

Gamete Donation and Parental Responsibility

TIM BAYNE

PARLIAMENTARY LIBRARY
WESTERN AUSTRALIA

Copy provided by the Western Australian
Parliamentary Library in accordance with
Section 48A of the Copyright Act 1968

ABSTRACT *Unlike surrogacy and cloning, reproduction via gamete donation is widely assumed to be morally unproblematic. Recently, a number of authors have argued that this assumption is mistaken: gamete donors, they claim, have parental responsibilities that they typically treat too lightly. In this paper I argue that the 'parental neglect' case against gamete donation fails. I begin by examining and rejecting the view that gamete donors have parental responsibilities; I claim that none of the current accounts of parenthood provides good reason for ascribing parenthood to gamete donors. I then argue that even if gamete donors do have parental responsibilities for 'their' children, it is not clear that they treat these responsibilities too lightly. I conclude the paper by examining the wider question of just what kind of responsibilities gamete donors might have towards the children that they have a role in creating.*

I. Introduction

Unlike surrogacy and cloning, reproduction via gamete donation is widely assumed to be morally unproblematic. There is little evidence that gamete donors, gamete recipients, or society at large are seriously troubled by the morality of gamete donation. In recent years, however, a number of philosophers, notably David Benatar and James Lindemann Nelson, have argued that gamete donation is deeply morally problematic [1]. Benatar and Nelson argue that gamete donors have parental responsibilities towards the children that result from their donation, and that they typically treat these responsibilities too lightly. Gamete donors, in other words, are guilty of parental neglect. In the first part of this paper I argue against the view that gamete donors have parental responsibilities; none of the current accounts of parenthood provides good reason for ascribing parenthood to gamete donors. But suppose that I am wrong and gamete donors do have parental responsibilities; do they treat these responsibilities too lightly? In the second part of this paper I argue that it is far from clear that they do. I conclude the paper by examining the wider question of just what kind of responsibilities gamete donors might have towards the children that they have a role in bringing into existence.

II. The Grounds of Parenthood

A crucial premise in the neglect argument is the claim that gamete donors have parental responsibilities towards the children that result from their donation. Let us call this the *responsibility principle* (RP). In order to assess the plausibility of RP we need

to determine what the grounds of parental responsibilities — ‘parenthood’, for short — are. Despite a burgeoning literature on this topic there is little consensus about the answer to this question in either philosophy or the law. Four accounts of parenthood currently dominate the discussion: gestationalism, intentionalism, geneticism and causalism [2]. Gestationalists claim that parenthood is based on gestation and child-birth; Intentionalists claim that parenthood is based on intentions to rear; Geneticists claim that parenthood is based on the relation of direct genetic derivation; and Causalists argue that parenthood is grounded in the relation of being the cause of a child’s existence. Each of these positions may be held in various ways depending on whether the relation in question is said to be sufficient or necessary for parenthood (or both). For example, one could be a pluralist about parenthood and hold that each of these relations is sufficient and none is necessary for parenthood.

Since all four accounts of parenthood are live options, rejecting RP on the grounds that it doesn’t follow from one of these accounts would be dialectically problematic. A better argumentative strategy would be to show that it isn’t supported by *any* of these accounts. That is the strategy I will adopt.

Gestational accounts of parenthood clearly fail to support RP, for gamete donors (*qua* gamete donors) don’t stand in a gestational relation to their genetic child. Of course, gamete donors aren’t the only individuals who fail to stand in a gestational relation to their genetic children: all fathers are in this position. Perhaps gamete donors might inherit parental responsibilities in much the same way that fathers do? So how do gestationalists account for paternity? Typically, they hold that paternity is acquired *indirectly*: a man becomes a child’s father by virtue of his relationship with the child’s mother [3]. Whatever the plausibility of this account of paternity, it clearly doesn’t support RP, for gamete donors will rarely have the kind of relationship with the child’s mother that generates paternity.

Intentional accounts of parenthood also fail to support RP. Intentional approaches to parenthood ground parental responsibilities in intentions to procreate and rear. The typical gamete donor has neither of these intentions. He or she has the intention to *help* someone procreate by providing the materials necessary for procreation, but these intentions are importantly different from the intentions to procreate and rear. And it is implausible to suppose that successfully *enabling* someone to procreate might generate parental responsibilities, for if they did, then a doctor who provided fertility drugs would thereby acquire parental responsibilities over the resulting child. In order to find *prima facie* plausible defences of RP we need to turn to genetic and causal accounts of parenthood.

