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Gestation and Parental Rights: Why is Good Enough Good Enough?¹

Lindsey Porter

Abstract

In this paper I explore the question of whether gestation can ground parental rights. I consider Anca Gheaus's (2012) claim that the labour and bonding of gestation give one the right to parent one's biological child. I argue that, while Gheaus's gestational account of parental rights is the most successful of such accounts in the literature, it is ultimately unsuccessful, because the concept 'maternal-fetal bonding' does not stand up to scrutiny. Gheaus argues that the labour expended in gestation generates parental rights. This is a standard, Lockean sort of a move in parental ethics—it usually relies on the claim that I have proprietary rights over the products of my labour. However, Gheaus argues that a standard labour account of parental rights could not generate parental rights over one's own birth child via gestation without ownership, since the labour would merely afford one a right to enjoy the goods of parenthood. At best, then, labour alone would generate a right to a child. But, Gheaus argues, not only do gestational mothers expend labour in the course of the pregnancy; they also develop emotional ties to the fetus. They 'bond' with it. This, Gheaus argues, coupled with labour, gives the birth mother parental rights over her birth child. Fathers, on her account, acquire rights over their birth child by contributing labour—in the form of antenatal support—during the course of the pregnancy. I argue that because 'bonding' is not an appropriately morally salient phenomenon, Gheaus's account does not work unless it relies on a proprietary claim, and this is *prima facie* reason to reject the account. Further, the fact that it only confers parental rights on fathers by proxy also gives us reason to reject the account. I then offer a brief sketch of a more promising, positive account of parental rights.

Keywords: gestation, rights, parenthood, gender

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Introduction

In Western law, it is common to take the gestational mother—that is, the woman who carries the pregnancy—to be the rightful mother of the child in the first instance. Why it is true historically is no big mystery: gestation was easily proved, where genetic relatedness was not. Why it is still true today stands in need of explanation.²

In this paper, I will explore the question of whether it ought to be: whether gestation generates a moral right to parent that should be codified in law. I will do this by examining the viability of what I take to be the most successful gestational account of parental rights on offer: Anca Gheaus's gestational account (2012).

Gheaus's account is unique (to my knowledge) in that it purports to motivate rights via biology but without a proprietary claim—without claiming that biological parents own their children. This account has it that gestation can motivate a parental rights claim in the absence of a claim of ownership, because, first, gestation is rights-conferring labour, and second, because in the course of gestation women bond with their fetuses.

I assume—and I will do a bit of work to motivate the claim that—an account of parental rights that relies on ownership of the child is not one we ought to accept, all other things equal. If Gheaus's account can both successfully ground parental rights in gestation, and do so without relying on child ownership, then, it is to be preferred over those accounts that ground parenthood in gestation via ownership. So, if it is successful, it is probably the best gestational account of parental rights on offer.

However, I argue that the account is unsuccessful without an ownership claim, because so-called 'maternal-fetal bonding' is not the right sort of phenomenon for Gheaus's purposes. Maternal-fetal bonding is, first and foremost, a popular notion—a set of folk beliefs about pregnancy based loosely around socially-motivated empirical work in psychology (on 'maternal-fetal attachment') stemming, but deviating broadly, from mid-20th-century theoretical work on 'maternal-infant attachment'. It is an idea that holds great sway in our culture, but it is not an idea that stands up to scrutiny. It just is not a real phenomenon of the right sort to ground a rights claim.

In Section 1 of this paper, I review the conceptual landscape of parental rights as it stands. In Section 2, I lay out Gheaus's gestational account, and show how it avoids the pitfalls of a proprietary account. In Section 3, I present three initial worries about Gheaus's account—though I will argue that probably only the third of these, the worry over non-gestational parental rights, is a real worry.

² See, for example, HFEA (1987).

In Section 4, however, I argue that ‘bonding’ just can’t do what Gheaus wants it to do; and as such, her non-proprietary gestational account is ultimately unsuccessful. Given that Gheaus’s account is probably the best gestational (indeed, biological) account on offer, I will suggest that this should lead us to reject gestational accounts of parental rights. In the final section, then, I will briefly sketch out a proposal for an alternate way of conceptualising parental rights: a deflationary account of parental rights that relies on a general defeasible right to fulfil one’s moral obligations.

