

TOWARD A PLURALIST ACCOUNT OF PARENTHOOD

TIM BAYNE AND AVERY KOLERS

ABSTRACT

What is it that makes someone a parent? Many writers – call them ‘monists’ – claim that parenthood is grounded solely in one essential feature that is both necessary and sufficient for someone’s being a parent. We reject not only monism but also ‘necessity’ views, in which some specific feature is necessary but not also sufficient for parenthood. Our argument supports what we call ‘pluralism’, the view that any one of several kinds of relationship is sufficient for parenthood. We begin by challenging monistic versions of gestationalism, the view that gestation uniquely grounds parenthood. Monistic and necessity gestationalism are implausible. First, we raise the ‘paternity problem’ – necessity gestationalists lack an adequate account of how men become fathers. Second, the positive arguments that necessity gestationalists give are not compelling. However, although gestation may not be a necessary condition for parenthood, there is good reason to think that it is sufficient. After further rebutting an ‘intentionalist’ account of parenthood, in which having and acting on intentions to procreate and rear is necessary for parenthood, we end by sketching a pluralist picture of the nature of parenthood, rooted in causation, on which gestation, direct genetic derivation, extended custody, and even, sometimes, intentions, may be individually sufficient for parenthood.

I.1 INTRODUCTION

What makes someone a parent? Three distinct views have emerged in answer to this question: *geneticists* claim that parenthood arises from direct genetic derivation; *gestationalists* claim that parenthood arises from gestation and childbirth; and

intentionalists claim that parenthood arises from intentions to create, nurture, and rear.

Each of these positions can be endorsed in a number of forms. The strongest of each are *monistic* accounts of parenthood, which hold that parenthood has a single ground. For example, monistic gestationalism is the view that gestation is the sole ground of parenthood: gestating is both necessary and sufficient for parenthood. All other views are *pluralist*, but pluralism may be more or less inclusive. Some versions of pluralism are *necessity* views, in which one or more of genetic, gestational, or intentional relations are necessary (but not also sufficient) for parenthood. More inclusive are *sufficiency* versions of pluralism, in which one or more types of relations are sufficient (but not necessary) for parenthood.

We have argued elsewhere¹ that genetic relations are not necessary for parenthood, and so neither monistic nor necessity geneticism can be correct. Insofar as genetic relations ground parenthood, they can do so only within an inclusively pluralistic view of parenthood. In this paper, we extend the case for inclusive pluralism: neither gestation nor intentions are plausibly regarded as necessary, and *a fortiori*, as necessary and sufficient, for parenthood. Having rejected these accounts, we then draw out what is plausible in each – namely, that each is sufficient but not necessary for parenthood. We suggest that the sufficiency of gestation and intentions derive from the causal role of gestation and intentions in the creation and survival of dependent children. As we argue in the concluding section, there is reason to think that parenthood is ultimately grounded in causal relations.

I.2 PARENTHOOD: NATURAL AND LEGAL

By ‘parenthood’ we mean what is often called ‘natural’ or ‘original’ parenthood, as opposed to social or custodial parenthood. Persons can become parents without standing in gestational or genetic relations to infants – as when they adopt them – but it is often assumed that, at least in the first instance, parenthood is grounded in a natural relation of some kind.

The relationship between natural parenthood and legal parenthood is both complicated and fluid. Roughly speaking, natural parenthood puts one in position to be considered for parental

¹ A. Kolers & T. Bayne. ‘Are You My Mommy?’ On the Genetic Basis of Parenthood. *Journal of Applied Philosophy* 2001; 18: 273–85. In the earlier paper, we referred to ‘monistic geneticism’ and ‘monistic gestationalism’ as ‘strong geneticism’ and ‘strong gestationalism’ respectively.

rights, and it may make one liable for parental responsibilities. Custody is not always given to a child's natural parents, nor are a child's natural parents necessarily required to provide for her *as* her parents; the point is simply that being a natural parent gives one an initial claim to parental rights and makes one initially liable for parental responsibilities. Both claims and liabilities are defeasible (rebuttable), but the point is that natural parenthood suffices to generate a presumption of legal parenthood in the first instance. Natural parenthood is not simply legal parenthood, but it does carry legal implications.

We use the term 'parenthood' rather than divide parenthood into constituent rights (or claims) and responsibilities. We do this in part because we are trying to fix on a basic moral notion rather than a legal relation. We also speak of parenthood because we assume that insofar as parenthood brings both rights and responsibilities it brings them *together* – that is, one does not get all the rights but none of the responsibilities, or vice versa. This is not to say that parenthood *does* bring either rights or responsibilities, or that it does not bring one without the other. Nor is it to say that one cannot *lose* rights and responsibilities separately; an abusive parent, for instance, may lose custody but be compelled to pay child-support. Our assumption is only that *if* parenthood brings both rights and responsibilities, then it brings them together.

I.3 WHY NATURAL PARENTHOOD MATTERS

Despite the fact that various accounts of parenthood have fundamental implications for the nature of fatherhood, the debate about the basis of natural parenthood has emerged only since genetic and gestational motherhood became separable through reproductive technologies such as 'surrogate' or 'contract' motherhood, gamete donation, the freezing of embryos, and attempts to develop an artificial uterus (which would permit ectogenesis, disembodied gestation). Monistic gestationalism implies that infants gestated in an artificial womb would be orphans – which might provide an argument against ectogenesis. For their part, monistic geneticists – even those who oppose surrogacy contracts – regard gestation as such as mere babysitting, and therefore find (mere) gestational surrogacy morally unproblematic.² Many

² See: H. Krimmel. 1998. The Case against Surrogate Parenting. In *Classic Works in Medical Ethics*. G. Pence, ed. Boston. McGraw-Hill: 127–137. See also: J.L. Nelson. Parental Obligations and the Ethics of Surrogacy: A Causal Perspective. *Public Affairs Quarterly* 1991; 5: 49–61.

gestationalists, on the other hand, oppose surrogacy on the basis of gestationalism.³ While no view on the nature of parenthood by itself *entails* any position on these other issues, accounts of parenthood clearly shape the character of these debates. A plausible account of natural parenthood could help move these debates in fruitful directions.

