

## Moral Parenthood: Not Gestational\*

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**Abstract:** Parenting our biological children is a centrally important matter, but how, if at all, can it be justified? According to a contemporary influential line of thinking, the acquisition by parents of a moral right to parent their biological children should be grounded by appeal to the value of the intimate emotional relationship that gestation facilitates between a newborn and a gestational procreator. I evaluate two arguments in defence of this proposal and argue that both are unconvincing.

**Keywords:** Parental Partiality, Right to Parent, Particular Parental Rights, Gestationalist View, Personal Relationship, Ethics of Partiality, Baby

### 1. Introduction

According to the

*Gestationalist View*, gestation typically facilitates an intimate emotional relationship between a gestational procreator and their unborn child. This fact

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grounds a moral right on part of the gestational procreator to parent their biological child.<sup>1</sup>

This is an influential account of the acquisition of a moral right to custody of biological children in contemporary discussions on parental partiality.<sup>2</sup>

Why talk about the acquisition of a right our biological offspring? For one thing, the question merits attention within the ethics of partiality, specifically justifying partiality toward our biological children – which is a centrally meaningful pursuit for many. But the question also bears on contemporary debates in liberal egalitarianism. On commonly endorsed interest-based approaches to parental rights, rights to parent biological offspring do not necessarily follow from the protection of any relevant party's interest by a right, whether that be a parent-centred right (protection of a parent's interest in parenting), a child-centred right (protection of a child's interest in being parented), or a dual-interest approach focused on both.<sup>3</sup>

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<sup>1</sup> The notion of parent is ambiguous in multiple ways and therefore worth clarifying: A moral parent, who holds a parental right, should be distinguished from a social or legal parent. A moral parent has a warranted claim to care for a child based on some normatively significant property P. By contrast, a social parent is the person who, by convention, is given the role of looking after a child, and a legal parent is the person who has the legally protected rights of a parent as determined by law. This distinction is from Archard [1, p. 21].

<sup>2</sup> See [2, 3]. Other independent Gestationalist accounts are developed by Narayan [4], Rothman [5], and Feldman [6]. For an account of the phenomenology of pregnancy, see [7]. Some versions of these accounts allow partners who accompany a gestational procreator to also acquire parental rights, while others, such as Rothman's [5] account are more restrictive. I bracket this issue here.

<sup>3</sup> According to interest-based approaches, for an agent A to have a right to p, an interest of A's must be of sufficient weight for another agent, B, to be under a duty owed to A with

For example, we might hold a child-centred view according to which one has a right to parent a particular child by virtue of being the best or “sufficiently adequate” parent for that child. Whoever is then deemed the best parent for any given child need not be that child’s biological procreator, assuming that an appropriate evaluative standard of parenting excellence can be determined.

The argument on which the Gestationalist View is based typically runs like this. By the time of birth, the intimate relationship between a gestational procreator and her child amounts to a non-instrumentally valuable good that both the gestational procreator and her gestating fetus have an interest in maintaining.<sup>4</sup> Taking birth children away from their birth parents would destroy considerable normative value. This relationship should therefore be protected in the form of a moral right.

I here evaluate two arguments in defence of this idea and argue that they are both unconvincing. In the next section, I discuss an argument according to which the relationship between fetus and gestational procreator is a *sui generis* intimate relationship with special value. In the third section, I evaluate an argument that defends the idea that there exists a relationship by appeal to the idea that children would be harmed by separation at birth from their gestational procreator. I conclude in Section 4.

An upshot of my discussion is that the story of how one of the most foundational elements of partiality, partiality to biological children, is justified is not as ‘neat’ as one might have hoped and that we will have to turn to alternative justificatory avenues to provide a defence of one of our strongest convictions regarding parental partiality.

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respect to p—where a relevant ‘interest’ is understood as contributing to A’s objective, as opposed to subjective, well-being.

<sup>4</sup> In more recent work, Gheaus [3] argues that only children’s interests in this relationship facilitated through gestation are relevant.

## 2. A *Sui Generis* Emotional Relationship

Let's begin by examining the Gestationalist View's claim that at birth there exists a non-instrumentally valuable intimate relationship between newborn and gestational procreator.

