependent children in the sense described above since I deem those cases to be especially normatively relevant.

Moreover, I will limit my philosophical investigations to countries in Europe and the United States as well as to Great Britain and Australia as this is where the problem of high separation and divorce rates is prevalent. Accordingly, the majority of empirical studies that I will make use of are conducted in those countries. However, we have to keep in mind that these countries have different legislations regulating divorce as well as different welfare systems, and these structural aspects have an impact on parental separations. Divorce law can discourage

parents from separating through legal barriers, for example, whereas public subsidies can promote a successful separation process.

Throughout this book, I will occasionally mention legal regulations and policies. Yet, I want to make clear that I am interested in how we, as parents, politicians and members of society, should deal with parental separations ethically speaking, and this might differ from or exceed legal requirements. It is important to keep in mind that law and ethics are different fields. These fields are connected but should not be confused. We can subject laws, such as those privileging traditional families or those regulating divorce, to an ethical assessment and judge them as unjust, for example. At the same time, ethical considerations regarding children's wellbeing and gender equality can guide us in changing the laws. In this regard, I will make suggestions for state measures to support families in separation contexts.

This is because parents in separation contexts might be limited in their capacities to fulfill their parental duties since they are in a difficult situation themselves. I will thus conclude that children can only be protected from the potential harms of a parental separation if their parents receive the support they need in order to be able to meet the specific parental duties that arise in case of a parental separation. According to this idea of a division of moral labor, successful separation processes are only possible if parents, state and society take on their collective child rearing responsibilities. To understand the argumentative structure of the book that led me to this conclusion, I will provide a short chapter overview below.

The book consists of six chapters. The first two chapters discuss theories in family ethics that are supposed to provide theoretical foundations and analytical tools for my later analysis of parental separations. Chapter 1 is about the nature and value of the family. Parental separations take place in families. Therefore, we first have to understand what a family is and why it might be valuable before we can make sense of parental separations. I will acknowledge a variety of different family forms but focus on families with children as this is where parental separations occur. I will argue that we should not define those families in terms of a traditional family model, but in terms of their function - the raising of dependent children by adults who assume primary custodial responsibility for them. I will argue that all family forms that are concerned with child rearing merit state support.

Some families fulfill their social function better than others do. Fundamental characteristics of the family, such as privacy and dependency, may provide an opportunity to enjoy uniquely valuable relationships. At the same time, they might encourage abuse and neglect. To acknowledge this ambivalence, I will argue that the family only has potential value.

This understanding of the value of the family is not based on an ideal conception of family life. Rather, it acknowledges that child rearing is demanding and stressful, and that this affects the quality of family life.

I assume that there is a close connection between the value of family relationships and the duties that we take parents to owe their children. Chapter 2 is therefore concerned with parental duties. In this chapter, I argue that parental duties are more complex than previously assumed. I argue that parental duties stem from different sources - the social role of parenthood and the parent-child-relationship. Role-based duties acknowledge the social dimension of parenthood: Parents have a duty to raise their children to become well-functioning adults. To achieve this social aim, responsibility is shared between parents and other institutions such as educational and healthcare systems. Parents can therefore outsource part of their role-based duties. Relationship-based duties arise within this stable institutional framework and acknowledge the private dimension of parenthood: Parents also have a duty to provide their children with intimate and loving relationships. In contrast to role-based duties, those duties cannot be outsourced. Moreover, I will argue that parents not only have duties towards their children but also towards the co-parents.

In Chapter 3, I will analyze cases of parental separations. I will first give an overview on current findings in empirical social research. If we compare the social reality that those findings depict with how things ought to be according to the ethical theories that I discussed in Chapter 1 and 2, we will encounter conceptual discrepancies and practical problems. I will first argue that the concept of divorce is too narrow and, furthermore, not useful to understand the problems of children in separation contexts. With regard to practical problems, I will show how some of the goods that are essential to children's wellbeing are put at risk in case of a parental separation. I will conclude that a parental separation is potentially harmful to the children involved. In the following two chapters, I will then discuss two strategies of how we should deal with this ethical problem.

Chapter 4 discusses a strategy according to which we have to prevent parental separations from happening to protect children from the potential harms of a parental separation. Yet, I will argue that it is unclear whether measures to avoid parental separations would really promote children's wellbeing. Contrary to the anti-divorce theorists, I do not think that a parental separation is inherently bad and that it is thus always better for the children if their parents stay together. Another reason that speaks against anti-divorce measures is that they might severely limit the parents' autonomy. This appears to be unjustified in light of the fact that a parental separation is not necessarily harmful to the children involved.

In Chapter 5, I will argue for an alternative strategy according to which, we should not try to avoid parental separations as such, but only the harmful circumstances that often accompany them. According to this view, parents should be allowed to separate, but they have to fulfill specific duties that flow from the recognition of the serious harms that children in separation contexts might suffer. I will explain how such duties for parents in separation contexts could look like. Parents have a duty to manage changes in the living conditions and relationships of the family conjointly with the aim of reorganizing the family system. Yet, parents in separation contexts often suffer from emotional distress and economic hardship and are therefore limited in their capacities to meet their duties.

In the 6th and final Chapter, I will therefore argue that children can only be protected from the potential harms of a parental separation when there is a division of moral labor. State and society must support families by providing institutional structures and a social environment in which all parents can fulfill their duties sufficiently well. For this purpose, I will make concrete suggestions regarding state policies and social services that should be offered. Moreover, I will argue that family friends and close relatives might also have duties of support towards parents and children in separation contexts in virtue of the valuable relationships they share with these family members.

# 1. The Nature and Value of Families

Parental separations take place in families. Therefore, we can only make sense of cases of parental separations and the ethical challenges that might arise against the background of an understanding of what a family is and why it is supposed to be valuable. In what follows, I will examine the nature and value of the family.

The chapter consists of two parts. In the first part, I will outline how we should conceive of the family in light of changing family structures in Western liberal societies. I will acknowledge a variety of different family forms but focus on families with children as this is where parental separations take place. In this context, I will discuss whether traditional families are better suited to meet children's needs and thus merit special protection by the state. However, I will offer liberal arguments against privileging traditional families. As a way of acknowledging that what matters is the function of families and not their form, I will then introduce David Archard's minimal definition of the family that encompasses all different kinds of family forms that are concerned with child rearing and that therefore merit special protection by the state.

In the second part, I will discuss whether the family is valuable. I will argue against philosophical approaches that see the family either as a place of great happiness or as a place of danger. Rather, I take a moderate position that acknowledges the goods and bads that are both internal to family life. According to this position, the family is valuable as it provides parents and children with unique opportunities to develop special kinds of intimate and loving relationships. However, not all families realize this value and children's lives might go badly as a result. To reflect this ambivalence, I will conceive of the family as only being potentially valuable. The chapter ends with some concluding remarks.

## 1.1 What is a Family?

In modern Western societies, there is no single social phenomenon that can be identified as *the* family. Rather, the term "family" is used to designate different kinds of personal relationships that go beyond the relationship between parents and children (Cutas, 2018). I may conceive of an uncle as being part of the family, for example, and I might do so even if I hardly know him. In this case, family is associated with kinship. Yet, one could also conceive of people living in domestic partnerships as a family. These people have chosen to be a family regardless of kinship. In this case, family might be associated with support and commitment. To capture the richness of uses of the term "family", Anca Gheaus takes it to include "all those self-identified

families whose existence should not be ruled out by neutral liberal states” (Gheaus, 2012, p. 123).<sup>4</sup> If Gheaus is right, talk about *the* family obscures the complexity of this social phenomenon.

Besides the traditional family - two married heterosexual adults raising their biological offspring together - many alternative family forms have emerged in the last half century. Family life has been shaped by social trends, economic factors, technological developments and legal regulations. Let me summarize the most important changes: Among other things, major transformations in women’s lives are responsible for changes in family structures. More women joined the workforce and became financially independent. In the past, economic aspects of marriage were important. Nowadays it is the desire for fulfilling relationships (Walper & Langmeyer, 2019). As divorce laws have become more liberal, there has been an increase in the number of divorces. Similarly, there has also been an increase in the number of separations as couples are less likely to be married. Besides that, developments in reproductive medicine such as surrogacy and gamete donation had implications for family structures (Sobotka & Berghammer, 2021). In this context, another characteristic of modern families becomes apparent: If they comprise children, biological and social parenthood can fall apart. Those who made a biological contribution to producing a child - the biological parents - are not necessarily those who rear them - the social parents.

Nowadays there are cohabiting couples, single-parent households, patchwork families, gay and lesbian couples with children and adoptive parents to name just a few examples. And there are even more living arrangements that could be called “family” if we conceive of this term in a very broad sense such as Gheaus does, people living in domestic partnerships for instance. I am sympathetic with Gheaus’ definition as it acknowledges that people in liberal societies might refer to a variety of living arrangement when they talk about “the family”. Yet, since this is a book about parental separations, it seems to be useful to differentiate between two different kinds of family forms: Families with and families without children. As I am interested in cases of *parental* separations and not in separations as such, I will focus on the former kind of families.

Again, we can ask what is meant by “families with children”. It is commonly known that children in modern Western societies are increasingly reared by adoptive parents, homosexual parents, single parents etc. Yet, there is a heated debate over whether some family forms are better suited to meet children’s needs than others, and if so, whether these families

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<sup>4</sup> Gheaus’ definition is also able to account for so-called ‘families of choice’ that have been of recent philosophical interest (see e.g. Cutas & Chan (2012)). These families are created through subjective ideas of belonging rather than through biological relatedness.

merit special protection by the state. Thus, when it comes to families with children, the focus is on normative and political issues. This is because children are vulnerable human beings who will only develop into well-functioning adults and competent citizens if they are raised in intact families by parents who provide them with the care and resources they need. Since families are the social units where children are socialized and prepared for adulthood, they are of special interest to state and society.

In order to ensure that children are adequately cared for, states impose duties on parents and support them in fulfilling these duties, for instance by means of health care services and public subsidies. Besides that, states regulate parenting practices and intervene in families to protect children from harm if the parents do not meet their duties. David Archard therefore admits that “(...) the family is not an institution whose nature is fixed in advance of the possibility of state interference. (...) The state and society, through a range of measures and actions, legal, financial, educational, and so on, define just what is and is not a family (...)” (Archard, 2010, p. 19). In line with this thought, some scholars argue that only traditional families should count as families in the proper sense. These scholars believe that children’s needs are only met well if they are raised by a biological father and a biological mother who are married and cohabiting (Blankenhorn, 1995; Galston, 1991; Popenoe, 1992a, 2003; Spaht, 1998; Whitehead, 1993). In what follows I will sketch arguments for the superiority of the traditional family in order to find out whether there really are good reasons to privilege this family form. I will thereby adopt a liberal standpoint.

Liberalism is a much-debated topic in philosophy. There is a variety of liberal theories, for instance perfectionist liberalism and political liberalism among other things (Courtland, Gaus, & Schmidtz, 2022). Yet, I do not want to commit myself to any particular theory. In what follows, I will therefore focus on core liberal ideas that different theories have in common. I take there to be three central principles that define a liberal society as well as the proper role of the state within liberalism and that are relevant for the purpose of my arguments.<sup>5</sup> I expect those principles to be uncontroversial within post-Rawlsian political philosophy, so I will not discuss them in any detail here.

The first and most important principle is that a liberal society consists of free and equal moral persons. According to John Rawls, these persons are “self-originating sources of valid claims” (Rawls, 1980, p. 546). Liberalism thus takes the individual, rather than collectives

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<sup>5</sup> This way of characterizing liberalism is inspired by David Archard (2010, p.1). Besides basic individual liberties, a fair distribution of social and economic resources and official neutrality on the question of the good, Archard points to a fourth principle: democratic governance. I do not refer to this fourth principle, however, since I consider it irrelevant for an analysis of parental separations.



such as the family or religious groups, to be the fundamental object of moral concern. In a liberal society, individuals must be able to exercise their own judgment about how to live their lives. For this purpose, the liberal state has to assure equal basic rights and liberties for all citizens irrespective of their gender, race, sexual orientation, religion etc.

According to the second principle, the liberal state has to ensure a fair distribution of social and economic resources so that all citizens have the means to make use of their individual rights and liberties.

The third principle concerns the fact that citizens in liberal democratic societies hold a diversity of worldviews or, in the words of Rawls, “reasonable pluralism”. They believe in different religions or none; they may disagree on what to value and how to live their lives; they may have differing moral convictions etc. Liberalism now aims at providing a political framework that remains neutral between such controversial worldviews, provided that these worldviews are compatible with liberalism’s fundamental tenets. For example, a liberal state must not exercise coercive political power in order to impose religious conformity on citizens with different faiths.

Taking those liberal assumptions for granted, we can now come back to the initial question: Is the state justified in privileging traditional families? In what follows, I will outline two different visions for family policy that scholars have developed as a way of answering this question. I want to contrast these visions with the status quo: Most states currently have policies that give protection to families - with and without children - that are organized around marriage (Brake, 2012). Besides that, parenting is supported - in traditional families and also increasingly in non-traditional families (Gheaus, 2012).

So-called New Familists, such as William Galston (1991), Katherine Shaw Spaht (1998) and David Popenoe (1992; 2003), criticize current policies that support different family forms for leading to the decline of the traditional family. The New Familists argue that the growing number of single parents and non-married parents are bad for children and thus bad for society since they lead to poverty and family instability. They conclude that for children’s wellbeing and developmental needs to be met they have to be raised in traditional families. To stop societal decline we have to revive this family form. To accomplish this goal the New Familists call for policies that privilege traditional families and that discourage divorce and nonmarital births (Blankenhorn, 1995; Galston, 1991; Popenoe, 1992, 2003; Spaht, 1998; Whitehead, 1993).

Is this first vision of how family policy should evolve in tension with liberal principles? Some of the New Familists, such as Galston, describe themselves as liberal. Galston does not seem to worry about any tensions since he does not defend the traditional family by reference

to any controversial conception of how individuals in a liberal society should live. To discourage certain family forms because it is morally wrong for unmarried couples to raise children would, of course, violate the liberal principle of state neutrality (Archard, 2010, p. 70). Yet, instead of making normative claims, the New Familists cite empirical studies such as those conducted by Judith Wallerstein and Sandra Blakeslee showing that children in traditional families fare better than children in non-traditional family forms (Wallerstein & Blakeslee, 1989).<sup>6</sup> They then argue that liberal states have a duty to ensure children's wellbeing and healthy development into competent liberal citizens. To privilege traditional families and restrict the freedom of parents in non-traditional families on these grounds is at least not at first glance in tension with liberal principles.

Nevertheless, liberals and feminists, such as Caren Struening (1996), Shelley Burt (2002), David Archard (2010) and Iris Marion Young (1995), have criticized the New Familists' arguments for a variety of reasons. Based on these criticisms, they then develop an alternative vision for family policies. Henceforth, I will call those who argue against privileging the traditional family "Family Pluralists".

First, leaving the question aside of whether the New Familists' policy recommendations are just or useful to promote children's wellbeing, one could criticize that they will not bring about the desired effects. As explained above, in Western societies there have been profound transformations in family structure. Most sociologists conceive of these transformations as very difficult to undo. The societal changes that caused these transformations in family structure appear to be too complex to be reversible (Furstenberg & Cherlin, 1992; Goode, 1970; Shorter, 1975). It is thus highly unlikely that the New Familists' policy recommendations will in fact initiate the cultural renewal they envision. We can conclude from this that to be effective family policies should acknowledge rather than deny social trends.

According to a second point of criticism, the New Familists misinterpret empirical data. The New Familists explain the positive outcomes for children in traditional families in terms of family structure. They think that due to its composition - two heterosexual married parents and their biological offspring - the traditional family is simply better suited to raising children than

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<sup>6</sup> I will say more about the work of Wallerstein and her colleagues in Chapter 3 when giving an overview on empirical social research on families in divorce contexts. Wallerstein's work has been criticized on methodological and ideological grounds (Amato, 2003). Nevertheless, the New Familists make a valid point here, they just draw the wrong conclusions. Sara McLanahan & Sandefur (1994) show, for example, that children in one-parent families often experience problems due to a lack of available resources. Moreover, recent studies indicate that, compared to married two-parent families, children and parents in unmarried heterosexual two-parent families are more likely to have difficulties (Aronson & Huston, 2004) because these families have fewer resources (McLanahan & Teitler, 1999) and the stability of unmarried relationships is lower (Nock, 1995). For a general overview over how children develop in different family forms, see Patterson, Farr & Hastings (2014).

other family forms. They conclude that all we can do for children is to ensure that there are more traditional families.

Yet, the New Familists disregard that traditional families might just be better suited for raising children since they have structural advantages and political privileges (Burt, 2002). Obviously, two parents can afford more emotional, socioeconomic and temporal resources than a single parent can do. If these two-parent-families are, furthermore, organized around marriage, they receive public subsidies. Opponents of the New Familism thus argue that the problems faced by children in non-traditional family forms should not be traced back to a wrong kind of family structure but to a lack of resources and state support (Young, 1995; Burt, 2002). Children do not suffer from only having one parent in the household; they suffer from poverty, for example. The Family Pluralists assume that children can flourish in any kind of family form as long as they have a stable and close relationship with at least one adult who provides attentive care, be it homosexual parents or a single parent. However, to provide attentive care the adults in question need emotional, financial and temporal resources, and they need state support to be able to afford them.

Burt's vision for family policy thus is "to equip diverse family forms to serve the needs of children, their long-term care-givers, and the polity as a whole. Stated another way, the goal would be to increase the number of family structures in which the developmental needs of children could be met and met well" (Burt, 2002, p. 241). In this regard, current family policies - even those who already support non-traditional families - could be criticized for being insufficient to achieve this goal. For, different kinds of family forms may need different kinds of support and family policies that are tailored to their specific needs.

The Family Pluralists' arguments show that the New Familists' proposals are in tension with liberal principles after all. For one thing, the policies the New Familists propose add to the disadvantages children in non-traditional family forms suffer from (Archard, 2010). Children are not only "self-originating sources of valid claims" such as every individual in a liberal society. They are also especially vulnerable and the future adults of that society. Liberal states thus have to promote the wellbeing of all children as a matter of justice, irrespective of the family form in which they are raised.

The New Familists' proposals might not only be unfair to children, but also to parents who raise their children in non-traditional family forms. The New Familists' arguments are based on the assumption that children in non-traditional family forms tend to suffer because the family structures in which they are raised are morally inferior. Yet, if the Family Pluralists are right and this is because social and economic resources are unfairly distributed, the New

Familists' policy recommendations are unjust. It is unjust to disadvantage parents in non-traditional family forms to discourage divorce and nonmarital births out of a misdirected concern for children's wellbeing. And it is unjust to deprive parents of the means to make effective use of their freedom of intimate association and lifestyle experimentation (Struening, 1996).

The New Familists' proposals are unfair to parents in non-traditional family forms in general. Yet, they would especially exacerbate the vulnerabilities suffered by women. Since child rearing responsibilities are normally allocated to women, there are much more single mothers than single fathers. If the state does not provide single mothers with adequate support, there is a high risk that they will fall into poverty. Moreover, if divorce were harder to obtain, it would be difficult for women to leave an abusive relationship. However, this is something they should have a right to in a liberal society where individuals matter and not collectives (Young, 1995).

In order to address these inequalities liberal states should support all different kinds of families that are concerned with child rearing. They should do so not only to ensure that all children have their needs met, but also to enable new kinds of fulfilling lives and identities (Struening, 1996). Family policy should thus be concerned with parenting and not with family forms that are organized around marriage.<sup>7</sup> State policies should not conceive of the family as a social unit with a particular form, but as a social unit with an important social function - the raising of children. Archard developed a minimal definition of "family" that acknowledges this fact.

According to Archard "the family can be minimally defined as a multigenerational group, normally stably co-habiting, whose adults take primary custodial responsibility for the dependent children" (Archard, 2010, p. 10). Due to its focus on the function of the family, Archard's definition is able to accommodate a plurality of family forms that comprise children. The parents need not be married or heterosexual or in a romantic relationship to count as a family, for example. According to Archard's definition, a parent is someone who assumes primary custodial responsibility for a dependent child. Thus, social parenthood matters, not biological parenthood. Moreover, Archard acknowledges that families in modern Western societies do not necessarily involve two parents such as suggested by the traditional family model. Rather, there may be single parent households as well as families with more than two

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<sup>7</sup> This is not to say that families without children should not receive state support. I just want to make clear that families with children merit a special kind of protection insofar as vulnerable children are involved whose parents have to invest considerable resources to prepare them for competent adulthood. However, both in case of families with and without children, states might not seem to be justified in giving marriage relationships a special social and legal importance (Brake, 2012).

parents. By using the term “normally co-habiting” Archard even acknowledges that separate living arrangements where the care of children is divided between two households can count as a family (Archard, 2010).

Archard’s definition is able to acknowledge that different kinds of families have something in common that is normatively relevant and that distinguishes them from other family forms: They are the places where adults raise dependent children and therefore the appropriate target of state policies. Yet, Archard’s definition does not only provide an answer to the question of what types of families with children there are and why they all merit special protection by the state. It is also a good starting point for reflections about the value of the family and for an ethical analysis of cases of parental separations.

In the second part of this chapter, I will investigate whether the family is valuable. According to Archard, people tend to define the family in normative terms. They might associate the family with love and flourishing relationships, for example. Such a kind of definition would anticipate a positive answer to the question of whether the family is valuable. However, as will become clear in what follows, I do not think that such a positive answer can be given without qualification. Archard’s definition allows for such an assumption as it offers a neutral description of what different kinds of families with children have in common rather than an evaluation of what might be valuable about families (Archard, 2010, p. 10).

Besides that, Archard’s definition also provides a helpful analytical focus for my later discussion of cases of separations in the second part of the book. There are two reasons for this: First, since Archard’s definition focuses on adults having primary custodial responsibility for dependent children, it does not apply to the relationship between parents and their grown-up children. Second, Archard excludes grandparents, aunts, cousins etc. from his definition. Rather, he distinguishes what he calls the “extended family” from what constitutes the family as a social institution - parents that raise dependent children (Archard, 2010, p. 13). This is what I will call the “nuclear family”.

It is this latter understanding of the family that I am interested in - not because this is the only way we can talk about families, but because I consider separations of parents who share primary custodial responsibility to raise dependent children especially normatively relevant. Yet, this is not to say that those aspects of family life that Archard excludes from his definition may play no role in cases of parental separations. Consider the temporal extension of family life: When it comes to cases of separations, problems associated with a parental separation may persist although the children are grown-up. Moreover, extended family members are normally also affected when parents separate. Grandparents or aunts may be

involved in possible conflicts, or they may provide support for instance. However, to keep things as simple as possible for a fruitful analysis, I will only touch on these aspects in passing and focus on the nuclear family.

Yet, when analyzing cases of parental separations, I can only use Archard's definition in a limited way. Parental separations cannot take place in single-parent households, for example, but only in families with two or more parents who share the custodial responsibility for raising a child. Parental separations involving more than two adults are quite interesting as they challenge our everyday understanding of separations. Off-standard examples may reveal important ethical considerations that could remain unnoticed if we only focus on the more common cases. Nevertheless, I will focus on separations in families with two parents. There are two reasons for this: First, as indicated in the introduction there has not been a comprehensive ethical analysis of parental separations so far. As this book is a very first attempt to close this theoretical gap, it seems reasonable to start with standard cases and leave questions about separations with more than two parents open for further research in the future. Second, this book is concerned with empirically informed ethics, and most of the empirical research is about standard cases of separations.<sup>8</sup>

Besides that, the use of Archard's definition in the context of parental separations will also require a slight modification of it. Archard limits his reflections about the family to the parent-child dyad. However, we can only fully understand cases of separations if we see the family system as a triad, consisting of the parent-child relationship and the relationship between the co-parents. Co-parents are those who share the custodial responsibility for raising a child. Therefore, they have special duties of commitment and support towards each other, as I will argue in the following chapter. According to Archard's definition, the co-parents do not necessarily have to be in a romantic relationship to count as a family. In contrast to that, I will assume that the parents had a romantic relationship before the separation. This is because to make sense of the conflicts that oftentimes arise in separation contexts we have to see the adults involved not only as co-parents but also as ex-lovers.

To some readers, what I have said may sound like a praise of the traditional family, but this is not the case. I exclude particular family forms since separations can only take place within certain family structures, or for reasons of simplicity, but I do not say that this is the only way we can think about families and separation contexts. Besides that, I want to emphasize that

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<sup>8</sup> It appears to be reasonable that social scientists focus on standard cases since cases of separations where more than two adults are involved are rare and hard to find - if such cases are recognized by social scientists as separations at all. However, as I will argue in Chapter 3, we may nevertheless criticize that empirical studies are often based on a conservative understanding of divorce. As a result, even more common cases of parental separations such as those involving unmarried parents are not taken into consideration.

my understanding of families in separation contexts still differs from the traditional family model. I do not limit my reflections about cases of separations to biological parents who have been married. What I will say also applies to homosexual or co-habiting parents, for example. However, before we can go into detail here, we need more theoretical foundations. In the next section, I will discuss whether the family is valuable - especially for children but also for adults and society as a whole.

Many people think that the family is valuable as a place for raising children and conclude that parental separations are therefore bad for the children involved, but this way of thinking is too general. There are cases where a separation may be something good, if a child is no longer exposed to the persistent conflicts of the parents for example (Amato, Loomis and Booth, 1995). The aim of this book is to develop a more fine-grained picture of both families and parental separations. However, to understand what is good or bad about particular cases of separations, we need to know what is valuable about family life and why families can go wrong.

## 1.2 Is the Family Valuable?

In what follows, I want to examine the value of the family conceived of as a social institution where adults assume primary custodial responsibility for dependent children. In the first place, I am interested in whether being raised in a family is valuable for children. Yet, we might also ask whether the family is valuable for parents, state and society. Thereby, different parties have different interests. State and society may want children to become well-functioning adults, whereas children might not only have an interest in being prepared for adulthood but also in having a good childhood. Parents take an interest in providing guidance and care for a vulnerable human being. Yet, sometimes this is not the kind of guidance and care that children need, but domination or unjustified paternalism. It is therefore important to differentiate between different perspectives.

In the previous section, I criticized existing state policies that protect marriage and traditional families. I argued that the liberal state should support families irrespective of their composition since vulnerable and dependent children are involved. I thereby presupposed that those families are valuable and thus merit special protection by the state. In fact, many people believe that the family is valuable. Yet, on closer inspection, it might turn out that this common assumption is mistaken and that state policies to support families are not justified. This might be a reason to abolish the family.

Philosophers disagree about whether the family is valuable. Broadly speaking, there are two camps: Some praise the family for being a protected space that provides parents and children with unique opportunities to flourish in the context of intimate relationships (Brighouse & Swift, 2014; Seglow, 2013). Yet, the family has also been criticized for being an unjust institution since structures of dependency and care encourage exploitation, abuse, and neglect within the private space of the family. Some philosophers thereby focus on unjust relations between men and women that result from a gendered division of labor within the family (Okin, 1989). Others refer to the relational vulnerability of children within the parent-child-relationship (Hannan, 2018; Lotz, 2018). I consider both kinds of problems important. Nevertheless, I will focus on the latter, as I am primarily interested in whether the family is valuable for children - despite the risk of being harmed and despite the fact that family life might be problematic for other reasons.

As sketched above, philosophers tend to see the family either as a source of happiness or as a source of misery. They thereby present one-sided pictures of family life that can, in fact, be both enriching and disturbing. Proponents of the family conceive of the parent-child relationship as ideal while they overlook that parents may mistreat their children in various ways. For example, Brighouse and Swift assume “a deep harmony between adults’ and children’s interests when it comes to the business of child rearing.” They think that “the kind of relationship that children need from the adults who raise them is the same kind of relationship that it’s in adults’ interests to have with the children they raise” (Brighouse & Swift, p. 94). Yet, cases of abuse and neglect provide evidence to the contrary as this is not the kind of relationship that it is in children’s interest to have. The crucial point here is that children lack the abilities to exit such a relationship. They are dependent on their parents for care and protection and therefore vulnerable to their actions and choices (Lotz, 2018; Hannan, 2018). The proponents’ understanding of the family does not reflect this social reality, however, as it is based on an ideal conception of the family.

The opponents present a one-sided picture of family life as well. They see the family primarily as a place of danger and thereby ignore the various goods that can come along with family life. Children and parents may enjoy special kinds of relationships that are especially stable over time and that are characterized by intimacy and trust. As a result, parents may have special knowledge about their children’s needs and are therefore in a privileged position to provide them with attentive care and loving guidance.