Section 1: Parental Rights Background

The two defining features of the role parent are, first, that the role-filler has special responsibilities towards the child, responsibilities that other members of the child’s community do not have, even if we all have a general non-malevolent duty towards the child; and second, that she or he has special entitlements with respect to the child.³ Specifically, parents have the right to decision-make on behalf of their child, and they have the right to do so even in the absence of parental perfection. That is, parents have the right to act in ways that are not in the very best interest of the child.

Having the right to act in non-optimal ways with respect to one’s child stands in need of explanation. Children by nature are vulnerable and unable to secure what is in their own best interest, and thus, need care. But it seems indisputable that children have a *pro tanto* right to that which is in their own best interest: all other things equal, children ought to have what is best for them. Given this, all other things equal, it seems that the caretaker of a child has a duty to provide the child with what is in their best interest. And indeed, for this reason it seems like those who are best able to provide the child with what is in its best interest should parent the child. If a parent is non-optimal, it seems then that we ought to assign parenthood to someone else.

But again, it’s definitional of the role parent that the role-filler has an entitlement to decision-make even in non-optimal ways. In the philosophical literature on parenthood, the usual way to describe this entitlement is to say that parents have a right to parent their children so long as they are good enough. That is, so long as the care they provide to their children meets a minimum threshold of respect to the child’s interests,⁴ the decisions parents make do not affect their parental rights even in case of non-optimality.

³ I am conceptualising parenthood as a moral role here. See, for example, Hardimon (1994) or Porter (2012).

⁴ What we ought to take to count as good enough is a relatively underexplored question, but there is general agreement that there is some good enough, such that

Given it is clear that children have a pro tanto right to have their best interests catered to, then, we need some explanation for why good enough is good enough: we need to know what explains parents' right to be non-optimal, even in the face of children's best interest rights, since otherwise we would have to say that those best able to cater to children's best interests ought to be allowed to decision-make on their behalf. We need an account of parental rights in order for the moral role of parent to float—in order to justify parenthood. So, there is important theoretical reason to give an account of parental rights.

On the practical side of things, what we say about parental rights matters a great deal in a relatively small minority of cases. Clearly, the rise in frequency of (often regulatorily-messy) assisted reproduction throws up new challenges to understanding who is entitled to rear a given child and why. There is a startling lack of clarity, for example, surrounding parentage and citizenship in cases of international surrogacy.⁵ Furthermore, in cases of non-assisted reproduction, custody disputes are often settled via deciding a custody arrangement that simply maximises the best-interest of the child, and without much regard for the rights of the individual parents. And while the child's best interests are probably paramount, still it seems clear enough that this simple way of settling things is driven more by practical necessity than justice: we simply don't have a clear way

if a parent is at or above this standard, she has the right to parent her child. It has been suggested to me that one might need to specify what counts as 'good enough' in order to discuss parental rights, since we might think that one reason apparently non-optimal parents have a right to continue to parent their children is that it's in practice—or even in principle—impossible to rank parenting: that it's not possible to say who is a better parent than whom. But if this is right, then the parental rights question is, in some sense, moot, since we would not, on this state of affairs, be able to say that there are any non-optimal parents: just that there are apparently non-optimal parents. What one wants out of a theory of parental rights is an account of why parents have a right to continue to parent their children even if they are indeed non-optimal. So, the discussion of the right can proceed on the assumption that there is some metric for parenting goodness, even if we also have reason to feel a certain epistemological or even conceptual skepticism about this claim. If it turns out that judging some parents a bit better than others doesn't even make sense, we can still talk about why parents have a right that would hold even if it did make sense. If one disagrees that parents have such rights in principle, then one would, indeed, need to say more about what counts as 'good enough'. But in this paper, I will proceed on the assumption that parents have such rights in principle.

⁵ See, for example, the HCCH (2014) report: 'The Desirability and Feasibility of Further Work on the Parentage / Surrogacy Project'.

of making parental rights decisions in the absence of gross parental incompetence. An account of how and why a given adult has a right to rear a given child in the first instance, then, can help to give a richer and more accurate picture of what judges and arbiters ought to do in these situations. Even in simple situations of parental separation, there is need for the same clarity, if we are concerned with respecting the rights of individuals and families. So, there is good practical reason to want a sound account of parental rights.