II.1 THE PARITY PRINCIPLE AND THE PATERNITY PROBLEM

In the face of reproductive technologies, medical and legal institutions have had to address new kinds of parental disputes. Although there is no consensus on the nature of parenthood, there is widespread support for monistic gestationalism *about motherhood*. Legislation in the United Kingdom, South Africa, Bulgaria and Spain holds that the gestational mother should be considered the sole mother.⁴ According to the Council of Europe, ‘maternity should be determined by the fact of giving birth, rather than genetics (origin of the ova).’⁵ Similarly, the Warnock Report – perhaps the most influential public document on reproductive technology – also endorses some form of gestationalism: ‘legislation should provide that when a child is born to a woman following donation of another’s egg the woman giving birth should, for all purposes, be regarded in law as the mother of the child, and that the egg donor should have no rights or obligations in respect of the child.’⁶ Where they have addressed the issue,

³ See: R. Tong. The Overdue Death of a Feminist Chameleon: Taking a Stand on Surrogacy Arrangements. *Journal of Social Philosophy* 1990; 21: 40–56; M. Moody-Adams. On Surrogacy: Morality, Markets and Motherhood. *Public Affairs Quarterly* 1991; 5: 175–191. See also several of the papers discussed below.

⁴ On the UK, see: United Kingdom Department of Health and Social Security. 1986. *Legislation on Human Infertility Services and Embryo Research: A Consultation Paper*. London. H.M. Stationery Office. On South Africa and Bulgaria, see: R.A. Charo. 1990. Legislative Approaches to Surrogate Motherhood. In *Surrogate Motherhood: Politics and Privacy*. L. Gostin, ed. Bloomington. Indiana University Press: 106. And on Spain, see: K.H. Rothenberg. 1994. Gestational Surrogacy and the Health Care Provider. In *The Beginning of Human Life*. F.K. Beller & R.F. Weir, eds. Dordrecht. Kluwer: 101–113.

⁵ Rothenberg, *op. cit.* note 4.

⁶ M. Warnock. 1985. *A Question of Life: The Warnock Report on Human Fertilisation and Embryology*. New York. Basil Blackwell: 37. The Report is ambiguous between sufficiency and monistic gestationalism, for it does not say whether egg donors *alienate* their parental claims, or whether they have no such claims to alienate.

medical associations have also generally endorsed monistic gestationalism (for motherhood).⁷

The legal approach to motherhood is not clearly compatible with the legal approach to fatherhood.⁸ Most jurisdictions strongly presume that the husband of the 'natural' mother is the child's father, where the natural mother is usually understood to be the gestational mother.⁹ This 'mother's husband' presumption may suggest that the law regards paternity as an indirect relation, acquired via a man's relationship with a (gestational) mother rather than his relation to the child. However, the mother's-husband presumption is not always decisive, and courts (at least in America) are becoming increasingly willing to proclaim the rights of genetic fathers. For instance, the Colorado Supreme Court has claimed that the 'natural father, no less than the mother, must have the right to establish the significant relationship of paternity to the child he has allegedly sired.'¹⁰ In addition, several courts have overturned adoptions to which the genetic father had not consented (because he did not know he was a father), thus explicitly assuming that mere genetic parenthood does ground a man's claim to parental custody.¹¹ In short, the legal perspective on parenthood is both equivocal and fluid.

Whatever view theorists or laws take on parenthood, they ought to accept a meta-principle regulating such determinations, which we call the *parity principle*: any condition that makes one person a parent should, biology permitting, make anyone a parent. It would seem arbitrary if, say, direct genetic derivation were

⁷ Both the Working Party on Human Infertility Services of the British Medical Association, and the Committee on Ethics of the American College of Obstetrics and Gynecology, deem genetic parentage less weighty than gestational parentage. See: Rothenberg, *op. cit.* note 4.

⁸ For an extensive review of American legal precedents on fatherhood, see: J.L. Hill. What Does it Mean to Be a 'Parent'? The Claims of Biology as the Basis for Parental Rights. *New York University Law Review* 1991; 66: 353–420, at 372–83.

⁹ B. Cohen. Surrogate Mothers: Whose Baby IS it? *American Journal of Law and Medicine* 1984; 10: 243–285.

¹⁰ Cohen, *op. cit.* note 9, p. 270.

¹¹ For discussion and criticism of three infamous contested-adoption cases where courts found in favour of genetic fathers, see: A.S. Rosenman. Babies Jessica, Richard, and Emily: The Need for Legislative Reform of Adoption Laws. *Chicago Kent Law Review* 1995; 70: 1851–95. In the first gestational surrogacy case, the court granted the genetic parents the right to have their names put on the birth certificate and be recognised as the legal parents. See: L.B. Andrews. 1989. Alternative Modes of Reproduction. In *Reproductive Laws for the 1990s*. S. Cohen & N. Taub, eds. Clifton, NJ. Humana Press: 361–404.

sufficient for paternity but not maternity. Institutions that recognise the parenthood of genetic fathers should also recognise the parenthood of genetic mothers, and vice versa.