We can conclude that proponents as well as opponents of the family oversimplify the complex realities of family life. Yet, this is where an assessment of the value of the family



should start. It should start from a realistic picture of family life according to which families vary in their capacities to realize the goods of family life depending on the emotional, temporal, social and economic resources they have. Proponents as well as opponents seem to underestimate that raising a dependent child to become an independent person is a challenging task for parents and even more so in the complex societies we live in (Alstott, 2004; Brake, 2010).

According to Anne Alstott “[s]lowly, but surely, a combination of technological, social, and legal change has transformed modern parenthood into an extraordinarily demanding social role, and one that carries a built-in tension between meeting our children’s needs and pursuing lives of our own.” (Alstott, 2004, p. 4). In line with this, Serena Olsaretti speaks of the costs of care which include “the loss of freedom, time, and financial resources that carers – typically parents – undergo in order to bring up their children (...)” (Olsaretti, 2013, p. 229). As a result, many parents have to deal with chronic stress, economic pressures and inner conflicts. These factors affect the quality of family life. This is not to say that there are no families meeting these challenges. For sure, there are, but I consider it important to keep in mind that family life can be very challenging.

What should have become clear so far is that we cannot answer the question of whether the family is valuable by simply siding with either the proponents or the opponents. Rather, we need a more fine-grained analysis of why the family might be considered valuable. To this, it might be useful to specify the question in two respects: First, we can ask in comparison to what the institution of the family might be valuable. Second, if we assume that the family has at least some value, we can ask if the family is uniquely valuable.

Before I address these questions, a comment is in order: I consider it uncontroversial that it is valuable that children are cared for and raised into adulthood. Children are dependent on adults to provide them with the care and resources necessary for their survival and development. If no one raised children, they would die and societies could not be reproduced over time. But this is not to say that children should be raised in families. Could other child rearing arrangements perhaps do a better job of bringing up children?

This leads me to the first question: In comparison to what is the institution of the family supposed to be valuable? To choose the rather extreme but much discussed case (Archard, 2012, p. 64-68; Brighouse and Swift, 2014, p. 74): Why not raise children in state-run institutions where professional nannies take care of them as Plato famously suggested? Might such a child rearing arrangement perhaps be better suited to meet children’s needs? Nannies working in state-run institutions might have professional knowledge about different stages of children’s

development and their age-specific needs - knowledge that parents might not have. Nevertheless, they might not be able to provide children with intimate relationships, a stable environment and attentive care as parents in families might do.<sup>9</sup>

Following Brighthouse and Swift, I assume that intimacy between children and their caregivers requires a certain degree of privacy as well as the possibility to interact spontaneously. To this, the caregivers must have considerable discretion over their children's lives. However, professional nannies working in state-run institutions might have to follow detailed guidelines as part of their job description. Such guidelines would define daily routines, educational measures and goals etc. Nannies would have to report on the measures they use and the state would monitor them in order to ensure that they follow these guidelines. It is therefore unlikely that the formal setting of state-run institutions would leave much space for children and their caregivers to experience intimacy and spontaneity.

Furthermore, state-run institutions may not provide children with a stable developmental environment such as families could do. Whereas society expects parents to not exit the parent-child relationship, but to stay in that role for at least 18 years (Alstott, 2004), professional nannies would be free to quit their job. Yet, the loss of a caregiver implies a loss of trust and a loss of continuity of care in children's lives. The psychologists Goldstein, Freud and Solnit explain why this is problematic:

Physical, emotional, intellectual, social, and moral growth does not happen without causing the child inevitable internal difficulties. The instability of all mental processes during the period of development needs to be offset by stability and uninterrupted support from external sources. Smooth growth is arrested or disrupted when upheavals and changes in the external world are added to the internal ones (Goldstein, Freud, & Solnit, 1979, p. 32).

During the complex process of becoming an adult, children need caregivers that provide them with a stable environment in which the children can successfully accomplish different developmental tasks. Continuity of care is thereby particularly important for children's emotional development. Especially during the first years, children's emotional development depends on learning to understand and regulate their emotions by interacting with their caregivers regularly during the course of their development. For instance, if caretakers respond to distress with comforting behavior the children can learn how to regulate their negative

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<sup>9</sup> In what follows, I will provide arguments against raising children in state-run institutions that are based on children's interests in being provided with continuity of care, intimate relationships and attentive parenting. However, state-run institutions are, of course, also problematic for other reasons. According to David Archard such a child rearing arrangement would also decrease diversity and restrict individual liberty (1993, p. 135 - 137).

emotions. Because of the parents' comforting behavior the children feel safe and protected which, in turn, affects their ability to trust as well as the development of empathy (Davidov & Grusec, 2006).

To be able to provide the kind of care that promotes children's emotional development, caretakers need to have special knowledge about their children's specific needs and how to meet those needs. At the same time, children need to know their caretakers very well to trust them and be comforted when they are distressed. This shows that continuity of care is also important to develop intimate relationships. And it shows why changing nannies in state-run institutions might not be able to provide children with responsive and sensitive parenting as they might not know the child well enough. It is therefore reasonable to assume that the family is valuable insofar as it is at least better suited to promote children's wellbeing than state-run institutions. However, this is not to say that the family is without failure. Rather, the family might only have comparative value, as it does not appear to be as bad as possible alternatives.

Moreover, an argument against state-run institutions for child rearing does not imply that the family is a private institution in which the state is not allowed to interfere (Archard, 2012). As indicated earlier, states have an interest that children are raised to become competent future adults. As a way of acknowledging that families can accomplish this social goal, states assign primary responsibility for child rearing to parents and give them considerable discretion over their children's lives. At the same time, states acknowledge that parents may fail to meet their parental duties and that children are vulnerable human beings who must be protected from harm. This is why the state is allowed to violate the privacy of family life in cases of abuse and neglect. To detect such cases the state has to monitor families. However, whereas nannies in state-run institutions might be monitored systematically, states should find more discreet ways of monitoring to not destroy the family's intimacy. For example, teachers, doctors and nurses should be trained to look out for warning signals and the state should only intervene in families where there is an acute suspicion of child abuse (Brighouse & Swift, 2014, p.11).

So far, I asked whether the family has some value compared to raising children in state-run institutions. If it has, we can now ask whether the family has *special* value compared to other close relationships. According to Gheaus "[t]he most appealing value of family relationships - that they embody love - is shared with other close relationships, and hence it is not unique to them. Family has no unique value; love does" (Gheaus, 2012, p. 130). I agree with Gheaus that families and other close relationships, such as friendships, may both be valuable insofar as they embody love, but unlike Gheaus I assume that the kind of love involved in parent-child-relationships is different from the love involved in other close relationships.

As indicated earlier, Gheaus works with a very broad understanding of “family” and she herself concedes that this might lead to blurring boundaries between family and friends (Gheaus, 2012). In contrast to that, my understanding of the family focuses on parents that raise dependent children. In this regard, Gheaus seems to overlook that relationships between parents and children differ from other loving relationships. Whereas friends are symmetrically situated, the parent-child relationship is inherently asymmetric. Brighouse and Swift identify four features that are unique to the parent-child-relationship. They believe that these structural features constitute the special value of the family (Brighouse & Swift, 2014, p. 88 - 91).

First, Brighouse and Swift point to the fact that parents and children do not have an equal standing. Due to a lack of capacities that characterize normal adulthood, children are unable to care for themselves and to lead independent lives. They are dependent on adults for their survival and wellbeing. These adults have authority over their children’s lives. They decide what their children eat, when they go to bed, whether they can see their friends etc. Children are, in turn, vulnerable to the parent’s actions and choices as they do not have the power to exit the parent- child relationship.

Second, in contrast to other close relationships the parent-child relationship necessarily involves paternalism. Brighouse and Swift argue that parents are allowed to manipulate or coerce their children for the sake of serving their good since children are oftentimes unable to act according to their best interests. By contrast, to treat our friends paternalistically is in most cases morally problematic insofar as they are considered to be fully autonomous people.<sup>10</sup>

Third, parents must raise dependent children to become independent adults. They have to support their children in becoming autonomous and in developing their own conception of the good although this might be challenging for the parents. According to Brighouse and Swift, “[f]or most parents it is emotionally as well as practically challenging to prepare a child who has been entirely dependent, and whom the parent loves deeply, to become her own person, capable of effectively challenging the parent and the parent’s values” (Brighouse&Swift, 2014, p. 90).

The fourth feature concerns the quality of the intimacy that arises when parents interact regularly with children who reveal their authentic selves. Children have a special ability to love and trust their parents without reservation. They also openly express fear, sadness and

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<sup>10</sup> I agree with Brighouse and Swift that, generally speaking, paternalism is a special feature of the parent-child relationship, but we have to bear in mind that the parent-child relationship is dynamic. Small children are not autonomous yet, but they will gradually develop into autonomous persons. Therefore, only those forms of paternalism are appropriate that do not undermine the development of autonomy (Betzler, 2014).

excitement - emotions that require spontaneous emotional responses from the parents. When adults interact, they normally do not reveal their inner life such as children do.

Brighouse and Swift claim that because of these structural features of the parent-child relationship a unique kind of intimacy and spontaneous love can arise that makes the family distinctively valuable. Brighouse and Swift argue for this within the framework of a relationship goods account. According to this account, relationships are valuable in virtue of the different kinds of relationship goods that the relationships' participants co-create since they have an interest in enjoying them (Seglow, 2013). According to Brighouse and Swift the parent-child relationship makes possible the realization of special kinds of relationship goods, namely the so-called familial relationship goods of intimacy and spontaneous love. These goods might not only account for the unique value of the parent-child relationship but also give rise to special kinds of parental duties as will be discussed in the next chapter.

Yet, one might still doubt that there really are relationship goods that are unique to the family since friends also have intimate and loving relationships, for example. It is, in fact, difficult to identify the distinct kind of intimacy that characterizes a particular relationship. But it would be wrong to conclude from this that there are no specific familial relationship goods (Betzler, 2022). To illustrate this, consider again the example of raising children in state-run institutions. We regard such settings problematic not only with regard to the interests of children in having stable and close relationships, but also with regard to the interests of the parents in raising a dependent child. If children were raised in state-run institutions, the parents would be deprived of a special kind of relationship that could not be substituted by having more friends, for instance. Parenting is in Jurgen De Wispelaere and Daniel Weinstock's words "non-substitutable" (De Wispelaere & Weinstock, 2012, p. 198). This speaks against Gheaus' claim that the value of family relationships is shared with other close relationships and in favor of Brighouse and Swift's arguments. Since familial relationship goods cannot be realized outside the parent-child relationship and since both parents and children have an interest in realizing them, the family might have a special value. However, there is more to be said about the value of the family.

Since Brighouse and Swift's relationship goods account presupposes an ideal conception of the parent-child relationship, they conceive of this relationship as unconditionally valuable (Betzler, 2022). However, I do not think that this is the case. I agree with Brighouse and Swift that the parent-child relationship is characterized by structures of authority, dependency and care. I also agree that parents and children can realize special relationship goods due to these structural features. Yet, I think that Mianna Lotz rightly points to the fact

that “[w]hether or not the proposed goods are realized depends entirely upon the highly contingent and unreliable factor of whether proximate adults are suitably protective, competent, sensitive, nurturing and worthy of children’s trust and love” (Lotz, 2018, p. 308). But what if they are not?

Brighthouse and Swift do not acknowledge that the very same structures that make possible the realization of relationship goods may also entail a risk that children’s lives go badly. To illustrate this ambivalence, take the following two examples: The first example concerns the child’s ability to love and trust the parents unconditionally. For Brighthouse and Swift this ability is something good since it makes possible a special kind of intimacy within the parent-child relationship. Yet, children might love their parents irrespective of whether they are worthy of this love, even if they constantly overlook their child’s needs, for example. According to Sarah Hannon, such cases show that the child’s disposition to love and trust can also be a source of great harm (Hannan, 2018).

The other example concerns the privacy of the family. The parent-child relationship, as described by Brighthouse and Swift, can only occur within a certain institutional setting in which families are granted a considerable amount of privacy as well as rights against state interference. Privacy seems to be a precondition for intimate family relationships, but Archard rightly points to the fact that it can “equally function as a cloak for abuse and neglect”. According to Archard “[t]he ill-treatment of children takes place in a ‘private’ space, the family home, and to the very extent that it is a private space, it may continue undetected and unsuspected” (Archard, 1990, p. 192).

We cannot resolve this tension between family relationship goods and bads since it is inherent in the structures of the parent-child relationship. There is a necessary connection between vulnerability, privacy and intimacy. If we try to avoid the potential risks that come along with family life by either trying to eliminate children’s vulnerability or by monitoring the parent-child relationship, we seem to thwart what is good about the family: intimacy and loving relationships. These familial relationship goods seem to be so valuable that we tolerate the family’s privacy and the parents’ authority even if this involves a risk that children’s lives go badly.

As a way of acknowledging this ambivalence, I assume that the family only has potential value. It is valuable insofar as it provides parents and children with an unique opportunity to develop and enjoy special kinds of intimate relationships. The value of the family thereby depends on there being families who are able and willing to take advantage of this unique opportunity. This understanding of the value of the family acknowledges that flourishing

relationships do not simply exist, but they are “made by their participants” as Jonathan Seglow rightly points out (Seglow, 2013, p.30). There is a connection between the value of the family and the special duties that parents need to acknowledge in order to realize that value and to let the parent-child relationship flourish. Yet, assuming such a connection also allows for the fact that parents fail to meet their parental duties and thus fail to realize the value of family life.

In most cases, this is not something that parents do intentionally. For, as already pointed out, parents normally also have an interest in enjoying flourishing parent-child relationships. They might just lack the abilities or resources to provide adequately for their children. I therefore assume that the value of the family is not only potential insofar as it depends on there being parents who meet their parental duties. Rather, it also depends on whether the state and society provide institutional structures and a social environment in which parents can fulfill their social role sufficiently well.

As already mentioned, parents in modern societies often experience economic pressures, chronic stress and inner conflicts. Such conditions increase the risk that parents fail to provide their children with flourishing family relationships. I earlier said that we, as a society, could not avoid the risk that families go wrong without also missing out on the goods that can only be realized within the parent-child relationship. What we can do, however, is reduce the risk that children’s lives go badly by creating conditions that are conducive to the development of valuable family relationships. For, it is also in the interest of state and society that children are raised in the context of flourishing relationships by sensitive, competent and nurturing parents since this is what children need to become well-functioning future adults.

### 1.3 Summary

The aim of this chapter was to gain an understanding of what a family is and why it might be considered valuable. Concerning the nature of the family, I showed that modern liberal societies are characterized by variety of relationships and living arrangements that could be called “family”. It therefore makes sense to conceive of “family” as a multifaceted social phenomenon. Nonetheless, I decided to focus on families with children as these are the kinds of families in which parental separations take place. As a way of acknowledging that families with children fulfill an important social function and therefore merit special protection by the state, I introduced Archard’s minimal definition of the family, which encompasses different family forms that deviate from the traditional family model.

Moreover, I argued against a black-and-white thinking about the value of the family. This is because philosophers who see the family either as a place of happiness or as a place of danger oversimplify the complex reality of family life. In response to this, I presented a more fine-grained analysis of the value of the family. This analysis showed that the family is valuable insofar as it is a protected space where parents can provide their children with continuity of care and intimate family relationships. However, the family only is potentially valuable as the structures of dependency, authority and care that enable the development of uniquely valuable relationships also entail a risk that children suffer serious harms. The value of the family therefore depends on there being parents who meet their parental duties. To fully grasp the potential value of the family, we thus need a more profound understanding of the special kinds of duties that parents owe their children. To gain such an understanding is my aim for the next chapter.



## 2. Parental Duties

Roughly speaking, ethical challenges in separation contexts arise out of the following conflict: As indicated in the introduction, empirical studies show that a parental separation poses a risk to children's wellbeing and development (for an overview, see Amato (2010)). At the same time, there is agreement in philosophical and legal discourse that parents have special duties towards their children to promote their wellbeing and development (e.g. Archard, 2010; Brighouse & Swift, 2014).<sup>11</sup> To make sense of this conflict and to find ways to resolve it, we need a better understanding of both parental duties and empirical facts. While the subsequent chapter will deal with recent findings in empirical social research, this chapter is concerned with the nature of parental duties. In what follows, I want to examine the grounds of these duties as well as their content and scope in more detail.

The chapter is structured as follows: I will first give a short overview on the types of duties there are. In the second part, I am going to present two influential accounts of parental duties - the role-based and the relationship-based account. Although each account reveals important aspects about parental duties, I will criticize them for providing an incomplete picture of parental duties. This is because we can neither see the family exclusively in terms of an institution nor exclusively in terms of a relationship. Rather, the family seems to contain elements of both. In order to do justice to this complexity, I will suggest an alternative account of parental duties in the third part. According to this combined account, parental duties should be conceived of as an interplay between role-based and relationship-based duties. To this point, I have explored the duties that parents have towards their children. In the fourth part, I will extend the scope arguing that parents also have duties towards their co-parents, that is towards those with whom they share the project of raising a child. In the fifth part, I will outline the limitations of parental duties. In the end, I will summarize my findings.

### 2.1 Overview

If we want to find out what kinds of duties parental duties are and what they amount to, we first have to understand the different types of duties there are. In what follows, I will give a brief

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<sup>11</sup> In their books, Brighouse & Swift and Archard do not only address the topic of parental duties, but also the topic of parental rights. As parental duties and parental rights are related, both topics are often discussed together. Yet, for the purpose of my arguments and for reasons of simplicity, I will only focus on parental duties and disregard the lively debate about what justifies parental rights and what kinds of rights parents should have. For a recent discussion about parental rights, see Hannan & Vernon (2008).

overview (for such an overview, see Seglow (2013, p. 8-10)). For one thing, we can differentiate between general and special duties. We owe general duties to all people in virtue of their humanity. We have, for example, a general duty not to harm others. On the other hand, there are special duties that we only owe to certain people. Special duties are agent-relative and directed. They are owed to a particular person, and they cannot be discharged by just anyone, but only by a person who stands in a certain kind of relation to the other person. Parental duties are thus special duties. Parents owe these duties to their children in particular. But due to what kind of connection? Here we can differentiate between three classes of special duties.

There are special duties that we have towards particular people in virtue of a specific kind of interaction we had with them. Special duties of this kind are what Seglow calls agency-based, harm-based and benefit-based duties (Seglow, 2013). Agency-based duties arise out of agreements, promises or contracts. We have an agency-based duty to act according to the expectations we have deliberately created in others, for example. Harm-based duties emerge when a duty-holder has harmed a duty-bearer or when the duty-bearer is particularly vulnerable to being harmed. In the former case, the duty-bearer has a duty to compensate the victim or to make amends. In the latter case, the duty-bearer must ensure that the duty-holder's vulnerability does not lead to actual harm. Benefit-based duties arise when one has benefitted from the actions of another person. The former, then, has a special duty towards the latter to reciprocate in some way, for example by repaying debts or by showing gratitude. For special duties of this kind to arise, duty-bearer and duty-holder do not need to stand in a personal relationship (Seglow, 2013, p.10). If I had a car accident, for instance, I may owe duties of gratitude towards the woman who rescued me although I did not know her before.

In contrast to that, there is a second class of special duties that we owe to specific people due to having a particular kind of personal relationship with them. I will call this type of special duties "relationship-based duties". Following George Tsai, I take a personal relationship to involve a certain level of interaction, commitment and appreciation between the relationship's participants over time (Tsai, 2016). We have relationship-based duties towards our family members, friends or colleagues, but not towards strangers. Whereas agency-based, harm-based and benefit-based duties are grounded in general moral principles, I take relationship-based duties to not be reducible to any of these principles. Rather, it is the value of the particular kind of relationship itself, which gives rise to this kind of duty.<sup>12</sup> Throughout the chapter, I will use

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<sup>12</sup> I here commit myself to a non-reductionist account according to which associative duties cannot be explained by reference to contractual duties, reparative duties or duties of gratitude. Such as Scheffler (2007) Wallace (2012), and Seglow (2013), I assume that relationship-based duties are a separate class of special duties that amount to the value of personal relationships. In line with Wallace and in contrast to Scheffler and Seglow, I focus on personal relationships, or loving relationships to use Wallace's term, and not on social relationships that would also include

examples to illustrate my arguments. Thereby, I will take friendship to be a paradigmatic case of relationship-based duties.

Besides that, I would like to add a third class of duties that is often overlooked, namely the duties that people have towards each other in virtue of occupying social roles (Hardimon, 1994; Sciaraffa, 2011). I will call this class of special duties “role-based duties”. Throughout the chapter, I will take the social role of being a lifeguard who has a duty to rescue drowning swimmers as a paradigmatic case of such a duty. Role-based duties are special duties since those occupying the social role of a lifeguard have reasons to treat particular people - the swimmers - differently from others. However, unlike in the case of relationship-based duties, for role-based duties to arise duty-bearer and duty-holder do not need to have a personal relationship. In what follows, I am going to present an account that sees parental duties as role-based duties.

## 2.2 The Role-Based Account of Parental Duties

According to the role-based account of parental duties, being a parent can be understood as an institutionally defined social role, such as being a doctor or a citizen (Brake, 2010; Millum, 2018). Social roles of this kind exist within certain institutionalized contexts, such as a family, hospital or state. Institutional roles come along with a set of legally and socially defined duties that people occupying these roles have in relation to certain others who occupy social roles as well, such as their patients or compatriots. I will call the kind of connection these people have “role relations”. Moreover, taking on a social role also means being subject to social norms and expectations (Hardimon, 1994, p. 358).

According to the standard account, role-based duties are grounded in the social function or end of a social role (Hardimon, 1994; Sciaraffa, 2009). For example, Stefan Sciaraffa states that “[s]ocial roles serve a function in a larger whole much like a liver or a kidney serves a function in a body. As such, social roles are found in larger complexes of roles that together fulfill some larger end or set of ends, the end(s) of a social institution” (Sciaraffa, 2009, p.109). Social roles are thus useful for the organization of society. In line with this thought, Archard states that the family has “a functional role of providing care for, protection of, and education of its young. The family is the principal means by which a society’s future adults are produced” (Archard, 2010, p. xxi). If Archard is right and the family is a social institution with the purpose

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the relationships between citizens. This is because I consider the case for relationship-based duties to be much clearer for personal relationships than for social relationships.

of turning children into society's future adults, being a parent is a social role. If so, the social role of parenthood carries with it a set of legally and socially defined duties that are grounded in the social function of that role. Joseph Millum and Elizabeth Brake both give an account of how we should conceive of parental duties as role-based duties.

According to Millum's role-based account, parental duties are "a set of duties that, in becoming parents, people adopt on societies behalf" (Millum, 2018, p. 212). Millum assumes that there is a collective responsibility within society to ensure that children are provided with the goods they need in order to flourish. As some of these goods can only be provided by constant caregivers who have a stable relationship with the child over time, society attributes part of this collective responsibility to parents. In this context, Millum identifies two different categories of role-based duties. First, parents have a duty to provide the child with generic goods. They have to feed, clothe and comfort the child, or they have to ensure that these goods are provided by other caregivers. By contrast, the second category Millum introduces consists of goods that can only be supplied by someone who has taken on the social role of parenthood. According to Millum, parents also have a duty to provide their children with a stable developmental environment and intimate bonding. This is what he calls "filial goods". Unlike the duty to provide generic goods, this second category of parental duties cannot be discharged (Millum, 2018, p. 115).

Brake's role-based account of parental duties shows considerable similarities to Millum's. Brake also conceives of parental duties in a larger societal context. According to Brake "[p]arental obligations reflect the way society has coordinated the activities of child rearing" (Brake, 2010, p. 166). The content of parental duties therefore depends on how society divides child rearing responsibilities. Whereas society might provide healthcare and schooling, Brake argues that those occupying the social role of parenthood have duties to provide their children with shelter, food etc. as well as with warmth, intimacy and long-term support (Brake, 2010, p. 165).

I think that Millum and Brake point to important aspects about parental duties. At the same time, I doubt that parental duties can be justified solely on account of the social roles that parents occupy. I will first address the advantages of role-based accounts and then point out limitations.

Role-based accounts suggest that we should see child rearing in a wider societal context and that parenthood does not rest on biological ties. They are thus able to accommodate two central claims which I made in the preceding chapter. A first advantage is that role-based accounts can explain why parenting should be conceived of as a collective endeavor rather than

a private project (Engster, 2010). By seeing the family as a social institution, role-based accounts emphasize the great significance of child rearing within society. As there is a collective interest that children develop into well-functioning adults, responsibility for child rearing does not fall entirely on parents but is shared. State and society adopt part of this responsibility, for instance by providing healthcare and educational systems.

However, in order to ensure that children can experience intimate relationships, primary responsibility for child rearing is still assigned to parents. Since child rearing has considerable social impact, parents are expected to do this job well. Role-based accounts can therefore also make sense of the fact that parents are subject to social norms and expectations. Here are two examples: To ensure that the ends of the institution of the family are achieved, society expects parents to stay in their social role for 18 years or longer if necessary (Alstott, 2004). Or take an example given by Nina Brewer-Davis, according to which a mother might consider herself responsible to make lunch for her daughter for school as she is her mother and this is what mothers do (Brewer-Davis, 2019, p. 379).<sup>13</sup>

Moreover, role-based accounts also acknowledge that for those occupying the social role of parenthood it is demanding and costly to prepare children for competent adulthood. For parents to do this job well, society has to support parenting activities by providing resources as well as institutional structures. In this context, Sciaraffa speaks of the importance of social roles and institutions with regard to the “social coordination necessary for the pursuit of comprehensive goals”. The example he uses is the life of a parent:

[T]o enjoy the life of a parent, there must be a social practice of deference and support that makes it possible to be a parent. Particularly, the social practices that constitute social roles must settle who has custody of which children and who makes what set of decisions regarding their wellbeing for it to be possible for anyone to enjoy the life of a parent (Sciaraffa, 2009, p. 124).

According to Sciaraffa, society may not only create the conditions for people to be able to be good parents through public support. Rather, society may also create the conditions for people to be parents at all. Sciaraffa assumes that parenthood is assigned to particular adults by virtue of social practices. Depending on the social practices, parenthood can be assigned to different people, be it biological parents, adoptive parents or larger kin groups in societies with extended families (Brake, 2010). Accordingly, parenthood does not have to rest on biological ties.

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<sup>13</sup> This case shows that social roles and the expectations attached to them can also be morally problematic. Gendered social roles within the family might cause women to assume primary responsibility for child rearing and household, for example (Okin, 1989).

Another advantage of the role-based account therefore is that it is able to account for the liberal conception of the family that I defended in Chapter 1. According to this conception, to count as a family parents and children do not have to be genetically related. Rather, what matters is that families fulfill a certain function, namely child rearing. I therefore take the liberal conception of the family to encompass all those family forms that constitute the social institution of the family.

However, as already indicated, role-based accounts of parental duties also have limitations. To recapitulate: Brake and Millum differentiate between two categories of role-based duties. The first category concerns the provision of generic goods, such as food and clothing. Parents can delegate those duties to other caregivers. With regard to the second category, Brake and Millum argue that parents have role-based duties to provide their children with stable and intimate relationships. Yet, I think that Brake and Millum are wrong in thinking that the parental duty to provide their children with stable and intimate relationships can be justified in terms of the role relation that parents and children have. Rather, this duty is a relationship-based duty that is grounded in the value of the parent-child relationship, or so I will argue.

In her paper “Roles and relationships: On whether social roles ground associative reasons” Nina Brewer-Davis criticizes philosophers who tend to conflate relationship-based and role-based duties (Brewer-Davis, 2019). Brewer-Davis points to differences between the two types of duties in order to show that relationship-based duties cannot be justified by virtue of the social roles that individuals occupy. Unlike in the case of relationship-based duties, people can have role-based duties without sharing a personal relationship or even without interacting at all. Lifeguards have a duty to rescue drowning swimmers - to use a paradigmatic example - although they do not have a personal relationship with those individuals. Brewer-Davis therefore argues that role-based duties are attached to “types of relationships, or to hypothetical or future relationships” (Brewer-Davis, 2019, p. 381). Qua holding the social role “lifeguard”, a particular individual has role-based duties towards a generic type of person, namely any person who may visit the beach. In contrast to that, we can only have relationship-based duties towards actual individuals with whom we interact regularly.

