

# Won't Somebody Please Think of the Parents?

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# Won't Somebody Please Think of the Parents?\*

*Liam Shields*

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Should parental rights be allocated to the best available parent? Anca Gheaus has argued that they should and that the interests of those who might rear them are strictly irrelevant to their allocation. This discussion article defends the view that parents' interests are relevant to parental rights, against this latest argument. I show that the Best Available Parent View, as stated, conflicts with the exclusion of parental interests, on which it allegedly rests. I show that by including parental interests we better explain how parental rights should be distributed and over a wider range of cases.

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## I. INTRODUCTION

How should parental rights be distributed? Should children always be placed with the best available parent? Do the interests of those who would parent them matter? What place, if any, should considerations of biological connection have in our deliberations? While many believe that possession of these rights has a biological basis, the two most prominent positions in the philosophical literature focus fundamentally on the interests of parents and/or children. Child-centered theorists believe that only the interests of the child can justify an allocation of parental rights. Dual-interest theorists believe that parents' interests matter too.

In her recent article "The Best Available Parent," Anca Gheaus provides a novel argument in favor of the child-centered position and defends

\* I am very grateful to my fellow pandemic parents Michael Garnett and Sarah Fine for a lengthy discussion of an early draft. I am also grateful to Richard Child and Stephen de Wijze for comments on a draft and to Stephanie Collins for discussing the arguments.

a new positive account of how parental control rights should be allocated.<sup>1</sup> The argument sets out the Liberal Presumption, a general principle according to which rights to control the lives of those who have full moral status, such as parental rights, can only be justified in the best interests of the controlled or with their consent (“BAP,” 435). Since children cannot give consent, the Liberal Presumption states that parents’ rights are justified exclusively in the interests of the child, thus providing a powerful new rejection of dual-interest views. Gheaus takes the presumption to entail the Best Available Parent View, a revisionary account of how parental rights should be allocated. According to this view, parental control rights should initially be allocated to those willing adults who would perform best with respect to the child’s interests, consistent with the basic rights of third parties (“BAP,” 435).

In this discussion article, I provide a response on behalf of dual-interest views to the arguments set out in “The Best Available Parent.” In Section II, I argue that the Best Available Parent View violates the Liberal Presumption and so cannot be supported by it. Nevertheless, the Best Available Parent View and the Liberal Presumption raise important challenges for dual-interest views that must be addressed. In Section III, I identify two problems with the Best Available Parent View. First, the view relies for its plausibility on an arbitrary distinction between initial allocation and reallocation. Second, the view states that the value of gestational relationships is relevant to the justification of parental rights but denies the relevance of analogous parental interests. This is inconsistent. I then consider Gheaus’s suggestion that the Best Available Parent View can avoid these problems by granting adults rights to a long-term and secure association, but not control (“BAP,” 455–57). I explain that the distinction between association and control is unstable and so the response fails. In Section IV, I turn to the Liberal Presumption. I show that, once contextualized, the examples used to support the presumption lack force and that all views that do not violate the presumption fail to explain some of our most important convictions. Section V concludes that we should adopt a dual-interest view and take a more general approach to theorizing the distribution of child-rearing rights.

## II. THE ARGUMENT

In “The Best Available Parent” Anca Gheaus argues that dual-interest views should be rejected because they violate the Liberal Presumption. The basis for the presumption is the intuitive idea that control rights

1. Anca Gheaus, “The Best Available Parent,” *Ethics* 131 (2021): 431–59, henceforth cited as “BAP.”

over another nonconsenting person who has full moral status cannot be grounded in the interests of the possessor of those rights. Gheaus explains as follows: "Liberals believe that rights to control the life of another person must be justified either by appeal to consent given by the person whose life is controlled or, if consent is unavailable, by appeal to that person's legitimate interest and third parties' interests, but not by appeal to the interests of the person doing the controlling . . . therefore there is a presumption in favor of the view that the right to parent is held by the person who would make the best available parent for a child and who is willing to rear her" ("BAP," 435).<sup>2</sup>

If sound, the Liberal Presumption refutes the defining claim of standard dual-interest views: that the interests of parents, as well as children, determine the just distribution of parental rights. Gheaus believes that the presumption supports the following account of how parental rights should be allocated: "The Best Available Parent View is centered around a comparative claim: that the right to parent is held by the person who, among those willing to parent, is going to advance the child's legitimate interests best" ("BAP," 434).