II.1. Geneticism and the Responsibility Principle

At first sight, geneticism seems to support the responsibility principle. If one has parental responsibilities towards those individuals who derive from one’s gametes, then gamete donors would seem to acquire parental responsibilities. Thus, it is not surprising that Benatar’s defence of RP is based on the claim that people have a presumptive responsibility for rearing children who result from their gametes.

... given the way nature works, it is the case that barring any human decisions or actions one’s reproductive autonomy extends over one’s own body, including

one's own sex cells. Thus, in the normal course of events, one is responsible for rearing any of one's genetic offspring [4].

Benatar's description of what holds in the normal course of events seems correct, but gamete donation is quite clearly not something that happens in the normal course of events, and we need an argument for thinking that reproductive autonomy follows the same sort of trajectory in assisted reproductive contexts that it does in normal reproductive contexts. There is good reason to think that it might not.

We can explore such reasons by noting that the phrase "one's own sex cells" can be understood in more than one way. On one reading of the phrase, one's gametes are those gametes that carry half of one's own genes. Let us call the view that parenthood tracks one's own gametes so understood 'biological geneticism'. On another reading of the phrase, one's gametes are those gametes over which one has legitimate control. Let us call the view that parenthood tracks one's own gametes on this conception of what it is for gametes to be one's own 'proprietary geneticism'.

The distinction between biological and proprietary geneticism can be illustrated by considering gonadal transplants, in which a testical is transplanted from one man, *A*, into the body of another man, *B* [5]. Suppose that *B* has a child (Jake). Who is Jake's genetic father? *A* is Jake's genetic father according to biological geneticism, but *B* is Jake's genetic father according to proprietary geneticism. This case supports proprietary geneticism, for intuitively it is *B* rather than *A* who ought to be held responsible for Jake.

Since proprietary geneticism is to be preferred to biological geneticism, the fact that biological geneticism supports RP is of no help to the proponent of RP. The important question is whether proprietary geneticism supports RP, and it seems clear that it doesn't. I suggest that the geneticist should regard gamete donation as an abnormal context in which the presumption of responsibility for one's biological gametes fails in much the same way it fails in the context of gonadal transplants. Gamete donors (*qua* donors) are no more responsible for children produced from 'their' (biological) gametes than are gonadal donors. Instead of regarding the gamete donor as transferring his or her *parental* claims over any offspring resulting from their gametes, we can think of them as transferring their *property* claims over the gametes. Reproductive autonomy over the donated gametes is transferred from donor to recipient. This transfer of ownership over the gametes brings with it a transfer in potential parental responsibilities: *should* any children derive from the donated gametes the gamete recipient(s) would have responsibility over them [6].

Some might object to this account of gamete donation on the grounds that it assumes — incorrectly — that we have property rights over our gametes. If we don't have property rights over our gametes, then we can't understand the gamete donor as transferring their property rights over the donated gametes.

We certainly recognize *some* rights of control over our gametes [7]. It's permissible to put one's sperm in a sperm-bank in case one should become infertile, and while in storage one has rights of control over it. But the central right that is of interest here is the right of alienation — the right to transfer control over one's gametes to another person. Do we — or *should* we — recognize such a right?

It seems clear that current practices of gamete donation do recognize this right to alienate one's gametes; the central question here is whether we *should* permit persons

to alienate their gametes. (Note that the question isn't whether we should permit persons to *sell* their gametes. It's one thing to allow individuals to transfer rights of control over their gametes to others, it's another thing to allow individuals to receive payment for such a transfer.)

One reason — or set of reasons — for not wanting to allow certain types of body parts to be alienated concerns the possibility that the alienator might be exploited and/or coerced. Whatever the merits of such considerations with respect to body parts in general, they seem to be less pressing when it comes to gametes. Unlike such body parts as kidneys and lungs, gametes aren't essential to the health of the donor. And, unlike most other body parts, gametes are fairly easily replaced.