Some people might reject the parity principle based on the following two claims: (1) the gestational mother has a better claim to be the mother than the genetic mother does; and (2) a person cannot have multiple (natural) mothers. Whatever is the case with (1), (2) is implausible. Monistic gestationalists, for their part, may remain silent on claim (2), or even join us in rejecting it, if shared gestation becomes possible. Monistic gestationalists (trivially) endorse the parity principle by asserting a stronger claim: (1*) the gestational mother has the *only* claim to be the mother. Thus because it (trivially) supports the parity principle, monistic gestationalism has initially plausible implications. However, this way of respecting the parity principle faces the *paternity problem*: if the gestational relation is necessary for parenthood, how do men become fathers?¹² The best account of parenthood should both respect the parity principle and solve the paternity problem.

Monistic gestationalists might offer two solutions to the paternity problem. One solution would make 'non-gestational parenthood' derivative on gestation. In this view, 'fatherhood' can be acquired only indirectly, in virtue of the man's relationship with the child's only genuine parent, its gestational mother. In essence, this move aligns paternity with social parenthood: a 'genetic father' has neither a *prima facie* claim to parental rights, nor liability for parental responsibilities. This position is quite counter-intuitive, and so defending it requires a powerful argument in favour of necessity gestationalism; in the rest of this section, we examine three potential arguments. Because this position makes natural parenthood rest on some inherent aspect of gestation, we call it the 'inherent' approach.

A second approach to the paternity problem would make a subtle but important emendation to gestationalism. Instead of grounding parenthood in a property unique to gestation, one might ground parenthood in a feature that accompanies or 'tracks' gestation, but which men can also possess. Indeed, monis-

¹² The paternity problem is a special case of a general challenge to the *exclusivity* of monistic gestationalism. Other species of this problem would ask whether (mere) genetic mothers are to be regarded as mere gamete-suppliers rather than parents; or whether adoptive parents can ever be the real parents of their adoptive children. In our view, however, the problem is sharpest for the case of paternity, so in what follows we focus on that version.

tic gestationalists might even hold that men can *easily* possess this feature – for instance, when they participate as equals in child-rearing – but that this feature does not supervene on genetic derivation (and so denies the paternity of sperm donors and men who contract with surrogate mothers, where parenthood is most disputed). In this approach, then, gestation generates parenthood only because it tracks those properties that really ground parenthood. This ‘tracking’ strategy must specify: i) which property or properties gestation tracks, and ii) why those properties generate parenthood. Section III below examines three plausible candidates for such a property.

II.2 THE INHERENT APPROACH TO PARENTHOOD

Monistic gestationalists often endorse the indirect conception of paternity we mentioned above. According to Barbara Katz Rothman, ‘If men want to have children, they will have to either develop the technology that enables them to become pregnant (and so be ‘legal’ mothers of children they gestate themselves) or have children through their relationships with women.’¹³ In effect, in Rothman’s view fatherhood (given current technology) is merely an ascriptive relation grounded in social, economic, or legal considerations, rather than a natural relation grounded in biology.¹⁴ The problem is that Rothman defend this view of paternity by appeal to the legal context mentioned earlier, in which a husband is presumed to be the father of any child born to his wife.¹⁵ Similarly, defending the indirect account, Ruth Macklin notes that in cases of artificial insemination by donor (AID) the law recognises the husband of the sperm recipient as the father.¹⁶ However, these considerations are not clearly to the point, since they address legal conventions rather than natural relations; moreover, as we noted, the legal context is ambiguous. As for Macklin’s point about AID, it is at least arguable that gamete donors *transfer* their parental

¹³ B.K. Rothman. 1989. *Recreating Motherhood: Ideology and Technology in a Patriarchal Society*. New York. W.W. Norton: 257.

¹⁴ It is debatable whether a sharp natural/ascriptive distinction can be sustained. Rothman seems to assume that it can be, and we follow her here. Note, however, that our account of parenthood in section V does not depend on this distinction.

¹⁵ See Rothman, *op. cit.* note 13, pp. 230, 254.

¹⁶ R. Macklin. 1996. Artificial Means of Reproduction and Our Understanding of the Family. In *Biomedical Ethics* (4th edition). T.A. Mappes & D. DeGrazia, eds. New York. McGraw Hill: 514.

rights and responsibilities, rather than they never had these rights and responsibilities at all (as Macklin assumes).¹⁷

It is, of course, still open to defenders of the inherent approach to offer positive arguments for limiting parenthood to gestational mothers. What, then, can be said in favour of the view that gestation is uniquely necessary for parenthood?

II.3 THE IDENTIFIABILITY ARGUMENT

One familiar basis for gestationalism is that gestational mothers, unlike genetic 'parents', are guaranteed to be identifiable at birth. This 'identifiability' argument is one of two that the Council of Europe offers in defence of monistic gestationalism.¹⁸ It also finds support from George Annas and other commentators.¹⁹

We have two worries about the identifiability argument. First, we have qualms about appealing to consequentialist considerations in theorising about natural parenthood. While such considerations ought to play a key role in custody decisions, it is less clear that they should be given a central role in grounding natural parenthood. However, even if we grant the consequentialist orientation of the argument, it still does not go through. One wouldn't want to endorse *monistic* gestationalism if one wanted to ensure that children enter the world with a network of people who have an interest in, and responsibilities for, their welfare. Monistic gestationalism ensures that children have (at most) one parent, while recognising that the moral force of genetic relations will usually bring in two 'parents' and a whole network of 'kin.'²⁰ A pluralist account of parenthood, according to which gestational and genetic relatedness are individually sufficient for parenthood, better ensures that children have adequate protection from birth. To be sure, this inclusiveness could generate custody disputes, which in this context would seem like an embarrassment of riches for a child who (one previously worried) might lack *any* guardian.