Standard accounts of parental rights tend to suppose some sort of biological account of parenthood. That is, they tend to take biological parents to be the persons whose rights stand in need of explanation. The reason for this is straight-forward: in the case of adoptive parents, there is an apparently-clear contractual mechanism for explaining both duties and entitlements, since (in the West in contemporary times) adoptive parents go through a vetting process, at the end of which a legal contract is drawn and signed by parents and state. Adoptive parents have the duties and more importantly the entitlements of parenthood, then, because those duties and entitlements have been accepted by them by contract, and have exactly been granted them by appropriate authority.

Biological parents, on the other hand, have simply made a baby. In general, biological parents have not been vetted; they have not signed a contract; there is no presumption, as in adoption, that these people in particular are the child's best chance of having her best interests catered to. And yet, we tend to think that they have parental entitlement in the same way that adoptive parents do. This seems to need an explanation where adoptive-parental rights do not.⁶ So, the literature on grounding parental rights tends to focus on biological parents, and the usual approach, then, is to give a biological account of parental rights: to ground the rights in the biological relatedness.

The trouble with grounding the rights in the biological relatedness is that biological accounts tend to collapse into proprietary accounts of one variety or other: they tend to collapse into the claim that parents have the right to parent their children because they own their children. This collapse can be immediate, or mediated. An immediate collapse occurs in the case of straight genetic

⁶ Despite this explanation, the simple truth of it is probably that the real reason we focus on biological parents' rights is that we tend to think that biological parents are the real parents, and as such, are the ones with the rights. I disagree with this (see my (2014), and section 5 of this paper), but I agree that parents having rights in virtue of being the biological progenitors stands in need of explanation: it's not obvious why biological relatedness should be rights-generating, if it is; and it's non-obvious why giving birth to a baby ought to entitle you to keep it and raise it.

accounts of parental obligations. A mediated account occurs when labour is appealed to in order to drive the rights claim.

A straight genetic account says that (genetic) parents have rights to and over their child because the child is the product of their genetic material (e.g., Hall 1999). But the story can't end here, since 'genetic materials' are in the end just chemical sequences. Chemical sequences are not the sorts of things, on their own, that can be morally weighty enough to drive a rights claim.⁷ So, in order to ground parental rights in genes, one must argue not just that parent and child share genetic material, but that the genetic material belongs to the parent, and thus, so do the products of it (i.e. the offspring produced with it).

This is an easy strategy to reach for, since it seems quite plausible that for each of us, our bodies belong to ourselves. If our bodies belong to us, then surely our genes belong to us, since they are just what make up our bodies. Just as we have rights over our bodies (over ourselves), so we have rights over other stuffs produced by and from our bodies. So, on this sort of account, we can get easily from our rights over ourselves to our parental rights. But this belongingness will need to be of a sort that can generate rights over the object of the belonging. It is difficult to see what sort of belonging could do so, other than ownership.⁸ Indeed, when I claim rights over my own body, I do so via the claim that I own it: I own my body, and that is why I have rights over it. Same will go, then, for my genetic children. A straight genetic account of parental rights, then, collapses immediately into a proprietary account.

⁷ The problem is worse than this, since, for example, we share the vast majority of our genetic code with all mammals. The unique sameness between a parent and her child will be so vanishingly tiny a thin thread of code, it's perfectly implausible that this should, on its own, matter morally in such a significant way—not to mention the fact that siblings, for example, will share more in common, genetically-speaking, than parent-child pairs. Big brother might have a greater claim to parenthood than dad does.

⁸ It is not too difficult to think of senses of 'belongs to' that do not imply ownership. For example, I might say that I belong to a gym (if I did). And clearly I'm not claiming that the gym owns me. But just as clearly, this sort of belonging isn't rights-generating for the belongee. The gym does not have any rights over me (save the rights it always had, like the right against my stealing towels, etc.) in virtue of my 'belonging to' it. On the other hand, we can think of lots of instances of 'belonging to' that do generate rights: this pencil belongs to me; this idea belongs to me; this puppy belongs to me. In all of these examples, 'belongs to' seems to mean is owned by me.