Another reasons for refusing to recognize rights to alienate control over one's body parts stems from considerations regarding the dignity and respect that we think the human body deserves. Again, the objection falls short of its target. It is one thing to admit that the human body as a whole demands a certain form of respect, it is quite another to hold that all parts of the human body demand a certain form of respect. And we certainly have no difficulty with allowing persons to alienate rights of control over *some* parts of their bodies (hair, fingernails, blood). The objection from respect and reverence should, I think, stand or fall on our attitudes to gametes themselves, not on our attitudes to the human body as a whole. Do we really think that *gametes* deserve respect and reverence? One wouldn't have thought so by considering the cavalier way in which most of us treat them. (Even if we were to grant that our gametes are deserving of respect, the objector still needs to do some work to show why this gives us reason for refusing to allow them to be alienated. Works of art and animals are clearly worthy of respect, but we allow them to be alienated.)

A third objection to allowing the alienation of gametes involves the worry that such a move would set us on a slippery slope towards a proprietary conception of embryos and children. Although some continue to regard parental rights as a species of property rights, there are excellent reasons for not wanting to think of embryos and children in proprietary terms [8]. But there is little reason to think that recognizing (limited) property rights over gametes would (or should) lead us to recognizing the same rights over the embryos and children. A gamete doesn't become a zygote, far less does it become an embryo or a child. A new object comes into being with the creation of a zygote, and claims over its ingredients are not claims over it.

I conclude that there is no good reason for refusing to recognize that individuals have rights of control and alienability over their gametes. This clears the way for a conception of gamete donation as involving the transfer of such rights. On the more plausible version of geneticism, one has parental responsibilities for offspring derived from those gametes concerning which one has reproductive autonomy. Since gamete donation involves a transfer of reproductive autonomy from gamete donor to gamete recipient, the genetic account of parenthood does not — despite appearances to the contrary — entail RP.

II.2. Causalism and the Responsibility Principle

While Benatar supports RP by appeal to a form of geneticism, James Nelson's defence of the principle rests on a causal account of parenthood [9] [10].

Whether the instrument used for introducing sperm into the appropriate environment is a plastic syringe or the more traditional vessel, the [genetic] father is irreplaceably involved in the production of the child, in a way that other causal agents (apart from the mother) are not. This argues that even in A.I.D. cases, the biological father is causally situated so as to be assigned the burden of moral fatherhood as well [11].

There are two ways to read this passage, what we might call a 'cause-who' reading and a 'cause-that' reading. Let me begin with the 'cause-that' reading. The idea here is that the biological father plays a crucial causal role in the fact that the mother has a child — a role that other agents — such as medical professionals, grandparents, and friends — don't. Is this claim true? It's far from obvious. A gamete donor might be a but-for cause of the child in question, but 'but-for' causation — on which X causes Y if Y wouldn't have happened but for X — is too weak to support a plausible account of parenthood. Any number of individuals — such as grandparents and medical professionals — can stand in a 'but-for' relation to a child without thereby acquiring parental responsibilities over him or her. Nelson suggests that the gamete donor is irreplaceable in the way that other agents aren't, but this claim too seems false, at least if read as a claim about efficient causation. A particular gamete donor might be more replaceable than a medical specialist in terms of the process of producing some child or other.

Let me turn now to the 'cause-who' reading of Nelson's position. The idea here is that the biological father — and gamete donors more generally — play a crucial role in fixing the identity of the child. Consider a birth-mother, M, who gives birth to a child, C, formed from gametes donated by D. Had D not donated his or her gametes to M she might still have given birth to a child, but, arguably, that child wouldn't have been C. On the influential Kripke-Parfit essentialism-of-origins account of personal identity, an individual couldn't have developed from gametes other than those from which they actually developed [12]. Is the 'cause-who' version of Nelson's more persuasive than the 'cause-that' version?

One point at which the argument could be challenged concerns the essentialism-of-origins thesis. Although this thesis is widely granted, I think it is open to challenges. But I will grant it for the sake of argument here. A more pressing issue is whether the identity-determining role of gamete donors might justify RP. I think there's reason to doubt that it does. The first point to note is that this reading of the causal account actually seems to collapse into a kind of geneticism. What's doing the work here isn't the role of the gamete donor as an efficient cause of the child, but the structuring role of 'their' gametes. We seem to be back at the view, already rejected, on which D has parental responsibilities over a child in virtue of the genetic connection between them.