However, the Best Available Parent View does not follow from the Liberal Presumption. The presumption establishes only that parents' rights are justified exclusively in the child's interests. It does not follow that we ought to take a comparative approach and maximize the child's interests, let alone accept the Best Available Parent View, with all its caveats.<sup>3</sup> A satiable noncomparative approach to promoting the child's interests only to some threshold also satisfies the presumption.<sup>4</sup> At the very least, there is a missing step in the argument. But the relationship between the Liberal Presumption and the Best Available Parent View is even looser. The Liberal Presumption cannot support the Best Available Parent View because that view violates the presumption in two ways. First, the view makes parental willingness a prerequisite for parental rights allocation, thus elevating a parental interest, in occupational choice ("BAP," 435 n. 9), above those of the child in all but the worst-case scenarios where there is no minimally competent willing parent ("BAP," 434). Second, the view protects gestational relationships because of its value for the gestational parent even if there is a better parent available, again elevating a parental interest above those of the child ("BAP," 432, 444). In these two ways, the

2. The presumption admits of two interpretations. On the first, parental interests are irrelevant to the justification of child-rearing (see "BAP," 431, 434, 435, 454). On the second, parental interests are relevant but never outweigh the child's interests (see "BAP," 433–34, 443, 444). My arguments have force against either.

3. Here I have in mind the "moderations" and restrictions explained in "BAP," 432.

4. See Sarah Hannan and Richard Vernon, "Parental Rights: A Role-Based Approach," *Theory and Research in Education* 6 (2008): 173–89.

Best Available Parent View violates the Liberal Presumption by allowing the control right holder's interests to justify the allocation of parental control rights.

Although the Best Available Parent View and the Liberal Presumption are incompatible, each poses a challenge to standard dual-interest views. The Best Available Parent View poses a challenge to standard dual-interest views by offering a rival account of how parental rights should be allocated that is only weakly dual-interest. If it is more plausible, then we should accept it and reject standard dual-interest views. The Liberal Presumption poses a challenge to standard dual-interest views by excluding the interests of parents from justifying parental rights. Each challenge requires a response.

### III. THE BEST AVAILABLE PARENT VIEW

Standard dual-interest views hold that parents' interests are weighty and relevant to the justification of allocations of parents' rights. One parental interest that such views tend to emphasize is the weighty interest that parents can have in fulfilling the parental role successfully.<sup>5</sup> They believe that parenting can be good for parents and that this means that parental rights need not always be possessed by the best available parent. If the Best Available Parent View were more plausible than standard dual-interest views, then this would, as Gheaus notes, have radical and revisionary implications, including the rejection of some of the most prominent positions in this debate ("BAP," 432). However, the Best Available Parent View has two important defects that make it less plausible than standard dual-interest views. First, it relies for its plausibility on an arbitrary distinction between initial allocation and reallocation of child-rearing rights. Second, it includes the interest in maintaining gestational relationships and arbitrarily excludes other analogous parental interests that dual-interest views standardly include. Dual-interest views do not make a similar arbitrary division.

#### A. Allocation and Reallocation

Gheaus distinguishes cases of initial allocation and cases of reallocation of parental rights ("BAP," 436–37). Initial allocation occurs at birth and may include adoption of orphans. Reallocation involves changes to who

5. Harry Brighouse and Adam Swift, *Family Values* (Princeton, NJ: Princeton University Press, 2014); Matthew Clayton, *Justice and Legitimacy in Upbringing* (Oxford: Oxford University Press, 2006); Colin MacLeod, "Parental Competency and the Right to Parent," in *Permissible Progeny? The Morality of Procreation and Parenting*, ed. Sarah Hannan, Samantha Brennan, and Richard Vernon (Oxford: Oxford University Press, 2015), 227–45; Liam Shields, "How Bad Can a Good Enough Parent Be?," *Canadian Journal of Philosophy* 46 (2016): 163–82.