¹⁷ T. Bayne. Gamete Donation and Parental Responsibility. *Journal of Applied Philosophy* 2003; 20: 77–87.

¹⁸ See: Rothenberg, *op. cit.* note 4, p. 103.

¹⁹ G. Annas. Redefining Parenthood and Protecting Embryos: Why We Need New Laws. *The Hastings Center Report* 1984; 51 (October): 106. See also: Charo, *op. cit.* note 4, p. 105. The consequentialist nature of the identifiability argument is explicit in: S. Feldman. Multiple Biological Mothers: The Case for Gestation. *Journal of Social Philosophy* 1992; 23: 98–104.

²⁰ See: U. Narayan. 1999. Family Ties: Rethinking Parental Claims in the Light of Surrogacy and Custody. In *Having and Raising Children*. U. Narayan & J. Bartkowiak, eds. University Park, PA. Pennsylvania State University Press: 76.

However, provided gestation remains sufficient for parenthood travesties such as the *Baby M* case would not occur.²¹

Of course, the identifiability of genetic parents might raise issues of privacy. But privacy concerns need not be significantly challenged if genetic testing and other methods of identification were limited to cases where the gestational mother requests it, or (what is more likely) can identify the genetic parent(s). It should also be noted that cases where the genetic parents are hard to locate are likely to be cases in which, for whatever reason, no one wants or feels able to assume responsibility for the child. Assuming that parenthood brings rights and responsibilities together if at all,²² monistic gestationalism implies that the *only* person with parenthood-based responsibilities for an unwanted child would be its gestational mother. It seems to us that this would be a troubling result.

II.4 THE INCORPORATION ARGUMENT

One of the unique features of pregnancy is the physical relation between the foetus and the gestational mother. Three aspects of this physical relation are relevant here. First, the foetus is *physically contained* within its gestational mother. Second, the foetus is *physiologically integrated* with the gestational mother – she provides its nutrients and eliminates its waste. Because of this, the foetus is, at least in the early stages of development, directly dependent on its gestational mother for life. Third, the foetus is *materially derived* from the mother's body. Given these three considerations, it is plausible to view the embryo-foetus as, quite literally, 'part of the woman's body, regardless of the source of the egg and the sperm.'²³ And from there the move to the special moral relationship between gestational mother and child is quick; the liberal doctrine of sovereignty over one's person, for instance, supports the idea that one bears a special relation to things that are, or used to be, part of one's body.

According to the incorporation argument, the gestational mother is the parent of her child because it was once part of her. So there are two premises to the incorporation argument: (1) at least in the early stages of its development, a foetus is quite literally part of its gestational mother's body; (2) being, or having been, someone's body part is necessary for being that person's child.

²¹ G. Annas. *Baby M: Babies (and Justice) for Sale. Hastings Center Report* 1987; 17 (June): 13–15.

²² See section I.1 above.

²³ Rothman, *op. cit.* note 13, p. 238; cf. 258.

Although the notion of a body part is not unproblematic, there seems to be something to (1).²⁴ The foetus does have its own blood supply, but it lacks an independent supply of oxygen, and this is as important as blood. One might object that since a foetus is an organism in its own right, it cannot be part of its mother. Granting – if only for the sake of argument – that a foetus is an organism in its own right, it does not follow from this that it could not also be part of its mother. Something can be both an organism in its own right and, at the same time, part of another organism. Our cells, for instance, are organisms that are parts of other organisms, and perhaps the foetus bears this relationship to its mother. Although problematic then (1) is not implausible. Premise (2), however, is unattractive. While incorporation may be *sufficient* for parenthood, it is unclear why it should be necessary.

Monistic gestationalists might argue that the important phenomenon is not bodily incorporation *per se*, but the fact that foetuses are materially derived from their gestational mother in a way that they are not derived from genetic or custodial ‘parents.’ This point is clearly true, but it lacks probative force: a foetus is *materially* derived from its gestational mother but it is *genetically* derived from its genetic ‘parents.’ And of course, the environment provided by the social ‘parent(s)’ and the larger society has deep and powerful effects on the growing child’s physical and emotional development. There is little *prima facie* reason to regard any one of these relations as primary, though surely each takes its turn in the experiential limelight. It seems arbitrary to regard any one kind of contribution to creation and development as necessary for parenthood, when clearly each is necessary for a child’s flourishing and growth. Arguments from derivation support sufficiency gestationalism, but they also support sufficiency geneticism, and even some form of social parenthood.

Identifiability and incorporation, then, each supports sufficiency gestationalism – and indeed can be extended to support pluralism – but neither stands up as a defence of the claim that gestation is *necessary* for parenthood.

III. THE TRACKING APPROACH

Earlier we distinguished two general strategies for answering the paternity problem. We have seen that the inherent strategy

²⁴ See: E. Olson. 1997. *The Human Animal*. Cambridge. Cambridge University Press: 142–153, for discussion of some of the difficulties involved in giving an account of what makes something part of one’s body.

does not support monistic gestationalism, because the positive defences of monistic gestationalism are inadequate. We now turn to the second strategy, according to which gestational mothers are parents because they possess some feature that not only tracks gestation but may also track other relations some of which may be carried out by would-be genetic and social parents. Three plausible features might be appealed to here: 'sweat equity', an affective relation of some kind, and social expectations. We take these in order.