Whatever the nature of this relationship at birth, it seems to lack the emotional complexity, intimacy, and intensity of other paradigmatically valuable intimate relationships such as loving relationships between adults, parental love at later stages of parenthood, and the love between siblings.

But perhaps facts about the complexity and richness of a relationship do not fully determine its relative importance for the individuals involved in the relationship. One way of cashing out this idea is to suggest that the newborn–gestational procreator relationship is a *sui generis*—that is, of its own kind—relationship that is valuable despite lacking much of what characterises paradigmatically valuable intimate relationships.

To begin, the parent–child relationship is already highly asymmetrical, and the fetus–gestational procreator relationship is even more so. It is therefore helpful to consider the idea of a valuable *sui generis* relationship from the perspective of each participant.

### *The Newborn's Perspective*

We cannot ask newborns how they feel about their gestational parents right after birth. But as a first step, it is possible to examine their behaviour.

At birth, an infant is drawn toward its gestational procreator's voice and smell, such as the scent of her amniotic fluid [8, p. 2–3]. The infant tends to be calmer when surrounded by the procreator's voice and odours, and distressed when the voice and smell of the procreator are too distant. The development of these abilities begins in the last trimester of pregnancy, during which a fetus' auditory and olfactory systems develop sufficiently for a fetus to start to learn the gestational procreator's voice and odours.

This might suggest that insofar as newborns display preferential treatment toward their gestational parents after birth, they have already formed an emotional relationship with them.

But the issue is not so straightforward.

A first question concerns how infants' behavioural patterns at birth should be interpreted. Do they indicate the *existence* of an emotional attachment? Or do they *reflect a process* whereby strong emotional bonds are created? Clinical evidence suggests that the latter is the case: infants' behaviour at birth reflects an evolutionary predisposition to *attract* the attention of a caregiver in order to ensure their survival. Infants enter the world with an urge, not to maintain an intimate emotional relationship with their gestational carrier, but to *form* a strong emotional attachment with any potential caregiver in their immediate vicinity [9, Ch. 2; 10]. Babies are born with cognitive skills that allow them to recognise and respond to caregivers. For example, they are immediately able and ready to draw a caregiver—anyone keeping them healthy and alive—into a relationship with them through behaviour and interaction such as crying, grabbing, or laughter.

The Gestationalist View will, of course, want to resist this interpretation. It might say that an infant's favourable behaviour toward the gestational parent right after birth really does show that some form of affectional relationship with her exists, and that, by virtue of being the most developed emotional attachment a newborn can have, it ought to have its value protected.

Let's probe this idea some more.

If a valuable relationship does exist at birth, it must be primarily characterised for the fetus by experiences of hearing, smelling, and feeling the gestational procreator during gestation once the relevant faculties are appropriately developed.

Is this sufficient to characterise a relationship in the ‘thicker’ normative respect (beyond just a gestational connection) that is usually appealed to in the context of justifying partiality toward other friends and family? In other words, does the relationship between newborn and gestational procreator bear considerable normative importance to justify granting a special right to parent the gestated child?

Now, to clarify, the point is not to deny that the (developed) parent–child relationship is one of the strongest and most valuable intimate relationships. The question is rather whether whatever relationship exists at birth between the gestational procreator and their gestated child is normatively significant enough to outweigh the considerations that may speak in favour of assigning the parental rights to others who have not gestated the child.

And the bar to meet here is non-trivial: in principle, re-allocating newborns away from their birth parents to adoptive parents can mitigate social injustices or even lead to better care for the children [2].

So, the Gestationalist View cannot just point to the *existence* of some form of emotional attachment. This attachment needs to be *sufficiently* normatively weighty. It needs to be of sufficient moral importance to outweigh *other* moral considerations which speak in favour of adoption and detachment of a child from its birth mother. In this respect, I disagree with the contention that ‘by virtue of being the most developed [emotional] relationship that a new-born can have’ the relationship between newborn and gestational procreator ought to be protected [3, p. 235–7]. Just because an emotional attachment exists—and even if this attachment is the most developed one the new-born can have—it does not follow that this attachment needs to be protected at all costs.