A further problem with grounding RP in identity-determining causation is that it seems to extend the net of parental responsibility too widely. A child's grandparents (and great-grand-parents, and so on) play an identity-determining role in the creation of their grandchildren, yet they don't thereby acquire parental responsibilities over their grandchildren. Furthermore, it is not difficult to imagine certain medical interventions that might qualify as identity-determining, yet we wouldn't, I think, necessarily want to ascribe parental responsibilities to those carrying-out such interventions. It seems to me that the causal theorist is hard-pressed to justify RP [13].

To sum up the results of section II: no account of parenthood provides clear support for the responsibility principle. Genetic and causal accounts of parenthood are best suited for such a task, but on closer inspection neither account supports RP.

III. The Transfer of Parental Responsibilities

I have argued that the responsibility principle is false: gamete donors don't acquire parental responsibilities towards "their" children. But suppose that my arguments are unsound, and that the responsibility principle is true — would it be the case that gamete donors treat their responsibility too lightly? In order to answer this question, we need to know what responsibility gamete donors (typically) take with respect to the use of their gametes, and we need to know what it would be to take one's parental responsibilities seriously. Let me start with the second issue.

Under what conditions is it permissible to transfer one's parental responsibilities? (Note that the issue at question here is *not* about the transfer of responsibility for children with whom emotional attachments have been formed — the issue concerns the parental responsibilities for gametes, or, perhaps, the embryo which has been formed from the gametes). Daniel Callahan states that it is morally permissible to transfer one's parental obligations only when one is mentally or financially incompetent to discharge them [14]. Benatar, for his part, claims that "the sum of responsibilities for rearing children, are of the weighty sort such that, in the absence of compelling reasons, one ought not to transfer them to others, even if others are equally competent to bear them" [15]. Callahan and Benatar reject what I will call the *transfer principle*, according to which it is permissible to alienate one's parental responsibilities (over neonates) to another individual (or institution) as long as one has good reason to think that they will carry out those responsibilities adequately.

What can be said against the transfer principle? Despite its unpopularity there is relatively little in the way of serious discussion of it. Benatar presents the following scenario in an attempt to undermine it:

P's child has to be rushed to hospital and P charges his neighbour (who can drive as fast and safely as P) with this task, while P stays home to water the plants. In the absence of any reasonable explanation of this behavior, we would argue that P had failed to take seriously his responsibility to care for the child [16].

I agree with Benatar's verdict on P's behaviour but I don't agree with the moral that he draws from it. It appears as though P has indeed failed to take his parental responsibilities seriously, but this is because P's neighbour isn't equally competent to bear P's responsibilities, even if she can drive as fast and safely as P. P's parental responsibilities aren't restricted to getting his child to the hospital quickly and safely, they also include providing the appropriate emotional support. Presumably P has a closer relationship to his child than his neighbour does, and presumably the child would rather be taken to hospital by her father than by the neighbour. P's parental responsibilities may also include making medical decisions on behalf of his child, and since P's neighbour won't be in an on-going relationship with the child she is obviously not well-placed to make such decisions. I think Benatar's scenario fails to undermine the transfer principle.

Nelson presents another line of attack on the transfer principle.

It is not so much a question of knowing that the biological parents can do a *better* job than possible replacements; it is more a matter of continually being at hand to answer to one's own responsibilities. With respect to anyone else, the best I can do is predict that they will fulfil their duties, but my relationship to my own agency is categorically different; I can bring myself — at least sometimes — to *perform* my duties [17].

Again, it seems to me that this argument fails to meet its target. While it is certainly true that one's relationship to one's own *current* agency is categorically different from the relationship that one has to the agency of others, this isn't the crucial contrast. Rather, the crucial contrast is between one's relationship to one's *future* agency and one's relationship to the future agency of others. There are differences here, but it's far from clear that they are categorical differences [18]. While my future self will, one presumes, be inclined to take the intentions and actions of its former selves into account in deciding what to do, my current intentions do not *determine* my future intentions; no matter what promises I have made in the past, I can always decide not to keep them. I cannot now make it the case that in 10 years I will intend to provide the sort of care for my child that I ought to. And even if I could, I certainly cannot now guarantee that in 10 years I will be in a position to provide the care for my children that I ought to provide.