To illustrate this, Brewer-Davis gives the following example: “A doctor has role reasons toward patients even before she has begun to practice, and these properly inform how she sets up the practice. But she cannot have associative reasons toward people she is not yet associated with” (Brewer-Davis, 2019, p. 381). Whereas lifeguard and swimmer are in most cases solely connected by their social roles, this example suggests that there are also cases where role

relations provide an opportunity to develop personal relationships. Those relationships are shaped by the institutional setting. Social roles structure the way in which the relationship's participants interact (Seglow, 2013; Hardimon, 1994). If the doctor interacts more regularly with a particular patient, a personal relationship may develop. As a result, the doctor might incur relationship-based duties. In such a case, it may be appropriate for her to treat her patients differently in light of the relationships they have although she has a role relation and the same role-based duties to all of them. I think that we should conceive of parental duties in a somewhat similar way. But before I say more about this, I want to add a further difference between role-based and relationship-based duties.

This difference only becomes apparent in cases where role relations and relationships do not overlap. Whereas I consider the connection between lifeguard and swimmer a pure role relation, I take friendship to be an ideal type of a relationship. Following Hardimon, I do not conceive of being a friend as a social role since friendship is not an institution. According to Hardimon, "[w]hat counts as a friendship is up to the parties involved in a way in which what counts as a state, family or university is not" (Hardimon, 1994, p. 336). In contrast to the role relation between lifeguard and swimmer that is fixed by the social function of the role, friends can negotiate the terms of the relationship they share. They are free to work out a mutually acceptable understanding of the duties they have towards each other in virtue of being friends (Wallace, 2012). Another important difference thus is that individuals have more latitude in shaping their relationships and their relationship-based duties than in shaping their role relations and their role-based duties.

I take those distinctions to show that role relations and relationships are different ways of how people relate to each other. Therefore, they ground different kinds of duties. Consequently, Millum and Brake can be criticized for conflating relationship-based duties and role-based duties. Yet, although they do not make this explicit, they seem to be right in assuming that parental duties encompass more than what can be justified in terms of social roles. But what kinds of parental duties can be legitimately justified on the grounds of social roles?

To answer these questions, it appears to be useful to refer back to the standard account of role-based duties as developed by Hardimon and Sciaraffa. The standard account suggests that the family is a social institution and that parental duties amount to serving a particular social function, namely producing society's future adults. Parental duties would then be much like professional duties. Yet, being a parent - or at least being a good parent - is more than doing one's job. Imagine a parent who does everything he does for his child only because this is what society expects him to do in virtue of occupying the social role of parenthood. We might blame

such a parent for being motivated by the wrong kind of reasons, while good parents act out of love and affection. However, the standard account of role-based duties does not only fail to properly explain why parents do what they do for their children; it also fails to account for the kind of duties that we take parents to owe to their children.

A parent who is only motivated by role reasons might spend her time thinking about how to meet her child's developmental needs best in order to ensure that the child becomes a competent future adult that is good for society. But children are more than future adults and parenting is more than preparing children for adulthood. A parent who conceives of her duties merely in functional terms may lack the capacity to engage in spontaneous and loving interactions with the child. Yet, this is something that parents owe to their children as well.

We can conclude that role-based accounts are unable to capture the complexity of parental duties. If we only conceive of parental duties as role-based duties, this leads to a poor understanding of parenthood. At least, this is what the standard account of role-based duties suggests. Yet, Sarah Hannan and Richard Vernon affirm this assumption. According to them "to conceive of relations in a family exclusively in terms of roles would of course be to falsify them, and to cast the family too much in terms of a formal organization or of professional duty" (Hannan & Vernon, 2008, p. 148). I think Hannan and Vernon are right that the role-based account falsifies the relations in a family, or in this context the relation between parents and their children, insofar as these individuals are not only connected by virtue of the social roles they occupy. Rather, they also have special kinds of relationships. This is what the relationship-based account of parental duties suggests.

### 2.3 The Relationship-Based Account of Parental Duties

According to relationship-based accounts of duties, we have special duties towards particular people - such as our friends, family members or colleagues - in virtue of having a special kind of relationship with them (Scheffler, 2008; Seglow, 2013; Wallace, 2012). Relationship-based duties are thereby justified as they make the development of valuable relationships possible. These relationships are believed to be valuable since they make an important contribution to the wellbeing of those involved in these relationships. However, this is only the case if the relationship's participants acknowledge that they have special duties towards each other in light of the relationship they share and the value they attach to it. There are different theories about how the value of personal relationships and relationship-based duties are connected, but for my



purpose it suffices to say that relationship-based accounts of duties involve what Seglow calls a “relationship value claim” (Seglow, 2013, p. 18).<sup>14</sup>

The most prominent account of relationship-based duties - the relationship goods account - tries to spell out in more detail what is valuable about personal relationships and what relationship-based duties entail. According to relationship goods accounts, valuable relationships are those in which the participants co-create relationship goods through interacting over time (Brighthouse & Swift, 2014; Keller, 2007; Seglow, 2013). Seglow developed the most comprehensive relationship goods account. He argues that the participants in relationships are both agents who propel the relationship forward as well as beneficiaries who appreciate the product of that collective endeavor: relationship goods. The parties involved have a strong interests in enjoying relationship goods insofar as they constitute valuable relationships which contribute to leading a meaningful life (Seglow, 2013). Relationship-based duties thus require the participants in personal relationships to address each other’s interests in enjoying valuable relationships through cooperating in the realization of relationship goods. Depending on the nature of that relationship, there are different kinds of relationship goods involved that call for different types of relationship-based duties.

In case of the parent–child relationship, Brighthouse and Swift identify a unique kind of spontaneous love and intimacy as so-called familial relationship goods (Brighthouse and Swift, 2014). As a way of acknowledging that “family life is a context for celebrations, holydays, religious events, outings, games, visits (...)” Seglow adds further relationship goods such as shared family experiences or a sense of continuity between the past and the future that people have in virtue of being part of a family (Seglow, 2013, p. 57). Parents and children have an interest in enjoying these goods that they have co-created through mutually oriented interactions. As explained in Chapter 1, for their emotional wellbeing and development children need to experience a relationship with a constant caregiver who knows them very well and who is attentive to their needs. Since these goods cannot be realized outside the parent-child relationship, the family has a special value.

I agree with Seglow that producing relationship goods is a collective endeavor and that children are their parents’ collaborators in producing these goods. Children’s unconditional love for their parents may facilitate the development of intimacy, for example. However, we also have to bear in mind that the interactions in question do not take place between

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<sup>14</sup> According to Scanlon to acknowledge relationship-based duties is constitutive of the value of such relationships (1999). Scheffler sees relationship-based duties as a precondition for the existence of valuable relationships (2008). Seglow argues that to meet these duties is a central way that people serve their social relationships (2013).

symmetrically situated individuals. Rather, parents have power over their children, and this includes the power to undermine the value of the parent-child relationship. It is therefore very important that parents use the discretion they have over their children's lives wisely by engaging in activities and interactions with their children that facilitate the realization of familial relationship goods.

Relationship good accounts are rather abstract and might be difficult to grasp. To illustrate what kinds of relationship-based duties parents have towards their children, consider an example by Brighthouse and Swift: reading bedtime stories. According to Brighthouse and Swift, reading bedtime stories can be an opportunity for parents and children to share physical space and intimacy. Moreover, by reading bedtime stories parents can give their children exclusive attention at an important time of the day (Brighthouse & Swift, 2014, p. 125). Reading bedtime stories is thus conducive to having a flourishing parent-child relationship.

Just as the role-based account, the relationship-based account of parental duties also has advantages and limitations. The relationship-based account reveals important aspects of parental duties that the role-based account is not able to capture: Whereas the role-based account focuses on the institutional dimension of family life, the relationship-based account emphasizes its emotional dimension. It is therefore better able to accommodate motives of emotional attachment that appear to be characteristic of family relationships. Parents act out of love and concern and not - or at least not merely - because they have to fulfill particular functions for their children.

Here is another important aspect of family life that the relationship-based account of parental duties can capture more adequately than the role-based account. The role-based account conceives of the family as a static institution with a defined purpose: the raising of children. Yet, it does not acknowledge that the relationships within families are dynamic phenomena. The relationship goods account stresses that family members play an active part in shaping their relationships. According to Seglow, “[m]aintaining a relationship is something that one does” (Seglow, 2013, p. 30). This focus on agency allows for transformations in family relationships, such as in case of a successful separation process. Yet, the role-based account cannot account for such dynamics as it conceives of the family as a static institution.

The relationship-based account of parental duties not only has advantages, but also limitations. If we consider the relationship-based account of parental duties on its own, it seems to provide an incomplete picture of parental duties. This is because relationship-based duties are limited to actions that are directed towards the realization of relationship goods. The relationship-based account therefore has difficulties to account for those kinds of parental duties

that can be delegated to others. These duties pertain to the provision of generic goods. While relationship goods cannot be enjoyed outside the parent-child relationship, generic goods can, in principle, be provided by anyone. Generic goods, such as adequate nutrition or clothing, are goods that adults deliver and children receive. Unlike relationship goods, they are not the product of mutually oriented interactions. The provision of generic goods is thus not a relationship-based duty in the proper sense. Insofar as parents are entrusted with primary responsibility for child rearing, we take them to have a duty to provide at least some of these goods themselves and to coordinate the care provided by others. Yet, the relationship-based account has difficulties to make sense of these kinds of parental duties.

If we conceive of parental duties only as relationship-based duties, we are thus not able to capture the complexity of parental duties. This speaks in favor of a combined account. In what follows, I want to suggest that we should conceive of parental duties as an interplay between role-based and relationship-based duties. This allows us to incorporate the advantages of both the role-based and the relationship-based account of parental duties while, at the same time, eliminating their weaknesses.

## 2.4 The Combined Account of Parental Duties

The combined account of parental duties tries to do justice to the fact that the family is in some sense a social institution, but also an association of individuals that have special kinds of intimate relationships. I therefore assume that parental duties stem from different sources - the social role of parenthood as well as the parent-child relationship. Taking a look at the process of becoming a parent will thereby help to show that there are two different kinds of duties at work. Therefore, I will first outline what the combined account of parental duties has to say about the acquisition of parental duties. After that, I will explain how these different kinds of duties interact once both of them have been acquired.

According to the combined account, the acquisition of parental duties is two-step: Adults become parents when they assume the social role of parenthood. The biological or adoptive parents usually decide to assume the parental role before the child is born in the knowledge that this entails the long-term commitment to raise a child. From this moment on, the soon-to-be parents have duties towards the future child. They have a duty to prepare for a life with a baby. At this point, the parents may start to form an emotional attachment to the

unborn child, but they have not yet developed a personal relationship with the child.<sup>15</sup> The kinds of duties they have towards their unborn child are therefore role-based. The parents have these duties towards a generic type of person with whom they stand in a role relation rather than towards an actual individual with whom they have a personal relationship.

Once the child is born, the institutionally defined role relation provides parents and children with an unique opportunity to develop a personal relationship.<sup>16</sup> This is the second step. With the moment of birth, a generic type of person becomes an actual individual. This is when a role relation evolves into a personal relationship. While the parents fulfill their role-based duties such as to feed, clothe and comfort the newborn child, parents and child interact on a day-to-day basis and get to know each other better. They thereby gradually develop a relationship. This is when relationship-based duties come into play.

Parents may develop a parent-child relationship because they are highly emotionally involved in their parenting activities. They are motivated by attitudes of care and concern for their child. Moreover, the parents have an interest in enjoying a flourishing parent-child relationship (Brighouse & Swift, 2014). Yet, they might also have a duty to develop such a relationship with their child as part of their social role since children need to have a flourishing parent-child relationship for their emotional wellbeing and healthy development into competent future adults. The role-based duties of parents thus seem to give rise to relationship-based duties.

The duties that arise while the relationship develops are duties of their own kind. These relationship-based duties are grounded in the particular kind of relationship and not in the type of role relation. To illustrate this, consider the following example: A father has the same role-based duties towards all of his children insofar as the same role relations connect them, but he may have different relationship-based duties towards every single child in virtue of the individual he or she is. Whereas a 5-year-old child and a 13-year-old teenager might both need food and clothes, they need different kinds of relationships with their parents. A 5-year-old might need cuddles and bedtime stories while a teenager might need support in becoming an autonomous young adult.

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<sup>15</sup> Gheaus argues that an intimate relationship between the pregnant mother and the future baby starts even before the baby is born. This is because birth mothers invest a significant amount of resources to pregnancy and are highly emotionally invested (Gheaus, 2012). But this is not the kind of relationship that I have in mind, namely one in which individuals engage in mutually oriented interactions. In contrast to that, much of the relationship between the pregnant mother and the future baby seems to operate through fantasy and projection as Brighouse & Swift rightly point out (Brighouse & Swift, 2014)

<sup>16</sup> In cases of adoption where older children are involved, things are slightly different but relevantly similar. In these cases, a role relation might become a relationship when parents and child see each other for the first time even of this is not at birth.

Once parents have acquired both kinds of duties, they may encounter situations where role-based and relationship-based duties conflict. Such cases provide further evidence that there are, in fact, different kinds of parental duties involved. Consider the example of 3-year-old Alice who urgently needs to go to the dentist but is deeply afraid of it. Her parents might have to force her to go to the doctor to maintain her dental health even if Alice could feel betrayed and even if this might impair the quality of their parent-child relationship. In this case, role-based duties to maintain Alice's health trump relationship-based duties. In the following example, it is the other way around: It is Tom's 7th birthday and all he wishes for is to go to McDonalds and to eat as much cheeseburger as he can. Normally his parents would not allow him to do that, but they make an exception because it is Tom's birthday. They go to McDonalds together and have a great time. In this case, realizing relationship goods by celebrating this special day might be more important than providing healthy nutrition, so one could say that relationship-based duties trump role-based duties.

These examples show that role-based and relationship-based duties are different kinds of duties that sometimes conflict. Yet, there are also many cases where role-based and relationship-based duties are closely related. These cases tend to obscure the fact that there are indeed different kinds of duties involved. To illustrate this, consider a further example: At family mealtimes, parents can provide their children with the generic good of adequate nutrition. Yet, this can also be an opportunity to realize relationship goods. Family mealtimes are daily routines where parents and children share physical space and interact with each other. This strengthens the emotional attachment and a mutual sense of identification between parents and children. In such a case, the parents might fulfill both kinds of duties at the same time while accommodating different reasons for action that complement each other. It is therefore sometimes difficult to differentiate between actions that pertain to the fulfillment of role-based duties and actions that pertain to the fulfillment of relationship-based duties. Similarly, it is difficult to differentiate between generic goods and relationship goods insofar as providing generic goods is, in this case, a way of realizing relationship goods.

The fact that role-based and relationship-based duties are in many cases closely related explains why parents cannot delegate all their role-based duties to others even though generic goods can, in principle, be supplied by anyone. Imagine parents who delegate all of their role-based duties to nannies who feed, clothe and comfort the children. I consider it very unlikely that these parents can have a flourishing relationship with their children. This is because relationship goods are the product of day-to-day interactions that are, in the case of parents and children, structured by role-based duties. We can conclude from this, that parents have to

recognize part of their role-based duties to be able to carry out their relationship-based duties. However, it is also the other way around: For parents to fulfill their role-based duties partly consists in recognizing the relationship-based duties they have towards their child. This is because the end of the social institution of the family - to produce society's future adults - can only be achieved if parents provide their child with a stable and close relationship.

I hope these arguments provide sufficient reasons for understanding parental duties as a combination of role-based and relationship-based duties. If accurate, the combined account of parental duties can describe parental duties more adequately than the role-based account or relationship-based account of parental duties. The combined account acknowledges that the family is in some sense a social institution with institutionally defined social roles, but that parents and children also have special kinds of intimate relationships. By bringing institutional and associational aspects together, the combined account can account for the fact that the parent-child relationship is shaped by background institutional structures. But it can also explain why the family differs from other social institutions where social roles such as those of lifeguard and swimmer precisely determine the kinds of interaction there can be.

Parents have some discretion in raising their children, but they are not as free as friends to negotiate the terms of their relationship. Rather, parents are free to shape the parent-child relationship only within the limits of legally and socially defined parental duties. While friends, to stick with the example, may dissolve their relationship more easily, for instance, society expects parents to not exit the parent-child relationship. The parents have to stay in their social role for 18 years or longer if necessary, since children need continuity of care to develop into well-functioning adults and competent citizens (Alstott, 2004). The combined account of parental duties shows that institutionally defined role relations persist while the relationships within the family might change.

This idea that the institution of the family is rather static while the relationships are dynamic is useful to understand cases of parental separations. When parents separate, their social roles as parents remain unaffected although there are changes in the relationships and living circumstances of the family. Since taking on the social role of parenthood entails a long-term commitment, role-based duties and the relationship-based duties they give rise to persist irrespective of the parents' relationship status. In the chapters that follow, I will say more about how parents in separation contexts can meet their parental duties and why they might have problems to do so. This look ahead was just meant to show that the combined account of parental duties serves as a useful starting point for analyzing parental duties in separation contexts.

## 2.5 Co-Parental Duties

The family, even in the narrow sense in which I am using the term, involves more relationships than I have admitted so far – at least in case of families with more than one parent. Up to now, my reflections on parental duties have focused on the parent-child dyad. However, to understand what happens in case of a parental separation, we have to see the family as consisting of the relationships between the child and each of the parents as well as the relationship between the co-parents. By co-parents, I mean individuals who raise a child together and who share the joys and burdens of parenting. They may be lovers or not.

As already explained in the previous chapter, raising a child is challenging - especially in the modern societies we live in. Parents have to make sure that their children's needs are met, spend time with them, educate them, make a living, arrange daycare, make medical appointments, attend their child's ballet recital etc. This is why many parents decide to share the physical, emotional and financial demands of parenting. In what follows, I argue that shared parenting creates additional duties for parents. I call them co-parental duties.

Whereas there is a substantial body of literature on the duties that parents owe their children, co-parental duties have largely been neglected by philosophers.<sup>17</sup> By contrast, empirical social research on co-parenting has grown over the past decades. According to Mark E. Feinberg “[c]oparenting occurs when individuals have overlapping or shared responsibility for rearing particular children, and consists of the support and coordination (or lack of it) that parental figures exhibit in child rearing” (Feinberg, 2003, p. 96). Empirical studies show that that successful co-parenting predicts family functioning and promotes children's wellbeing (Teubert & Pinquart, 2010). Successful co-parenting is therefore especially important in cases of parental separations.

If we want to explore the duties that arise when parents share the responsibility for rearing a child, we might again start with how co-parental duties are acquired. Whereas parents acquire duties towards their children by deciding to assume the social role of parenthood individually, co-parental duties arise when they jointly decide to assume this role (Cook, 2012, p. 172). Thereby, the co-parents mutually commit to sharing the responsibility for raising a particular child. Such as Feinberg's characterization of co-parenting suggests, those who share in parenting might have duties to support each other and to coordinate child rearing activities. These co-parental duties are shaped by the child's interest. For, parents who decided to share

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<sup>17</sup> As far as I know there is only one philosophical paper about the duties of shared parenting written by Philip Cook (2012). Much of what I will say therefore relates to his paper.

the responsibility for child rearing must work together to meet their children's needs. Yet, I think that Philip Cook is right that co-parental duties are not only grounded in the interests of the child (Cook, 2012, p. 169).

Co-parents may also have duties towards each other that arise from the mutual commitment to share the responsibility for child rearing. As a result, the parents come to rely on each other, they form expectations about each other's behavior, and they make plans that are based on these expectations. Co-parents thereby incur special duties towards each other, namely to act according to the expectations they have created.<sup>18</sup> These duties - let us call them duties of reliance - are not derived from the children's wellbeing. Parents owe each other these duties directly insofar as they engage in shared parenting. Yet, it seems reasonable to assume that parents who fulfill the duties of reliance they owe to each other also engage in the kind of co-parenting their children need. Consequently, both grounds of co-parental duties seem to reinforce each other.

## 2.6 The Limits of Parental Duties

So far, I showed that parental duties are more complex than philosophers have previously assumed. Parents have duties towards their children both in virtue of occupying a social role with a particular social function and in virtue of being participants in valuable personal relationships. Parents have to invest huge amounts of resources to raise their children to become well-functioning adults that are good for society. They have to make a living to be able to provide their children with generic goods, and they have to spend time with them to form loving relationships. It therefore has advantages for parents to share the burdens of child rearing. Yet, as has also been shown, this creates further duties of support and cooperation that co-parents owe each other.

To meet all those different kinds of duties and to meet them well is, without doubt, a big challenge. Having said this, I might have created the impression that parents have to be perfect to meet this challenge. Thereby, perfect parents might be such that they always act according to the best interests of the child while subordinating their own interests. Being the best possible parents might be what all their life is about. Yet, following Brighouse and Swift I do not think that parents can and should be expected to conform to this ideal. This is because parents are not only parents, but also individuals who have their own lives to lead. They occupy other social roles, they have independent interests as well as non-parental duties (Brighouse & Swift, 2014,

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<sup>18</sup> I am rather brief here. For a more detailed discussion of some duties of this kind, see Scanlon (1999, Ch. 7).



p. 98). I therefore consider it important to not only acknowledge the children's interest in having the best possible parents, but also the parents' interest in leading autonomous lives. Consequently, parents should only be required to parent reasonably well in the sense that it is appropriate if they do not always act according to the best interests of the child.

Parents should be allowed to sometimes weight their own interests against their children's interests as long as they do not harm their children by doing so. Similarly, there might be cases where the duties that parents have towards others or towards themselves trump parental duties. What kinds of trade-offs are legitimate in this context highly depends on the kind of situation parents find themselves in. Still people will disagree about when parents might be justified in giving priority to their own interests or their duties to others. It is beyond question that parents are justified in missing out on their child's ballet recital to save someone else's life, for example. Yet, it is up to debate whether parents should be allowed to live in different cities even if their child would clearly benefit from having both parents around. Such tricky questions will also play a role in my later discussion of cases of parental separations - at least if we assume that parents do not have to be perfect.

What I said so far might have created the impression that the parents' autonomy and the wellbeing of their children necessarily conflict, but this is not the case. Brighouse and Swift are right that it is important for children to have parents who lead their own lives. By contrast, parents whose sole purpose is to serve their children might not be able to provide their children with the kind of relationship they need. Children need to experience their parents as autonomous individuals who have independent interests and pursuits (Brighouse & Swift, 2014, p. 99).

We can conclude from this that parental duties are complex and demanding, but not absolute. Parents do not have to be perfect. Rather, as a way of recognizing parents as autonomous agents, we should only require them to parent reasonably well. As a result, the parents might not always act according to the children's best interest, but as suggested by Brighouse and Swift experiencing them as independent people might sometimes be more important.

## 2.7 Summary

In this chapter, I showed that, if considered individually, the role-based account and the relationship-based account lead to a poor understanding of what parental duties are and what they entail. I argued that to do justice to the complexity of parental duties we have to see them as an interplay between role-based duties and relationship-based duties. I also showed that the

duties of parents are complex in another sense, namely insofar as they not only involve duties towards the child but also duties towards the co-parent. Yet, I not only examined the ground and content of parental duties, but also their limitations. In this regard, I argued that we should only expect parents to parent reasonably well in order to acknowledge that they are not only parents but also independent people.

Together with the reflections about the nature and value of the family from Chapter 1, these general philosophical considerations will provide useful analytical tools for my discussion of parental separations. Having an understanding of how things ought to be according to these ethical theories will be helpful to identify ethical problems in separation contexts. In the next chapter, I will present empirical findings about families in separation contexts to show why parents in separation contexts might fall short of the ethical standards for parenting that I defined in this chapter.

### 3. Parental Separations: Empirical Findings and Ethical Problems

In this chapter, I am going to examine cases of parental separations, identify ethical problems and make suggestions for how to solve them. I want to analyze this kind of potentially difficult and stressful situation parents and children can find themselves in from an empirical as well as from an ethical point of view. We need both perspectives since we cannot identify ethical problems in separation contexts without an awareness of the relevant empirical details. At the same time, we need ethical theories to determine which facts are ethically relevant in this specific context.

I will say more about the methodological approach I adopt and about how I conceive of the relation between empirical social research and ethical theory in the first section of this chapter. As I deal with practical ethical issues concerning a complex social phenomenon, I consider it important to first gain insight into the everyday realities of families in separation contexts. In the second section, I will thus give an overview on current findings in empirical social research on families in divorce contexts. If we compare the social reality that those findings depict with how things ought to be according to the ethical theories that I discussed in Chapter 1 and 2, we will encounter conceptual discrepancies and practical problems. In the remainder of this chapter, I am going to explore these discrepancies and problems. In section 3, I will criticize the narrow concept of divorce that most of the empirical studies employ for excluding children who experience a separation in non-traditional family forms. In section 4, I will outline why a separation is potentially harmful to the children involved. I will describe those harms by means of the different goods that children in separation contexts might be deprived of. I will show that a main reason for this is that parents in separation contexts often fail to fulfill their parental duties due to economic hardship or interparental conflicts. In the end, I will present two strategies for how to deal with those problems.

#### 3.1 Methodological Approach

The methodological approach that will guide my theorizing for the rest of this book assumes that empirical social research and theories in family ethics can be brought into fruitful exchange. However, it is anything but obvious that this is the case. Many people may see empirical research and ethical theory as two distinct fields that are in tension or have no relation at all. Empirical research helps us explain how things are, whereas ethical theory is about how the world should be. Or, to put it in other words, empirical research is concerned with facts, whereas

ethical theory is concerned with values (Bauer & Meyerhuber, 2020). Empirical research and ethical theory represent different perspectives on the world and thus appear to be distinct fields. In line with this, Max Weber admitted that science could not tell us what we ought to do or how we should live (Weber, 2004).

Weber is surely right that we should not confuse is and ought. Nevertheless, there seems to be a close connection: What we ought to do often depends on what is, for example. This is especially the case if we engage in practical ethics. In his introduction to *The Oxford Handbook of Practical Ethics* Hugh LaFollette loosely defines practical ethics as “the explicit discussion of practical ethical issues, by philosophers, in their capacity as philosophers” (LaFollette, 2005, p. 3). Now what we ought to do refers to what is insofar as these practical ethical issues are related to reality; we express those issues on the basis of empirical facts. In case of the practical ethical issues this book deals with it is the empirical fact that a separation poses a risk to the wellbeing and development of the child. Empirical studies thereby explain how particular circumstances that often accompany parental separations can lead to negative outcomes among children.

One may deny the relevance of empirical research by pointing to the importance of intuitions to ethical theorizing. To resort to our intuitions when discussing practical ethical issues does not seem to be a good alternative, however, insofar as we, as philosophers, might not know all the relevant empirical details. The realities of families in separation contexts are more complex than one might assume. At the same time, debates about parental separations are oftentimes driven by emotions or ideological reasons. Consequently, if we rely on our intuitions this could result in a discussion that is biased or shortsighted (LaFollette, 2005). For example, many people seem to think that a separation is bad in any circumstance. By contrast, the empirical findings that I will present later on show that this negative perspective is too general, and that separation contexts are more diverse.

This suggests that the fields of empirical research and ethical theory are not only connected, but that we must bring them together if we want to engage in practical ethics. When we discuss practical ethical issues, we need empirical social research to complement our abstract theories with empirical details (Bauer & Meyerhuber, 2020). For example, theories in family ethics suggest that parents have a duty to promote the wellbeing and development of their child. However, what the fulfillment of these duties requires may vary with the specific circumstances, such as in cases of a separation. At the same time, we need ethical theories to find out which empirical facts are ethically relevant in a particular case. Otherwise, we would not be able to identify practical ethical problems.

However, practical ethics consists of more than applying a theory to a practical ethical issue. Following LaFollette, I therefore do not use the term “applied ethics” as it implies that the relation between ethical theory and empirical research is unidirectional (LaFollette, 2005). But this is not correct. Empirical findings may also influence ethical theories when they make us aware of ethical problems that were previously unknown, or when they let us rethink our theoretical assumptions. If we want our ethical theories to have an impact on reality, those findings should give us reason to engage in further theorizing and to adapt our ethical theories accordingly. I therefore assume that, in the case of practical ethics, empirical research and ethical theory are mutually related and mutually enriching.

Later, when I try to find solutions to practical ethical problems in separation contexts, I will refer to the ethical principle of “ought implies can”. This principle illustrates how is and ought can be related in moral theory. According to the principle that ought implies can, you can only have a duty to do what is possible for you to do. This principle is widely accepted among philosophers, but there is disagreement on how to interpret the “can” in “ought implies can”. Following Amy Berg, I assume that “can” does not only refer to what people are able to do according to the best standards, but that we must also take into account people’s shortcomings and psychological limitations as well as the present situation they find themselves in (Berg, 2018). With regard to the second, more modest interpretation of “can” empirical data are useful to gain insight into non-ideal circumstances and might therefore have an impact on the kinds of duties we take people to have.