III.1 SWEAT EQUITY

A number of authors argue that gestation grounds parenthood on account of the labour that the gestational mother performs. In Narayan's words, a gestational mother undergoes 'considerable discomfort, effort, and risk in the course of pregnancy and childbirth.'²⁵ Moody-Adams defends monistic gestationalism on the grounds that gestation is a *sui generis* form of labour, unique because of its duration and constancy, its effects on the life of the labourer, and its product. In contrast, genetic 'parents' do not perform any comparable labour, for although genetic parents help to *cause* the child, the *labour* they invest in the child is minimal.

The sweat equity argument may suggest an unattractive children-as-property conception of parenthood, but the argument can in fact be made without appeal to property in oneself or one's creations. Someone who donates much of their time and effort to community work deserves recognition for their work, but they do not thereby acquire property rights through their efforts.

However, there is a problem with the sweat equity argument and it is this: while mapping onto our intuitions about the fruits of one's labour, it ignores the fact that the direction of fit can also go in the other direction. Consider the situation of a genetic father who refuses to contribute to the well-being of his genetic child. We would be inclined to regard such a person as failing to fulfil his parental responsibilities. This, of course, assumes that such a person has an obligation to invest his labour in a certain child *because* this child is his, i.e., because he is its genetic father.

²⁵ She goes on to say that 'gestation is an intimate process during which a woman could quite understandably develop a deep attachment to the child she carries and gives birth to.' Narayan, *op. cit.* note 20, p. 81. This second claim is a version of what we call the affective argument, which we discuss below.

Monistic gestationalism cannot explain why being a genetic parent can make the investment of sweat equity morally incumbent.

It may be, then, that the sweat equity argument throws into question the assumed symmetry between the origins of parental rights and the origins of parental responsibilities. A monistic gestationalist might argue that through successful gestation, gestational mothers gain defeasible rights over, but not defeasible obligations to, their children. We find this proposal implausible. For one thing, this argument distinguishes gestation from any other kind of action, in that the agent would bear no responsibility for its consequences even when the action is voluntary. To be sure, some defenders of the sweat equity argument, such as Moody-Adams, emphasise the putative *sui generis* character of gestational labour, but to ground such an odd moral conclusion in the sheer uniqueness of gestation could only add to the mystery. Moreover, from a teleological perspective, this rights-only position endangers the child, whose only genuine parent is now taken to have no obligations with respect to it.

III.2 BONDING AND AFFECTIVE RELATIONS

The sweat equity argument emphasises the physical relation between the gestational mother and her foetus. By contrast, the affective argument emphasises their psychological relationship. In this view, gestation grounds parenthood because it tracks an emotional relationship between mother and child, a relationship that does not follow upon genetic relationships as such.

Bonding and attachment play a role in custody disputes and the assignment of social parenthood, and it doesn't seem unreasonable to suppose that they should also play a role in generating natural parenthood. According to Rothman:

Any pregnant woman is the mother of the child she bears. Her gestational relationship establishes her motherhood . . . [Children] enter the world in a relationship, a physical and social and emotional relationship with the woman in whose body they have been nurtured.²⁶

Do children really enter the world in a social and emotional relationship with their gestational mother? One can consider the mother-child relation from two perspectives: that of the infant (attachment) and that of the mother (bonding). Let us begin with attachment. The monistic gestationalist might attempt to derive

²⁶ Rothman, *op. cit.* note 13, p. 475.

some support from attachment theory.²⁷ Attachment theorists hold that early mother-infant attachment is essential for the development of the infant. Although 'official' versions of the view tend to date the beginnings of attachment to birth, attachment theorists sometimes suggest that attachment might begin during pregnancy.²⁸

Attachment theory, however, has come in for significant criticism in recent years.²⁹

[R]esearch on early emotional bonding suggests that parents can become highly involved with their infants during the first few hours if they are permitted to touch, hold, cuddle, and play with their babies . . . However, it appears that this early contact is neither crucial nor sufficient for the development of strong parent-to-infant or infant-to-parent attachments. Stable attachments between infants and caregivers are not formed in a manner of minutes, hours or days: they build rather slowly from interactions that take place over many weeks and months.³⁰

Although it is certainly possible that future research may show that significant attachment can occur only if it begins *in utero*, or in the hours immediately following birth, there is currently little support for either claim.

While there is little evidence that infants become attached to their gestational mothers either in the womb or in the birth process, it may be that gestation and childbirth are crucial in the bonding process, that is, in the *mother's* felt relationship with her child. While it is certainly true that many gestational mothers bond with their foetus or new-born, many mothers are indifferent to their new-borns, and it is often a week or so before this indifference gives way to deep feelings of concern.³¹ More

²⁷ See: J. Bowlby. 1969. *Attachment and Loss*. London. Hogarth Press. M.D. Ainsworth, M.C. Blehar, E. Waters & S. Wall. 1978. *Patterns of Attachment*. Hillsdale, N.J. Lawrence Erlbaum. M.H. Klaus & J.H. Klennell. 1983. *Bonding*. St. Louis, MO. Mosby. See also: Hill, *op. cit.* note 8, pp. 394–400, and works cited there.

²⁸ See: Bowlby, *op. cit.* note 27, p. 181; Ainsworth, *op. cit.* note 27, p. 23; and Klaus & Kinnell, *op. cit.* note 27, p. 9.

²⁹ See: D.E. Eyer. 1992. *Mother-Infant Bonding: A Scientific Fiction*. New Haven, CT. Yale University Press. See: M. Daly & M. Wilson. 1988. *Homicide*. New York. A. de Gruyter: 69–73. S. Goldberg. Parent-Infant Bonding: Another Look. *Child Development* 1983; 54: 1355–1382.

³⁰ D. Shaffer. 1989. *Developmental Psychology: Childhood and Adolescence* (2nd edition). Pacific Grove, CA. Brooks/Cole: 399.