One might argue that the transfer principle ignores the fact that parental responsibilities arise out of a kind of promise. Perhaps bringing a child into existence involves an implicit promise to look after the child. Further, one might argue that the obligations generated by promises cannot be transferred to others. I accept, if only for the sake of argument, that bringing a child into existence involves an implicit promise to the child in question, but what is the content of that promise? The objection assumes that one promises to take care of the child *oneself*. But as far as I can see, the promise may only be to ensure *that* the child is taken care of.

No doubt there is more to be said for and against the transfer principle, but I will assume that enough has been said here to make it — or something analogous to it — plausible. What implications does the transfer principle have for the morality of gamete donation? Would it be reasonable for gamete donors to think that the recipients of their gametes will meet their parental responsibilities adequately?

It's difficult to give a definitive answer to this question, for that will depend on the structure of the gamete transfer system in question. We can begin by distinguishing two systems of gamete donation, donor-directed systems and anonymous systems. In a donor-directed system the gamete donor is able to select those individuals who have permission to use her or his gametes. As far as I know, the only forms of gamete donation that are donor directed are those that occur between friends and relatives. It is difficult to know whether such gamete donors reflect on the suitability of the gamete recipients for parenthood, but one suspects that most gametes donors give the matter at least some thought. Certainly one assumes that most individuals would be reluctant to donate gametes to someone who they had reason to think would not fulfil their parental responsibilities adequately.

The vast majority of gamete donors use what I have called anonymous donation. By this I mean not that the donor is anonymous to the recipients, but that the recipients

are anonymous to the donor, and the donor has no say in who has permission to use their gametes. Anonymous donation complicates the question of parental responsibilities, for if donors have little control over the use of their gametes then it is less clear that they are culpable if their gametes are used to produce children that are maltreated. Of course, it might be claimed that a responsible donor would only assent to contribute to such a system if they had good reason to think that the administrators of that system had reasonable screening procedures in place for prospective parents. I think that this is a fair point; it is also, I think, a point that exonerates many — and perhaps most — gamete donors, for gamete donors have two fairly good reasons for thinking that their gametes will be used only by responsible parents. First, gamete recipients invariably *want* to be parents, and there is reason to think that those who want to be parents tend, on the whole, to do a good job of being parents. (At least, it seems reasonable to think that those who want to be parents will generally do a better job of being parents than those who become parents out of necessity.) Second, gamete donors have reason to assume that fertility services providers screen prospective parents, in much the way that adoption agencies screen prospective parents. After all, section 3 of *The Code of Practice* for the Human Fertility and Embryology Authority (Great Britain) specifies that fertility centres should take the (potential) child's welfare into consideration in deciding whether or not to provide donated gametes to prospective parents [19]. (It must, however, also be pointed out that the relevant HFE act does not actually exclude any category of person from being considered for treatment!) Given such legislation, it seems reasonable for gamete donors to assume that their gametes would be unlikely to go to unsuitable individuals.

Let me end this section with one final point. It seems clear that the practice of gamete donation provides substantial benefits. Gamete donors clearly benefit those who become parents through their assistance, and who would otherwise be either unwilling or unable to become parents without their assistance. More controversially, gamete donors may benefit those who are brought into existence through the actions of gamete donors [20]. Even if — contrary to what I have argued here — gamete donors fail to live up to their parental responsibilities, a full assessment of gamete donation must balance these alleged failings against the benefits that the practice involves.

IV. All Our Children

The argument against gamete donation that I have been considering claims that gamete donation involves a form of 'parental neglect' — gamete donors have parental obligations that they fail to meet. I have, I hope, said enough to defuse this objection, but I want to conclude by suggesting that gamete donors may have *procreative* responsibilities.

What are procreative responsibilities and how are they related to parental responsibilities? This is a difficult question, and I can only make a couple of programmatic remarks here. There are two dimensions along which we might distinguish parental responsibilities from procreative responsibilities: the *content* of the responsibility (what it involves), and its *ground(s)* (how one comes to acquire the responsibility). Let us call anyone who plays a significant role in causing (or even allowing) persons to come into existence a 'procreator.' Any number of individuals and institutions might qualify as

procreators, including family-planning committees, population planning bodies, gamete donors, and, of course, would-be parents. Intuitively, procreation doesn't bring with it the full-range of parental responsibilities, but this isn't to say that procreators don't have any responsibilities. Exactly how to think about the content of the responsibilities of procreators involves some very deep and difficult issues; I have space here to address only two of these issues.