holds parental rights, for instance, cases involving removal of rights from inadequate parents and the resolution of post-separation custodial disputes. Gheaus stipulates that the Best Available Parent View applies only to cases of initial allocation (“BAP,” 437). Restricting the view to initial allocation is crucial to the plausibility of the Best Available Parent View. In cases of reallocation the view is implausible because it requires the redistribution of children whenever doing so would be even marginally better, overall, for the child, regardless of the value of the relationship to the current parent and regardless of how good a job they are doing. This is acknowledged (“BAP,” 437). Even if such reallocation would be rare (“BAP,” 436, 437), these are the view’s implausible implications. Since initial allocation and reallocation concern the same control over children, and we have some reason to prefer a more rather than a less general theory, the restriction of the Best Available Parent View to cases of initial allocation requires support. It cannot be stipulated.

Gheaus suggests two reasons for distinguishing initial allocation from reallocation. The first is that continuous care for a child is at stake in cases of reallocation but not in cases of initial allocation (“BAP,” 436). The second is that the value of existing relationships is at stake in cases of reallocation but not in cases of initial allocation (“BAP,” 437).

These differences, however, are overstated and cannot support separate approaches to initial allocation and reallocation. The relationship between gestational parent and unborn child exists prior to birth, and since the gestational parent is recognizably providing care before birth, breaking that relationship would sacrifice continuity of care.<sup>6</sup> Whatever other differences there may be, even on the Best Available Parent View, continuity of care and existing relationships are at stake in both initial allocation and reallocation. But even if continuity of care and existing relationships were at stake only in cases of reallocation, this would not establish that distinct principles must apply. A single account of justice in child-rearing rights that acknowledged the value of existing relationships for the parent, including gestational ones, and the value of continuity of care for the child would capture these differences.

To illustrate this, consider Gheaus’s own stork example (“BAP,” 444), where children are brought to parents by storks and so there are no preexisting relationships and no prospect of maintaining or sacrificing continuity of care. The distinction would be robust. In stork cases, dual-interest views can refer only to the child’s interests and may resemble a child-centered view if it is a comparative dual-interest view (“BAP,” 442

6. The value of continuity of care may be low to start with and become large enough to outweigh possible benefits of reallocation. This makes the distinction more robust, but, as I explain, this is still insufficient.

n. 27).<sup>7</sup> Dual-interest views, therefore, need not be less plausible than child-centered views even when the distinction is fully robust.

With respect to real cases of both initial allocation and reallocation, dual-interest views are overall more plausible than the Best Available Parent View. In initial allocation, the dual-interest view can appeal to gestational and other existing relationships, such as those formed with the non-gestational parent, alongside the child's interests in continuity of care. The view is no worse than the Best Available Parent View at capturing these considerations, and it may better capture other existing relationships. In reallocation the dual-interest view acknowledges the value of existing relationships formed with current parents as a reason against reallocation, something the Best Available Parent View cannot.

In summary, there is no principled distinction between reallocation and initial allocation and so no rationale for restricting the Best Available Parent View to it. Since standard dual-interest views can perform better overall with respect to real initial allocation and reallocation cases, and no worse with respect to stork cases, there is no reason to endorse the Best Available Parent View as a separate principle for initial allocation cases.

### *B. Gestation*

In Section II, I explained that the Best Available Parent View is weakly dual-interest and violates the Liberal Presumption in two ways. But while the Best Available Parent View only states that the gestational relationship may warrant protection, standard dual-interest views go further and include the interests of some adults in parenting quite generally. If this is a mistake, and the only parental interest we should include is the interest in maintaining the gestational relationship, then the Best Available Parent View may be preferable. To defend the Best Available Parent View on these grounds, proponents must argue that no other parental interests are relevant to the justification of parental rights. Such an argument cannot, however, point to the fact that parental interests are excluded by virtue of being parental, as the Liberal Presumption does, because the Best Available Parent View does admit parental interests.

Starting with relationships formed between conception and birth, gestational relationships are, in many significant ways, like other valuable relationships with the child that seem just as salient for cases of initial allocation and for the same reasons. These include those involving the nongestating partner, commissioning parents of a child by surrogate,

7. For an example of an explicitly dual-interest comparative view see Shields, "How Bad." A noncomparative dual-interest view may give fair chances to good enough prospective parents.

and the child's siblings. Such persons can be heavily involved in preparing for the child's arrival, may interact with the child such that the child can recognize the person's voice, and may provide recognizable forms of care and not merely as a way of maintaining their relationship with the gestational parent, but for the unborn child's own sake. Such persons may become heavily invested in the unborn child, would be devastated by news of its sickness, and would be delighted by every piece of good news and especially the child's birth. The Best Available Parent View would implausibly exclude, not merely downplay, the interests of those other than the gestational parent even though they have similar relationships with the unborn child.