³¹ See Daly & Wilson, *op. cit.* note 29, pp. 71–72.

generally, we do not think that emotional intimacy is necessary for parenthood. Consider the example of an emotionally cold and distant parent. We might describe such a person's emotional state as being inappropriate or impoverished in some way: one ought to love and care for one's children simply because they are one's children. However, if this response is appropriate then emotional attachment cannot be necessary for parenthood.

In addition, we should also note that emotional commitment is not sufficient for parenthood. Many individuals can bond with an infant (and perhaps even a foetus), albeit in different ways. Relatives, family friends, and hospital staff can all bond with an infant, but they do not for this reason become parents of the infant in question. Bonding and attachment are not helpful for the monistic gestationalist, because they are not properties that parenthood plausibly tracks.

III.3 SOCIAL NORMS AND EXPECTATIONS

A final argument for gestationalism appeals to the social norms that govern pregnancy and childbirth. Perhaps gestational mothers are mothers because they are regarded as such. Elizabeth Anderson puts this point nicely: 'Pregnancy is not simply a biological process but also a social process. Many social expectations and considerations surround women's gestational labor, marking it off as an occasion for the parents to prepare themselves to welcome a new life into their family.'³² Social institutions, formal rules, and informal norms, can have powerful effects on people's conception of their roles and themselves. It might be that this attitude – combined with its origin in social norms and pressures – grounds parenthood. A pregnant woman is likely to change her diet in the interests of the foetus, and may change her job in its interests as well. Whether or not she *does* act in the interests of her foetus, she will be expected to do so by many people, and in some jurisdictions she can be prosecuted for failing to do so in certain ways. Not only does society in general regard gestational mothers as mothers, but they see themselves in this light. The self-conception of many pregnant women is in large part as mothers – or, at least, as mothers-to-be.

Although the social argument seems to provide some support for sufficiency gestationalism, it does not show that gestation is

³² E.S. Anderson. Is Women's Labor a Commodity? *Philosophy and Public Affairs* 1990; 19: 81 (cf. 87).

necessary for parenthood. Clearly social norms of parenthood do surround gestational mothers, but they also surround genetic fathers and adoptive 'parents.' Men are expected to have a certain attitude toward their genetic children, whether or not they live with the gestational mother or have ever met the child. Paternal abandonment is generally the subject of censure, even if the father helps ensure that the mother and child are economically secure. And in the same way that gestational mothers internalise the general conception of them, so too do genetic fathers. The social norms surrounding pregnant women in particular and parenthood in general do not regard gestation as the sole ground of parenthood.

A second point to note about the social argument is that, as Laura Purdy has noted, there may be a rather high cost in grounding gestationalism in our social norms concerning gestation and childbirth. The social norms around childbirth and rearing are among the more regressive, with respect to gender, in our society.³³ This remains true even if, as Anderson argues, those norms serve the valuable function of encouraging mothers to love and identify with their children. Laying a great deal of moral weight on them may therefore be counterproductive in other respects. In particular, women who intend to terminate their pregnancy or give up their child for adoption might want to resist seeing themselves as – and being seen as – mothers-to-be.

We have surveyed an array of arguments for monistic gestationalism and found each one lacking. At most, these arguments support *sufficiency* gestationalism, which is friendly to the pluralism about parenthood that we endorse. We have not, it should be noted, argued that sperm (or egg) donation and gestation are equally arduous, nor have we argued that gestational mothers have no better claim to be awarded custody of a child than its genetic 'parents.' We have argued only that each relation gives its possessors a defeasible claim to parental rights and responsibilities. In this respect, 'parenthood' is a success term – its applicability is a function of its bearer having a certain status, not how hard she must work to attain that status. Similarly, 'pregnancy' is a success term. Some people try for a long time with no results (hence the fertility industry), while others 'succeed' without even trying (hence the shotgun wedding). We do not disrespect those whose pregnancies require exhaustive biological and

³³ L.M. Purdy. Surrogate Mothering: Exploitation or Empowerment? *Bioethics* 1989; 3: 18–34.

technological effort when we regard accidental pregnancies as no less pregnancies than theirs; similarly, we do not disrespect or devalue gestational mothers when we regard genetic 'parenthood' as no less a form of parenthood than gestational parenthood.

IV. INTENTIONALISM

Although less prominent in the philosophical literature, intentional approaches to parenthood have been popular among legal theorists.³⁴ In its broadest form, an intentional account of parenthood takes the intentions to rear and nurture as relevant (i.e. necessary, sufficient, or both) to the ascription of parenthood. As one proponent writes, 'it is the procreators – the party or parties responsible for bringing the child into the world with the intention of raising it . . . – who are the "parents" of the child at birth'.³⁵

Intentionalism strikes many as intuitively odd, so it may be appropriate to say a few words in its favour. First, intentionalism offers the appealing prospect of integrating natural and social parenthood. Social parenthood is plausibly regarded as resting on parents successfully carrying out the intention to parent. Second, intentionalism promises to make sense of how parental rights and responsibilities are acquired. This can look somewhat mysterious from the standpoint of geneticism and gestationalism.