I now want to turn to another way in which is and ought are conceived of as distinct fields. Just as some philosophers deny the relevance of empirical research to practical ethical theorizing, there is a long-standing assumption that science is free of values (for a discussion, see e.g. Lacey, 1999). Yet, this assumption does not seem to be correct. Just as practical ethical theorizing and empirical research cannot be strictly separated, science is not always free of normative influences. In this regard, Kreienkamp et. al. differentiate between overt normative assumptions about what proper research is and unconscious normative assumptions (Kreienkamp, Agostini, Kunz, Meyerhuber, & Fernandes, 2020). In a similar vein, Helen Longino distinguishes between constitutive values and contextual values. Constitutive values define what an acceptable scientific method or scientific practice is, whereas contextual values are social, personal or cultural. Longino convincingly argues that this distinction cannot be maintained. This is because when they formulate hypotheses, researchers often do more than merely describing empirical data. Rather, they must interpret their research findings and make assumptions. Thereby, contextual values may influence their reasoning (Longino, 1987).

Although researchers may think of themselves as being objective, they are oftentimes prone to biases. Consider the following example of scientists who studied the tomb of a Viking warrior. For a long time, Viking warriors were believed to be male, but recent DNA analyses of bones from a tomb have shown that there were also female warriors (Hedenstierna-Jonson, Kjellström, & Zachrisson, 2017). Researchers who thought that Viking warriors were male might have misinterpreted the research findings due to wrong assumptions about social orders in past societies. This shows that science is not always free of contextual values.

But this should not be a reason to stop using empirical data altogether. Empirical data can still help to gain knowledge about the world, we just have to be more careful in using them. And we must be aware that science is not as objective as we might think. Consequently, it would be wrong to assume that each piece of empirical data represents the truth. This is especially the case in scientific debates where both parties present empirical evidence for their opposing positions. The scientific debate on whether divorce affects children's adjustment appears to be just like that.

There are two extreme positions (for an overview, see e.g. Lansford (2009)): According to the first position, divorce has devastating long-term effects. Children of divorce are believed to have mental health issues and problems to form close interpersonal relationships until adulthood (e.g. Popenoe, 2003; Wallerstein, Blakeslee, & Lewis, 2000). Judith Wallerstein is a famous advocate of this position. Her research on divorce had a considerable influence on social policy and scientific work. But Wallerstein's work has also been criticized for methodological and ideological reasons (Amato, 2003; Coontz, 1992). The second and opposite position holds that divorce has no measurable long-term effects on children (Harris, 1998). However, this position has come under criticism as well as it contradicts many empirical findings that provide evidence to the contrary.

Those insights into the scientific debate on divorce illustrate why we should not think that each piece of empirical data represents the truth. Nonetheless, we must gain reliable information about social reality as this is the starting point for an ethical analysis of separation cases. According to Paul R. Amato, one of the leading figures in empirical social research on children in divorce contexts, "(...) the most reasonable approach is to search for consistency in findings across studies that have used different methods to collect and analyze data" (Amato, 2003, p. 333). In what follows, I will therefore try to give a neutral and unbiased overview of the current state of research on families in divorce contexts by using literature summaries and meta-analyses that combine the findings of different studies.

### 3.2 Empirical Social Research on Families in Divorce Contexts

In the last five decades, a considerable number of empirical studies on families in divorce<sup>19</sup> contexts and especially on the consequences of a divorce for children have accumulated. Divorce rates in most Western countries have increased significantly during the last half century and have stabilized at a high level (Amato & James, 2010; Ambert, 2009; Langmeyer & Walper, 2014; Prioux et al., 2010; Walper, 2009).<sup>20</sup> During this time, developments in international research - most of the empirical findings come from the United States, but there is also a growing number of studies conducted in Europe - led to a more differentiated picture of divorce. In the early days of research, social scientists tended to adopt a deficit perspective on divorce (Langmeyer & Walper, 2014). This is because empirical studies indicate that, on average, children whose parents are divorced experience more problems, show an impaired development as well as lower levels of wellbeing compared to children who grow up in intact two-parent families. These problems include conduct problems, depression symptoms and anxiety as well as social and academic difficulties (Averdijk et al., 2011; Barrett & Turner, 2005; Potter, 2010; Sun & Li, 2002). Moreover, empirical findings show that at least for some individuals the adverse effects of divorce persist into adulthood (Amato & Sobolewski, 2001).

Many people seem to stop at this point, thinking that this is all they have to know about the effects of divorce on children. However, things are more complicated, so it is worth going into detail here. What such people do not know, for example, is that the average effects of divorce are rather weak. This is because simple comparisons between children with divorced parents and children from two-parent families obscure the fact that there is a diversity of outcomes for children in both groups. Depending on the circumstances, children vary considerably in how they react to the divorce. Children from high conflict families may be better off after a divorce, for example, while others adjust quickly and still others have long-term problems to cope with the divorce (Amato, 1994).

To analyze the circumstances under which a divorce leads to negative outcomes among children and contrast them with factors that protect children in divorce contexts, Amato uses a divorce-stress-adjustment perspective. This perspective does not conceive of a divorce as a single event, but as a process that begins some time before the parents' decision to divorce and ends long after the legal act of divorce (Amato, 2000). As its name suggests, the divorce-stress-

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<sup>19</sup> Most of the empirical studies focus on divorce. For now, I will adopt this terminology although I am going to criticize it later for being based on a traditional family model.

<sup>20</sup> I will not go into detail here since divorce rates are hard to pin down and may vary between different countries. For a discussion about methodological challenges, see Amato (2010) and Kennedy & Ruggles (2014).

adjustment perspective acknowledges that a divorce is stressful for children. One reason for this is that a separation is oftentimes associated with a large number of changes in the social environment of the child. The sociologists Amato, Kane and James illustrate this as follows:

“Divorce brings about significant changes in most children’s lives, including the departure of one parent from the household, a decline in standard of living, moving to a new residence and neighborhood, giving up pets, changing schools, losing contact with friends and classmates (...) (Amato, Kane, & James, 2011, p. 514).”

The divorce-stress-adjustment perspective assumes that although changes in the living conditions of the family are stressful for children, they might adjust to the divorce. This depends, among other things, on the quality of postdivorce family relationships. It has been shown, for instance, that children with supportive parents fare better in divorce contexts than children whose parents are not emotionally available. In the latter case, the children might lack the emotional resources to cope with the new situation (Langmeyer & Walper, 2014).

Whereas the divorce-stress-adjustment perspective focuses on the divorce process and its consequences for parents and children, there are studies suggesting that we also have to consider the time before the divorce (Furstenberg & Teitler, 1994; Malone et al., 2004). This is what Amato calls the selection perspective (Amato, 2000). This perspective assumes that at least some difficulties that children experience are not the consequence of the divorce but have already been present in earlier family life. Partnership issues or stressful living conditions may increase the risk of a divorce and are, at the same time, stressful for children. According to the selection perspective, we must see the consequences of a parental separation against the background of these previous problems.

Both the divorce-stress-adjustment perspective and the selection perspective assume that it is not the separation per se that poses a risk to the wellbeing and development of the child. Rather, this depends on the causes and circumstances of a parental separation. In what follows, I will explain in more detail factors - so-called stressors - that put children’s adjustment at risk. The main stressors in divorce contexts are economic hardship, interparental conflicts and impaired parenting. However, what is important here is that although I look at these stressors in the context of divorce, they are not specific to divorce but may occur and contribute to children’s problems in all different types of family forms.

A parental separation may be associated with economic hardship in two respects. Studies adopting a selection perspective show that parents with a low socio-economic status are more likely to divorce than other parents (Amato, 1994). According to a divorce-stress-



adjustment perspective divorce is oftentimes accompanied by a drop in household income as the parents need to manage separate residences. Currently, most divorced parents choose a sole custody arrangement. In this arrangement, the children live with a single parent - in most cases the mother - and visit the non-resident parent - in most cases the father.

An alternative living arrangement for children after divorce that recently attracted scholarly attention is joint physical custody (Baude, Pearson, & Drapeau, 2016; Bauserman, 2002; Fehlberg, Smyth, Maclean, & Roberts, 2011). In this living arrangement, parents share the time that their children spend in each household more equally than in the sole custody arrangement. However, there is a wide range of definitions. The time children spent in each household ranges from a one-third division up to an equal share of time. Even though the number of families in joint custody arrangements increased in the last years, still only a minority of divorced parents choose this arrangement (Walper & Langmeyer, 2019). This is why I am going to focus on sole custody arrangements.

As already indicated, a parental separation may have negative effects on children's wellbeing and development if it is associated with economic hardship. Empirical studies show that after divorce women often experience a decrease in living standards, especially if they have primary custody for their children, whereas men's living standards tend to increase or remain stable (Bonnet et al., 2021; Bratberg & Tjøtta, 2008; Leopold, 2018). This is especially the case if single mothers do not receive payments of child support from the child's father.

Studies show that economic hardship is associated with poor outcomes among children with divorced parents (Aseltine, 1996; McLanahan & Sandefur, 1994). With regard to psychological problems, Aseltine showed that adolescent depression is linked to postdivorce economic hardship (1996). Moreover, economic disadvantages are associated with low socioeconomic attainment in adulthood as single mothers are oftentimes not able to buy books for their children or to pay for good schools. In contrast to that, there are studies indicating that child support payments are positively related to children's behavior and school attainment (King, 1994; Thomson, Hanson, & McLanahan, 1994). Such studies demonstrate the importance of income for children's adjustment to divorce.

Another predictor of negative outcomes among children in divorce contexts are interparental conflicts. Studies indicate that conflicts between the parents may have harmful and long-lasting effects on children's adjustment, especially when children witness their parent's arguments (Davies et al., 2002; Fincham, 1998) and when the parents argue continuously and intensively without finding an effective solution (Cummings, Simpson, &

Wilson, 1993). By contrast, children suffer less from conflicts between their parents if they notice that the parents reconcile after an argument.

If the relationship between the parents is conflict-ridden, there is an increased risk that the parents will force children to take sides in parental conflicts, whereas children may face conflicts of loyalty. Several studies suggest that the feeling of being caught in the middle causes high levels of stress among children and adolescents in divorce contexts (Buchanan, Maccoby, & Dornbusch, 1996; Franck & Buehler, 2007; Shiller, 1986). It is even worse when children witness physical violence between their parents as such experiences can have a traumatizing effect on children (Holt, Buckley, & Whelan, 2008; Kelly, 2000).

Interparental conflicts are not only a direct stressor as they occupy a lot of children's attention and emotional resources, but they are also problematic in another way. Conflicts between the parents impair their functioning both as parents and co-parents and, relatedly, the quality of the parent-child relationship. A number of studies indicate that, compared to married parents, divorced parents show deficits in parenting (Astone & McLanahan, 1991; Hetherington & Clingempeel, 1992). Due to stress and conflicts, divorced parents tend to overlook their children's needs. If parents do not or cannot answer with caring behavior to the problems their children face, this causes emotional insecurity in the child (Davies et al., 2002).

Deficits in parenting may not only result from problems in the couple relationship, but also from problems in the co-parental relationship. Thereby, the quality of the co-parental relationship is more tightly connected to child adjustment than to other aspects of the interparental relationship (Margolin, Gordis, & John, 2001). The impact of co-parental conflict is greater as it centers on child-related issues. In line with this, there are studies showing that children tend to suffer from dysfunctional co-parenting styles, such as when parents maintain inconsistent rules or when they try to undermine the other parent's authority (Buchanan et al., 1996; Harper & Fine, 2006; Sandler, Miles, Cookston, & Braver, 2008). In such cases, the parents may struggle to develop a cooperative co-parental relationship while, at the same time, dissolving the romantic relationship (Markham, Ganong, & Coleman, 2007).

In sole custody arrangements, dysfunctional co-parental relationships result in less contact between the non-resident parent and the child. This may be problematic since children appear to benefit when they have supportive and close relationships with non-resident parents (Amato & Gilbreth, 1999; Harper & Fine, 2006; King & Sobolewski, 2006). However, there are also studies showing that children do not benefit from frequent contact with the non-resident parent if the co-parental relationship is conflict-ridden (Kalmijn, 2016).

We can conclude that interparental conflicts are one of the main stressors for children in separation contexts. Interparental conflicts interfere with the children's attachment to their parents and therefore cause emotional insecurity in the child, which can, in turn, lead to adjustment problems. Against the background of an analysis of pre- and postdivorce stressors, we can now better explain why most of the empirical studies indicate that children of divorced parents tend to be disadvantaged compared to children whose parents are still together. This is not because a parental separation is inherently bad. Rather, what the empirical findings show is that many parental separations are, in fact, accompanied by the above-mentioned circumstances. They show that many families in separation contexts suffer from a lack of financial resources, that many parents are unable to solve their interparental conflicts and struggle to be emotionally available for their children.

However – and this is the good news – these negative effects are contingent meaning that a parental separation does not necessarily lead to poor outcomes among children. Whereas stressors impede children's adjustment to divorce, social researchers have identified so-called protective factors that facilitate children's adjustment. Protective factors function as shock absorbers which make individuals experience less stress (Rutter, 1987). The main protective factors in divorce contexts are successful co-parenting as well as mediation and divorce education classes (Lamela, Figueiredo, Bastos, & Feinberg, 2016; Shaw, 2010).

Successful co-parenting is more than the absence of co-parental conflicts. Rather, co-parents must agree on child rearing issues, negotiate how to share responsibilities and support each other in their social role as parents (Feinberg, 2003). Successful co-parenting is a reliable predictor for family functioning and positive outcomes among children in different types of families and not only in divorce contexts (Feinberg, Kan, & Hetherington, 2007). Studies indicate that in case of a divorce children benefit when the parents communicate regularly, support each other's parenting activities and set out similar rules in both households (Buchanan et al., 1996; Harper & Fine, 2006; Sandler et al., 2008). Successful co-parenting may be favorable for children's adjustment since it reduces children's exposure to conflicts (Sbarra & Emery, 2008) and promotes positive parenting (Markham et al., 2007).

These findings show that successful co-parenting, parental functioning and a good parent-child relationship are closely intertwined. In sole-custody arrangements, successful co-parenting has an influence on the involvement of the non-resident parent. According to a study from the US, non-resident fathers had contact with their children more frequently and therefore a better parent-child relationship because of good co-parental cooperation (Sobolewski & King, 2005).

When parents separate, the question arises of how to organize shared parenting. For warring parents it may be especially hard to come to an agreement on child rearing issues as they may struggle to develop a positive co-parental relationship that is detached from the conflictual couple relationship. In this context, divorce mediation – another protective factor – might help families to solve conflicts and negotiate agreements. In a series of studies, Emery et. al. showed that most parents reach an agreement in mediation, that mediation resulted in more communication between the parents and in more contact with the non-resident parent (see also Emery, Laumann-Billings, Waldron, Sbarra, & Dillon, 2001; Shaw, 2010).

Another way of assisting parents in having a good divorce are divorce education classes. In such classes, divorcing couples are thought about the specific needs of children in divorce contexts. The parents learn to understand that children benefit when they have two parents around who engage in successful co-parenting and who limit children's exposure to conflicts (Douglas, 2006). Besides that, there are also programs for children in divorce contexts where they can develop the cognitive and social skills they need to cope with the new situation. Children can get social support in school-based divorce groups, for example. There they can connect with peers who encounter similar situations (Kalter & Schreier, 1993).

Good postdivorce relationships and social support networks can facilitate children's adjustment. Nevertheless, it is hardly possible to eliminate all risk factors. Stressful changes in the living conditions of the child, such as the departure of one parent from the household, may be inevitable, for example. Protective factors can only help the child to cope with the new situation. Therefore, we should be careful not to think that a divorce is something that does not affect children at all.

At the same time, this more differentiated perspective challenges the deficit perspective by showing that divorce can lead to different outcomes among children. It can also be a chance to escape high conflict families, for instance. Many researchers who investigate the disadvantages of children in divorce contexts compare them with children from allegedly intact two-parent families, but they do not seem to acknowledge that not all two-parent families are good. Such as there is a diversity of outcomes among children in divorced families, there is also a diversity of outcomes among children in two-parent families (Amato, 1994). Empirical findings suggesting that children's problems often precede the breakup support this assumption. This shows that talk of good families and bad divorces oversimplifies the complex realities of both family life and divorce.

In the preceding section, I portrayed two extreme positions on the effects of divorce on children - that divorce has devastating long-term effects on children and that it does not affect

children at all. Not surprisingly, the truth lies somewhere in between those two extremes. According to the current state of research, children vary in their outcomes depending on the stressors and protective factors that accompany the separation process. The fact that divorce is not inherently bad might entail a potential for change and improvement. But before we can try to find solutions, we first have to identify ethical problems. If we compare the social reality that the empirical findings depict with how things ought to be according to the ethical theories that I discussed in Chapters 1 and 2, we encounter conceptual problems.

### 3.3 Conceptual Problems

The vast majority of empirical studies, even more recent ones, focus on the concept of divorce and contrast this concept with the institution of marriage.<sup>21</sup> Thereby, divorce is characterized by the dissolution of the parents' marriage. This concept presupposes a traditional family model as the type of parents that the empirical studies focus on are not only married, but they are also heterosexual and lived in the same household before the divorce. This family model differs from the liberal definition of the family that I introduced in Chapter 1. Following Archard I defined the family as a "multigenerational group, normally stably co-habiting, whose adults take primary custodial responsibility for the dependent children" (Archard, 2010, p. 10). In what follows I will argue that by using the narrow concept of divorce empirical scholars ignore the fact that modern families exhibit a variety of forms and that separations take place in all different kinds of family forms. In response to this, I will then propose the broader concept of parental separation.

Most of the empirical studies on divorce focus on children whose parents were married. However, the marital status of the parents seems to be irrelevant when it comes to the problems of children. Amato assumes that the empirical findings on divorce are also applicable to families where the parents have not been married. This is because children may suffer from interparental conflicts whether the parents were married or not (Amato, 2011). It is not the legal act of divorce that affects children, but changes in the relationships and living conditions that come along with the separation process. Yet, children whose parents separate may experience these changes in any kind of family form.

Liberal Western societies are characterized by a plurality of family forms. Empirical research only captures part of this social reality and thereby excludes children who experience a parental separation in non-traditional family forms. There is a growing number of co-habiting

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<sup>21</sup> For an exception, see Manning, Smock, & Majumdar (2004).

parents who break up, for example (Amato, 2000). Besides that, there may be homosexual parents or Living Together Apart couples who separate. Empirical scholars can be criticized for ignoring that such children experience similar problems. Moreover, such children might face problems that are specific to a certain kind of family structure. For example, it seems reasonable to assume that children who experience a parental separation in non-traditional family forms suffer from intersecting patterns of discrimination: They are raised in a type of family that differs from what is falsely believed to be the ideal family and they are children whose parents are separated. Due to the limited research scope of most empirical studies, these potential problems remain unnoticed.

To be able to address those problems we need a broader concept of what a parental separation is, but this is difficult to define. Once we give up the concept of divorce, we can no longer point to the legal act of dissolving the parents' marriage as a clear (though irrelevant) criterion to identify the social phenomenon in question. If we admit, instead, that this social phenomenon is broader and try to accommodate different family forms, we lose conceptual clarity. To illustrate this, consider how separation processes in non-traditional families could look like. Archard's definition, which I mentioned earlier, not only includes unmarried parents, but also co-parents who do not have a romantic relationship as well as families where care of children is divided between different households, such as in the case of Living Apart Together couples.

One could argue that parental separations are characterized by the end of the parents' romantic relationship. However, this is not the case for separations between co-parents. Imagine a girl who had a teenage pregnancy and who lives with her mother, that is the child's grandmother. Both raise the child together, but due to disagreements on child rearing there are ongoing conflicts between mother and daughter that undermine the co-parental relationship and lead to one parent moving out of the shared home. Of course, this is an atypical case. Nevertheless, we might call it a parental separation – at least in some sense.

Another off-standard example are Living Apart Together couples. If such couples decide to end their romantic relationship, the separation process does not involve the departure of one parent from the household. Nevertheless, there may be changes in the relationships and living conditions of the family. Most obviously, the parents are no lovers anymore and this might have an impact on their co-parental relationship and their ability to engage in shared parenting. Due to these changes, we might conceive of this case as a parental separation as well.

Such off-standard cases challenge the conventional understanding of divorce. Of course, they are rather rare, but they can help us better understand what constitutes a parental separation,

if not the dissolution of the parent's marriage, the end of the parent's romantic relationship or the departure of one parent from the shared household. Maybe it just makes no sense to search for a single event that constitutes a parental separation. For, as Amato rightly stated, a parental separation is not a discrete event, but a process that is associated with changes in the relationships and living conditions of the family (Amato, 2000). As such changes normally cause turmoil in the lives of parents and children, a parental separation always entails a risk that the family system collapses. However, the separation process does not only involve risks but also the chance to renegotiate family relationships and rearrange the family system.

This understanding of a parental separation is broader and more inclusive than the conventional understanding of divorce that most empirical scholars seem to employ. It is broader as it conceives of a parental separation as something that does not only affect the parents' romantic relationship, but also the functioning of the family system more generally. This is why I am talking about parental separations and not separations as such. Moreover, this broader understanding of parental separations is able to account for the fact that there is a growing diversity of family forms and hence a growing diversity of separation contexts. To make room for such developments, I conceive of "parental separation" as a prototype category.

Unlike in the classical model of characterization, prototype categories are not defined by means of necessary and sufficient conditions. Rather, they are organized around the most typical representative of that category. The membership of a certain item in a prototype category is determined by the degree of similarity that this item has to the most typical representative in that category. Prototype categories may therefore neither have clear-cut boundaries nor a single common essence (van der Auwera & Gast, 2010).

Using prototype theory enables us to acknowledge different off-standard cases of parental separations. These cases may reveal important ethical considerations that could remain unnoticed if we only consider cases that are more common. Families in less typical separation contexts may face specific problems that should be addressed. Yet, taking into account all different types of separation cases would make things very complicated. Prototype theory provides helpful conceptual tools to deal with this complexity as it allows us to focus on the prototype of a parental separation to keep things simple for a fruitful discussion. There are two further reasons for focusing on common cases of parental separations: First, as mentioned in the introduction, there has not been an empirically informed ethical analysis of families in separation contexts so far. This book is the first attempt to close this theoretical gap. It therefore seems reasonable to start with an ethical analysis of the prototype of a parental separation and leave an examination of atypical cases open for further research in the future. Second, most of

the empirical research is about standard cases of separations. I have to focus on these cases if I want to make use of empirical data. What I consider to be the prototype of a parental separation, therefore is similar to the case that empirical scholars focus on: It is the case where two parents - co-habiting or married - live in the same household and have a romantic relationship before the separation. This decision to separate marks the end of the romantic relationship and leads to changes in the relationship and living conditions of the family, one of which being the departure of one parent from the shared household.

Now one could argue that my discussion of off-standard examples was pointless since I ended up adopting the conventional understanding of divorce that I initially criticized. But this conclusion is false. I acknowledge that there are off-standard cases that belong to the prototype category of “parental separation” in that they are more or less similar to the most typical representative of a parental separation. With regard to those similarities, part of my general ethical considerations will also be applicable to off-standard cases. Interparental conflicts are, for example, harmful to children in all different kinds of separations contexts. In what follows, I will analyze these kinds of ethical problems.

### 3.4 Practical Ethical Problems in Cases of Parental Separations

The empirical data presented above indicate that parental separations pose practical ethical problems.<sup>22</sup> Most significantly, they indicate that a parental separation poses a potential risk to children’s wellbeing and development. This is an ethical problem as children are vulnerable human beings who are dependent on their parents to be protected and adequately cared for. Empirical studies show that children in separation contexts tend to have more conduct problems, anxiety and depression symptoms as well as more academic and social difficulties than children in intact two-parent families (Amato, 2000, 2010; Hetherington & Kelly, 2002; Kelly & Emery, 2003). Social scientists thereby measure the wellbeing of children by means of different indicators, such as health and education, that have been developed in order to track children’s wellbeing (Raghavan & Alexandrova, 2015).

Since ensuring children’s wellbeing has moral relevance, it is important to gather empirical data about how children’s lives are going. At the same time, Raghavan and Alexandrova note that “[a]lthough there is a great deal of work on determinants and indicators of child well-being, there is neither consensus, nor much discussion on what constitutes child

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<sup>22</sup> In the following, I assume that when it comes to general problems the empirical findings on divorce are broadly applicable to families in separation contexts as suggested by Amato and his colleagues (Amato et al., 2011).



well-being” (Raghavan & Alexandrova, 2015, p. 888). What makes a child’s life intrinsically good? This is a philosophical rather than an empirical question, and how we answer this question seems to have an impact on what kinds of indicators for children’s wellbeing are considered relevant. Therefore, it is important to differentiate between descriptive and evaluative questions regarding children’s wellbeing (Bagattini, 2019). Yet, when it comes to practical ethical questions, I consider it important to bring both perspectives together.

In the introduction to this book, I stipulated that for children to live intrinsically good lives they must be able to enjoy three different kinds of goods - relationship goods, childhood goods and generic goods. In what follows, I will argue that children in separation contexts might be deprived of these different kinds of goods if so-called stressors accompany the separation process. As explained above, researchers have identified three main stressors: economic hardship, interparental conflicts and impaired parenting. A parental separation might affect children’s wellbeing, conceived of in philosophical terms, insofar as these stressors render parents unable, or make it at least difficult for them, to meet their parental duties and to provide their children with those goods. Besides that, there are also cases where parents are simply unwilling to meet their duties, such as when non-resident fathers refuse child support payments although they earn a good income.

Parents in separation contexts might fail to fulfill their parental duties to provide their children with generic goods and relationship goods as well as their co-parental duties to cooperate and provide mutual support. Thereby, the parents might not only fail to meet the parental duties they have on a general level. Whereas these duties are the same for all parents, parents in separation contexts might have additional separation-related duties in virtue of the difficult situation their children face and the specific needs they have. I will say something about these special kinds of duties in Chapter 5.

Before I examine in more detail why a parental separation poses a risk to children’s wellbeing, a caveat is in order: The situation we are talking about is highly complicated. As suggested by the empirical data, separation contexts are characterized by a complex interplay of factors. For instance, if parents in separations contexts experience economic hardship, they might not only be unable to provide their children with generic goods, but they might also be preoccupied with worries, which leads to impaired parenting. Similarly, parental duties are complex as has been shown in the previous chapter. It is sometimes difficult to differentiate between parental and co-parental duties, for example. Interparental conflicts might not only render parents in separation contexts unable to provide their children with a flourishing parent-child relationship; they might also hinder supportive co-parenting. Moreover, insofar as the co-

parents are in most cases heterosexual and insofar as women usually get primary custody of children after the separation, ethical problems do not only involve considerations for child wellbeing, but also issues of gender equality. Because of the complexity of this situation, the following analysis of practical ethical problems in separation contexts does not claim to be exhaustive.

A parental separation is necessarily associated with changes in the relationships and living conditions of the family. The parents are no lovers anymore, they move to separate residences and start to live lives of their own. These changes bring about challenges. The parents have to rearrange family life and shared parenting. At the same time, they might struggle to cope with the new situation. This situation might be especially stressful if the parents experience economic hardship or conflicts. As a result, they might not be able to fulfill the relationship-based duties they have towards their child by providing relationship goods such as intimacy, spontaneous love and shared family experiences. This is the first problem.

As explained in Chapter 2, to realize family relationship goods, parents and children need to engage in mutually oriented interactions. Obviously, this is only possible if the parents pay attention to their children and spend time with them. With regard to the first aspect, empirical studies show that parents in separation contexts, especially those with conflict-ridden relationships, tend to be emotionally unavailable for their children. If parents are preoccupied with their own problems, they are often inattentive to their children's needs and thus fail to respond with caring behavior to the stresses and fears that children in separation contexts might experience. For example, parents who go through a difficult separation process might forget about common rituals, such as reading a bedtime story. Yet, such rituals might be important to the child and could create a sense of belonging and stability in these difficult times. By contrast, the feeling of not being protected and cared for causes emotional insecurity in the child (Davies et al., 2002).

Under such unfavorable circumstances, parents in separation contexts fail to fulfill their relationship-based duties to provide their children with the kind of relationship they need for their wellbeing and development in general as well as for their adjustment to the parental separation in particular. Experiencing a parental separation might be bewildering to children. If they do not experience their parents as supportive and protective, they might lose trust in them. Yet, intimacy requires trust, and insofar as the parents' inattentiveness undermines the stable emotional attachment between parents and children, a parental separation might endanger the realization of family relationship goods.