The key strategy that is often employed to avoid the proprietary collapse is to appeal to labour: in the style of Locke, I have rights over the products of my labour.⁹ On this sort of account, parental rights aren't generated via bodily- or self-ownership, but rather, via the bodily (and other) labour involved in producing progeny.¹⁰ This sort of account both solves the worry over how genetic material can be rights-generating, and avoids the immediate collapse in to proprietorship. But of course, while it does not collapse immediately into a proprietary account, it certainly does collapse. One does not, on this sort of account, have to appeal to ownership of one's body, and thereby ownership of offspring; but one does have to appeal, just as the nod to Locke implies, to ownership of the fruits of one's labour. So, even though this sort of account is less directly a proprietary account, it is a proprietary account all the same. Its punchline is that parents own their children, and that parental rights follow from this.

I will claim—and I assume it is fairly uncontentious—that a proprietary account of parenthood should be avoided. That is, we don't want to give an account of parenthood that tells us that parents (or anyone, for that matter) own their children. Proprietary accounts have a long history in western thinking about parenthood. For example, Aristotle writes that

[T]here is no injustice in an unqualified sense in relation to what is one's own, and a chattel, or a child until it is of a certain age and becomes independent, is like a part of oneself, and oneself – no one decides to harm *that*. . . (as cited in Austin 2007, 13)¹¹

In the contemporary literature, authors like Edgar Page and others have offered more nuanced proprietary arguments (e.g., Page 1984). And it is easy to see why proprietary accounts would be common: in the first instance, it is just quite common to think of children as possessions, even if these days fewer people are willing to talk or think about them in this way. And further, theoretically-speaking, ownership is a very good way to ground rights over a thing. But there are many reasons why we ought not accept such a view.

Michael Austin (2007), for example, argues that because babies are human beings, and human beings cannot be owned, proprietary accounts of parenthood are incoherent (12). Such an objection is problematic for all the reasons that

⁹ Though note that Locke does not give a labour-based account of parental rights. See Brennan and Nogge (1997, 11).

¹⁰ See e.g. Narveson (1988).

¹¹ Taken from *Nicomachean Ethics* book V, 1134b.

speciesist accounts of moral status are problematic—since babies aren't moral or rational agents, etc.—but the objection does point us towards clear problems with baby ownership accounts.¹² In particular, it's not clear how/why it could be the case that I both own my child, and that I undoubtedly own myself. Both biological and labour-based proprietary accounts need, for their validity, the claim that I own myself; that every person is such that she or he owns herself and her body. Biological accounts need it, since this is how we get to the claim that I own my gametes; and labour accounts need it, since this is how we ground the claim that I own my labour. But, if it's foundational that I own myself, how can it be that someone else (namely, me) owns my child? Doesn't she own herself? We might tell some story or other about ownership being transferred from parent(s) to child at some age or level of maturity, but we would need to tell a story, indeed: we would need to explain how, why and when ownership is so transferred.¹³ Does it happen automatically, or must parents surrender ownership? Can parents refuse such surrender? If so, then how is it undoubted that even every adult owns herself? Mightn't some adults still be owned by their parents? If parents cannot refuse surrender, then how does this sort of ownership—a sort that must be relinquished, willingly or unwillingly, after a certain period—relate to other sorts of ownership? And why should we think it rights-generating in the way that other sorts of ownership are? And so on.

It might be the case that we could devise a crafty and nuanced account of how it can be that every adult owns herself, while children are owned by someone else, but it's not clear why we would want to try. It would not be a simple way to explain parental rights, and, once we sort out all the details, neither would it be intuitive. Most importantly, there is simply something unsavoury about the claim that parents own their children. As Samantha Brennan and Robert Noggle (1997) put it, '[C]ounting a person as the property of another is clearly inconsistent with granting her equal moral consideration'(11). What it seems that we want is an account of parental rights that can explain why good enough is good enough—that is, why parents have the right to rear and to decision-make on behalf of their children even if someone else would do it better—without appealing to ownership.

In the next section, I will present Anca Gheaus's non-proprietary gestational account of parental rights. Gheaus takes her account to ground parental rights in the labour of gestation, and to do so successfully without appealing to ownership. If it works, then, it is just what we want: an account of parental rights

¹² See Singer (2006).

¹³ And indeed, I think this sort of story will be very acceptable to some more conservative types.

that explains why good enough is good enough, using a clear explanatory mechanism and grounding, that gets us validly from the facts about biological parenthood to parental rights.