³⁴ Hill, *op. cit.* note 8. Other intentionalist approaches to parenthood include: A. Stumpf, Redefining Mother: A Legal Matrix for New Reproductive Technologies. *The Yale Law Journal* 1986; 96: 187–208; M.M. Shultz, Reproductive Technology and Intent-Based Parenthood: An Opportunity for Gender Neutrality. *Wisconsin Law Review* 1990: 297–398; P. Parker, Surrogate Motherhood: The Interaction of Litigation, Legislation and Psychiatry. *International Journal of Law and Psychiatry* 1982; 5: 341–54; and L.M. Silver & S.R. Silver, Confused Heritage and the Absurdity of Genetic Ownership. *Harvard Journal of Law & Technology* 1998; 11: 593–618. Nelson, *op. cit.* note 2, discusses and rejects a theory that he calls 'intensionalism' (with an 's'). He characterises this view as a theory of how parental obligations are incurred, rather than a theory of what makes someone a parent (though he does not distinguish between these two issues). This distinction matters here because intensionalism for Nelson amounts to an instance of the general view that all obligations are (hypothetically) voluntary, which Nelson rejects. But intentionalism (with a 't') does not share this premise. To wit, Nelson and (as we shall see below) Hill both defend causal accounts of the origins of parental obligations, though Nelson thinks that this 'causalism' entails monistic geneticism.

³⁵ Hill, *op. cit.* note 8, p. 387.

How could a purely biological relationship such as genetic derivation or gestation generate rights and responsibilities? By contrast, it is much more comprehensible how rights and responsibilities could arise out of the effective achievement of manifest intentions.³⁶

In arguing for intentionalism, Hill considers a five-person surrogacy arrangement involving two persons who intend to rear a child ('intended parents'), two gamete donors, and a woman who will gestate the foetus (three 'biological progenitors'). Hill offers two reasons for thinking that (only) the intended parents are the real parents. First, they are the 'first cause, or the prime movers, of the procreative relationship.' Second, 'while some gestational host and genetic progenitors are necessary to achieve the intention of the intended parents to have a child, no particular biological progenitors are necessary.'³⁷ But for the intended parents, there would be no child at all.

Neither of these claims is convincing.³⁸ The 'prime mover' argument is not to the point, for persons who were eager to be grandparents might act as 'prime movers' in orchestrating their daughter's or daughter-in-law's pregnancy. It would not follow that the grandparents thereby became parents. Nor is Hill's second point persuasive. Hill's 'but-for' causal argument is invalid because it equivocates on the identity of the particular child in question. Hill is correct that no particular biological progenitors are 'necessary to achieve the intention of the intended parents to have a child', but it does not follow that the particular biological progenitors do not stand in the 'but-for' causal relationship with the child that they do in fact have.³⁹ To the contrary, at least on the most plausible current theory of identity, each person's genetic material – the particular gametes that fused at conception – is essential to that person, and thus each person's genetic parents stand in a 'but-for' causal relationship to her or him.⁴⁰ It may be true that but for the orchestration of the intended parents, no child would have been born, and *a fortiori* that *the*

³⁶ O. O'Neill. 1979. Begetting, Bearing, and Rearing. In *Having Children*. O. O'Neill & W. Ruddick, eds. Oxford. Oxford University Press: 25–38.

³⁷ Hill, *op. cit.* note 8, p. 415. Emphasis in original.

³⁸ For a penetrating critique of Hill see: M. Roberts. Good Intentions and a Great Divide: Having Babies by Intending Them. *Law and Philosophy* 1993; 12: 287–317.

³⁹ Hill, *op. cit.* note 8, p. 415. Emphases added.

⁴⁰ S. Kripke. 1972. *Naming and Necessity*. Cambridge, MA. Harvard University Press: 113–14.

child would not have been born, but it does not follow that the intended parents are the only 'but-for' causes of the child.⁴¹

Intentionalism also suffers from other problems. First, and most simply, many people become pregnant unintentionally and this does not make them any less the parent of the ensuing child than if they had planned the pregnancy. Thus, preconception intentions to procreate are not necessary for parenthood. The same can be said for *prebirth* intentions to procreate, or for that matter, procreative intentions whenever they arise. If, as we have argued, genetic fathers are fathers, they are such whether or not they know they have conceived a child. (It does not follow that the father is a *good* father, or that the acts whereby he participated in procreation were exercises of a putative right to procreate.) However, if genetic 'fathers' are fathers, they are such whether or not they intend to be. It seems to follow that no particular intentions are necessary for parenthood.

V. CAUSALISM

The argument against necessity intentionalism leaves open the possibility that a weaker form of intentionalism – sufficiency intentionalism – might take its place alongside sufficiency geneticism and gestationalism as one of several bases for ascribing parenthood. Indeed, it could be that (sufficiency) intentionalism is, at root, plausible for the same reasons that (sufficiency) geneticism and gestationalism are plausible, viz., procreative intentions can be causally linked in the right sort of way to the creation of children. Our goal here is not to defend a causal account of parenthood in any detail. Rather, we want to suggest that whatever shape a causal account of parenthood takes, it must be pluralistic, because several kinds of activities make significant causal contributions to procreation.

The gestational mother plays the most obvious causal role: inside her, the embryo-foetus is actually created and, at significant expense, she provides the oxygen, nutrients, and shelter required to bring the foetus to term. There is also little mystery in the causal role of genetic parents, whose chromosomes are essential to the particular being that comes to exist. Though at this point

⁴¹ Hill offers two other arguments for intentionalism. These are the 'contract argument' and the 'avoidance-of-uncertainty' argument. These two arguments, while not wholly implausible as far as they go, are much more plausibly read as defending particular frameworks for legal rights, rather than as an account of parenthood. Thus, we leave these arguments aside here.

we have no account of the 'right way' of being causally implicated, it seems that including the gestational and genetic parents is a litmus test of any account of the right sort of causal linkage.