With this in mind, consider the following case provided by Gheaus [3, p. 236], to support the idea that the relationship between the newborn and gestational procreator ought to be protected:

**Limited Relationship:** Imagine an emotional attachment between a very severely cognitively impaired adult, Ann, and her caregiver, Beth, who is the only person with whom Ann has a relationship.

Is this relationship sufficiently normatively significant and therefore deserving of protection despite its—due to the severe cognitive impairment likely—limited complexity and richness?

I think that appeal to *Limited Relationship* is unhelpful in answering this question. It is underspecified and contains confounding factors that render it improperly equalised with the case of a fetus during the gestational period. Once we draw attention to these factors, I think we can see that the case is unhelpful as an analogy to illustrate that the newborn–gestational procreator relationship is sufficiently normatively significant:

- **Kind of interaction:** Suppose we equalise the kind of interaction that Ann is capable of with that of a fetus during gestation. Admittedly, our imagination might be somewhat challenged here, but suppose that Ann’s cognitive development is equivalent to that of a fetus. She is not able to see Beth or in any deliberate respect comprehend Beth’s presence, but she has some rough olfactory and touch-based perception of her.
- **Process of interaction:** Neither is interaction possible in the way in which it typically constitutes other interpersonal relationships, even between adolescent impaired people and their caretakers. Instead, imagine that the interaction between Ann and Beth is limited so as to resemble the interaction that is possible through gestational containment. Suppose, for example, that Ann and Beth are separated by a transparent rubber wall thin enough for Ann to feel and hear Beth through it.
- **History of interaction:** Lastly, the history and amount of interaction also have to be equalised. Usually, a fetus’ ability to hear and respond to the gestational procreator’s voice begins in the third trimester (week 28), so

we should imagine a relationship between Ann and Beth that has lasted for about three months.

- **Amount of interaction:** In terms of the amount of interaction, it may be difficult to find an analogy since gestation is such a distinctive phenomenon, but suppose that Beth spends a couple of hours every day talking to Ann and feeling her through the rubber wall.

Having specified these features of *Limited Relationship* in more appropriate detail, we can ask: would Ann feel a loss if the rubber wall was now lifted, and Beth were replaced by another caretaker, or perhaps even a caregiving robot, who gives Ann everything that Beth gave her (nourishment as well as—a qualitatively different—touch, and voice)?

I think that the answer is No. There might be at most a minor loss or confusion by the qualitative change of the caregiver's touch and voice. But this loss, if it exists, does not seem significant enough to outweigh moral considerations speaking in favour of separating a child from its birth mother (such as the child's greater welfare in the long-run).

Once *Limited Relationship* is better equalised, and we reflect again on the question to what extent the case shows that the relationship between newborn and gestational procreator is sufficiently normatively significant from the perspective of the new-born, I think the intended implication of the case is debunked. It is debunked because, given more careful specification of the features intended to characterise the valuable relationship between Ann and Beth, it seems mysterious what—beyond a change of the quality of touch and smell of the caretaker—the exact nature of Ann's loss could be. Again, even if the change of touch and smell would be a normatively significant loss on some level, it seems like this loss would be, at most, minor and not capable of outweighing other moral considerations which speak in favour of separating a new-born from her birth mother in certain cases.



*The Gestational Procreator's Perspective*

What is the gestational relationship like from the perspective of the gestational procreator?

Gestational procreators are usually highly emotionally invested in their pregnancy [2, p. 446-51; 3, p. 234-7]. This investment is facilitated in part through the costs that pregnancy incurs and in part through the many forms of interaction with the fetus, such as seeing it on ultrasound images, hearing its heartbeat, and feeling its movements. Gestational procreators often invest attention in the waking and sleeping patterns of their child and bond with the newborn through delivery, which, as countless testimonies show, is usually one of the most memorable experiences in the lives of birth parents.