In Section 3, I will canvass three initial objections one might raise to Gheaus's account, and argue that two of them, anyway, can be done away with. But in Section 4, I will argue that all the same the account does not work. Because the account hinges crucially on an empirical claim—the claim that pregnant women 'bond' with their fetuses, and that this bonding is an interpersonal relationship—that turns out to be problematic at best, we cannot get from the labour of gestation to parental rights in the way Gheaus proposes; it just doesn't work.

Section 2: Gheaus's Non-Proprietary Gestational Account

Gheaus argues that gestation generates parental rights. She writes:

Given that babies come into the world through a gradual, sometimes complicated, approximately nine-month long gestation in their mothers' bodies, by the time of the birth the birth parents will have already shouldered various burdens necessary to bring the child into existence. (2012, 436)

She points out that the physical burdens of pregnancy carry high cost for the expectant mother, and have a significant effect on many women's ability to 'carry on with life as usual' (447). Pregnant women often endure fatigue, aches and pains, nausea and so on and for some, much worse than this. These aches, pains and other troubles interfere with their ability to perform tasks, carry on with paid employment as usual, and maintain interpersonal relationships. She writes that

some of the most important burdens of pregnancy result from the extent and pace of change, undergone by all pregnant women, which often contributes to a distinctive sense of losing control over one's life and diminished ability to pursue other projects and interests during pregnancy as well as during recovery from childbirth. (447)

Furthermore, many women also pay behavioural costs during pregnancy—such as limits to what they can eat and drink—and social ones like patronising behaviour from strangers.

All of these effects of pregnancy, Gheaus argues, should be understood as costs borne in anticipation, and borne precisely because of anticipation, that the

outcome will be a child to parent. Because of this, she argues that gestational mothers have a right to parent. So in other words, because pregnant women expend labour and endure hardship towards the cause of bringing a child into existence and towards the aim of parenting a child, they thereby have a right to do so. Gheaus does not argue that this right is inalienable. Where serious concerns over the child's wellbeing would be warranted were the child left with the birth parent, the child's interests can swamp that of the birth mother. However, where the birth mother is a good enough parent to meet a baseline of good care, she has a right to do so in virtue of gestation.

But this account, as Gheaus rightly acknowledges, does not give birth mothers a right to parent any particular baby. Rather, it seems only able to give the birth mother the right to parent a baby. This right then would be consistent with (for example) a baby-swapping scheme, whereby all gestators who have a right to parent have an equal chance at raising (say) a healthy child; or a clever child; or etc.

On a classical sort of a gestational account, this gap between having a right to parent, and having a right to parent one's own biological child would be filled by ownership: mum owns her own baby; she has a right not just to parent a child, but to parent her child. But of course, as was said, there is something unsavoury about the claim that babies can be owned; that they can be property.

Gheaus agrees that this is the wrong account—she assumes that the idea of child ownership is 'out-dated'—and relies instead on bonding between woman and fetus in the course of gestation. She writes that 'during pregnancy many—perhaps most—expectant parents form a poignantly embodied, but also emotional, intimate relationship with their fetus' (Gheaus 2012, 446). Because women bond with their fetuses in the course of gestating them, Gheaus argues, they have a right to parent the baby with which they have bonded. During the course of pregnancy, she argues, women form a 'highly emotional' relationship—'a bond that is both physical and imaginative'—with their babies that is 'already quite developed at birth' (449). It is this relationship, then, that generates a right on the part of the gestational mother to rear her birth child. She writes that

Bonding during pregnancy provides a very solid reason for thinking that redistributing babies would likely destroy already existing intimate relationships between newborns and their bearing parents. The fact that the relationship with one's future child starts during pregnancy provides the missing step in the justification of a fundamental parental right to keep and raise one's birth baby and the answer to the question of how to determine fundamental moral rights to parent particular babies. (450)

So in other words, because a ‘bond’ forms between the gestating woman and the fetus prior to birth, taking newborns away from their birth parents at birth is no different from taking children away from their social parents: it is a disruption of a meaningful relationship, against which the birth parents have a right (on the assumption that their parenting is good enough). Furthermore, gestational ‘bonding’ generates ‘additional, child-centred justification’ for the recognition of such a right, since not only does the gestating woman bond with the fetus, but the fetus also bonds with the woman: can recognise her voice and heartbeat, for example. So, taking birth mother away would harm baby just as it would harm mother.