The situation is especially morally problematic if the parents involve their children in their conflicts. In the case described above, the parents do not seem to intentionally withhold relationship goods from the child. Rather, they fail to engage in attentive and responsive parenting due to the separation-related stresses they experience. If we assume that parents only have a duty to do the things that are possible for them to do in light of their psychological limitations, we might not blame such parents for neglecting their parental duties. By contrast, there are also cases where the parents deliberately try to undermine the child's relationship with the other parent, for example by telling the child bad things about the ex-partner.

These cases are especially morally problematic since such parents seem to withhold relationship goods from the child out of ill will. They thereby exacerbate the problems of their children who already are in a difficult situation. Parents who pressure their children to take sides not only fail to provide their children with relationship goods, they also fail to acknowledge that their children have an interest in realizing relationship goods with both parents. Moreover, they neglect their co-parental duties that involve an effort to support the co-parent's parenting.

As indicated earlier, to realize relationship goods through mutually oriented interactions, the parents do not only have to be attentive to their children's needs, but they also have to spend a considerable amount of time with them. According to what I defined as the prototype of a parental separation, a parental separation is accompanied by the departure of one parent from the household. From this point on, non-resident parent and child get to see each other less often - how often depends on the custody arrangement and the distance between the two households. Most parents choose a single custody arrangement. Empirical data show that this involves a risk that the relationship between non-resident parent and child deteriorates. 20% of children even lose contact with the non-resident father over time (Kalmijn, 2015). This is especially the case if the parents have a conflictual relationship. At the same time, the parents' ability to cooperate in child rearing after a parental separation is shown to keep non-resident fathers connected to their children (Carlson, McLanahan, & Brooks-Gunn, 2008).

To illustrate this, consider the case of Ian who sees his 4-year-old daughter Ashley every other weekend. Ian has difficulties maintaining a close parent-child relationship for without everyday interactions there is less room for spontaneity, intimacy and shared family experiences. Ian does not try to keep in touch with Ashley when they cannot see each other, by calling her for instance, since he does not want to talk to Ashley's mother with whom he has a conflictual relationship.

When father and daughter see each other, Ian does not make good use of the little time they have together. Instead of engaging in joint activities, Ashley watches TV most of the time. As a result, Ian and his daughter become estranged and as time goes by the relationship comes to an end. This case exemplifies why there is a risk that the relationship between children and their non-resident fathers breaks down. At the same time, empirical data indicate that most children in separation contexts benefit from maintaining a good relationship with both parents (Amato & Gilbreth, 1999; Harper & Fine, 2006; King & Sobolewski, 2006).

So far, I talked about parents in separation contexts who have difficulties to provide their children with relationship goods, but when non-resident parents deliberately exit the parent-child relationship, this is even worse since the children in question are deprived of a uniquely valuable relationship that cannot be substituted by other relationships. A father who exits the parent-child relationship not only fails to fulfill his parental duties, but also his co-parental duties. Since the parents once jointly agreed to share the responsibility for child rearing in the full knowledge that this is a long-term commitment, they can legitimately expect from each other to stay in that role for at least 18 years. Parents who share in parenting arrange their lives on the basis of the assumption that the emotional, physical and financial demands of child rearing are shared. When a parent leaves the family, this normally leads to a lack of resources that cannot be compensated by a single parent.

If parents in separation contexts have conflicts or one parent exits the parent-child relationship, this seems to threaten children's wellbeing in two respects. They not only fail to provide their children with relationship goods, but they might also create conditions in which children cannot enjoy certain types of childhood goods, such as a sense of being carefree or an ability to love and trust without reservation (Gheaus, 2015; Brennan, 2014; McLeod, 2010). If parents in separation contexts do not provide their children with emotional security, but expose them to their problems and conflicts, children might worry a lot about the future of family life. Especially young children have fewer coping skills and are more likely to blame themselves for the divorce (Kurdek, Blisk, & Siesky, 1981). Children who experience such kinds of difficult separation processes might therefore be unable to enjoy a sense of being carefree. The same holds true for children's disposition to love and trust their parents without reservation. In most cases, they might not realize that they were treated badly (Hannan, 2018). Yet, when a parent exits the parent-child relationship this wrongdoing is so obvious that children recognize it as a betrayal. Such children are deprived of the childhood good of unconditional trust.

There is a common tendency, both in empirical social research as well as in philosophical theories of child wellbeing, to focus on long-term outcomes. Children are often

conceived of in terms of the adults they will become, rather than in terms of the individuals they are now (Brennan, 2014; Raghavan & Alexandrova, 2015). In this context, to focus on childhood goods helps to show that a parental separation might threaten the wellbeing of children even if they might adjust in the long run.

Up to now, I have argued that a parental separation is potentially harmful to the children involved insofar as they might be deprived of relationship goods and childhood goods. Yet, the wellbeing of children in separation contexts might also be affected in another way. Since a separation is often accompanied by economic hardship, there is a risk that the children involved will not be provided with generic goods as well. In Chapter 2, I argued that parents have role-based duties to feed, clothe and comfort the child, or they have to ensure that these things are done by others. Empirical studies show that single mothers have difficulties to provide their children with generic goods. As they might not have the financial resources to buy schoolbooks, for example, their children have academic difficulties (Aseltine, 1996; McLanahan & Sandefur, 1994). The situation may be especially difficult if single parents – in most cases the mothers – do not receive child support payments from the non-resident parents – normally the fathers – who thereby fail to fulfill their role-based duties to ensure that their children are adequately cared for.

This ethical problem does not only concern children's wellbeing, but it is also an instance of gender inequality within the family – a topic that Susan Okin addressed in her book “Justice, Gender and the Family”. Although the book was published in 1989, it is still relevant today as cases of parental separations show. In her book, Okin argues that a gendered division of labor leads to inequalities within the family since it renders women vulnerable in comparison to men (Okin, 1989). In case of a separation or divorce the gendered division of labor often leads to women having primary custody of children whereas they are oftentimes not properly compensated for the loss of partner income - neither through public transfers nor through the ex-partner's child support payments (Bonnet et al., 2021). This is why single mothers are more likely to fall into poverty after divorce – a fact that reflects post-divorce gender inequalities.

This ethical problem involves interpersonal, but also structural aspects: On the one hand, single mothers face economic hardship because the fathers are unwilling or unable to pay child support. Thereby, the fathers do not fulfill their parental duties in two respects: They fail to ensure that their children are provided with generic goods by their mothers, and they do not financially support the ex-partner as once agreed on when both parents decided to share the project of raising a child. On the other hand, there are structural problems that appear on the level of political action. In Chapter 1, I argued that we should see the family as a social

institution that is shaped and protected by the state through legal and financial measures. There is a collective interest that parents raise children to become well-functioning adults and good citizens, and the state has a duty to ensure that this social goal is met. In light of these considerations, one could argue that another ethical problem is that the state fails to fulfill its duties if it does not provide (sufficient) financial support for families and especially single mothers in separation contexts.

But maybe we jump to conclusions here. What policies are appropriate depends on the concept of family as well as the perspective on parental separations that the state employs. For conservatives, to count as a family, the parents must live in the same household and have a romantic relationship. According to this conception, a parental separation always implies the dissolution of the family. As the conservatives assume that for children's needs to be met they have to be raised in traditional families, a parental separation is seen as something bad. This line of reasoning may lead to the conclusion that the state should make it more difficult for parents to separate in order to protect the traditional family and promote children's wellbeing, whereas financial support might encourage parents to separate and increase children's suffering.

We can contrast this position with the following one: If we define the concept of family more broadly, as I did in Chapter 1, we can account for the possibility that a family remains a family even after a separation. This reflects the more nuanced perspective on divorces that I tried to outline above. According to this perspective, a parental separation does not necessarily lead to bad consequences for children. Rather, this depends on the circumstances, and such circumstances can at least partly be influenced by state action. Now this line of reasoning may lead to a different conclusion: Instead of enforcing restrictions, the state should support parents in separation contexts and create conditions under which a good separation is possible.

These two options point to different strategies of how to deal with the ethical problems sketched above. Either we can try to avoid these ethical problems by preventing parental separations, or we can admit that many parents decide to separate and try to influence the separation processes in a way that circumvents or at least alleviates those problems. In the chapters that follow, I want to discuss these two options in more detail. In Chapter 5, I will examine whether parents have a duty to stay together for the sake of their children and whether policies that would make it more difficult for parents to separate are justified. In Chapter 6, I will discuss an alternative strategy according to which parents should be allowed to separate but have a duty to do this in such a way that children are protected from the potential harms of a parental separation.

### 3.5 Summary

In this chapter, I analyzed parental separations from an empirical as well as from an ethical point of view. I first presented findings from empirical social research showing that a parental separation can lead to diverse outcomes among children depending on whether stressors or protective factors are present. A parental separation should thus not be seen as inherently bad. I then tried to bring together empirical social research and philosophical theories in order to clarify the concept of a parental separation. Empirical studies focus on divorce conceived of as the dissolution of the parents' marriage. This rather conventional understanding is based on a traditional family model that is in tension with the liberal definition of the family that I introduced in Chapter 1. I therefore suggested a boarder understanding of "parental separation" by working with prototype theory. In a third step, I identified practical ethical problems in separation cases. I demonstrated that a parental separation is potentially harmful to the children involved as they might be deprived of important goods that constitute their wellbeing if stressors accompany the separation process. These stressors render parents unable to meet their parental duties. Since women usually have primary custody for children after the separation, ethical problems in separation contexts also relate to gender injustices. In the end, I presented two strategies of how to deal with those problems. These strategies will be discussed in more detail in the chapters that follow.

## 4. Better Avoid Parental Separations?

In the previous chapter, I brought together empirical social research and theories in family ethics in order to identify practical ethical problems that arise in cases of parental separations. In this chapter, I want to discuss one strategy of how to deal with those problems. Theorists who adopt this strategy - let us call them anti-divorce theorists - argue that we can only protect children from the potential harms of parental separations by preventing them from happening. There are two camps: The first camp consists of legal scholars, political philosophers and sociologists who think that healthy families are centered in marriages. Therefore, they want to strengthen marriage and traditional families by making it more difficult for parents to divorce. Whereas this line of argument is traditional, theorists from the other camp offer a rather unconventional argument: As advocates of neuroenhancement, they argue that parents have a duty to use love drugs to enhance their romantic relationships for the sake of their children.

The chapter is structured as follows: In the first part, I will sketch the general structure of the argument against parental separations, before presenting both the traditional and unconventional version of it. In the second part, I will show that this line of reasoning is problematic for a variety of reasons. More precisely, I will argue for three claims: first, that this argument rests on outdated and false empirical assumptions according to which a separation necessarily leads to bad outcomes among children. By contrast, the current state of research, as presented in Chapter 3, indicates that children vary in their reaction to divorce. My second claim refers to the usefulness and feasibility of the proposed measures: I argue that measures that make it more difficult for parents to divorce might go largely ignored and might, above that, not be useful to promote children's wellbeing. In contrast, love drugs could be useful, but open questions remain regarding how they could be used and how they would work. The third claim concerns the parents' autonomy: Insofar as a parental separation can lead to different outcomes among children that are not necessarily bad, it seems morally problematic to restrict the autonomy of unhappy parents by requiring them to stay together. Those three points of criticism will lead me to the conclusion that employing this strategy is unpromising - at least in view of the current state of research. Rather, there are other, more effective ways to protect children from the potential harms of parental separations, as I will show in the following chapters.

### 4.1 The General Argument

Although theorists from both camps give different explanations for the increasing incidence of divorce and therefore propose different measures of how to lower divorce rates, their arguments



have a common structure. They start with the empirical observation that most Western countries are confronted with high divorce rates and point to empirical studies, such as those conducted by Judith Wallerstein and her colleagues, which indicate that children whose parents divorce show lower levels of wellbeing than children who grow up in intact two-parent families (Wallerstein et al., 2000).

The anti-divorce theorists then argue that these social trends are highly problematic as these empirical findings suggest that divorce necessarily leads to bad outcomes among children. The anti-divorce theorists therefore assume that children can only become well-functioning adults when they are raised by a father and a mother who have a romantic relationship and who live in the same household. Accordingly, all parents who divorce fall short of their parental duties to promote their children's wellbeing.

The anti-divorce theorists conclude that parents are required to stay together for the sake of their children. This is at least the case when the parents are "just" unsatisfied with the relationship and do not divorce for serious reasons such as adultery or domestic violence. The anti-divorce theorists consider the prevention of parental separations to be the only way to provide children with a stable and nurturing family life. At the same time, they recognize that due to changing social values concerning parenting, marriage and gender parents are nowadays less willing to stay together for the sake of their children. The anti-divorce theorists therefore propose measures that aim at counteracting these social trends. In what follows, I will present two different versions of this argument.

#### 4.1.1 The Traditional Version

According to theorists from the traditional camp, such as Katherine Shaw Spaht and William Galston, high divorce rates result from a change in values - from discipline and responsibility to self-fulfillment and autonomy. This led to a transformation in the conception of marriage. Nowadays spouses see marriage rather as a means to personal fulfillment than as a lifelong commitment (Spaht, 1998). Changes in the law, or more precisely the introduction of no-fault divorce legislation, reflect such social trends. Before that, couples could only get divorced if one spouse proved the other guilty of adultery, abuse, addiction etc. Law - and not individual spouses - had the authority to decide on the dissolution of a marriage. By requiring the continuation of marriages in cases where the spouses were just dissatisfied, law limited the number of divorces. Then no-fault law reforms removed the requirement of proving fault, meaning that spouses were then free to leave their marriage - for any reason or no reason at all (Teitelbaum, 1996).

Why do anti-divorce theorists worry about those developments? This is because reforms in divorce law also made it also easier for couples with children to divorce. At the same time, divorce as well as its consequences, such as growing up in a single-parent household, have negative effects on children and society. To illustrate this, theorists from the traditional camp point to studies showing that children of divorced parents face an increased risk of poverty, school dropouts, teen pregnancies as well as delinquency (Wallerstein & Blakeslee, 1989; Whitehead, 1993). They therefore see the fragility of contemporary marriages and the resulting high rates of divorce as a main cause for societal decline. According to law professor Spaht “the prosperity of our nation - indeed perhaps its very survival - depends upon the health of its constituent families” (Spath, 1998, p. 1551). For Spath and the other anti-divorce theorists, healthy families are traditional families whereas single-parent families or stepfamilies are not. Divorce is thus believed to always put an end to a stable and nurturing family life. As a result, parents who divorce are blamed for neglecting their familial responsibilities out of selfish reasons (Galston, 1991; Popenoe, 1992).

This applies especially to fathers. According to sociologist David Blankenhorn, who is the founder of the Institute for American Values, divorce contradicts effective fatherhood. In his book “Fatherless America” Blankenhorn claims that “the preconditions for effective fatherhood are twofold: coresidence with children and a parental alliance with the mother” (Blankenhorn, 1995, p. 18). As divorce normally puts an end to this kind of family life, fathers are blamed for being less involved in their children’s lives, or, at worst, not involved at all. They may fail to provide the family with material resources and to maintain a relationship with the child. Divorce should be avoided as it causes relationships to be less stable.

The anti-divorce theorists conclude from this that the only way to promote children’s wellbeing is to prevent parental separations from happening by both restricting divorce and privileging traditional families. To restrict divorce, some anti-divorce theorists want to give up no-fault divorce law and return to the old system in which one spouse must prove the other guilty. Due to this legal requirement, the decision to divorce would be more costly. The anti-divorce theorists hope that this would discourage dissatisfied spouses from leaving marriage.

In this vein, a few states in the United States have enacted so-called covenant marriage laws in the late 1990s. These laws aim at restoring the ideal that marriage is a lifetime commitment (Sanchez, Nock, Weight, & Gager, 2002). Here couples can choose a marriage with more stringent legal requirements. Requirements for covenant marriage include premarital counseling where the couple is taught about the seriousness of marriage as well as marital counseling to preserve the marriage even in difficult times. Couples who choose a covenant

marriage are only allowed to divorce when marital fault can be proven or after a 2-year separation period when a reconciliation has not been achieved (Cade, 2010). So far, there are no reliable empirical data on whether covenant marriages do in fact lower the divorce rate. One reason for this may be that they are not widely accepted. In the first year after its implementation in Louisiana, only 1,5 % of couples chose a covenant marriage (Rosier & Feld, 2000).

In addition to law reforms, anti-divorce theorists propose family policies that support traditional families. According to William Galston “the [empirical] evidence indicates that the intact two-parent family is generally preferable to the available alternatives. It follows that a prime purpose of sound family policy is to strengthen such families by promoting their formation, assisting their efforts to cope with contemporary economic and social stress, and retarding their breakdown whenever possible” (Galston, 1991, p. 284). In contrast to Spaht, Galston does not focus on strengthening the institution of marriage as such but on strengthening traditional families. He therefore argues that divorce law should differentiate between couples with children and those without children since only the former engage in activities with wide-ranging social consequences (Galston, 1991). Moreover, Galston argues that to promote children’s wellbeing family policies should privilege the two-parent family. Here the idea seems to be that a loss of state support in case of a divorce, such as the prospect of facing economic hardship as a single parent, might encourage parents to stay together.

What I said so far indicates that there is more on the anti-divorce theorists’ agenda than trying to prevent parental separations from happening. They also want to defend the institution of marriage as a lifelong commitment as well as the superiority of the traditional family. Questions regarding the legitimacy of divorce are discussed in the context of larger “culture wars” as scholars have called the polarized political debate between conservatives and liberals about how to deal with changes in family life (Sanchez et al., 2002; Scott, 2001). Liberal arguments will play a role later on when I criticize this line of argument. But before that I would like to present the unconventional version of this argument. It is unconventional as it originates from a completely different theoretical field, namely the philosophy of neuroenhancement. Philosophers of neuroenhancement, such as Brian D. Earp, Anders Sandberg and Julian Savulescu, do not seem to deal with questions about the legitimacy of divorce as a way of fighting in the culture wars. Rather, this topic seems to be an interesting field of application for them as will become clear in what follows.

#### 4.1.2 The Unconventional Version

According to Brian D. Earp, Anders Sandberg and Julian Savulescu “the fragility of contemporary marriages - and the corresponding high rates of divorce - can be explained (in large part) by a three-part mismatch: between our relationship values, our evolved psychobiological natures, and our modern social, physical, and technological environment” (Earp, Sandberg, & Savulescu, 2012, p. 561). To illustrate this three-part mismatch Earp et. al. use the example of adultery: They start with the observation that adultery is a prominent reason for couples to divorce (or separate). To justify their decision, couples often refer to the widely accepted relationship value of fidelity. According to Earp et. al. partners struggle to act in line with this value as it is in tension with our psychobiological natures. As human beings, we are the product of evolution, and evolution equipped us with natural instincts in order to ensure the survival of our species. However, evolution did not design human beings for complete monogamy since having sex outside of the main reproductive alliances tends to increase the fitness of both sexes. This tension between the relationship value of fidelity and our psychosexual natures is made worse by our modern environment, which is very different from the environment in our evolutionary past: In this modern environment, it is less costly to act according to our natural instincts as sex is dissociated from reproduction due to birth control technology. In addition, partners have more opportunities to cheat on each other as contemporary societies are characterized by larger social networks and an increased mobility (Earp et al., 2012, pp. 570 - 572).

The same problems apply to the relationship value of love: Nowadays many people think that marriage should be based on love and the pursuit of happiness. Yet, in the past people did not marry because of love, but for economic reasons or to improve their social standing, among other things. Earp et. al. argue that the relationship value of love is also in tension with our psychobiological natures. In our evolutionary past, brain systems that foster attachment and love between parents evolved to promote cooperation in child rearing and to avert intersexual conflict. This was necessary because offspring had to go through a longer maturation process as brains became more complex. During this period of time, parental investment was very important to increase the offspring’s fitness. At the same time, pair-bonding results in limited mating opportunities. Therefore, evolutionary psychologists assume that evolution produced a mixed strategy by generating two different systems that are both wired into our brains: a long-term and a short-term mating system (Eastwick, 2009). Yet, we only have limited control over which system is activated since this depends on unconscious factors, such as shifting hormone levels. If the short-term mating system is activated, spouses may be unable to develop a stable

emotional attachment although they wish to. This fact about our psychobiological natures contradicts with the relationship value of love and may lead to divorces or separations (Earp et al., 2012, p. 580).

Earp et. al. consider the high divorce rates that result from this three-part mismatch problematic with regard to children's wellbeing. Just as philosophers from the traditional camp, they point to studies showing the detrimental effects of divorce on children and declare that we are facing a divorce crisis. Earp et. al conclude that we must prevent parental separations from happening by dissolving the three - part mismatch. We can either do this by changing our relationship values or the environment or our human nature.

First, we could change our relationship values and think of adultery as something natural, for instance, in order to achieve consistency between our relationship values and our psychosexual natures. However, Earp et. al. consider it very unlikely that the majority of people could be convinced to change their values. Another option would be to change the environment, for example by introducing laws that make it harder for parents to divorce or by making adultery illegal. However, Earp et. al. worry that such measures would cause negative side effects or go largely ignored as people would have problems to repress their sexual instincts. As both options are unpromising, Earp et. al. adopt a rather radical approach. They argue that to dissolve the three-part mismatch we must change nature through chemical interventions that are designed to improve love and commitment (Earp et al., 2012, pp. 572 -578).

This is how the argument runs: Given that divorce, or a breakup more generally, has avers effects on children and given that parents are responsible to protect them from harm, they have a moral responsibility towards their children to preserve their relationship. More specifically, Earp et. al. argue that parents - weather married or not - have a duty to use what they call "love drugs" to enhance their romantic relationship.<sup>23</sup> This is because love drugs could be a very effective and, in some cases, even the only way to help parents fulfill their parental duties. However, Earp et. do not argue that using love drugs should be mandatory for parents or legally enforced.

To illustrate how love drugs could be used, Earp et. al. draw an analogy to the treatment of depression: Sometimes patients with mental health problems are unable to handle the problems that influence their mood disorder because their brain chemistry is confused. In such cases the patients may need a "first boost of chemical motivation" to make a change possible (Earp et al., 2012, p. 579). Similarly, love drugs could help couples with relationship problems

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<sup>23</sup> For discussions of love pills that center around questions of authenticity and the quality of the love when it is induced through chemical stimuli, see Nyholm (2015) and Parens (1998).

to get “over the initial hump” in cases where marriage counseling is insufficient (Earp et al., 2012, p. 564). For example, chemical stimuli that reduce stress levels and promote positive communication could influence the psychological factors that contribute to the couple’s relationship problems. As with antidepressants, love drugs would not solve those problems, but they could influence biochemical processes to enable couples to solve their conflicts within a broader therapeutic program (Earp et al., 2012, pp. 564 - 565).

How would such love drugs work? Earp et. al. suggest different treatments that aim at increasing romantic attraction, lust and attachment. Love drugs could, for example, boost levels of the hormone oxytocin which reduces stress, promotes trust and encourages pro-social behaviors. The hormone dopamine, which is released when partners have sex or fall in love, could be used to strengthen the pair bond. According to Earp et. al. a factor that may cause relationship instability is a discrepancy in sexual desire. This discrepancy could be minimized through a dose of testosterone in order to increase the libido of one partner, for example (Earp et. al., 2012, p. 581).

We need to know more about the effectiveness of those treatments and about the contexts in which they could be used. Therefore, Earp et. al. call for a research program to identify promising interventions. The rest of the argument is then rather hypothetical: If such love drugs did really help and if parents could use them one day, they would have a duty to enhance their romantic relationship for the sake of their children. At the same time Earp et. al. notice that we are facing a divorce crisis now, so we may need measures which are more hands-on. This is just one of many points of criticism that I will discuss in the next section.

## 4.2 Critique

In this section, I will argue that the anti-divorce strategy is problematic for the following three reasons. I will, first, show that the arguments against divorce are based on false empirical assumptions. Then I will critically assess the usefulness and feasibility of the proposed measures. Finally, I will criticize such measures for unjustifiably limiting the parents’ autonomy.

### 4.2.1 Empirical Assumptions

Both kinds of arguments against divorce are based on the premise that divorce is bad for children in any circumstance as it necessarily leads to family breakdown. Therefore, divorce should be avoided whenever possible. Theorists from both camps point to empirical studies to

buttress this claim. For example, they draw on the work of Wallerstein and her colleagues that I already mentioned in Chapter 3. Wallerstein and her colleagues portray divorce as a traumatic experience that leads to long-term suffering. According to Wallerstein et al. “[w]hen children of divorce become adults, they are badly frightened that their relationships will fail, just like the most important relationship in their parents’ lives failed. (...) [T]hey are haunted by powerful ghosts from their childhoods that tell them that they, like their parents, will not succeed” (Wallerstein et al., 2000, p. xiii). These disturbing findings about the long-term consequences of divorce are based on longitudinal interview studies with families in California. Wallerstein’s research has been influential and received a lot of media attention, yet it faced serious criticisms on methodological grounds. Her research relied on a non-random sample, for example, which included a considerable number of parents who had serious psychological problems at first contact. Therefore, the results from the study cannot be generalized. Nevertheless, Wallerstein often presents her findings as if they apply to all children in divorce contexts (Amato, 2003).

Besides that, the anti-divorce theorists point to a few other studies showing that children of divorced parents are disadvantaged compared to children from two-parent families. Such simple comparisons may be misleading, however, as they suggest a deficit perspective on divorce that I have criticized in Chapter 3. Studies that work with these comparisons measure the average effects of divorce and thereby obscure the fact that there is a diversity of outcomes for children in both groups (Amato, 1994). Recent findings suggest that differences in outcomes depend on the circumstances accompanying the divorce, such as the emotional, social and financial resources a family has. Children from high conflict families tend to be better off after a divorce, for example, while others, such as children whose parents are supportive, adjust quickly and still others have long-term problems in coping with the divorce (Amato, 2000).

The arguments against divorce are based on a perspective that is outdated in light of the current state of research as it oversimplifies the complex realities of families in divorce contexts (Langmeyer & Walper, 2014). Maybe not all authors could have known about those developments in empirical social research, but at least in case of more recent papers they just seem to ignore the current state of research according to which children vary significantly in their reaction to divorce. Rather, they only point to a few studies that help buttress their claims and assume that those studies represent the truth. This is problematic since empirical social research on divorce is also influenced by the culture wars and thus by ideological values. There are conservative and liberal scholars presenting empirical evidence for their opposing positions. Therefore, a single study should not be considered conclusive. Rather, one has to review a large

body of research and search for consistency in empirical findings across a variety of different studies to avoid ending up with a one-sided perspective. The anti-divorce theorists fail to do so. They are not only wrong that divorce is always bad for children, but they also buy into everything that this deficit perspective implies. In what follows, I will reject three further assumptions.

For one thing, the anti-divorce theorists assume that divorce is necessarily associated with family breakdown. There are different understandings of what a family is. In Chapter 1, I argued that we should not define the family by means of a certain form, but with regard to its function: the raising of children by a limited number of adults who take custodial responsibility for the dependent children and provide them with continuity of care. I also argued that families with different forms, such as single parent families or stepfamilies, can fulfill this function - if necessary with the help of state support. What matters for children's wellbeing is that they are raised in the context of stable and intimate relationships and such relationships can be realized in different kinds of family forms (Golombok, 2000). Empirical studies indicate that some families in separation contexts manage to maintain stable and intimate relationships so that the children involved have the emotional resources to adjust to the changes in family life. Under such favorable circumstances, children may not suffer serious harms as divorce does not lead to family breakdown – at least if we think of the family in functional and not in traditional terms. According to my understanding, the family continues to fulfill its function as long as the parents meet their parental duties. To live in the same household may certainly be favorable for this purpose, but not necessary.

In light of these considerations, we can also dismiss a second assumption, namely that parents – and especially fathers – always escape from their familial responsibilities in case of a divorce. The fact that some children suffer no serious harm implies that some parents succeed in promoting the children's wellbeing in separation contexts. Empirical findings indicate that parents can influence the separation process to a large extent - for the worse but also for the better. Whereas children in separation contexts may suffer from interparental conflicts, they benefit from successful co-parenting, for example. When a child adjusts quickly to the changes in family life, it is mainly because of the parents who cooperate in protecting their children from the potential harms of a parental separation. Such parents manage to maintain the shared project of raising a child while dissolving the romantic relationship.