But even though the experience of pregnancy is extremely rich and valuable, gestational procreators do not know much about the unborn participant in the relationship apart from the limited forms of interaction available; the rest of their impression is grounded in personal projection and fantasy [11, p. 311]. As Little [11] notes: 'With gestation [...] there is little to the relationship, as a relationship, other than the biological substrate and the woman's experience and conception of it.' This is not to deny that these investments are valuable, only to point out that their value need not be entirely grounded in the value of an extant intimate relationship.

The problem, again, is that it seems like too much of a stretch to suppose that loving actions and emotions and the bestowal of benefits add up to the existence of a sufficiently weighty normatively significant personal relationship capable of outweighing other moral considerations.

To see the point, consider the case of

***Secret Admirer:***<sup>5</sup> Imagine that Chloe is a singer in a bar who feels a strong affection for Daisy, a regular visitor, with whom she has never spoken.

Assume that Chloe cannot see Daisy, though she can sense her in some indistinct physical way. It seems true that Chloe feels a strong sense of anticipation and fantasy in relation to Daisy. We can also suppose that Daisy feels a sense of security and love when listening to Chloe's singing. But their 'connection' does not seem to have the form that we find in valuable relationships.

This point can be further borne out by considering the constitutive features of the valuable *sui generis* relationship between newborn and gestational procreator. Accounts of friendship or love maintain that the value of these relationships is grounded in certain properties of a beloved, in reciprocity of interaction or a shared history, or in both features.<sup>6</sup> According to these accounts, the loving relationship between somewhat older children and their parents might be characterised by lovable characteristic features and the shared history of living together.

However, it seems difficult to see how these frameworks can account for the value of gestational relationship. We have already noted that this relationship is very short-lived, simple, and sparse in its constitutive interactions. Neither participant knows much about the other's properties, and most interaction is one-directional rather than reciprocal, though the gestational procreator's investment is indeed significant. In light of these details, what would be the constitutive features that ground its special value?

Of course, the absence of a detailed account of the value of the relationship between newborn and gestational procreator hardly shows that no account could be developed. However, by the same token, insisting that an account *could* be developed is hardly a

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<sup>5</sup> See [12, p. 94–5] for a similar argument.

<sup>6</sup> See [13] for a recent overview of the various accounts of love.

convincing defence of this way of grounding a mother's right to parent their gestated biological child.

One might wonder why we should be so strict about the standard for what counts as a valuable intimate relationship. If we set such a demanding standard for the loving relationship that the Gestationalist View posits to exist between newborn and gestational procreator, it seems that parents might not be able to form what would count as valuable relationships with their infants. And this seems highly implausible.

However, my argument does not entail that parents cannot form valuable relationships with their offspring. It entails only that they cannot do so until *after* birth. The normative picture changes very rapidly once a child is born. Typically, intimacy and attachment arise readily and rapidly within the first two weeks after birth with any person who nurtures the newborn [8, p. 3–5]. This is when the strong emotional bond develops that is often characteristic of early parent–child relationships.

### 3. The Harm Argument

A second way to argue for the presence of a normatively significant attachment between newborn and gestational procreator is to maintain that separating them would *harm* the newborn. Call this the *Harm Argument*. (The separation here consists in the child's being appropriately separated shortly after birth and given to an adoptive parent.) On this line of reasoning, the fetus–gestational procreator relationship is *instrumentally* valuable.

Let's look at the empirical evidence first.

There is empirical evidence to suggest that separating an infant from a gestational carrier at birth does not damage the infant in the short or long term so long as it occurs within an appropriate context and time range. Children do not lose out in this way on the development of an intimate emotional bond with their adoptive parents. For example, Golombok et al. [14, 1973–4] note:

Despite the concern that children born through reproductive donation would be at risk for psychological difficulties at adolescence, the findings of the present phase of this longitudinal study of families formed through egg donation, donor insemination, and surrogacy showed that these families did not differ from natural conception families when the children reached age 14.

However, to prevent too one-sided an empirical assessment, this kind of study should be contextualised in light of counter-evidence indicating that adoptive children are at a higher risk of encountering psychological problems later in life [15]. I don't want to get hung up on the empirical facts here—the relevant point, to my mind, is that our current empirical knowledge does not conclusively favour or disfavour the Harm Argument.

