



Family Ties

Reuven Brandt on parental responsibility and gamete donation

Many jurisdictions have enacted policies governing assisted reproduction that permit the separation of legal parenthood from biological parenthood, at least when certain conditions are satisfied. As a result of these policies, it is the individuals seeking donor gametes (sperm and/or ova) and not the gamete donors that the state recognizes a child's legal parent(s) from the moment of birth. This enables individuals seeking to use donor gametes to do so without fear that the state might deny them parental standing, or give competing parental rights to gamete donors. It also protects gamete donors from legal obligations, such as child maintenance, that might otherwise arise as a consequence of their role in reproduction.

While such policies have been of benefit to many, some have contested their ethical permissibility on the grounds that gamete donation is relevantly similar to other reproductive activities where we *do* think that biological parents ought to acquire moral and legal parental obligations. Consider, for example, a case in which contraception fails during a one-night-stand, and a child is born as a result. Here there is general (though **not universal**) agreement that the biological father has responsibilities towards his biological child even though he did not intend to become a parent at the onset of the sexual encounter. In this case, it certainly seems that freely and wilfully engaging in an activity that has the potential to result in the creation of a child is all that is required to gain parental responsibilities, if a child does in fact result. But why then does this differ from the gamete donor case?

A philosophical account of parenthood capable of distinguishing the one-night-stand case from the gamete donor case would certainly help resolve these differing intuitions we may have about responsibilities in these two cases. However, to date no such account has been fully successful. An alternate way forward is to argue that parental responsibility can be transferred. According to this view, even if gamete donors *initially* acquire responsibilities towards their biological children, these can be transferred, under the right circumstances, to the intending parents. The major upshot of this approach is that it would provide an ethical justification for policies that recognize intending parents as children's sole parents without having to resolve questions about how parental

responsibilities arise in the first place; however they arise, they can be transferred from donor to intending parent.

While many ethicists have endorsed the view that parental responsibilities are transferrable, it has two serious problems. The first is that arguments in favour of the transferability of parental responsibilities generally fail to take into account the difference between transferring and delegating responsibilities. The second is that, on further reflection, gamete donors do not seem entitled to transfer their responsibilities because these are in effect obligations owed to their offspring.

First let us consider the case made for the transferability of responsibilities. Most authors who argue for this position do so by claiming that transferring some subset of parental responsibilities to others is in fact common and uncontroversial. They point to practices such as putting children in boarding schools or under the care of babysitters as examples of transfers of parental responsibility that are generally thought to be morally unproblematic. All that is involved in the gamete donor case, they claim, is a more extensive and protracted transfer of parental responsibility; this is merely a difference in degree rather than a difference in kind.

However, on closer examination it is not clear that the examples provided to motivate this position are examples of transfers of responsibility at all. In order to see why, it is helpful to first draw a distinction between transferring and delegating responsibilities, and this is best done through use of an example. Consider the following case:

Jamie and Bill are both members of a student government. Jamie is in charge of communication and Bill is charge of internal affairs. After some discussion the student government decides to alter the duties of each posts so that the weekly newsletter becomes the responsibility of the internal affairs chair rather than the communications chair. Following this change, Bill gets a friend to do the newsletter for him so that he can have a long weekend off.

Here we would say that both a transfer and a delegation of responsibility occurred. The responsibility to produce the newsletter was transferred from Jamie to Bill, and then Bill delegated the responsibility to produce the next newsletter to his friend. This is not just a semantic point, as it reveals important features about the structure of the resulting responsibilities. Following the transfer of responsibility, we do not think that Jamie has any special duty (beyond what we might expect from any other board member) to make sure the newsletter gets produced if its completion seems to be in jeopardy. However, we do think that if Bill's friend backs out at the last minute, Bill *does* have a duty to either complete the newsletter himself or find someone else to do it.

When a responsibility is transferred, its initial barer no longer has any trace of it—it is as if they had never had the responsibility in the first place. By contrast, when a responsibility is delegated, the delegator still has the obligation to make sure it gets fulfilled.

If we re-examine the examples offered above, of babysitting and boarding school, it becomes clear these are cases of delegation and not transfer. For instance, if a parent discovers that a boarding school is not providing their child with adequate care—say, by not providing adequate meals—the parent has an obligation to withdraw their child from the school and make alternate arrangements that do satisfy their child's needs. Since the parent retains the obligation to ensure their child is properly cared for, the parent has only delegated responsibility and not transferred it. It thus does not seem that appealing to these kinds of practices supports the claim that parental responsibilities can be *completely transferred* to others—in the standard parenthood case, responsibility is delegated and the parent is never fully 'off the hook'.

That transferring parental responsibility is not as commonplace as others have suggested in no way demonstrates that such transfers are not possible at all. However, there are other reasons to doubt that such transfers are morally permissible. Consider the following example:

Mary borrows a book from the library. Instead of returning the book herself, she has John do it in exchange for fixing his bike. Unfortunately, John loses the book on the way to the library. The library asks Mary to pay to replace the book, but she refuses, arguing that she had transferred the responsibility to John, and so they should seek compensation from him.

In this example, Mary's response seems unreasonable. After acquiring the responsibility to take care of the library book, she cannot simply unilaterally transfer this responsibility to someone else. Since she is the person who withdrew the book from the library, she is ultimately responsible for its safekeeping. While she might have cause to get compensation from John on account of his negligence, this does not seem to alter her obligation to the library.

This analysis is relevant to reproductive cases because the common view is that parents have obligations *to* their children. If we take this view of parental obligation, it seems unclear how an agreement with the intending parents could absolve a gamete donor of these obligations, just like it seems unclear how an agreement between Mary and John could absolve Mary of her obligation to the library. Thus in the reproductive case, if it turns out that gamete donors do in fact acquire parental responsibilities, it does not seem like these could be unilaterally transferred to intending parents.

What I hope to have shown is that there are two good reasons to be suspicious of the claim that parental responsibilities can be easily transferred. The first is that, contrary to what is often claimed, transfers of parental responsibility are not in fact commonplace. The second is that parental obligations do not seem to be the kind of obligation that can be unilaterally transferred.

It is worth emphasizing that I have not defended the claim that gamete donors *do in fact* have parental responsibilities towards their biological offspring. My own view on the matter, which I cannot outline in full here, is that the question of donor responsibility requires a more fine-grained treatment than simply asking whether donors do or do not acquire parental responsibility. What the preceding critique does show is that we cannot dismiss this complex problem by claiming that any responsibilities that do arise for donors can simply be transferred to others.

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Image credit: Pedro Santiago, 'Father and daughter'

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