Less obvious is the causal role of custodial 'parents.' Causal accounts of parenthood may be more or less inclusive, and we suggest that they ought to be at least inclusive enough to admit certain custodial 'parents' fully into the realm of parenthood. Custodial parents – however many there are, and whether or not they are also 'biologically' related to the child – are causally important in the developing child's personality, opportunities, physical and mental health, and every other aspect of the child's life. Neoteny – long-term dependence upon others after birth – is as 'natural' an aspect of the human species as viviparous reproduction. For this reason, the widely held conviction that adoptive parents – at least when they adopt very early in the child's life, and at least after the passage of sufficient time – are parents on a par with 'birth' parents, seems correct. While we emphasise that simply determining the basis of natural parenthood does not entail any particular policies concerning parenthood, and so adoptive parents may be *legal* parents even if they are not *natural* parents, it seems that the causal role of adoptive parents in the creation of live, healthy children (and eventually adults), merits inclusion within a theory of natural parenthood.

Still less clear is the causal role of intended 'parents.' Although intentionalists fail to show that intended parents play a uniquely important causal role in the generation of a surrogate child, it is clear that intended parents are crucial to the creation of children in cases of 'assisted reproduction' (though even this term risks begging the question of who is doing the reproducing). For this reason, the plight of intended parents – who go to great pains orchestrating a process that results in the creation of a child, and who prepare for the coming child just as expecting gestational parents do – is surely a sympathetic one. However, it is by no means clear that the role of intended parents is in these respects any more 'parental' than the role of expectant grandparents. As we noted earlier, sometimes grandparents, too, can be the 'prime movers' in the creation of grandchildren. It should be remembered, too, that, provided the causal theory is sufficiently inclusive to cover custodial parents, intended 'parents' can expect to become genuine parents not long after they take custody of the child.⁴²

⁴² The *Glover Report* reaches a similar conclusion on surrogacy. See: Jonathan Glover. 1989. *Fertility and the Family: The Glover Report on Reproductive Technologies to the European Commission*. London. Fourth Estate: 77–80; 151.

Then again, custodial parents become parents (as opposed to mere legal guardians) solely on account of actions taken *after* gaining custody through, say, adoption. In contrast, intended parents take procreative actions before gaining custody, indeed, before conception. And as Hill notes, intended parents may even be causally necessary in the creation of the child. We are therefore inclined toward a brand of pluralism that is sufficiently inclusive to admit intended parents as parents.

This conclusion represents an attempt to resolve a conceptual problem, not a custody dispute. However, our resolution – mildly favouring intended parenthood as sufficient for parenthood – may seem threatening, in the context of contested cases where legislatures and courts have often favoured genetic and intended parents over gestational mothers. We should say, then, something about the implications of our pluralist position for these sorts of contested cases. Our position does not, recall, entail any position on custodial disputes. Nor does it entail any conclusion about the morality of surrogacy or any other technique of reproduction. One may be an inclusive pluralist – and so, in principle, consider intended parents genuine parents – but nonetheless reject reproductive technologies altogether. (Inclusive) pluralism implies only that genetic, gestational, custodial, and sometimes even intended parents, are all parents, and for that reason should be regarded as having *prima facie* responsibilities and rights as parents.

We do think that in the most controversial cases, the relevant interests of the gestational mother should generally be accorded priority over those of the genetic and intended parents. Our reasons for taking this position have to do with the power relations between genetic, gestational, and intended parents, rather than with any view about degrees or kinds of parenthood. In the contested cases that provide the backdrop to this debate, gestational mothers will typically have less voice, exit potential, and power than genetic/intended parents.⁴³ Thus, if legal priority is to be accorded to any party it should be the gestational mother.

⁴³ Intended mothers of their husbands' genetic children in surrogacy cases may also find themselves lacking voice, exit potential, and power. Indeed our pluralist view may be cold comfort in such cases: imagine the intended mother protests that her husband regards his genes as more important than hers, and his reply is that she can become a genuine parent by taking primary responsibility for child-rearing! For good reason, then, Rosemarie Tong has suggested that the practice of surrogacy inhibits solidarity among women who have more in common with each other than they do with their husband, genetic father, or intended father. See: R. Tong, *op. cit.* note 3, p. 48.

This priority might be regarded as an equalising force, intended to counterbalance the risk that the gestational mother's interests will not get their due consideration.

A more straightforward implication of pluralism is that a child can conceivably have a number of natural parents – two (or, technology permitting, more or fewer) genetic parents and one (or, technology permitting, more or fewer) gestational mother(s). However, this does not seem objectionable. After all, children can have an indefinite number of custodial parents, whose relationships to their children fall on a continuum from relatively informal to the most formalised, namely adoption. Toward the most-formalised end of this continuum, there may be few moral or legal differences between natural and social parenthood; and given high degrees of 'parental investment' and bonding, it is hard to see that social parenthood is any less 'real' a relation than natural parenthood. Thus, even those who defend 'natural' accounts of parenthood must admit that to some degree, parenthood is what we make it.

VI. CONCLUSION

We have argued against two widely held views of parenthood, monistic gestationalism and necessity intentionalism. However, in gestationalism and intentionalism, as well as geneticism, we found an underlying assumption that seems correct, if inchoate: being causally implicated in the creation of a child is the key basis for being its parent. Although we have neither defended nor developed a causal account of parenthood in any depth, we have suggested that any such account ought to be broad enough to grant parenthood to genetic, gestational, custodial, and intentional parents.

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

Avery Kolers
Philosophy Department
Humanities 313
University of Louisville

Louisville, KY 40292
USA
akolers@louisville.edu

Acknowledgements

We are grateful to two referees from this journal, members of the Center for Applied Philosophy and Professional Ethics (Canberra), and Steve Gardiner and Maria Taylor for their helpful comments. We are also grateful to the University of Pittsburgh Philosophy Department for summer research support. Finally, we would like to thank Giuliana Fuscaldo for calling our attention to the intentionalist literature.