Gheaus’s account, then, seems to motivate biological parental rights without collapsing into a proprietary account. Since the right to parent one’s biological baby, on this account, is motivated by a relationship with the fetus, coupled with a right to enjoy the good of parenting in virtue of having laboured for it, it seems to use biology and labour to ground the rights directly. In the next section, I will canvass three initial worries about this account, and argue that Gheaus can answer at least two if not all three of these worries. However, in Section 4, I will argue that the account is ultimately unsuccessful, because ‘bonding’ simply can’t do what Gheaus needs it to do. In Section 5, I will offer a brief sketch of what I think is a more promising avenue for grounding parental rights.

Section 3: Apparent Problems with the Account

In this section, I’ll discuss three possible worries about Gheaus’s account of parental rights: non-genetic gestation, non-parental gestation, and non-gestational parents. I will argue that the first worry is, in part, a semantic confusion. The second two worries, I argue, can be resolved by rejecting intuitions we have about them, but that (especially in the case of non-gestational parents) it is unclear whether we ought to do so.

Non-Genetic Gestation

One might have the following worry: Gheaus’s account does not work because, in cases where a woman gestates a fetus that was not conceived using her own gamete, she thereby has parental rights where the biological mother does not.¹⁴ Imagine a case in which two women undergo IVF at the same clinic and their eggs are accidentally switched, such that woman A gestates a fetus created using woman B’s ovum, and vice-versa. In this case, according to

¹⁴ The basic shape of this worry is taken from comments by S. Matthew Liao (2014).

Gheaus's account, woman A would have parental rights over B's genetic offspring, and woman B would have parental rights over A's genetic offspring. This seems to show that Gheaus's account cannot properly motivate a right to parent one's biological child, since it's clear in this case that A would not have a right to parent her biological child (and nor B).

But of course, there is biology and there is biology. Gestation, after all, is a biological process that helps to bring about a child where once there was a bundle of cells. So, it's not clear why we ought not take the non-genetic gestator to be a biological mother (on the assumption that she is, at least, a mother). Indeed, it seems clear to me that we should. She bears a unique biological relationship to the child, and one that we typically take to be definitional of biological motherhood, setting genes aside. The birth mother is a biological mother. She is not, however, a genetic mother. And, according to this worry, genetics are what matters. Genetic parenthood is rightful parenthood; biological parenthood is just genetic parenthood, according to this line of thinking. As such, Gheaus's account simply does not explain the biological parent's right to parent her child.

I suspect that Gheaus's reply to this worry would be something like 'So what?' Attributing parental rights to the genetic parent fits with our intuitions about biological parenthood—but so does attributing them to gestational parents. Indeed, most of us probably do not have intuitions fine-grained enough to sort these two out, since the vast majority of 'biological mothers' we will come across in life are both genetic and gestational mothers. There's no clear reason, in the first instance, to go with genes instead of gestation.

On reflection, however, the gestational account just works better. As was said in Section 1, it is unclear how genes, on their own, could be rights-generating. Genes are just chemical sequences; physical stuff. Having physical stuff in common seems an unlikely way to acquire rights over someone. Gestation, on the other hand, is doing something. There are lots of examples in life of acquiring rights by doing something. If I pay money to the shopkeeper for a bag of carrots, I have a right that she give me the carrots for which I paid the money; if I write a masterpiece, I have a right to a share of the profits when it's sold; and so on. So, it doesn't seem at all clear that there is any reason to suppose that genetics are the primary element of biological parenthood, and it seems there is reason to suppose gestation might be. The worry over non-genetic parenthood, then, seems little obstacle to Gheaus's account.

Non-Parental Gestation

A related worry is the worry over non-parental gestators: that is, gestators who we intuitively do not think of as parents. In the previous worry, we

considered a woman who gestates a fetus that is not genetically related to her with the intention of parenting it. I argued that there is no prima facie reason why we ought to suppose that the genetic progenitor is the rightful parent in this case. And it is indeed relatively easy to feel at least unsure what to say about a parent in such a situation. But in the case of surrogacy, many of us, anyway, will have strong intuitive reason to think in a way that seems to fly in the face of Gheaus's proposal. In surrogacy, a woman gestates a child for another parent—for the sake of someone else parenting the child. And given the pregnancy only comes about because the 'someone else' wants to parent a child, and (in many surrogacy arrangements) because the 'someone else' is actually paying the gestator for her services, it seems like we want to say that the gestator does not have a right to parent the child; or anyway, that it is nothing like a throw-away claim to say that she does.