In the alternative scenario that I propose, family relationships can thus endure a separation although the parents' romantic relationship or marriage has been dissolved. This brings us to a third flawed assumption: Endorsing a deficit perspective on divorce may lead



anti-divorce theorists to overstate the importance of marriage and romantic love for good parenting. Empirical studies indicate that what matters for children's wellbeing is that the parents provide the child with stable and intimate relationships and engage in successful co-parenting. However, this does not necessarily require being married or having a romantic relationship. Of course, marriage or love may be beneficial to good co-parenting as this facilitates attachment and stability. But we can also imagine cases where love and marriage can be antithetical to good parenting, if the parents have a dysfunctional romantic relationship for example. As they contrast the deficit perspective on divorce with the continuously intact two-parent family, the anti-divorce theorists tend to overlook that not only divorce can be harmful for children but family life, too, if children are caught in high conflict families for example. As a result, they propose measures to avoid parental separations that may miss the target, namely to protect children, as will become clear in the next section.

#### 4.2.2 The Usefulness and Feasibility of Anti-Divorce Measures

The two versions of the argument against divorce are based on the same flawed empirical assumptions, but theorists from both camps give different explanations for the high divorce rates and therefore propose different measures for how to prevent divorce from happening. In what follows, I will critically assess the usefulness and feasibility of both kinds of measures.

Let us start with the suggestion to change divorce law in order to strengthen marriage and traditional families. Philosophers from the traditional camp propose such measures in response to fundamental changes in society. Among other things, changing values and the growing economic independence of women had an impact on the social and economic circumstances of modern family life (Sobotka & Berghammer, 2021). To strengthen marriage and traditional families, one would have to reverse the fundamental changes in society that led to marriage instability. However, these changes are too complex and too fundamental to be reversible through government policies (Furstenberg & Cherlin, 1992). As a result, law reforms that aim at restricting divorce might not have the desired effect as they are in tension with modern values concerning marriage, gender and parenting. If the law was changed to make divorce harder to obtain, this would probably only increase the number of informal separations, but it would not improve children's wellbeing (Amato, 1994).

As explained in Chapter 3, the marital status of the parents seems to be irrelevant when it comes to the problems of children in separation contexts. Children may suffer from interparental conflicts irrespective of whether the parents were married or not, for instance. Law reforms that restrict divorce are therefore unlikely to solve the problems that children in

separation contexts face. Sometimes problems may even be intensified. Consider high conflict families that do not meet the requirements for fault divorce: In such cases, encouraging parents to stay together although they do not want to might cause more harm to children than allowing them to separate (Amato, 1994). Consequently, measures to restrict divorce are neither feasible as they will probably be largely ignored nor useful as they are unlikely to improve the wellbeing of children.

Yet, even if such measures were feasible and useful, they would only help some children, namely those whose parents are married. By focusing on the institution of marriage and the legal act of divorce theorists from the traditional camp overlook the increasing incidence of co-habiting parents who separate and whose children may have to be protected from the avers effects of a parental separation as well. Liberals are therefore skeptical about whether those measures are really meant to promote children's wellbeing or whether their underlying objective rather is to return to the era of traditional families (Scott, 2001).

Unlike divorce law reforms, the measures that Earp et. al. propose apply to all children. Both married and co-habiting parents may have a duty to use love drugs to enhance their romantic relationship for the sake of their children. The feasibility of those measures hinges on whether love drugs can serve that purpose. Earp et. al. try to explain how such love drugs could work and how they could be used. However, this part of the paper remains rather vague. One reason for this might be that more research is needed - about the brain systems involved in human love and about what pharmaceutical interventions could be promising. Yet, even if drugs really induced love, it would still remain unclear whether this directly benefits children. As indicated earlier, children do not necessarily benefit from their parents having a romantic relationship. They need parents who are attentive to their needs and who cooperate in child rearing. Children may only benefit indirectly insofar as romantic love between the parents facilitates attachment which might lead to good co-parenting.

Besides the problem that I already mentioned, namely that we do not know how such love drugs would work and whether they would be effective, I want to raise two more worries. These worries relate to the kinds of relationships that result from the neuroenhancement of love. According to Earp et. al., chemical interventions may cause people to have relationships that are characterized by lust, attraction and attachment, but it is unclear whether people would also have good relationships in the sense that the partners treat each other respectfully, that both partners appreciate the relationship and can live a good life.<sup>24</sup>

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<sup>24</sup> In another paper, Savulescu and Sandberg address this worry, but I do not think that they convincingly do so. They think that this worry can be removed if one distinguishes bad relationships from good relationships in terms of whether these relationships promote the wellbeing of the individuals involved. Savulescu and Sandberg thereby

One worry is that love pills could be used to enhance bad relationships, such as ones with partners who are fundamentally incompatible or - and this would be even worse - a relationship in which a man abuses his wife. In such a case, the wife might agree to take love drugs although the relationship is abusive because she cannot choose otherwise. To avoid such a scenario a doctor or therapist would have to decide on whether a particular relationship is worthy of protection, but this may be difficult to judge, especially because all couples who might want to take advantage of love drugs seem to have some sort of relationship problem.

To illustrate the second worry, imagine the following scenario: Lisa and Tom have a good relationship in the sense described above. They respect and value each other, but their love is greying. Therefore, Lisa and Tom both freely decide to take love drugs to enhance their romantic relationship. From now on, they feel more attracted to each other. However, some time later relationship problems occur, and Tom starts to treat Lisa disrespectfully. We do not know yet if love drugs really work that way, but in one possible scenario taking love drugs would render Lisa incapable of recognizing Tom's behavior as unfair.

In both cases, taking love drugs may not enable parents to have a good relationship in the sense described above. However, this is what children need. If love drugs promote abusive relationships or relationships between partners who are fundamentally incompatible, children may not benefit from such kinds of measures as they need parents who engage in successful co-parenting. But what if those problems did not occur? Let us assume that the unconventional measures that Earp et. al. suggest could be successful in enhancing not only romantic relationships but also good co-parental relationships. If so, such measures might be more useful than making divorce harder to obtain. As already explained, divorce law reforms are unlikely to improve children's wellbeing as such measures might increase interparental conflicts and leave unhappy parents trapped in an unsatisfying relationship. In this scenario, the parents wish to separate but are discouraged from doing so through legal barriers. In contrast, the measures proposed by Earp et. al. aim at preventing parental separations by improving the quality of the relationship between the parents so that problems can be solved and the partners may no longer wish to separate. As children are shown to suffer from interparental conflicts rather than from the separation itself the measures that Earp et. al. propose might improve children's wellbeing.

However, in light of these considerations one might ask why biochemical enhancement should only be used by couples with relationship problems. If they are effective, chemical interventions that reduce stress or encourage pro-social behaviors could also help parents in

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combine subjective and objective aspects of wellbeing. Yet, these aspects might conflict. In the end, it therefore remains unclear who has the authority to judge the quality of the relationship (Savulescu & Sandberg, 2008).

separation contexts who do not want to remain in a romantic relationship but who want to meet their parental duties nevertheless. In this case, talking about love drugs might be inappropriate, but perhaps such drugs could help parents manage the separation process so that children can adjust to the changes in family life. What speaks in favor of allowing parents to choose between both options - to enhance their romantic relationships or to separate in a child-friendly way - is the parents' autonomy. This leads us to the third point of criticism.

#### 4.2.3 Parental Autonomy

According to this third point of criticism, the measures that the anti-divorce theorists propose unjustifiably limit the parents' autonomy. Theorists from the traditional camp argue that parents are required to remain in an unsatisfying relationship for the sake of their children. Theorists from the unconventional camp argue that parents are required to take love drugs to maintain a romantic relationship that they otherwise wanted to leave. Because of adopting a deficit perspective on divorce, the anti-divorce theorists assume that, unless in cases of abuse or neglect, the children are better off if their parents stay together. In light of this perspective, the measures they propose seem to be legitimate as they clearly promote children's wellbeing. The parents are expected to sacrifice their autonomy for the sake of their children. However, this trade-off is not as clear-cut as it seems to be. There are two reasons for this:

As explained earlier, the realities of families in separation contexts are far more complex than the deficit perspective suggests. According to the current state of research, a separation can lead to different outcomes among children that are not necessarily bad. It is therefore questionable whether it is legitimate to restrict the parents' autonomy to leave an unhappy relationship (Young, 1995). This is especially problematic when it comes to law reforms according to which parents are only allowed to divorce if one spouse proves the other guilty of adultery, addiction, abuse and the like.

In contrast, Earp et. al. emphasize that taking love drugs should not be mandatory or legally coerced. No one should be forced to take any drugs against their will. At the same time, they argue that parents have a duty to use love drugs as this is a particularly effective and, in some cases, even the only way to save the relationship in order to protect their children from the potential harms of divorce (Earp et al., 2012, p. 564). This line of reasoning seems to imply that if parents want to meet their parental duties, they have little choice but to use love drugs. Because of adopting a deficit perspective on divorce, Earp et. al. do not acknowledge that parents can also fulfill their duties when separated. Since there are other ways to promote

children's wellbeing, it is unjustified to limit the parents' autonomy to leave a romantic relationship by requiring them to take love drugs.

Another reason is the value of parental autonomy: In Chapter 2, I argued that parental duties are limited insofar as parents are not only parents but also independent people. According to Brighouse and Swift "[a]dults who parent will also have lives of their own to lead—they will have rights and duties that have nothing to do with the fact that they are parents—and it is quite appropriate for them sometimes to weigh their own interests, and their duties to others, against those of their children" (Brighouse & Swift, 2014, p. 98). Parents are allowed to do so as long as they do not harm their children. If parents in separation contexts manage to protect their children from the potential harms of a parental separation, it might thus be appropriate for them to leave a romantic relationship which they do not deem valuable anymore.

However, we might not only allow parents to have their own independent interests and pursuits as a way of respecting their autonomy. Rather, it also seems to be valuable for children to experience their parents as independent people (Brighouse & Swift, 2014). In this context, it might be important for children's development to have parents who are good role models for what it means to have rewarding relationships. Yet, this is only possible if they are allowed to live autonomous lives and to leave an unhappy relationship.

This way of characterizing the parent-child relationship is in tension with the anti-divorce theorists' claim that the parents should stay together although they are dissatisfied. In such cases, children may not experience their parents as people who have independent pursuits and rewarding relationships. Rather, children often sense that the love is gone and that the parents are trapped in a hopeless situation. Especially teenagers might then blame their parents for faking family life and for not being honest to them. In contrast, a separation may provide an opportunity for children to experience their parents as people who make autonomous decisions even if this requires drastic changes.

Having said this, I do not want to deny that the parents' interest in autonomy and self-fulfillment and the children's needs for stable and close family relationships can also be in tension. Indeed, this is why managing separation processes is challenging for parents. Parents in separation contexts have to reconcile their individual life plans with the fact that they are still (co-)parents. Finding the right balance in this regard is, without doubt, not always easy. Nevertheless, the anti-divorce theorists seem to be wrong in thinking that this tension between parents' and children's interests can be solved by preventing parents from separating. Anti-divorce measures limit the parents' autonomy, while they do not necessarily promote children's wellbeing.

### 4.3 Summary

In this chapter, I argued that to prevent parental separation from happening is not an effective strategy to protect children from the potential harms of a parental separation. One reason for this is that the anti-divorce theorists try to reverse profound changes in society that are extremely difficult to undo. Yet, measures to protect children from the harms of a parental separation seem to be feasible and useful only if they are consistent with social conditions. Consequently, we should not only focus on children's wellbeing when trying to solve the "divorce crisis" but also on the parents' autonomy. In the next chapter, I will propose another strategy of how to deal with cases of parental separations that promises to be more effective in promoting children's wellbeing as it also acknowledges the parents' autonomy.

## 5. Parental Duties in Separation Contexts

In this chapter, I argue for a second strategy for how to deal with the empirical fact that most Western countries are confronted with high divorce rates and that divorce, or a parental separation more generally, is potentially harmful to children. Unlike the anti-divorce theorists, I argue that parents who want to separate should be allowed to do so. However, although this is a kind of liberal argument, it does not imply that parents in separation contexts are free to do whatever they want. We should not accept for the sake of the parents' autonomy that a lot of children in separation contexts suffer from impaired parenting, interparental conflicts and economic hardship. Rather, I argue that while we should not prevent parental separations as such, we should try to avoid the harmful circumstances that often accompany them. However, this is only possible if parents, state and society take on their shared responsibility to ensure that all children develop into well-functioning adults. To make successful separation processes possible, changes are necessary at both the individual and the structural level.

In this chapter, I want to focus on the duties of parents in separation contexts. I will proceed as follows: I will first distinguish my way of approaching practical ethical problems in separation cases from the anti-divorce theorists' strategy that I discussed in the preceding chapter. According to my approach, parents should be allowed to separate but have to fulfill specific duties that arise from the recognition of the serious harms that children in separation contexts might suffer and the specific needs they have. In the second part of the chapter, I will explain how such separation-related duties could look like. In the third section, I will sketch the limitations of my approach by discussing three concrete cases of parental separations. These cases exemplify that what I am asking parents in separation contexts to do might be too demanding. Taking this objection seriously, I admit that these parents need support so that they can fulfill their parental duties. This leads into the next chapter which discusses the obligations of state and society towards families in separation contexts.

### 5.1 One Problem – Two Strategies

Even if what I will propose differs in many aspects from what the anti-divorce theorists propose, there are also similarities: I agree with the anti-divorce theorists that high separation rates are problematic as there is a considerable risk that the children involved suffer. There is a risk that children in separation contexts are not provided with goods that are essential to their wellbeing and development, such as continuity of care and intimate family relationships. I also agree that the way we handle parental separations has to change so that children are protected from the

potential harms of a parental separation. Just like the anti-divorce theorists, I believe that specific duties and a need for regulation arise from the acknowledgment of the problems that families in separation contexts might experience. However, the kinds of specific duties and measures that I propose in response to those problems are different.

Unlike the anti-divorce theorists, I do not think that requiring unhappy parents to stay together for the sake of their children is the way to go. As argued in Chapter 4, it is unclear whether measures to avoid parental separations would contribute to children's wellbeing. At the same time, such measures would severely limit the parents' autonomy to leave a romantic relationship which they do not deem valuable anymore. Therefore, I have come to the conclusion that it is unjustified to restrict the parents' autonomy under these circumstances.

In contrast, my approach acknowledges both the parents' autonomy to pursue individual happiness in their romantic relationships and the needs of children for stable and close family relationships. According to this approach, parents are allowed to separate but required to stay in the parental role that they have once adopted jointly in the knowledge that raising a child is a long-term commitment. According to Anne Alstott "[t]oday, marriages may come and go, but parenthood endures for better and worse, for richer and poorer, and in sickness and in health" (Alstott, 2004, p. 3). Consequently, parents have a duty to carry the shared project of raising a child forward although they are no lovers anymore.

This duty does, of course, limit the parents' autonomy and may be difficult to fulfill – if warring parents have to cooperate in shared parenting, for example. Thus, my approach is not about promoting the parents' autonomy at the expense of the children's wellbeing. Although the parents are free to leave an unsatisfying relationship, they must continue to meet their parental as well as their co-parental duties. This requires the willingness to compromise and to reorganize the family system. Consequently, the strategy I propose does not merely aim at making things easier for parents, but at finding effective ways to promote children's wellbeing given the existing social conditions.

One could object that I am applying double standards here: In Chapter 4, I criticized anti-divorce measures for unjustifiably restricting the parents' autonomy and now I am proposing measures that restrict the parents' autonomy as well, although in different ways. According to my account, parents are allowed to separate but they are nevertheless limited in their autonomy insofar as they have to fulfill specific (co-)parental duties. Yet, what matters here is how these different measures are justified.

The requirement that unhappy parents have to stay together seems unjustified insofar as it is unclear whether this would really benefit children. The diversity of outcomes among



children in non-separation families implies that parents may fail to meet their responsibilities even though they have a romantic relationship, such as in high conflict families. In such cases, to maintain a romantic relationship and to live in the same household may even be antithetical to being good parents. Provided that the parents meet their parental duties, allowing them to leave an unsatisfying relationship may thus be better for the children involved even though experiencing a separation is stressful. Consequently, an argument for parental separations, at least how I present it, is in the end an argument for the wellbeing of children.

The measures I propose are justified as they directly aim at promoting children's wellbeing. If the parents stay together although they do not want to, this might not necessarily promote children's wellbeing. In contrast, resolving conflicts - a duty I take parents in separation contexts to have - might benefit children in any circumstance. Rather than trying to strengthen romantic relationships or traditional families, the measures I propose focus on what children really need: generic goods, attentive care and flourishing family relationships. The duties I take parents in separation contexts to have focus on successful (co-)parenting as this is what really promotes children's wellbeing.

Accordingly, I assume that a parental separation is not necessarily bad for children. In contrast, the anti-divorce theorists adopt a deficit perspective on divorce. To solve ethical problems in separation contexts by imposing specific duties on parents in separation contexts is thus not a viable option for them. In light of the deficit perspective, it appears to be impossible for parents to separate without severely harming their children. According to the normative requirement that ought implies can, it would thus be pointless for anti-divorce theorists to impose duties on parents in separation contexts. For, according to their view, it is impossible for these parents to protect their children from such harms.

However, the current state of research suggests otherwise. According to a more differentiated perspective, a parental separation can lead to different outcomes among children. Children are shown to suffer from interparental conflicts or impaired parenting, for example, rather than from the parental separation per se (Lansford, 2009). Cases where children come to no serious harms indicate that such adverse circumstances do not necessarily accompany a parental separation. In such cases, parents in separation contexts have met their parental duties.

Contrary to what the anti-divorce theorists assume, it is thus possible for parents in separation contexts to protect their children from at least some of the harms of a parental separation, namely those harms that occur on the level of personal interaction and that do not result from a lack of external support. According to the normative requirement that ought implies can, specific duties can therefore be ascribed to parents in separation contexts in virtue

of their capacity to at least partly influence the circumstances under which a parental separation takes place.

So far, I have argued that parents should be allowed to separate as it is possible for them to end their romantic relationship without causing serious harm to their children, namely if they fulfil certain duties that remain to be specified. This strategy promises to be more useful to promote children's wellbeing than preventing parental separations from happening. However, whether this strategy is in fact successful depends on how those theoretical and abstract considerations can be transferred to practice. Up to now, I have claimed that parents in separation contexts are required to stay parents and co-parents although they are no lovers anymore. In what follows, I will explore the content of their duties in more detail.

## 5.2 Parental Duties – General Considerations and Practical Applications

In family ethics parental duties is a much-debated topic. Most of the literature focuses on the duties that all parents have towards their children on a general level.<sup>25</sup> However, what those general parental duties amount to varies depending on the circumstances of family life, such as whether the parents care for an adopted child or in case of a parental separation. In light of the specific needs and vulnerabilities of children that arise under such different circumstances, the general parental duties assume a particular form. So, what form do parental duties assume in the context of a parental separation?

To find this out, we must fill our general and abstract considerations with empirical details. According to the methodological approach of practical ethics that I introduced in Chapter 3, we cannot identify practical ethical problems without an awareness of the relevant empirical details. Rather, ethical theory and empirical research must be brought into fruitful exchange. An awareness of the relevant empirical details is thereby not only important to identify practical ethical problems, but it is also important to solve them. Otherwise, we will end up with measures that have no impact on reality.

In what follows, I will show that practical ethical problems in separation contexts can at least partly be solved by imposing specific duties on parents. To conceptualize these specific duties, I will start with the duties that all parents have towards their children on a general level. I will then fill these universal ethical theories with empirical details that shed light on the specific needs and vulnerabilities of children in separation contexts in order to arrive at more specific principles.

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<sup>25</sup> For an exception, see Lotz (2014).

### 5.2.1 General Parental Duties

On a general level, parents have a duty to promote their children's wellbeing and development. To this purpose, children must be provided with generic goods, such as food, education and shelter as well as with stable and close family relationships. In Chapter 2, I argued that to provide their children with those goods parents have to fulfill a combination of role-based and relationship-based duties. This combined approach acknowledges that we can neither see the family exclusively in terms of an institution nor exclusively in terms of relationships. Rather, the family seems to contain elements of both. Unlike in other relationships, such as friendships, where the participants can negotiate a mutually acceptable understanding of the duties they have towards each other (Wallace, 2012) being a parent carries with it a set of legally and socially defined duties.

Unlike friendship, the parent-child relationship is essentially asymmetrical. Children are dependent on their parents for care and protection and therefore vulnerable to their actions and choices. At the same time, parenthood has a social dimension, namely to produce society's future adults. Parents are thus only free to shape the parent-child relationship within the boundaries set by society's need for children to become well-functioning adults. To develop into well-functioning adults children need a stable environment and close attachments to their parents, among other things. While friends - to stick with the example - may dissolve their relationship if they want to, society expects parents to not exit the parent-child relationship (Alstott, 2004). They may be free to renegotiate family relationships, such as in case of a successful separation process, but they are required to stay in the parental role for 18 years or longer if necessary, so that the institution of the family continues to fulfill its function.

In Chapter 2, I argued that parents do not only have duties towards their children to stay in their parental role but also towards the co-parents. This is because the co-parents once jointly decided to take on the social role of parenthood and thereby committed to sharing the responsibility for raising a child. For example, co-parents normally share the financial burdens of child rearing as well as the time spent with the child, and they make important decision regarding the child's wellbeing together. This shared commitment may lead parents to have expectations towards each other, that they cooperate in parenting for example. Based on these expectations, parents structure their lives and make plans for the future.

A parent who deliberately exits the parent-child relationship, such as in case of a parental separation, does not only wrong the child but also the co-parent who has relied on the other parent to share the responsibility for raising a child. According to Phillip Cook, this responsibility is "a particularly extended, pervasive, and profound commitment" (Cook, 2012,

p.180). When one parent shirks the responsibilities that come with this shared commitment, this has a profound impact on the life of the co-parent who must now bear child rearing responsibilities alone and who may not be able to compensate the loss of the other parent, or at least not immediately. This does, of course, have an impact on children's wellbeing. Parents may thus not only have a duty to stay parents, but also to stay co-parents. They have this duty towards each other in virtue of their shared commitment to raising a child, but they also have this duty towards the child whose needs will only be met well if the parents engage in successful co-parenting.

We can conclude that parental duties are long lasting in nature and can hardly be neglected as children are dependent on their parents to be provided with continuity of care. Parents thus have a general duty to stay in the parental role and to provide their children with the care and resources they need for their wellbeing and development. Fulfilling their parental duties individually is thereby not enough. Rather, the parents also have a duty to remain co-parents and to advance the shared project of raising a child. As co-parents, they have to share the emotional, physical and financial demands of child rearing and collaborate on parenting.

Insofar as these general (co-)parental duties are long lasting in nature, they persist even if there are changes in the relationships or living circumstances of the family, such as in case of a parental separation. As argued in the preceding chapter, parents can be parents and meet their duties irrespective of whether they have a romantic relationship or not. Rather, what matters is that they provide their children with generic goods, attentive care and flourishing family relationships. Yet, a parental separation may threaten the realization of those goods and may therefore pose a risk to the wellbeing and development of the children involved. As a way of protecting their children from those harms, parents have to fulfill specific duties. In what follows, I will describe the kinds of specific duties that parents in separation contexts have.

### 5.2.2 The Specific Duties of Parents in Separation Contexts

Earlier in this chapter, I argued that it is permissible to impose specific duties on parents in separation contexts since it is possible for them to protect their children from the potential harms of a parental separation. As a way of meeting their general parental duties to promote their children's wellbeing and development, parents in separation contexts must shape the separation process in such a way that the adverse circumstances that often accompany a parental separation do not occur. Parents in separation contexts can avoid those harms if they stay (co-)parents although they are no lovers anymore. But what do parents in separation contexts have to do to stay (co-)parents? How can they provide their child with continuity of care and engage in

successful co-parenting despite changes in the relationship and living circumstances of the family?

To answer these practical questions, we have to fill our general ethical considerations with empirical details. These empirical details reveal the complex realities of families in separation contexts. The challenge will be to derive more specific principles of what parents in separation contexts ought to do without oversimplifying reality. To this purpose, it might be helpful to differentiate between different aspects of parental duties in separation contexts. As indicated earlier, parents have general duties that pertain to interactions between the co-parents as well as duties that concern the parent-child relationship, whereas both kinds of duties are intricately connected. The same holds true for the specific duties of parents in separation contexts. Parents in separation contexts can only protect their children from the potential harms of a parental separation if they work together in meeting their children's need for stability and emotional security.

Besides that, it might be useful to introduce a distinction between the duties of parents who are about to separate and the duties of separated parents. The former type of duties relates to how parents manage changes in the relationships and life circumstances of the family as part of the separation process. During this process, the parents have to find ways to rearrange family life. The latter type of duties becomes relevant once the separation process has ended. These duties relate to what separated parents should do to stay (co-)parents in the long run.

I begin with the duties of separated parents that concern the separation process. According to Amato, this process begins some time before the parents decide to separate and ends long after the parental separation (Amato, 2000). I take there to be three steps. In a first step, parents in separation contexts have to solve potential conflicts. In a second step, they must come to an agreement on how to rearrange family life. And in a third step, they must implement what they have agreed upon. In the following, I will describe the different phases of this process as well as the risks and responsibilities that might arise in more detail.

Initiators of a separation process are oftentimes relationship problems between the parents. When such problems seem insurmountable and affect everyday family life, many parents nowadays decide to separate although this means giving up security and entering an uncertain future. One thing is certain, however: The parental separation will bring changes in the relationships and living circumstances of the family. Among other things, the parents will be no lovers anymore and they will move to separate residences. These changes may destabilize family relationships and thereby threaten the realization of relationship goods, for example. This risk is especially high if the separation process is accompanied by interparental conflicts.

Similarly, there is a risk that children in separation contexts are deprived of generic goods if the family suffers from post-divorce economic hardship.

At the same time, changes are an inevitable part of the separation process. What matters for children's wellbeing and development is how parents manage these changes. The decision to separate will make it necessary for parents to make many more decisions as part of the separation process. They must agree on a custody arrangement, for instance. As a way of fulfilling their parental duties, parents have to make such decisions with their children's needs in mind. Most importantly, parents must continue to provide their children with relationship goods as they need emotional resources to cope with the new situation. Accordingly, parents in separation contexts have to rearrange family life such that the child can maintain a close relationship with both parents.

To make wise decisions in this regard might be challenging, however, since a parental separation is not only emotionally stressful for the children involved but for the parents, too. Parents in separation contexts might have to deal with interparental conflicts, emotional distress or economic hardship. Empirical studies show that such stressors prevent parents from successfully managing the separation process since parents who are preoccupied with their own problems tend to overlook their children's needs (Langmeyer & Walper, 2014). Therefore, parents in separation contexts have a duty to counteract these negative circumstances.

Yet, as indicated earlier, parents can only partly influence the negative circumstances that accompany a parental separation. They might not be able to avert economic hardship, for example, but what they can and should do is try to resolve conflicts, if necessary with the help of a therapist. This is a very important first step of the separation process. For, only parents who settle ongoing conflicts and develop a cooperative co-parental relationship can be emotionally available for their children and attentive to their needs.

To illustrate this, consider the case of Monica and Paul and their 7-year-old son Charlie. Monica left Paul since she was dissatisfied with the couple relationship. Paul is deeply disappointed by Monica's decision. As a result, he does not cooperate in finding a suitable custody arrangement for Charlie. Instead of working towards a workable solution, Paul constantly blames Monica for her selfish behavior. Problems in the couple relationship thereby hinder a successful separation process. Then Paul starts to realize that Charlie needs parents who are there for him and who work together to handle this difficult situation. Monica and Paul therefore consult a therapist who supports them in resolving their conflicts so that they can focus on the duties they have as sharers in parenting.

But what kind of duties do parents in separation contexts have as sharers in parenting? They not only have to resolve conflicts, but they also have to engage in successful co-parenting. Successful co-parenting is more than the absence of interparental conflicts (Markham et al., 2007). Rather, the parents have to communicate regularly, cooperate and support each other in parenting. Those co-parental duties apply to all parents who once decided to raise a child together whether they are about to separate or not. However, for parents in separation contexts to fulfill their co-parental duties might be particularly challenging: Family life, as it used to be, has ended and many things are about to change. The parents now have to shape the separation process so that it results in the reorganization of the family system rather than its dissolution. To this, they must cooperate in findings ways to reconcile their individual life plans with the fact that they are still parents and rearrange family life accordingly. This is the second step of the separation process.