The first issue concerns what sorts of people it is permissible to attempt to create. One criterion we could adopt here is the 'life worth living' criterion, according to which it is permissible to bring a child into the world as long as it is reasonable to suppose that it would have a life worth living. Although this proposal is theoretically attractive, it has very counter-intuitive consequences. Many are inclined to think that there is something wrong with conceiving a child that one knows will have a seriously impaired life, even when one judges that the life in question will be one that is worth living. Consider, for instance, a couple who have a long history of very severe child abuse, where there is excellent reason to suppose that the couple's next child will also be abused. It is not unreasonable to suppose that any attempt to enable this couple to reproduce — say, by donating gametes to them — would be wrong, even though one might reasonably think that the child would have a life worth living.

Such reasons lead many to reject the life worth living account of what kinds of children it is permissible to create, but those who take this line have had little to offer by way of an alternative account. Some have suggested that it would be wrong to create people that one believes will have a seriously restricted life. Unfortunately, such authors tend to say little about what it is to have a seriously restricted life, or *why* it is wrong bring such individuals into existence. Here is not the place to broach these difficult and complex questions in detail, suffice it to note that they are not unrelated to the moral responsibilities of gamete donors (although not, *qua* parents).

A second issue concerns the appropriate locus for procreative responsibility. Should procreative decisions be left entirely in the hands of individuals, or should there be regulations of some sort on permissible procreation? This question has received a certain degree of urgency and attention due to the development of artificial technologies such as cloning, but the issues it raises are perfectly general ones that have implications for all modes of reproduction. Given the momentous importance of decisions to bring people into existence, there is a *prima facie* case for thinking that procreation, and parenthood, should be licensed in much the same way that we license various professions and activities [21]. Of course, this is only a *prima facie* case, and it may be that efforts would be better directed towards educating people how to be good parents [22]. Whatever the best methods for ensuring that parenthood is undertaken responsibly, they shouldn't be restricted to artificial (or assisted) reproduction, but should be applied to natural parenthood in equal measure. Arguably, the question of the responsibilities of gamete donors should be addressed in the context of a fully general account of the responsible procreation.

Bringing children into existence *is* a weighty responsibility. Arguably, it is a responsibility that falls *primarily* on the child's parents: after all, it is the child's parents who will be the primary recipients of the costs and benefits of procreative decisions (apart, perhaps, from the child themselves). But bringing children into the world is a complex business, and a number of individuals (and institutions) besides parents play a role in bringing the child into existence. Such individuals should exercise their procreative role

responsibly. Gamete donors play a procreative role, and thus they share some of the responsibility involved in bringing people into existence [23].

Tim Bayne, Philosophy Department, Macquarie University, North Ryde, NSW 2109, Australia. tbayne@scmp.mq.edu.au