That said, it seems to me that Gheaus's account can accommodate the intuition that surrogates do not have parental rights (or anyway, that they mightn't). Her account, again, relies on labour and bonding. Labour gives one a right to parent a child, while bonding gives one a right to parent this child. In the case of the surrogate, the labour is often compensated: surrogates are often paid. In the UK this payment is, in theory (and in law), restricted to compensation for 'costs'. In the US, surrogates are outright paid, as if in employment. When surrogacy is simply restricted to compensation for 'costs', it may be the case that the 'cost' is rather a lot, if Gheaus is right that gestation comes with high physical and emotional costs. In this case, it may be that surrogates ought to be compensated for a lot, and that if they are not, residual entitlement might remain. But it might also be the case that many of the costs borne by typical gestators (i.e. parental gestators) are not borne by surrogates. Surrogates, for example, probably do not take on the emotional weight of adjusting to life changes, since for them the change is only, presumably, temporary.¹⁵ Either way, in the absence of ownership, and in the absence of the aim of parenting the child, it seems that the labour of surrogate gestation can be compensated in such a way that it will not generate parental rights.

As regards the bonding, Gheaus might plausibly argue that surrogates simply do not bond with the fetus in the same way that intending mothers do.¹⁶ In this case, even if the labour cannot be compensated such that no right to

¹⁵ I say 'presumably' because it may be the case that pregnancy changes a person even if it is a surrogacy. But in that case, we might need to rethink the intuition that parental rights ought not be attributed to surrogates.

¹⁶ Again, I will say more about maternal-fetal bonding in the next section.

parent arises, still no right to parent this baby would arise.¹⁷ So, it seems that Gheaus's account can accommodate the intuition that gestational surrogates do not have parental rights over the fetuses/infants they gestate, since the cost of the pregnancy to them is presumably less than that for the parental gestator; the costs can be compensated; and the surrogate does not (or may not) bond with the infant in the way that the intending mother would do.¹⁸

Non-Gestational Parents (Parental Parity)

The third initial worry one might have about Gheaus's account is that it is, quite obviously, better-suited to grounding the rights of mothers than those of fathers. (And indeed, it is less well-suited to grounding the rights of non-gestational parents, full stop.¹⁹) If the labour and bonding that take place in the

¹⁷ One might recall that Gheaus thinks that both the gestator's attachment to the fetus and the fetus's attachment to the gestator are salient. If this is right, we might still worry about surrogacy. However, I take it that the fetus's attachment is, in some sense, incidental to the parental right. That is, it is the parent's attachment that matters to parental rights. The fetus's attachment is, with respect to parental rights, merely a happy bonus.

¹⁸ Gheaus briefly discusses surrogacy, writing that 'If having borne a baby is a ground for a right to keep that baby, the important question for surrogacy is whether this right is alienable and under what conditions. Is it possible to waive one's right to keep one's birth baby before one knows exactly what burdens the pregnancy will entail, and what kind of relationship one will establish with the new born? In other words, can a surrogacy contract pre-empt the rights of the gestating mother or couple? I remain, in this article, agnostic about this' (454). But this, of course, is the same sort of question that arises with pre-arranged adoptions (though of course, most Western nations now have laws that preclude the enforcement of adoption contracts where the birth mother has changed her mind); in thinking about surrogacy this way, Gheaus is just imagining surrogacy as a sort of adoption. But I do not think there is anything about Gheaus's basic account that commits us to accepting an adoption account of surrogacy.