Consider how the Best Available Parent View would lead us to think about commissioning parents in a surrogacy arrangement. Whatever we think about the regulation of surrogacy arrangements in law, it would be bizarre to think that the surrogate can, but the commissioning parents cannot, have a valuable or important relationship-based interest in parenting the child over and above any general claims that other adults might have. If the surrogate relinquished their rights, the commissioning parents would plausibly have a claim, perhaps not decisive, to hold the parental rights of that child. The Best Available Parent View would see the surrogate as the only adult who has any fundamental relationship-based interest relevant to the distribution of the moral right to parent the child. Commissioning parents would be no different from anyone else on an adoption waiting list. The relationship between an unborn child and a gestational parent can be relevantly similar to the relationship between another person and the unborn child, at least with respect to the features that appear to make that relationship salient to parental rights.<sup>8</sup> The Best Available Parent View should, on pain of inconsistency, incorporate other adults' interests.

The case for including relationships formed and maintained after the birth is even stronger. Those parents have at least as strong an interest not to be denied their rights if they are doing a good job. If the maintenance of the gestational relationship matters, then existing parent-child relationships, ones that did not necessarily begin during gestation, must also matter and be relevant.<sup>9</sup> So the Best Available Parent View must include existing relationships other than the gestational relationship.

In doing so, it would resemble the standard dual-interest view, but it could still retain some distinction by denying one important aspect

8. For an account of these features see Anca Gheaus, "The Right to Parent One's Biological Baby," *Journal of Political Philosophy* 20 (2012): 432–55. One difference is that gestation is embodied. But since nongestational parents do form valuable parental relationships with their children, and since many gestational parents do not form such a relationship with their child, embodiment is neither a necessary nor a sufficient condition.

9. I am grateful to Stephen de Wijze for helping me to clarify this point.

of that view: that there is a general interest in parenting held by some people before becoming parents. Excluding such an interest may appear easier to defend because the difference between existing and prospective relationships is obvious. But this difference cannot justify the exclusion of interests in prospective relationships and therefore cannot prevent the view from collapsing into a standard dual-interest view. Gestational relationships are not only existing by the time of the child's birth; they are also in an important sense prospective because aspects of the relationship that are most valuable are yet to be realized. Indeed, it only makes sense to say that there is value in maintaining a relationship if there was an interest in establishing it in the first place. The gestational relationship is rarely if ever thought to be valuable independently of the richer and more complex parent-child relationship it leads to.

To make sense of the position that prospective parents' interests matter too, we can understand current parents as having an interest in maintaining a relationship with their child and prospective parents as having an interest in establishing and maintaining a relationship with a child. While the interest in maintaining may often or always be more important, the prospective interest in relationships may also be important. This point is derived from a more general principle. If something is valuable to continue, it is also valuable to start, and so if engaging in a valuable activity gives rise to an interest, then so does seeking to engage in that activity.<sup>10</sup> The interest in establishing a parental relationship is parasitic on the interest in maintaining that relationship. Consider the following example. Both Peter, practicing doctor, and Agatha, an aspiring doctor, recognize the value in "being a doctor"; though there are differences, there are important similarities in the value of occupying a role and the value of the opportunity to occupy a role. Imagine that there is a limit to the number of doctors who can be employed. In selecting a sound policy, do we give Agatha's interest no weight because she is not currently engaged in practicing medicine? It is plausible to think that Agatha has a weighty claim that Peter be retired, but Peter also has a weighty claim that he continue to practice medicine. Perhaps Peter's claim is weightier. If both interests are weighty and relevant, then it implies that prospective relationships should be considered as well as existing ones. We cannot consistently exclude the interests of prospective parents while including the interests of current parents in maintaining an existing relationship, just as we cannot exclude other existing relationships while including gestational relationships. If we include gestational relationships, existing parent-child relationships, and a general

10. Sometimes, when we make a mistake in starting something, we can, on balance, have more reason to stick it out than quit. But here I am making a different point about how something that is valuable to continue is, for that reason, something that is valuable, in one way, to start. I thank Richard Child for pressing me on this point.

interest in establishing parent-children relationships, we arrive at a standard dual-interest view.