NOTES

- [1] D. BENATAR (1999) The unbearable lightness of bringing into being, *Journal of Applied Philosophy*, 16,2, 173–80; and J. L. NELSON (1991) Parental obligations and the ethics of surrogacy: a causal perspective, *Public Affairs Quarterly*, 5, 49–61.
- [2] I have provided accounts of these positions in A. KOLERS and T. BAYNE (2001) “Are you my mommy?” On the genetic basis of parenthood, *Journal of Applied Philosophy*, 18, 278–85, and in T. BAYNE and A. KOLERS (in press) Towards a pluralist account of parenthood, *Bioethics*. For gestational accounts of parenthood — or, at least, motherhood — see R. TONG (1990) The overdue death of a feminist chameleon: taking a stand on surrogacy arrangements, *Journal of Social Philosophy*, 21, 40–56; M. MOODY-ADAMS (1991) On surrogacy: morality, markets and motherhood, *Public Affairs Quarterly*, 5, 175–191; B. K. ROTHMAN (1989) *Recreating Motherhood: Ideology and technology in a patriarchal society* (New York, W.W. Norton); G. ANNAS (1984) Redefining parenthood and protecting embryos: why we need new laws, *The Hastings Center Report*, 51, 51–52. For intentional accounts of parenthood see J. L. HILL (1991) What does it mean to be a ‘parent’? The claims of biology as the basis for parental rights, *New York University Law Review*, 66, 353–420; P. PARKER (1982) Surrogate motherhood: the interaction of litigation, legislation and psychiatry, *International Journal of Law and Psychiatry*, 5, 341–54; A. STUMPF (1986) Redefining Mother: a legal matrix for new reproductive technologies, *The Yale Law Journal*, 96, 187–208; M. M. SHULTZ (1990) Reproductive technology and intent-based parenthood: an opportunity for gender neutrality, *Wisconsin Law Review* 1990; 297, 297–398. For genetic accounts of parenthood see H. KRIMMEL (1998) The case against surrogate parenting. In G. Pence (ed.) *Classic Works in Medical Ethics* (Boston, McGraw-Hill) 127–137, and B. HALL (1999) The origin of parental rights, *Public Affairs Quarterly*, 13, 73–82. For causal accounts of parenthood see J. L. NELSON (1991) Parental obligations and the ethics of surrogacy: a causal perspective, *Public Affairs Quarterly*, 5, 49–61 and J. BLUSTEIN (1997) Procreation and parental responsibility, *Journal of Social Philosophy*, 28, 79–86.
- [3] See Rothman.
- [4] Benatar, 175.
- [5] See L. M. SILVER and S. R. SILVER (1998) Confused heritage and the absurdity of genetic ownership, *Harvard Journal of Law and Technology*, 11, 593–618.
- [6] For a similar view see E. PAGE (1985) Donation, surrogacy and adoption, *Journal of Applied Philosophy*, 2.
- [7] See B. STEINBOCK (2000) Sperm as property, in J. Harris and S. Holm (eds) *The Future of Human Reproduction* (Clarendon Press, Oxford).
- [8] See H. T. ENGELHARDT (1996) *The Foundations of Bioethics* (2nd ed.) (Oxford, Oxford University Press) for the view that parental rights are property rights.
- [9] Actually, Benatar also seems to appeal to a causal account of parental responsibilities at one point: “Even though gamete donors themselves are not the proximate causes of bringing their genetic children into existence, they are nevertheless witting and responsible in the process of bringing about these children, and they tend to regard this far too lightly” (179).
- [10] Daniel Callahan’s defence of the responsibility principle also seems to rest on a causal account of parenthood, although he isn’t explicit about this. See D. CALLAHAN (1992) Bioethics and fatherhood, *Utah Law Review*, 3, 735–746; especially 737 and 739.
- [11] J. L. NELSON op. cit., p. 59.
- [12] See S. KRIPKE (1971) *Naming and Necessity* (Cambridge, MA, Harvard), pp. 112–113, and D. PARFIT (1984) *Reasons and Persons* (Oxford, Clarendon Press).
- [13] Ronald Munson also argues that a causal account of parenthood doesn’t support the responsibility principle, although his argument turns on the unexplained notion of a causal agent. See R. MUNSON

- (1988) Artificial insemination and donor responsibility, in R. Munson (ed.) *Intervention and Reflection* (3rd ed.) (Belmont, CA, Wadsworth), p. 448.
- [14] Callahan, 735.
 - [15] Benatar, 177.
 - [16] Ibid.
 - [17] Nelson, 60; original emphasis.
 - [18] See C. ROVANE (1998) *The Bounds of Agency* (Princeton, N.J., Princeton University Press).
 - [19] I thank a referee for this journal for drawing my attention to this legislation.
 - [20] For arguments to the contrary see D. BENATAR (1997) Why it is better never to come into existence, *American Philosophical Quarterly*, 34/3, 345–55 and D. HEYD (1992) *Genethics: Moral issues in the creation of people* (Berkeley, CA, University of California Press). Benatar argues that almost all of us are made worse off by being brought into existence, while Heyd argues that we can neither be benefited nor harmed by being brought into existence. For a statement of the view that one can be benefited by being brought into existence see S. SMILANSKY (1995) Is there a moral obligation to have children?, *Journal of Applied Philosophy*, 12, 41–53.
 - [21] See H. LAFOLLETTE (1980) 'Licensing parents,' *Philosophy & Public Affairs*, 9, 183–97.
 - [22] See D. ARCHARD (1993) *Children: Rights and Childhood* (London, Routledge).
 - [23] I am very grateful to Avery Kolers and to a referee for this journal for their very helpful comments on a previous draft of this paper.