In this second step, the parents have to agree on how to rearrange family life and shared parenting in light of the changes in the living circumstances of the family that accompany the separation process. As part of this process, the parents will move to separate residences. From now on family life will take place across two different households. As a result, the children have to commute, and the family members no longer share everyday family life as they were used to. Depending on how drastic and numerous these changes are, children may adjust better or worse to the parental separation. Parents in separation contexts thus have a duty to ensure that their children are provided with a stable social environment. One parent should remain living in the family home, for instance. If this is not possible, the parents should search for residences in the nearby area so that the child does not have to change schools, leave the sports club, or lose contact with friends and classmates. If the parents live close to each other, the children do not have to travel long distances between the two homes and can see both of them more regularly. Such a living arrangement<sup>26</sup> may not only provide the child with a stable social environment, but it also facilitates close family relationships. However, there is more to the quality of family relationships than the physical proximity of both parents. What also matters is how parents rearrange shared parenting.

Parents who are about to separate must negotiate on how to distribute child rearing responsibilities in the future. Different kinds of considerations should thereby be taken into account: Children's needs for having stable and close family relationship with both parents, the

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<sup>26</sup> I here leave open whether a joint or a single custody arrangement is better for the children involved as this highly depends on the particular circumstances of family life, such as how child rearing responsibilities have been distributed before the parental separation or whether the parents have a conflictual relationship (Walper & Langmeyer, 2019).

children's individual preferences and concerns as well as considerations of fairness between the co-parents. Yet, these different considerations might conflict as will become clear below.

As a way of meeting their children's needs, parents in separation contexts have a duty to distribute child rearing responsibilities in such a way that the child can have regular contact with both parents. However, empirical studies show that to maintain a close relationship not only the quantity of the time spent together is important but, above all, its quality (Dunn, 2004). After a separation, both parents have to engage in activities and interactions with their children that facilitate the realization of family relationship goods, such as intimacy and shared family experiences. In contrast, a father who picks up his 6-year-old daughter every two weeks to go to the cinema with her does not meet his parental duties as he is not involved in his daughter's life and her upbringing. As argued in Chapter 2, to realize relationship goods, parent and child have to engage in mutually oriented interactions. The father would thus have to do things like playing games with his daughter or helping her with her homework to meet his relationship-based duties.

Taking into account children's needs, might also mean that children and especially teenagers should be involved in decision-making. If the children are old enough, parents need to explain the situation to them and present possible options on how family life could be rearranged. When making decisions, the parents should consider the wishes and concerns of their children, insofar as they can already express them. Three reasons speak in favor of this: First, beyond the provision of objective goods, there are also subjective elements to children's wellbeing. There might be things that are important to children that we cannot anticipate from an adult perspective (Bagattini, 2019). For example, parents might not know how important it is for their son to be able to attend his swim training after the parental separation. Therefore, parents who are about to separate have to ask their children about such matters and consider their point of view. Second, children often experience the separation of their parents as something which just happens to them and which they cannot control (Walper & Langmeyer, 2019). To let children participate in the decision-making process might help them to regain a sense of control and security. The third reason relates to the first and the second one. Parents not only have a duty to provide adequate care, but they also have a duty to enhance their children's capacity for autonomy (Betzler, 2014). Especially in the case of teenagers, parents who are about to separate must not decide over their children's head. Rather, children should have the opportunity to articulate what they want and to make autonomous decisions. However, parents have to be careful here because empirical findings show that children in such kinds of situations might feel as if they have to choose between their parents (Emery, 2003; Warshak,



2003). When asking their children about their preferences the parents thus have to ensure that their children do not have to take on more responsibility than they are developmentally capable of.

To successfully rearrange shared parenting, the parents have to do more than distributing child rearing responsibilities so that each can parent separately and the children's needs and wishes are fulfilled. Rather, it is important that the parents coordinate their child rearing activities and come to important decisions regarding the children's wellbeing together. Due to living in separate residences, the family members do not interact on a day-to-day basis anymore. To be able to engage in successful co-parenting, nonetheless, parents in separation contexts must establish a new culture of communication. They may write emails, have meetings or regular phone calls where they exchange information about the children's life, make plans and discuss problems.

So far, I argued that parents in separation contexts have to distribute child rearing responsibilities so that children's needs are met. This is the case when there are no drastic changes in family life and when the child can maintain stable and close relationships with both parents. However, the requirement of continuity may lead to child rearing arrangements that are unfair to at least one parent as they perpetuate a gendered division of labor that still prevails in many families. Due to social factors such as unequal earnings between men and women and social expectations about who should care for children, women are usually more invested in child rearing than men. These social factors also seem to have an influence on how child rearing responsibilities are distributed after a parental separation. Women normally get primary custody of children (Bonnet et al., 2021). In cases where this child rearing arrangement does not lead to a decrease in living standards, it may promote children's wellbeing as the distribution of child rearing responsibilities they are used to remains unchanged. On the contrary, it might feel strange for children in joint custody arrangements to suddenly spend more time with a father who has always worked a lot and who has never been involved in child rearing.

Here considerations of fairness between the parents are in tension with considerations regarding the children's wellbeing. The custody arrangement that most families in separation contexts choose - namely a single custody arrangement rather than a joint custody arrangement - seems to be unfair as it perpetuates gender inequalities. Given that the other parent is no longer present in the household to share daily child rearing tasks, single mothers must invest more time, energy and financial resources than before the separation. At the same time, mothers who have primary custody of children have to work more - sometimes even if they receive child

support from the non-resident father. This is because divorce is usually accompanied by a drop in household income as the parents have to run separate households.

Yet, parents have a duty to ensure that each of them is able to meet the new demands of parenthood. They have this duty not only towards their children who must be adequately cared for, but they also have this duty towards the co-parent who once adopted the social role of parenthood under the assumption that the responsibilities of parenting are shared. A father who does not support his children's mother after the parental separation fails to fulfill this duty.

These considerations of gender equality speak in favor of joint custody arrangements. In many cases, to regularly spend time in each parents home is also in the interest of the child who wants to maintain a close relationship with both parents. This is at least the case, if the father has already been involved in child rearing before the parental separation. Accordingly, child rearing responsibilities should be distributed more equally between co-parents, both before and after a parental separation. However, where considerations of gender equality and considerations regarding children's wellbeing are in tension, parents should work towards a more equal division of labor only to the extent that children's needs for stability and permanence in family life are met.

In the third step of the separation process, the parents have to implement what they have agreed upon. This cannot be done overnight, but it may take time for the parents to adjust their lives to the new demands of parenthood. They may have to adjust their working hours, for example. During this transitional phase, the parents need to show some flexibility if what they have agreed upon does not work out right away. However, after a while, both parents should be able to stick to their child rearing agreements so that the parents can rely on each other.

To illustrate this, consider the following counterexample where a parent does not stick to the child rearing agreement: Lisa and Tom are about to separate. Among other things, they have jointly decided that Tom picks up their son Louis every Thursday after his guitar lessons. Tom is unreliable, however. He often informs Lisa at short notice that he will not be able to pick up Louis, and she has to step in spontaneously. Thereby, Tom fails to fulfill his parental duties towards Louis, namely to provide him with stability and emotional security in these difficult times. Louis might be confused or disappointed if Tom is not there to pick him up after his guitar lessons. Besides that, Tom also fails to meet his co-parental duties.

To illustrate this, suppose that Lisa does not tell Luis about Tom's unreliability to not disappoint him. Also, suppose that Tom's actions do not affect Louis' wellbeing since Lisa steps in. We might consider this case problematic nonetheless. This is because Tom failed to meet his co-parental duties towards Lisa who had relied on him. This might lead to new conflicts

and create a climate of distrust. Tom's unreliability hinders the successful implementation of the custody arrangement that Lisa and Tom have agreed upon as well as the development of a cooperative co-parental relationship. Yet, this is important so that parents can remain (co-)parents in the long run.

As argued earlier, raising a child is a long-term commitment, and this is the case for parents who are still together as well as for parents in separation contexts. As a result, parents in separation contexts do not only have a duty to successfully manage the separation process, but they also have a duty to stay (co-)parents at least until their child is 18 years old. Before I say more about this second class of duties, I sum up my findings about the duties of parents who are about to separate.

So far, I identified and outlined different stages of the separation process and the specific duties that arise. As a first step, parents in separation contexts have a duty to solve potential conflicts so that they can engage in successful parenting both on their own and as sharers in parenting. A positive co-parental relationship that is detached from the couple relationship is crucial for the parents to be able to enter the second phase, which is to manage changes in the living conditions and relationships of the family conjointly with the aim of reorganizing the family system. At best, this way of reorganizing the family system should also be fair for both parents. In a third step, the parents must implement what they have agreed upon in a collective and trust creating endeavor.

With the reorganization of the family system, the separation process has ended. However, this is not where parental duties in separation contexts end. Rather, separated parents continue to have specific duties both towards their children as well as towards the co-parent. About 20 % of children lose contact with the non-resident parent over time after a parental separation (Kalmijn, 2015). These empirical data show how important it is that the parents do not let things take their course once the separation process is completed, but that they keep on striving to stay (co-)parents. Both parents must maintain a close relationship with the child as well as a cooperative co-parental relationship. However, this is only possible if the parents adjust shared parenting to the changes in family life that the future will bring.

Children's needs and interests might change over time as the parents' lives go on and the children grow older. In the years following the separation, children might become teenagers; they might take up a new hobby or encounter problems at school. The parents may find new jobs or new partners, or they might move to a different city, and so on. For parents to stay (co)parents although their lives go on, it is important to preserve the culture of communication they have established during the separation process. Even though the parents now have lives of

their own, they might have a duty to at least inform each other about upcoming changes in their lives that have an impact on their shared project of raising a child. Ideally, the parents discuss whether and how they can manage (co-)parenting in case of a move or a new job and cooperate in finding ways to reconcile their individual pursuits with their child rearing responsibilities.

When making decisions, it is important that the parents stay attentive to their children's needs. They may have to frequently assess what is in their child's interest and adapt the child rearing arrangement accordingly. As part of their parental duties to promote their child's development, parents may have to acknowledge that teenagers are becoming increasingly autonomous and do not have to be taken care of all the time anymore, for example. As their children grow older, separated parents should therefore be more flexible about parenting times.

However, successful long-term co-parenting is more than (re)assessing what kind of child rearing arrangement is suitable given a child's age and interests and given the parents' life circumstances. Rather, separated parents must come to important decisions regarding the child's life together. In the years following the separation, the parents may have to decide on a secondary school that their child is going to attend or they may have to decide on what kind of medical treatment their child should receive. It is important that separated parents engage in shared decision-making. As they have a shared history and special knowledge about their children, parents are in a privileged position to discuss what kind of medical treatment is best for their child or what might help him or her overcome problems at school. A co-parent can therefore not be substituted by discussing the same issues with a close friend or the new partner. At the same time, parents who come to important decisions regarding the child's life together share the responsibility for these choices.

If parents manage to reorganize the family system and maintain it over time although they are no lovers anymore and live in separate households, they can provide their children with what is valuable about family life: continuity of care, good parenting and flourishing relationships. To impose specific duties on parents in separation contexts could thus be a promising strategy to protect children from the adverse effects of a parental separation. However, this is only the case if it is in fact possible and/or reasonable for parents in separation contexts to fulfill these duties.

In the next section, I will discuss cases where it may not be possible and/or not reasonable for parents in separation contexts to fulfill their duties. Those cases differ from the rather optimistic picture of parental separations that I presented so far. When outlining how a successful separation process should look like, I assumed that the parents know what they are required to do in this difficult and stressful situation and are willing to act accordingly despite

interparental conflicts and feelings of disappointment and anger. I also assumed that the parents have problem-solving and coping skills and that they can receive help from a therapist if they do not. However, in the absence of such favorable circumstances, parents in separation contexts might have problems to resolve interparental conflicts and cooperate in parenting.

Moreover, there are aspects about parental separations that I left out: So far, I largely ignored economic problems since they are rather structural. However, they are a main predictor of poor outcomes among children in separation contexts (McLanahan & Sandefur, 1994). If parents, and especially single mothers, suffer economic hardship, they may neither be able to provide their children with generic goods such as healthy nutrition and schoolbooks nor with good parenting as they struggle to make a living and are preoccupied with worries. Economic factors thus hinder parents in successfully managing the separation process. Yet, they can hardly influence these factors.

While focusing on what parents in separation contexts should do under ideal circumstances, I might have overlooked their shortcomings and problems. In what follows, I will outline the limitations of my approach. I will critically assess whether my account of parental duties in separation contexts might overburden at least some parents given the difficult situation they find themselves in.

### 5.3 Limitations

In this section, I will discuss three cases of parental separations in which it might be impossible and/or not reasonable for parents in separation contexts to fulfill their duties. This might be the case when a parent suffers severe emotional distress or when one parent behaves in a very immoral manner toward the other parent. Besides that, one can also question how much support co-parents can reasonably expect from each other. Of course, those three aspects are intricately connected. Nevertheless, I consider them separately. I will start with psychological factors.

Up to now, I have said a lot about how parental separations effect children's wellbeing, but I hardly addressed the consequences of divorce for adults. Empirical studies indicate that divorced individuals experience more social isolation, more psychological distress and lower levels of wellbeing if they suffer from economic hardship or interparental conflicts and do not have supportive social networks of relatives and friends (e.g. Bierman, Fazio, & Milkie, 2006; Wood, Goesling, & Avellar, 2007). Thereby, individuals who initiated the separation process tend to fare better compared to those who did not want to end the relationship (Kitson, 1992).

Now think of Mary, a young mother whose boyfriend John left her and their two children all of a sudden because he fell in love with another woman. At that time, the kids are one and three years old. John works full time, while Mary has not returned to work yet since the second child was born. The family used to live in John's apartment, so Mary has to move out and takes the children with her. They move to a small flat in a poor neighborhood since Mary cannot afford more and John does not make child support payments. Also, he does not want to be involved in child rearing any longer. From now on, Mary has to provide for the family and take care of the children although she is devastated. She is deeply hurt by her ex-partner's behavior and worries about the future. Due to economic problems and psychological distress, she is incapable of providing her children with generic goods and attentive care.

Are we justified in blaming Mary for not meeting her parental duties? This depends on whether we think that it is possible for Mary to fulfill her parental duties in this difficult situation. This depends on how we interpret the "can" in "ought implies can". According to Amy Berg "can" either refers to what individuals are able to do under ideal circumstances, or it refers to what they can do given their present situation and shortcomings (Berg, 2018). Earlier in this chapter, I argued that we are justified in imposing specific duties on parents in separation contexts in virtue of their capacity to influence the circumstances accompanying a parental separation in such a way that children are protected from the potential harms of a parental separation. Thereby, I referred to what parents can do according to the best standards. However, given the various problems that parents in separation contexts might face, it might be unfair to expect all parents to manage the separation process successfully without external support. This speaks in favor of adopting the latter understanding of "can". Provided that Mary did everything she could do given her present situation, we thus have to admit that she is not blameworthy for failing to provide adequately for her children. In contrast, we might blame John who deliberately shrinks his parental duties.

Now consider the second case, where one parent behaves immoral toward the other parent: Laura got divorced from her husband David because of his degrading behavior towards her. Whenever possible, David insults her and bosses her around which severely affects Laura's self-esteem. However, David has a good relationship with their 4-year-old son Adam and is willing to meet his parental duties after the divorce. Does Laura have a duty to cooperate with David in shared parenting although he treats her disrespectfully and is not about to change his behavior? This is a tough question as one must weigh the child's wellbeing against the mother's wellbeing. Adam might benefit from co-parental interactions where the parents can exchange

important information and coordinate their child rearing activities, whereas it might be better for Lisa to break off contact with her ex-husband.

I want to make two claims in response to this case – one is a rather general remark, the other a concrete suggestion. First, as explained in Chapter 2, I conceive of parental duties as pro-tanto duties that can be trumped by other duties or morally relevant reasons. If meeting a pro-tanto duty is very costly for oneself, one might be justified in not fulfilling this duty, such as when one would have to risk his own life to help others. The same holds true for the duties of parents in separation contexts. A parent might not have a duty to maintain a co-parental relationship with a violent ex-partner when this would be dangerous for the parent in question. However, in this case, having contact with a violent parent might not be in the child's best interest as well.

Yet, things are different in the case described above, for it seems to be in Adam's interest to maintain a good relationship with his father. At the same time, it is also important for his wellbeing that his mother is doing well. Therefore, here is a compromise I would suggest: If it is too stressful for Laura to talk to David or meet him, the co-parents could write emails to exchange information about Adam's life and coordinate their child rearing activities. Moreover, they could arrange that when it is David's care time, he picks up Adam from kindergarten so that the parents do not meet. Of course, this is not an ideal solution, but it might nevertheless be the best solution there is in this kind of difficult situation.

In the two cases presented so far, the parents should have done more, but they were unable or unwilling to do so. I now want to turn to the question of when a parent is doing more than he or she should: Amy broke off with William because he is a workaholic and has hardly been involved in family life in the last few years. During the separation process, the parents agreed on a single custody arrangement. William takes care of their 4-year-old daughter Julia on Wednesdays as well as every other weekend. William manages to adapt his working hours accordingly and is willing to meet his parental duties as he has come to realize that he did not care enough for Julia in the past. However, as William has always been working a lot, he does not know about Julia's needs and interests as good as Amy does.

Does Amy have a duty to support William in his parental role? For example, should Amy tell William about activities Julia is interested in or what he can do when she has problems to fall asleep? This seems to be more than what Amy owes to William in virtue of being a co-parent, but maybe Amy should offer such kind of support for the sake of Julia to ensure that she has a good relationship with her father. At the same time, one must acknowledge that in doing so Julia performs emotional labor and thereby invests her time and energy to comfort

others (Müller, 2019). For this reason, she might not be required to do everything possible to support William in parenting. If William and Julia want to go to the children's theater next weekend, for example, Amy does not have to buy tickets for them even if she suspects that William will forget it and Julia will be disappointed. Also, William might not be justified in constantly asking Amy for advice since it is on him to finally get involved as a father in Julia's life.

Whether Amy has a duty to support William in his parental role seems to depend on a variety of factors, such as the quality of the relationship between Julia and her father. If their relationship is not optimal, but reasonably good, Amy might not be required to provide the kind of support described above. As argued in Chapter 2, parents are independent people who do not always have to act according to the best interests of the child. Rather, parents are allowed to sometimes weight their own interests against their children's interests as long as they do not harm their children by doing so. Since Amy is already providing primary care for Julia and since supporting William in his parental role would demand even more of Amy's time and energy, she might not be required to do so. For, as argued earlier, children's wellbeing is not all that matters, but considerations of fairness sometimes matter too.

However, things seem to be different if the relationship between father and daughter is not good enough. Then Amy might be obligated to support the development of a good father-daughter relationship as a way of fulfilling her parental duties to promote Julia's wellbeing. Since children need stable and close relationships with their parents to be able to cope with the separation, Julia might harm Amy if she weights her own interests against those of her daughter. Yet, even if considerations regarding children's wellbeing have priority under these kinds of circumstances, it is nevertheless unfair that Amy has to bear the costs just because William failed to build up a good relationship with his daughter.

Those three scenarios showed that when it comes to concrete cases to deal with ethical problems in separation contexts is not as easy as my approach suggested. What might have been convincing from a theoretical standpoint is not convincing from a practical point of view. As long as there are parents in separation contexts who are unable or unwilling to fulfill their specific duties, children will not be protected from the potential harms of a parental separation. To impose specific duties on parents in separation contexts can thus not be the whole solution. In the next chapter, I will therefore argue that the state, people in the close environment of the family and the parents must work together in making successful separation processes possible.



## 5.4 Summary

In this chapter, I offered a liberal argument for parental separations: Unlike the anti-divorce theorists, I argued that parents should be allowed to leave a relationship which they do not deem valuable anymore. In this regard, I demand less from parents than the anti-divorce theorists who think that parents have a duty to stay together for the sake of their children even if they are unhappy. In contrast, I argued that allowing parents to leave an unsatisfying relationship might be better for the children involved. However, this is only the case if the changes that are associated with the separation process do not result in the dissolution of the family system but in its reorganization. For this purpose, the parents have to work together in shaping the separation process such that their children are provided with a stable social environment, successful co-parenting and flourishing family relationships. Ideally, the parents remain living in the nearby area, manage to reduce conflicts and distribute child rearing responsibilities in such a way that it is fair for both parents and the children's need for permanence in family life is met. However, my discussion of concrete cases revealed that what I am asking parents in separation contexts to do might be too demanding given the difficult situation they often find themselves in.

My argument is thus only liberal insofar as parents are free to leave an unsatisfying relationship. Yet, they are not free to defect from their (co-)parental duties as these duties are long-lasting in nature and need to be fulfilled regardless of whether the parents share a romantic relationship or not. In the end, my liberal approach might therefore be more demanding for parents than the anti-divorce theorists' approach. For parents who decide to separate everything changes. They have to reorganize the family system and provide their children with continuity of care. This is, without doubt, a big challenge.

## 6. Duties of Support towards Families in Separation Contexts

How should we deal with the empirical fact that parental separations are potentially harmful to the children involved? In Chapter 4, I argued that preventing parental separations from happening is not a viable strategy to protect children from the potential harms of a parental separation. In Chapter 5, I therefore presented an alternative strategy that promised to be more successful in promoting children's wellbeing. According to this strategy, we should not avoid parental separations as such, but only the harmful circumstances that often accompany them. In line with this thought, I explained what parents in separation contexts should do to protect their children from the potential harms of a parental separation. However, I also had to admit that parents are often limited in their capacity to shape the separation process successfully since they are in a difficult situation themselves. Did my strategy fail on these grounds? I do not think so. My approach is just incomplete so far.

Up to now, I looked at the family from an inside perspective. When trying to address ethical problems in separation contexts, I focused on parental duties and the quality of family relationships. Thereby, I disregarded the societal dimension of child rearing. As already indicated in Chapter 1 and 2, we should not see child rearing as a private project, but rather as a collective endeavor where state, society and families work together in providing children with the resources and care they need for their wellbeing and development. If we think of child rearing as a collective endeavor rather than a private project, this seems to have implications for how we deal with cases of parental separations. In what follows, I will argue that state and society as well as people in the close environment of the family may have duties of support towards families in separation contexts. Moreover, I will argue that children can be protected from the potential harms of a parental separation only if those different parties work together in making successful separation processes possible.

The chapter is structured as follows: I will start with presenting three general arguments for why liberal states should support families. In the second part, I will show that these arguments also apply in cases of parental separations. I will argue that the state must support families in separation contexts since it has a moral responsibility as well as an independent interest to ensure that all children grow up in stable family structures. For this purpose, I will make concrete suggestions regarding state policies and social services that should be offered. In the third part, I will argue that people in the close environment of the family such as friends and close relatives may also have duties of support towards parents and children in separation

contexts in virtue of the valuable relationships they share with these family members. In the end, I will sketch how a division of moral labor could look like.

## 6.1 General Arguments for State Support

In most Western countries, there is a well-established cooperation between parents, state and society in raising children. Most states already provide financial support for parents as well as public education and healthcare for their children (Brake, 2010). Besides that, there are different kinds of organizations and communities offering social support for families. Since becoming a parent is a private choice, it might not be clear that responsibility for child rearing should be shared. In Chapters 1 and 2, I already mentioned different arguments why liberal states should support families. There are society-based, child-based and parent-based arguments (Engster, 2010). I take those arguments to be mutually reinforcing, so I will briefly bring them together here.

I start with the society-based argument. According to this argument, the state should support families since the family is a social institution with an important social function, namely to produce society's future adults. It is important that children are raised into adulthood so that society can be reproduced over time. Moreover, there is a collective interest, especially in liberal democratic societies, that children develop into well-functioning adults and competent citizens (Archard, 2010). For this purpose, they must be raised in families by parents who (can) provide them with generic goods and attentive care rather than by professional nannies working in state-run institutions, for example.<sup>27</sup>

According to this line of reasoning, society should support families via the state since we all benefit from there being parents who raise their children to become well-functioning adults and competent citizens. As Daniel Engster rightly points out, the wellbeing of present generations depends on the existence of future generations that provide medical care, produce food etc. (Engster, 2010). At the same time, it is costly for parents to prepare their children for adulthood – especially in the complex societies we live in. Parents must invest a huge amount of time, energy and financial resources to provide adequately for their children's developmental needs. Since child rearing generates what economists call positive externalities that benefit all members of a society, it would be unfair to hold parents responsible for all the costs of child rearing (Olsaretti, 2013). Rather, responsibility for child rearing should be shared. The state

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<sup>27</sup> For an argument for the comparative value of the family, see Chapter 1.

adopts part of this collective responsibility by providing institutional structures within which parents are capable of performing their social role sufficiently well.

According to the society based-argument, the state should support families for instrumental reasons, namely in order to ensure the continued existence of a (liberal) society. Yet, this future-directed perspective on child rearing obscures features that are specific to the children's current state, such as their dependency-based vulnerability. This leads us to the child-based argument: According to this argument, the state should support families since children are among the most vulnerable members of society. As they have not yet developed the capacities that normal adults have, they are dependent on others for care and protection from harm. This dependency constitutes significant duties on others to provide for children's needs (Lotz, 2018). Part of those needs can only be addressed in the context of flourishing parent-child relationships. In most societies, primary responsibility for child rearing is therefore assigned to parents.

However, parents cannot be solely responsible for their children's wellbeing. This is because children are dependent on their parents and vulnerable to their actions and choices. If parents fail to meet their duties, children may be disadvantaged because of factors they cannot control. In order to acknowledge this vulnerability, the state must protect children's interests by addressing such inequalities through the public provision of resources, such as education and day care. High-quality daycare can compensate for suboptimal parenting practices, for example (MacLeod, 2002).

The two different lines of reasoning that I have presented so far thus seem to point in the same direction – at least in most cases. The state should support families since children are vulnerable human beings who are dependent on adults - most notably on their parents - to be protected and cared for. The state should do so irrespective of whether those children will become society's future adults, such as in the case of children who are severely mentally disabled and thus especially vulnerable. However, apart from such exceptional cases the state may also support families in order to attain a particular social goal, namely that children develop into well-functioning adults and competent citizens. For states to also have those instrumental reasons might not be problematic if we assume that the current and the prospective wellbeing of children are closely connected. I suppose that children can only develop into well-functioning adults if their current needs are met.

This is not self-evident, however. For example, Samantha Brannan worries that if we treat children in view of the future adults they will become, we might fail to respect the present individual he or she is now. As a result, people might think that physical punishment of children

would be justified even if it caused severe suffering in childhood as long as it leads to positive long-term outcomes. Brennan criticizes this future directed perspective as it does not appreciate the value of childhood (Brennan, 2014). Brennan is surely right that a child centered perspective is important to ensure that children have a good childhood, but I think that her example is somewhat flawed. I can hardly imagine that children who have received physical punishment in their childhood will show a healthy emotional development into a competent adult. This speaks in favor of my assumption that the current and future wellbeing of children are closely connected.

So far, the reasons for state support I set out primarily pertained to children's wellbeing. The arguments were based on the rationale that we must support parents in order to support their children. In contrast, the parent-based argument refers to parents more directly. According to this line of reasoning, the state should support families in order to address disadvantages that parents and particularly mothers experience. As already mentioned, child rearing is costly for parents. Parents who do not receive the support they need have to deal with chronic stress, economic pressures and inner conflicts about how to reconcile work and parental responsibilities. As a result, they are disadvantaged compared to nonparents. Since parenting activities are of great moral and social importance, however, parents should receive adequate state support as a matter of justice.

These considerations especially apply to women. Liberal states should support parents not only to address inequalities between parents and nonparents, but also to reduce gender inequalities within the family. Of course, children also benefit from such policies. Yet, liberal states might be required to implement such policies even if parents, and mothers in particular, managed to bear the costs of parenting themselves and children's wellbeing is not affected. This is because in a liberal society they should not be unfairly disadvantaged because of their parenting activities.

All these different arguments speak in favor of state support for families. There are thus good reasons that there is an already well-established cooperation between parents, state and society in the raising of children. However, the arguments I presented above were supposed to do more than defending the status quo. For, in most states - Nordic countries probably being an exception<sup>28</sup> - existing policies primarily aim at ensuring that children who are raised in traditional families have their needs met.

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<sup>28</sup> In recent decades, the Nordic countries were often considered to be role models when it comes to emerging family trends, innovative family policy approaches and gender egalitarianism (Goldscheider, Bernhardt, & Lappegård, 2015).

In Chapter 1, I criticized current policies for privileging the traditional family while this family form already has structural advantages compared to other family forms. Due to having more temporal, financial and emotional resources, two-parent families are better able to provide adequately for their children than single parent families, for example. Existing policies thus increase the disadvantages suffered by children in non-traditional family forms (Burt, 2002). These children are raised in family structures in which the parents tend to have difficulties to provide for their children's needs due to a lack of resources and a lack of adequate state support. In addition, these children are disadvantaged because they are raised in family forms that do not conform to a certain ideal propagated by family policy.