*C. Control Rights*

The exclusion of the full complement of parents' interests is arbitrary and makes the Best Available Parent View less plausible. However, if Gheaus's suggestion toward the end of the article is right that "adults' weighty interests in rearing children can be satisfied by establishing beneficial intimate and caring, although not globally authoritative, relationships with children, relationships which are protected from outside interference" ("BAP," 455), then the Best Available Parent View may be able to accommodate the parents' interests in a different way, without allowing general parental interests to determine how control rights are allocated.

There is some ambiguity in Gheaus's discussion. According to one version, associate rights are grounded only in the child's interests ("BAP," 433). This version would fail to respond to the objections above by granting those with parental interests associate rights only by chance, when in the child's best interests. According to another version, the adult's interests in child-rearing relationships ground associate rights, while control rights are allocated primarily in the child's best interests, taking into account the gestational relationship. For this version to successfully address the objections, the division of control and association must be able to satisfy the weighty interests of adults. I argue that there can be no separation that will satisfy those weighty interests.

Control rights and association rights will inevitably conflict. Note that parental control rights include "at the very least . . . the right to control where a child lives and a significant proportion of a child's daily routine" ("BAP," 434). But parents can be under a duty to help maintain the best combination of associations for their child ("BAP," 456). If the parent wants to move to a different country or change what the child's routine is like precisely on what was a visit day, then how is the associate to respond? The associate's right either limits or curtails the rights of the parent to determine where to live or important parts of the child's routine. If so, associates operate some form of final control. If not, and the parent may act in ways that would sever the associate's relationships, those associates have no protection for their relationship at all, far from the long-term and secure association we are told is required to satisfy their interest ("BAP," 455). Without some control there is no satisfaction of these interests by associate rights, and without satisfaction of these interests there is no defense against the above arguments.

Such conflicts can be resolved only by appeal to the more fundamental interests. Once we know what interests, and what kinds of relationships, the rights are supposed to protect, we can see which combination

best protects them. For instance, perhaps some grandparents' or siblings' rights to associate relationships should include some control and limit to parents' rights to move far away from them, severing those relationships. If we allocate control rights independently from allocating associate rights, we can end up with a self-defeating combination that fails to respond appropriately to the interests. For instance, it can be better to select the second-best holder of parental rights if it means selecting much better associates and ending up with a better overall package in terms of the child's interests. This might be the case if the best associates are unwilling to associate if someone in particular is allocated control rights, as may be the case in post-separation custodial disputes. This highlights the structural problems of separating out control from association in assessing the justice of the allocation of child-rearing rights, rather than attending to the various valuable relationships and interests first and then tailoring the rights, with varying degrees of control and rights to association.

This section has highlighted two problems for the Best Available Parent View. First, the plausibility of that view depends on there being a robust distinction between initial allocation and reallocation, but the explanations offered for the distinction are inadequate and the standard dual-interest view can apply to all types of cases more plausibly. Second, the Best Available Parent View includes only one parental interest: the gestational relationship. But since the gestational relationship shares key features with other existing and prospective relationships, the interests of the adults who would be in those relationships cannot be excluded, on pain of inconsistency, from determining the just allocation of parental rights. Finally, the Best Available Parent View cannot accommodate the parental interests by granting those adults who have them association rights instead because the inevitable conflicts that would arise make this division unstable and unable to accommodate the interests.

#### IV. THE LIBERAL PRESUMPTION

The Liberal Presumption holds that control rights, such as parental rights, can only be justified by appeal to consent, or the interests of the person controlled ("BAP," 435). It therefore denies the central claim of standard dual-interest views that parents' interests, too, can justify allocations of parents' rights. I now respond to this challenge. First, I show that, once contextualized, the examples used to support the Liberal Presumption fail to show that it generalizes to cases involving the allocation of parental rights. The presumption therefore lacks force against the dual-interest view. Second, I show that only very implausible views of the allocation of parental rights can satisfy the presumption because of the exclusion of parental interests. Therefore, we should reject the Liberal Presumption in cases of parental rights allocation and endorse a standard dual-interest view.