Moreover, a shortcoming of these empirical studies is that they study long-term effects of separation at birth and cannot therefore conclusively show that an infant is not harmed *at the very moment* of separation. This is because infants could presumably forget about the painful rupturing of the bond with their gestational procreator.

Agnafors [16, p. 360] draws on this idea and offers a conceptual version of the Harm Argument. He writes that

The child is then harmed to the extent that the separation from the surrogate (the gestational mother) increases its difficulty to successfully form a healthy attachment bond, since such attachment is crucial to successfully developing social and emotional functioning. As stressed earlier, this is not to say that a child whose attachment process is interrupted cannot, or will not, develop normal emotional and social functionings. Thankfully, the child's adaptive capacities and a loving environment are likely to ensure a healthy development. But pointing to apparently normal families and teenagers, or the potential or likely development into such, does not suffice to show that surrogacy involves no morally relevant harm, just as it cannot be proven that a man has not suffered a great harm when, say, losing a leg 10 years ago, by showing that he

feels fine today, or that divorces are not harmful because children and parents are usually fully functional individuals in the long run.

So even though interrupting the process of attachment does not prevent an infant from successfully bonding to another caregiver in the long term, doing so nonetheless reduces the infant's chances of successfully developing a filial attachment by virtue of ending its ongoing attachment process. This reduction of attachment success chance, according to Agnafors, constitutes a harm to the newborn.<sup>7</sup>

Agnafors' argument is a helpful reminder why the normative issue cannot be easily settled by empirical data, but I think it nonetheless misses its mark.

First, it does not follow that separation from gestational procreators at birth increases attachment difficulty for newborns. This is because it need not be the case that any given gestational procreator is indeed the most suitable caregiver for their newborn. So, whatever development of attachment would be lost by separation might be offset by a significantly greater 'attachment success' factor offered by a prospective adoptive parent. An adoptive caregiver might accordingly provide the newborn with *better* chances of attachment. This means that even this version of the Harm Argument needs to rely on additional empirical premises that do not seem obviously true.

Second, even if we assume that the chances of successful attachment for the newborn are reduced and that this harms the newborn, it need not be impermissible. Not all harms are categorically morally prohibited: Just because your success as an academic philosopher makes me unhappy, it does not follow that you have violated a duty by succeeding in your pursuits.

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<sup>7</sup> Additionally, the newborn might be harmed in simple hedonistic terms by the separation from its gestational procreator. That is, the newborn could experience the rupture as painful right when it occurs, but later in life have no recollection that this rupture was painful. I thank an anonymous referee for pointing this out.

So, the argument must be that separating a newborn from its gestational parent constitutes a morally relevant and significant harm. In contrast to the person who loses a limb after an accident, who can and likely does express great grief and pain after the fact, a newborn cannot tell us what it thinks or feels right at birth, and we have no other way to discern this. Since we cannot ask a newborn, and since re-attachment to an adoptive caregiver occurs readily, I think the appropriate abductive conclusion to draw is indeed that no significant harm is done.

#### 4. Conclusion

I have evaluated and argued against two arguments that support the Gestationalist View's claim that at birth there exists a valuable intimate personal relationship between newborn and gestational procreator.

It is instructive to return to an earlier issue, namely the question of why we ought to be so strict with the kinds of attachments or connections that we label as 'normatively significant personal relationships' that merit protection. The idea is not to apply unnecessarily demanding standards to these relationships just for the sake of it but rather to reinforce their normative importance by carefully delineating the limits of their application to prevent the notion from becoming a 'black box' for any loose attachment whatsoever. Valuable personal relationships are one of the most important elements of a meaningful life, and they have great impact on how we ought to live day in and day out.

My arguments may imply that part of the story of how we justify one of the most foundational elements of partiality, partiality to biological children, is not as 'neat' as one might have hoped. It is not as neat as saying that the in-utero connection is already a normatively significant personal relationship by virtue of which a birth mother's right to parent their gestated biological child exists. Accordingly, our normative framework should not be guided by conceptual convenience. Normative reality can be

complicated, and, as I have argued elsewhere, a plausible alternative account of how particular parental rights are acquired (if not by way of the Gestationalist View) is readily available [17].

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