Existing family policies do not only fail to ensure that all children have their needs met (as far as they can do so), but they also treat parents who raise their children in non-traditional family forms unfairly. This is especially unfair given the fact that some parents may find themselves in this situation for no choice of their own, such as a single mother who was left by her partner. However, even if parents chose this way of living, liberal principles may require us to give them equal respect as long as this way of living is not in conflict with children's wellbeing.

We can conclude from this that political measures which privilege the traditional family miss the actual target of family policy as suggested by the three arguments for state support that I presented above. If the purpose of family policy is to address children's vulnerability and to ensure the continued existence of a liberal democratic society, states would have to make sure that as many children as possible have their needs met, and not only those raised in traditional families. To achieve this objective, the state would have to provide all different kinds of families with the support they need.

To address these disadvantages suffered by children and parents in non-traditional family forms, the already established cooperation between state, society and families in the raising of children must be enhanced by introducing policy initiatives that are developed to make new family structures work. The aim of these initiatives should be to enable all families to provide adequately for their children's needs (Burt, 2002). Thereby, different family forms may need different kinds of support, and some may need more assistance than others. Adoptive families who suffer from biases based on a bionormative image of the family rather than from a lack of financial resources may need social support rather than material support, for example (Lotz, 2014). Similarly, families in separation contexts need policy initiatives that are tailored to their specific needs. In what follows, I will make concrete suggestions regarding state policies and social services that should be offered to families in separation contexts. Most of these

policies and services have already been introduced and proved to be helpful. However, up to now they are not available to all families in separation context that are in need of help.

## 6.2 State Policies and Social Services for Families in Separation Contexts

As elucidated in Chapter 1, modern family life has been influenced by broader social and economic changes. As a result, families have become more diverse and more fluid. Nowadays, there are, for example, more two-breadwinner families, more single mothers and more separated parents than 40 years ago (Sobotka & Berghammer, 2021). Family policy must respond to transformations of this kind to ensure that all children's needs are met and that parents in different family forms can perform their social role sufficiently well. In what follows, I will differentiate between policy initiatives that affect new family structures more generally and policy initiatives that aim at providing specific support for particular family forms. General policies such as financial support and flexible working might benefit single mothers irrespective of whether they are separated or not, for example. In contrast, there are specific services for parents in separation contexts, such as mediation or parenting classes. I will start with making suggestions for general policies.

In the complex societies we live in parents increasingly struggle to both make a living and meet their child rearing responsibilities, and this might be the case even if there are two parents who live in a shared household and who both work outside the home. Therefore, parents in non-traditional family forms especially suffer from a lack of temporal, financial and emotional resources and have difficulties to provide adequately for their children. As a way of assuming part of the collective responsibility to promote children's wellbeing, states should support non-traditional families by offering more financial support, by introducing or expanding flexible working policies and by making good daycare available to all parents.

Such general policies would also benefit families in separation contexts. Families in separation contexts would benefit from receiving more financial support since maintaining two residences requires more financial resources. Consequently, parents in separation contexts – and especially resident parents – often suffer from economic hardship, which affects the wellbeing and opportunities of both parents and children (Aseltine, 1996; Bonnet et al., 2021; Walper & Langmeyer, 2019). Moreover, parents in separation contexts would benefit from flexible working and good daycare for their children. If care of children is divided between two households, everyday child rearing activities cannot be shared. As a result, parents in separation

contexts – and again especially resident parents – have problems to reconcile family life with work.

This suggests that especially resident parents, who are in most cases mothers, need state support. This is because in single custody arrangements child rearing responsibilities are not equally shared between the parents. Since they have primary custody of the child, resident mothers tend to work less and earn less money. At the same time, they need financial resources to provide adequately for their children. Thereby, the situation is even worse if resident mothers do not receive child support payments from the non-resident father. In case of single custody arrangements, states should enforce child support payments of non-resident fathers if they earn a good income. If they do not, the state should step in as a financial provider (Burt, 2002).

In contrast to single custody arrangements, the burdens of child rearing are more equally shared in joint custody arrangements. As argued in Chapter 5, considerations of gender equality might speak in favor of encouraging joint custody arrangements. Empirical studies show that parents who choose this arrangement tend to have a higher socioeconomic status than parents who opt for a single custody arrangement (Kaspiew et al., 2009; Nielsen, 2011). This is because parents with a higher socioeconomic status are better able to meet the financial and logistical demands of a joint custody arrangement. At the same time, there might be parents who are willing to choose such an arrangement, but who are unable to do so because of a lack of financial resources. The state should support such parents in their efforts to implement joint custody arrangements in order to redress gender inequalities within the family and to ensure that children have regular contact with both parents.

Some states, such as Australia and Belgium, therefore give legal priority to the joint custody arrangement (Salzgeber, 2015). However, although the joint custody arrangement does have advantages, parents who are unwilling to adopt such an arrangement should not be forced to do so. Such arrangements only work if the parents are cooperative. If they are not, interparental conflicts might increase. This is because parents who adopt a joint custody arrangement must interact more to coordinate parenting activities than parents in single custody arrangements (Walper & Langmeyer, 2019). Accordingly, the state should support parents who are willing to choose a joint custody arrangement, but this should not be mandatory.

By providing financial support, flexible working and good daycare the state helps parents in separation contexts to meet some of their parental duties. Due to receiving financial support, parents in separation contexts can provide their children with generic goods, such as adequate nutrition and housing. By making use of good daycare, parents can ensure that some



of these goods are provided by others. Moreover, parents who do not have to deal with economic pressures and chronic stress tend to engage in more attentive parenting.

Yet, these general policies do not address all problems that parents in separation contexts might encounter. Parents in separation contexts might fail to meet their parental duties despite such policies - if they feel emotional distress and have constant conflicts, for example. Besides that, many parents just do not seem to know how a successful separation process could look like and what they have to do. As these problems are interpersonal rather than structural they cannot be resolved by only providing financial support, flexible working, and good daycare - if they can be resolved through political measures at all.

Since financial resources are easily transferable, the state can ensure that children in separation contexts are provided with generic goods. Yet, the state cannot ensure that they can enjoy familial relationship goods. Only the parents and family members can do that. However, the state can indirectly promote the realization of relationship goods by creating conditions that are conducive to the development of flourishing family relationships. This is where specific policy initiatives to support families in separation contexts come into play. These initiatives are supposed to address the specific problems that families in separation contexts might experience. Different kinds of interventions have been introduced to improve the quality of family relationships. In what follows, I will portray and critically assess the usefulness of two different kinds of interventions: divorce mediation and divorce education classes. I will show that both of these interventions have advantages but also problems. Insofar as they are not available to all families in separation context who are in need of help, they miss the actual target of family policy that I defined above, namely to promote the wellbeing of all children.

Among interventions for parents in divorce contexts, mediation is most common and widespread. Since the late 1980s, many family courts use mediation as an alternative form of dispute resolution. Unlike in traditional litigation where the attorneys make decisions on behalf of their clients, divorce mediation provides parents with an opportunity to negotiate a mutually acceptable agreement with the help of a neutral third party (Behounek, 2019; Sbarra & Emery, 2006).

Divorce mediation services are widely adopted, but they are not uniform in practice (Tondo, Coronel, & Drucker, 2005). One reason for this might be that these services are offered by a wide range of different professionals, such as attorneys, psychologists or social workers. Moreover, divorce mediation can comprise a lot of different topics including the distribution of property, child support or parenting times (Behounek, 2019).

Empirical studies show that mediation causes more positive outcomes for parents and children than when disputes are resolved in divorce proceedings. When having used mediation, parents appear to be more satisfied with the outcome and non-resident parents are more involved in child rearing whereas adversarial litigation might exacerbate conflicts and further polarize the ex-partners (Shaw, 2010). However, despite these advantages the usefulness of mediation services appears to be limited. In what follows, I will outline two problems that mediation services might have.

The first problem concerns the availability of mediation services: As already explained, most of the mediation services are court-ordered or court-based. They are only available to parents who have contact with the legal system, who can bear legal expenses and pay for a mediator. Consequently, divorce mediation is not available to parents with lower income. Yet, these parents might also benefit from having the opportunity to consult a mediator to resolve their conflicts that might be even more intense in light of the economic pressures they face. To also make divorce mediation accessible to parents who cannot afford for-profit practitioners, community-based mediation services have been offered (Heedin, 2004). Here non-profit organizations or public agencies provide free or low-cost mediation services by volunteer mediators. However, community mediation is hardly known (Baron, 2004).

Secondly, mediation services are short-term interventions that focus on supporting parents in reaching an agreement on a concrete case of dispute, but they do not aim at relieving the distress of divorce more generally. Empirical findings do not indicate that mediation serves decrease general psychological distress such as sadness or anger (Beck & Sales, 2001; Emery et al., 2001). Yet, such negative emotions can limit the capability of rational decision making within mediation.

Between one-half and three-fourths of mediations end in agreement (Kelly, 2004). Accordingly, mediation fails in at least one-fourth of the cases when parents are unable to overcome individual or interpersonal conflicts in order to reach an agreement for the sake of their children. To address such cognitive and emotional barriers, Sbarra and Emery recommend that we have to develop more therapeutic strategies of mediation that address mental health issues and relational dynamics more generally (Sbarra & Emery, 2006). I doubt, however, that mediation, as it is practiced in many courts, can address these problems since it is a time-limited and task-oriented intervention which is designed to help couples to solve their conflicts outside the courtroom. What speaks in favor of this assumption is that, in addition to mediation, divorce education programs have been developed to assist families in separation contexts.

Divorce education programs focus on providing parents with information on the developmental needs of children, co-parenting as well as child and parental adjustment. Whereas mediation services focus on counseling and dispute resolution, divorce education programs have an educational and preventive purpose (Blaisure & Geasler, 2006). However, just as mediation services, divorce education programs are often affiliated to courts and hardly uniform. There are short-term and long-term programs, for example. Some aim at assisting parents in separation contexts in general, whereas others are developed for high-conflict parents in particular. In many cases, information about different divorce-related topics is presented to a large group of parents. Besides that, there are programs where the parents have to invest more time and are more involved. Such skill-based programs work with exercises that are supposed to help parents develop coping skills as well as communication and conflict-management skills (Blaisure & Geasler, 2006). An example from Germany for such a skill-based program is the program “Kinder im Blick” ([www.kinder-im-blick.de](http://www.kinder-im-blick.de)).

Both information- and skill-based programs are associated with positive outcomes for both parents and children (Criddle, Allgood, & Piercy, 2003; Pedro-Carroll, Nakhnikian, & Montes, 2001). However, what matters in the end is that parents are not only aware of the potential harms of a parental separation, but they also have to know how to avoid those harms. That is why skill-based programs promise to be more effective (Blaisure & Geasler, 2006). When providing support for parents in separation contexts, states would thus have to make sure that parents in separation contexts do not only acquire knowledge-that, but also knowledge-how, to put it in philosophical terms. This is important since we are only justified in requiring parents to protect children from the potential harms of a parental separation if they are in fact able to do so – and this is not only a matter of knowledge and skills, but also a matter of providing the right kind of support. Yet, to ensure that all parents acquire knowledge-how, participation in skill-based divorce education programs would have to be mandatory for all parents. However, this is hardly feasible, as will become clear below.

Thus far, we can conclude that nowadays families in separation contexts are more likely to find support services than ever before. This empirical fact reflects the need of families in separation contexts for state support and the state’s efforts to provide it. However, not all families do already receive the support they need. Rather, to protect all children from the potential harms of a parental separation support services must be expanded and improved. We need policy initiatives that reach as many parents as possible. Up to now, participation in mediation or divorce education programs is encouraged or even mandated via the legal system since states can regulate the conditions under which parents can obtain the legal act of divorce.

In Denmark, parents with minor children are only allowed to divorce if they attend an education program, for example (Cipric et al., 2020).

Yet, there are more and more co-habiting parents. In case of a separation, such parents are less likely to have contact with the legal system since they do not have to apply for divorce. I earlier criticized existing family policies for being focused on a traditional family model. Against this backdrop, policy initiatives that support families in separation contexts are without doubt an achievement. At the same time, a traditional understanding of the family still seems to be present in such social services since having been married is, in most cases, a precondition for having access to them through the legal system.

However, if the purpose of family policy is to make all different kinds of family structures work in order to protect children and promote their development, then policy initiatives should support parents in separation contexts irrespective of whether they appear in court or not. To also reach parents who do not have contact with the legal system, states must work together with communities and organizations whose services should be easily accessible and free. Yet, in case of parents who do not appear before the court, attendance in community-based programs can hardly be legally enforced. Rather, parents have to seek for help proactively.

Accordingly, policy measures will only be effective if parents and society do their fair share in making successful separation processes possible. It takes volunteer mediators and skilled instructors as well as organizations who offer support services. And most importantly, it takes parents who recognize that they have specific duties towards their children in case of a separation and accept such offers. But what if they do not?

Beyond legal regulations, we have limited possibilities to influence the negative behaviors that parents in separation contexts often engage in. What we can do, however, is make parents aware of support services. Caregiver or teacher could inform parents about such programs and encourage them to take part, for example. For, in case of parents who do not receive information through the legal system, awareness of such support services might be low. Another option would be to create incentives for parents to make use of such services, for instance by giving public subsidies only to those who can prove attendance in (skill-based) divorce education programs.

My critical points about existing support services for parents in separation contexts showed that there is still a long way to go. It will take time and further empirical research until a continuum of services is developed which parents in different family structures and with different social backgrounds can and will make use of. But for now, let us imagine that state

and society succeed in giving all parents in separation contexts the support they need. In this scenario, families in separation contexts would receive adequate public subsidies. Parents could make use of flexible working policies and good daycare. Furthermore, all parents could seek assistance from a mediator to resolve their conflicts or attend a divorce education class where they learn how to deal with a parental separation in a child-oriented way.

Those structural changes would surely improve the situation of many families in separation contexts. However, this still does not seem to be the whole solution. So far, I thought of families as isolated social units within an institutional setting. I disregarded that a parental separation does not occur on an island, but within a certain social context. In the next section, I will therefore address the role of friends and close relatives in making successful separation processes possible.

### 6.3 Social Support Networks and the Duties of Relatives and Friends

As already suggested, it takes more than empirically informed and widespread policy initiatives to make successful separation processes possible. This is because the state only has limited possibilities to support parents in separation contexts who have difficulties to meet their parental duties. It can provide families in separation contexts with social services and financial resources to facilitate successful separation processes, but those families may also need another kind of support that the state cannot offer. To be able to cope with the changes in family life, parents in separation contexts may also need friends and relatives who provide them with emotional support, who give advice or take on child rearing tasks. Friends and family members may be in a unique position to promote a successful separation process in virtue of the personal relationships they share with the parents and/or the children. Empirical studies show that parents in separation contexts benefit from supportive social networks of friends and relatives (Aseltine & Kessler, 1993; Thabes, 1997). Yet, we can ask from an ethical perspective whether there is a corresponding duty to provide such kind of support and if so, what the normative basis of this duty is.

One possible answer could be that friends and relatives have a general duty of mutual support insofar as they share valuable relationships. According to the relationship goods account that I introduced in Chapter 2, such relationships are valuable in virtue of the goods they can produce. Since flourishing relationships contribute to living a meaningful life, the participants have a strong interest in enjoying these goods, which gives rise to a duty to co-create them (Seglow, 2013; Brighouse and Swift, 2014). In case of friendship, mutual concern

is considered a relationship good, for example. Consequently, friends have a duty to express mutual concern, for instance by supporting each other in difficult times (Owens, 2012). In the case of relatives, it might be the relationship good of having a shared family history and a special kind of emotional bonding that gives rise to duties of support when a family member is in need of help.

If a friend or a close relative goes through a separation process and faces difficulties, this seems to be a concrete case where relationship-based duties of support arise. Take the example of Julie and Sarah who have been best friends since childhood. It seems reasonable to assume that Julie has a duty to provide Sarah with emotional support after she was left from her husband John who is the father of her 4-year-old son Luke. As the separation process is accompanied by conflicts, Sarah suffers from emotional distress, so Julie is there for her. She has a duty to do so in virtue of the special kind of intimate relationship they share. But what kind of support does this relationship-based duty entail?

This relationship-based duty does not necessarily amount to promoting a successful separation process as suggested by the idea that we, as a society, need to establish a certain kind of division of moral labor to protect children from the potential harms of a separation. Julie's relationship-based duties are primarily directed at her best friend Sarah and her wellbeing. Even if Julie was friends with John, she might now have to take sides in face of the conflictual breakup. As a way of providing emotional support, Julie might show understanding for Sarah's feelings of anger and disappointment towards John. To say something like "John is such an idiot! You should not care about him anymore!" might help Sarah, but it could at the same time negatively influence the separation process since it might acerbate acrimony and further polarize the ex-partners. This is especially problematic given the fact that a child is involved.

If parents fail to develop a cooperative co-parental relationship as part of the separation process, this will affect the wellbeing and development of the child. As children are vulnerable human beings who will become society's future adults, they can make justified claims on others to be provided with the resources and care necessary for their wellbeing and development. Those claims do not only generate duties for parents, but for all individuals who are capable of fulfilling them (Engster, 2010).

In the case described above, Julie seems to be in a privileged position to promote a successful separation process so that Luke can adjust to the changes in family life. Julie is, for example, in a privileged position to give Sarah advice. As her best friend, Julie has special knowledge about Sarah and about her relationship with John. In virtue of having this special knowledge, Julie might be able to give a specific kind of advice, which a professional

practitioner might not be able to give. She can advise Sarah on how to resolve a conflict or on how to rearrange shared parenting by taking into consideration what kind of people Sarah and John are.

Here is another example: Because of having a special kind of emotional bonding, Julie might be in a privileged position to assist Sarah in overcoming feelings of anger and disappointment, for instance by listening to her worries and by calming her down. This might reduce general psychological distress and enable Sarah to think through the separation process more rationally. At this point, Julie could engage in a conversation with her. She could try to change Sarah's mindset by making her aware that her negative feelings relate to the conflictual couple relationship, which has now come to an end. Instead, Julie could try to draw Sarah's attention to the unpleasant, yet inescapable, fact that she and John are still parents who have a shared responsibility for Luke.

These examples show that Julie does not only have relationship-based duties towards Sarah. Rather, Julie also has to fulfil part of a collective duty to foster children's wellbeing. This is because Julie is in a privileged position to facilitate a successful separation process in virtue of being Sarah's best friend. This collective duty may limit Julie's partiality toward Sarah. She should not only consider Sarah's needs but also Luke's so that she can support Sarah in a way that is conducive, rather than detrimental, to a successful separation process.

What I said about the duties of support that friends have towards families in separation contexts might also apply to close relatives provided that they have flourishing family relationships. Flourishing family relationships are in some sense similar to friendships. They are both characterized by intimacy and mutual concern. Just as friends, there might also be close relatives who are in a privileged position to provide emotional support in order to make a successful separation process possible. Yet, there are also differences: Close relatives tend to be more involved in family life. If so, they might also have a close relationship with the child, whereas this is rather unusual in case of a parent's friend. Qua having this close relationship with the child, relatives could also support families in separation contexts by taking on child rearing tasks. To illustrate this, consider the following example of 6-year-old Lucy and her grandmother Emma.

Lucy's parents separated recently and are now having a difficult separation process. They faced problems about how to rearrange shared parenting since Lucy's mother Olivia has to work a lot as a manager and Lucy's father Andrew moved to another city. Lucy visits her father on the weekends, whereas Olivia takes care of her during the week struggling to reconcile work and child rearing responsibilities. This is why grandma Emma picks up Lucy from school

twice a week. Since Emma lives in the neighborhood, she and Lucy have a close relationship. Through taking on child rearing tasks, Emma provides Lucy with emotional security and a sense of stability and thus supports her in coping with the new situation. At the same time, she relieves Lucy's mother who has difficulties to adjust to the changes in family life.

What Emma does is, without doubt, very helpful for the family. It is unclear, however, whether Emma has a duty to provide such kind of support or whether this is a case of supererogation. In the case of Julie and Sarah, Sarah would seem to be justified in blaming Julie if she, as her best friend, did not provide her with emotional support in face of the difficult divorce. Similarly, we as a society seem to be justified in blaming Julie for providing Sarah with a kind of support that is detrimental to a successful separation process while she is in a privileged position to help. It is, by contrast, hard to imagine that Olivia could justifiably blame Emma for not taking on child rearing tasks as this requires a high level of commitment and a considerable amount of time. This observation might show that Emma is doing more than she would have to.

Although it is difficult to precisely define the content and scope of the duties that friends and relatives have towards families in separation contexts, it is reasonable to assume that such duties exist in virtue of the relationship they share. Yet, what kind of duties a friend or relative has in a given kind of situation is difficult to determine since a variety of factors play in: As members of society, friends and close relatives not only have relationship-based duties, but they also have a general duty to protect children and promote their wellbeing. The content and scope of the duties that friends and relatives have towards families in separation contexts depends on how these different kinds of duties are weighted against each other. Besides that, the case of Emma who takes care of her granddaughter Lucy showed that another factor plays in, namely how costly it is for friends and close relatives to fulfill these duties.

## 6.4 Summary

In this final Chapter, I tried to demonstrate that children can only be protected from the potential harms of a separation if we conceive of a parental separation as something that concerns us all, as members of society in general and as friends, politicians, teachers, social workers etc. in particular. When parents in separation contexts fail to meet their parental duties, this has an impact on all of us. If children of separated parents have behavioral problems, a poor school performance or fragile social relationships, this affects the social fabric as well as the individuals in their social environment.



I showed that such problems could be solved if others assumed part of a collective duty to ensure that children are provided with the resources and care they need for their wellbeing and development. In case of a parental separation, such a collective duty becomes relevant both because a separation poses a risk to the wellbeing and development of the child and because it is possible to improve the situation of these children. In this regard, I presented different kinds of approaches to support families in separation contexts. Some aim at changing institutional structures through political incentives, while others concern personal interactions between friends and relatives.

As explained in Chapter 3, whether a separation process is successful depends on a complex interplay of different factors. To respond to this complexity of factors, different kinds of support are necessary that have to be provided by different parties: parents, state and the people in the close environment of the family. Parents who are about to separate are in a privileged position to provide their children with continuity of care and emotional security, for example. If the quality of family relationships suffers in light of a difficult separation process, this is not something the state or a relative can compensate a child for. Yet, they can try to prevent such scenarios from happening by influencing the circumstances that accompany the separation process. For example, having a supportive friend around might alleviate general psychological distress - a factor that negatively influences the separation process. Similarly, the state may do its fair share by protecting families in separation contexts from experiencing poverty, which is another negative factor. This idea of a division of moral labor helps us to see ethical problems in separation contexts in a different light. When parents in separation contexts fail to meet their parental duties, this is not - or at least not entirely - a personal failure as many people might think. Rather, it is also a failure of the state and society to provide institutional structures and a social environment in which all parents, especially parents in separation contexts, can fulfill their social role sufficiently well.

## Conclusion

In this book, I identified practical ethical problems that families in separation contexts might experience and made suggestions for how they could be solved. I argued that a parental separation is problematic as it poses a risk to children's wellbeing and development. Children are vulnerable human beings who are dependent on others to be provided with the care and resources they need. In this context, it is essential that children are raised in stable family structures by parents who are attentive to their needs and who provide them with flourishing parent-child relationships. I argued that these familial relationship goods can be realized in all different kinds of family forms - even in cases of parental separations. Thereby, I refuted arguments that have been put forward by so-called New Familists who think that traditional families are best suited to meet children's needs and thus merit special protection by the state.

I criticized such policy recommendations as they are in tension with the liberal principles to which I have committed myself. Besides that, I explained why privileging traditional families would not be useful to reach what I have defined as the actual goal of family policy, namely to ensure that as many children as possible have their needs fulfilled. As the New Familists try to counteract major social trends in Western societies that are extremely difficult to reverse, the measures they propose might be largely ignored. By trying to revive a dying family form, the state fails to ensure that the many children who are raised in non-traditional family forms have their needs met.

However, the New Familists are right that raising a child in non-traditional family forms poses challenges, in case of single parenting, for example, or in separation contexts. In this book, I analyzed cases of parental separations in order to identify ethical challenges and risks. I identified those challenges and risks on the basis of findings from empirical social research. These findings suggest that a parental separation is potentially harmful to the children involved. Thereby, children are shown to suffer from the adverse circumstances that often accompany parental separations, such as impaired parenting, economic hardship or interparental conflicts rather than from the separation per se. This implies that what matters for children's wellbeing is not the parents' marital status. Rather, they need parents who engage in successful co-parenting and who are attentive to their needs - whether separated or not.

According to one strategy that I discussed in this book, we have to avoid parental separations in order to protect children from the potential harms of a parental separation. Yet, I argued that preventing parents from leaving an unhappy relationship does not ensure that children's needs for flourishing family relationships are met. This is because children's

wellbeing might also be at risk when they are caught in dysfunctional two-parent families. If the parents stay together, this is not necessarily better for the children involved. At the same time, a parental separation is not necessarily bad. I have concluded that we are, under these circumstances, not justified in restricting the autonomy of unhappy parents by requiring them to stay together.

In response to this, I suggested an alternative strategy that seeks to avoid the adverse circumstances that often accompany parental separations rather than the parental separation itself. I argued that we could protect children from the potential harms of a parental separation in the context of a division of moral labor where parents, state and society as well as people in the close environment of the family work together to enable successful separation processes. This is the case when the parents manage to stay parents although they are not lovers anymore and now live in separate residences. Parental duties persist despite those changes in the relationships and living circumstances of the family. As a way of fulfilling these duties, the parents have to jointly rearrange family life and shared parenting so that their children's needs for continuity of care and flourishing family relationships are met.

However, I had to admit that parents in separation contexts might have difficulties to meet these specific parental as well as co-parental duties if they suffer from economic hardship or are unable to solve their conflicts. This is where the duties of third parties come into play. I argued that child rearing is a collective endeavor rather than a private project. Accordingly, child rearing responsibilities should be shared. As a way of adopting part of this collective responsibility the state should provide parents in separation contexts with financial support and social services, such as mediation or divorce education classes, to promote children's wellbeing. Besides that, families in separation contexts might need supportive social networks of families and friends who assist them in coping with this stressful situation.

This way of dealing with parental separations promises to be more effective and more useful to promote children's wellbeing than preventing parental separations from happening. While the anti-divorce theorists nostalgically deny changes in family values, I tried to develop a strategy that responds to these social trends. In the past, people married for economic reasons. Nowadays, they pursue individual happiness in their romantic relationships. Since I do not prevent parents from engaging in this pursuit, the strategy I developed promises to be more effective.

Besides that, this strategy might also be more useful to promote children's wellbeing as it focuses on what children really need - parents who engage in successful co-parenting and who provide them with flourishing parent-child relationships. Parents need financial, social and

emotional resources to be able to meet these parental duties, but they do not have to be in a romantic relationship. Yet, this second strategy will work out only if parents, politicians, family friends, relatives and social worker take on their shared responsibility to protect children from the potential harms of a separation. What remains is a risk that this joint enterprise fails, but also a hope that we can improve the lives of many children if it does not.

Thereby, the recommendations I have made might not only benefit children in separation context but children in general. Empirical findings suggest that children tend to suffer from impaired parenting, economic hardship and interparental conflicts rather than from the parental separation per se. I have made suggestion as to how these circumstances could be avoided in case of a parental separation. Yet, these recommendations are applicable more broadly since the harmful circumstances that often accompany a parental separation can occur in any kind of family. Children might suffer when they are regularly exposed to their parents' conflicts irrespective of whether the parents are separated or not. Similarly, poverty affects the wellbeing of children in separation contexts as well as in other family forms. All of these children would benefit if their parents solved their conflicts and got more financial support.

Many of the ethical problems, that I have discussed, are thus not specific to cases of parental separations. So one might wonder why I have focused on cases of parental separations and not on poverty or interparental conflicts. Although my arguments might have border implications, there are at least two good reasons to focus on parental separations. For one thing, parental separations are a widespread social phenomenon. Since children's wellbeing and conservative family values are at stake, parental separations are the subject of considerable public debate. This book was meant to contribute to this debate by challenging flawed assumptions and prejudice. Instead, I tried to show that the reality of families in separation contexts is more complex than many people assume.

Another reason to focus on cases of parental separations was that children in separation contexts might be especially vulnerable since risk factors can accumulate and reinforce each other. This is, of course, a serious cause of concern. It would be wrong, however, to conclude from this that a parental separation is inherently bad. For, then we might fail to acknowledge that it also offers an opportunity to overcome problems and to rearrange family life successfully. This positive vision should guide us in how we deal with parental separations in the future.

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