A. *Examples*

To illustrate the plausibility of the Liberal Presumption as a general principle applying to control rights, Gheaus uses examples of rescue cases to show that rescuers' interests are not relevant to whether they have the right to rescue. Gheaus infers from this that parents' interests can be no more relevant to parents' rights than rescuers' interests are to rights to rescue. Gheaus states, "Imagine that during a humanitarian emergency, some people would make adequate but suboptimal rescuers—that is, by assumption, would save the same lives that would be saved if they did not get involved in the rescue action, but say, more slowly and by sparing less suffering . . . it is difficult to see how their interest in making a contribution could possibly outweigh the victim's interests in speedier rescue and minimal suffering" ("BAP," 443).

Although rescue cases conjure images of lifesaving benefits, the stakes in the examples are only speedier rescue and less suffering. The lower stakes are necessary to mirror the stakes where dual-interest and child-centered views have different implications, since both agree that the child's basic interests have high priority. The dual-interest views are deemed counterintuitive because, by denying that the best available parent should always hold the right to parent, they inflict avoidable suffering, as well as burdens equivalent to slower rescue, on the child. But this is not quite true. Dual-interest views will permit suboptimal parenting of the child sometimes, but they may conclude that the child's weighty interests, such as those involving suffering, are greater than those of the parents. One need not reject the relevance of parental interests to explain that minimization of suffering may outweigh the relevant interests of the parent.

The child-centered position, on the other hand, holds that any of the child's interests can outweigh any of the parents' interests, including their suffering. In the rescue examples the inferior, but nevertheless good, rescuer will not suffer if she is denied the right to save, though it may be bad for her to miss out on her opportunity to make an important and valuable contribution to the world ("BAP," 443). But in this respect, it is disanalogous to cases involving parents' rights. Parents whose rights are reallocated will suffer.<sup>11</sup> Consider a parent who is doing a good job of rearing a child, but even accounting for the costs of instability to the child, another parent would do a better job. This might be for some of the reasons Gheaus gives for judging a parent as "better," such as because the other parent is better at helping the child to navigate the emotional challenges of childhood, such as the death of the family pet ("BAP," 446), or the parent has other children who the child would benefit from

11. Unlike the Best Available Parent View, the Liberal Presumption is not restricted to cases of initial allocation.

forming a sibling relationship with. By allocating parental rights to the better parent, we impose great suffering on the current parent.<sup>12</sup> This suffering can only be captured by a dual-interest view that acknowledges the importance and weight of parents' interests.

The rescue examples used to support the Liberal Presumption exaggerate the kind of interest that might be at stake for the child if we permit the inclusion of the interests of the parent. They also fail to appreciate what is at stake for the parent, who may be devastated by having an existing and valued relationship severed.<sup>13</sup> The examples are therefore not analogous to parental rights cases, and these differences diminish the force of the presumption against dual-interest views, which can explain parents' rights cases quite plausibly.

### *B. The Implications of the Liberal Presumption*

The Liberal Presumption rules out all but the most implausible views of justice in the allocation of child-rearing rights. In denying the relevance of parental interests, the Liberal Presumption denies us a basis for explaining at least three of our most important convictions.

First, all views that satisfy the Liberal Presumption require changing the allocation wherever doing so is even marginally in the child's best interests, regardless of the costs to the adults of severing their relationships and regardless of how good a job they are doing. A common response to this objection is that the child's interest in continuity of care means that reallocation to better parents would be rare ("BAP," 436–37). But this is not a good response. In those rare cases it would be deeply unjust to reallocate, and the reason is that the parents' interests are weighty and relevant to such decisions. In addition, such cases will arguably not be rare at all. Even though the child's interest in continuity of care is sometimes a very weighty consideration, reallocation may take place early enough that the care that was discontinued had hardly begun. In such cases, the child's interest in continuity of care is unlikely to outweigh the benefits of better overall parental care. Since early intervention is possible in any number of cases, reallocation from even good parents would not be rare on the views that satisfy the Liberal Presumption.

Second, all views that satisfy the Liberal Presumption reach into parental conduct in implausible ways, not in generating overly demanding parental duties but in setting the conditions of retaining the right too

12. Such a trade-off appears to conflict with Gheaus's claim that "children's interests are warranted the same protection as adults' interests" ("BAP," 433).

13. One way of accounting for the suffering of parents who have this relationship severed is to appeal to the notion of attachment parents feel toward their children. For a philosophical account of attachment that could be applied here see Monique Wonderly, "On Being Attached," *Philosophical Studies* 173 (2016): 223–42.

high.<sup>14</sup> Imagine a parent who chooses to take their dream job, rather than remain in the dreadful job they are currently in. Taking this dream job requires them to move to a new area which, though not terrible, is a worse place to raise children. Her taking the dream job could lead her to lose custody of the child on the Liberal Presumption. The implausible over-demandingness of rights retention in this example is best explained by our having concern for parents' interests, which are not indefeasible but do matter, as the dual-interest view acknowledges.

Third, all views that satisfy the Liberal Presumption imply that conscription of better parents is justified whenever it would be best for the child's interests, and not only in emergencies such as wars and natural disasters.<sup>15</sup> Such a view rides roughshod over freedom of occupational choice, even when very little is at stake for the child, perhaps only the prospect of better comfort if their pet dies. A particularly alarming example would be the possible mass forced adoption of children from adequate parents in challenging circumstances, such as living in poverty, to those from more advantaged settings. One can imagine this on a national or international scale, reallocating children from the global poor to the global rich. Appeals to freedom of occupational choice and parental willingness are appeals to the parents' interests. To give them weight is to sacrifice the interests of children for those of the would-be parents and violate the Liberal Presumption.

Defenders of the presumption will again be tempted to appeal to contingencies, perhaps that unwilling parents will often be worse for the child. While this might be true in some cases, it will not always be the case, and we need to explain those cases too. One can observe that lots of people who become good parents do not intend to become parents. They would have turned down the opportunity if offered it. Many people go to great lengths to avoid becoming parents, and yet they can make adequate or even very good parents when those efforts are thwarted. Since some willing parents aren't very good and some are inadequate, some initially unwilling parents will be better than some willing parents.

A better explanation of the importance of parental willingness is available if we adopt a standard dual-interest view. Parental willingness matters in a fundamental way for the parent, and willingness and other interests are to be weighed alongside the child's interests. In emergency cases conscription can be permitted, but generally it is not, even when it would be better for the child, because of the importance of the would-be

14. Such overdemandingness is also implied by the "fitting attitude requirement," which appears to require promoting the child's interests to the limit of self-sacrifice (see "BAP," 447–48, 455).

15. Think, for instance, of evacuees who were sent from British cities to the countryside during World War II, as depicted in *Goodnight Mister Tom* and *Bedknobs and Broomsticks*. I am grateful to Sarah Fine for her knowledge of the latter.

parents' freedom of occupational choice. By excluding the interests of parents, the Liberal Presumption offers us a more consistent child-centered view than the Best Available Parent View, but it does so at the cost of explaining some of our most important convictions.

## V. CONCLUSION

In this discussion article, I have provided a response on behalf of dual-interest views to the arguments set out in Gheaus's "The Best Available Parent." In Section II, I argued that the Liberal Presumption cannot support the Best Available Parent View because the Best Available Parent View violates the Liberal Presumption. Nevertheless, each component raises an important challenge for dual-interest views. In Section III, I identified two problems with the Best Available Parent View. First, the view relies for its plausibility on an arbitrary distinction between initial allocation and reallocation. Second, the view refers to the value of gestational relationships but denies the relevance of further analogous parental interests. I then considered whether the Best Available Parent View can avoid these problems by granting association rights to those who have a parental interest. I explained that the response fails because the distinction between association and control leads inevitably to conflict and cannot satisfy the parental interest. In Section IV, I considered the Liberal Presumption. I showed that, once contextualized, the examples used to support the presumption lack force and that the only views that do not violate the presumption will fail to explain some of our most important convictions. Overall, I have shown that dual-interest views can respond well to the new challenges posed in "The Best Available Parent" and that we should adopt a more general approach to the question of child-rearing rights, one that can address the full range of interests and questions.