¹⁹ I am hesitant about how I ought to handle the heteronormativity of this objection as it usually occurs in the literature. On the one hand, heteronormativity seems a bad sort of normativity to perpetuate. On the other hand, it is only within the context of a biological account of parental rights that the worry over parity arises in a truly pernicious form: it is only when our goal is to secure the rights of biological parents that the Parity Principle becomes a sticking point. An alternate strategy for giving an account that attributes rights to non-gestational parents is to simply claim that, for want of a better way to put it, biology isn't where it's at. My

course of pregnancy are what ground parental rights, then it seems, at first glance, that fathers mustn't be parents; or anyway, that they mustn't have parental rights. If this is right, then it seems as though Gheaus's account is only half of an account of parental rights. Again, what we want out of an account is an account that tells us why good enough is good enough, in the case of biological parents. If we can't explain why this is so for both mothers and fathers, then it seems we are left saying that mothers have a right to parent their biological children so long as they are good enough, but that sub-optimal fathers may rightfully have their children snatched away.

This is not a view many of us would want to endorse. I take it that the prevailing assumption, these days anyway, is that mothers and fathers are equally parents; and that our theory of parenthood ought to reflect this equality. Kolers and Bayne take this assumption as a key principle in parental ethics, and call it the Parity Principle. According to the Parity Principle, 'being a mother doesn't make a person more of a parent than being a father, or vice versa (Kolers and Bayne 2001, 280). What we want, all other things equal, is an account that explains why both mothers and fathers are parents. So, with respect to the Parity Principle, an account like Gheaus's does not look like one that we ought to accept.

That said, we needn't give a unified account of parenthood in order to give an account of parental rights that adheres to the Parity Principle. That is, it's at least conceptually possible that what accounts for mothers' rights is not what accounts for fathers' rights, though both mothers and fathers have rights, and have them equally. This sort of separate-but-equal approach is just the approach Gheaus takes to saving her account from the parity worry. She writes that

While they cannot share all [the] costs [of pregnancy], involved partners typically can and do share many of them. They often are the main source of emotional, practical and financial support of their pregnant partner: they can accompany her on medical visits and support her during childbirth, share and try to soothe her worries, relieve her of some of her regular work and serve as an often-needed interface between her and the insufficiently accommodating outer world. (2012, 448)

own view is that it isn't, but defending that view is out of the scope of this paper. (See my (2014).) All that said, we ought still to think in terms of gestational and non-gestational parents—rather than mothers and fathers—since in principle a female parent might easily be non-gestational and biological (the genetic progenitor) and someone who we pre-theoretically think ought to count as a rightful parent.

And later, that

pregnant women's supporting partners are capable of being direct participants in the process of creating a relationship with the baby during pregnancy. With the help of medical technology they can see the fetus and hear its heartbeat as early as the bearing mother; during the last stages of pregnancy they can feel the baby, talk to it and be heard by it. Just like the mother, they can experience the fears, hopes and fantasies triggered by the growing fetus. (450)

So, the idea is that, because the non-gestational parent contributes to the labour of gestation, and bonds with the fetus (though in ways different to the gestator), he (or she) too can thereby acquire parental rights, even though he (she) does not actually gestate the baby. The account, then, appears to get around the parity worry.

But on closer inspection, it does so only at the expense of intuitive plausibility, since co-parent and pregnancy partner need not and often do not coincide. In an idealized (modern, Western) procreative situation it might be the case that the non-gestational parent is the primary co-labourer and co-bonder during pregnancy; but surely in reality this is not always so, and probably it is not often so, taking all pregnancies in all cultures, classes and circumstances into account. Indeed, it might very well be the case that, even amongst modern, Western middle-class heterosexual procreators, people other than the biological father routinely play a bigger role in supporting the pregnant woman than does the father: the pregnant woman's mother or sister or friends will very often be the primary source of emotional and practical support to her during her pregnancy. It would seem, then, that if labouring and bonding by proxy are sufficient to generate parental rights, then granny and auntie and so on have parental rights, too.

One way to respond to this worry would be to, first, bite the bullet on Granny and Auntie—accept the consequence that they too may have parental rights if their labour contributes significantly to the production of the child—and second, to claim that only fathers who do contribute significantly to the labour thereby acquire parental rights. But this response both fails to cohere with intuition (supportive aunties are aunties, not parents) and fails to dissolve the parity worry, since if this is right, then good enough is after all not good enough for dads: we will be left with an account on which gestators have parental rights in virtue of gestating, no matter how they do it, whereas non-gestational parents only have parental rights if they are good non-gestational parents.

If what we want out of a theory of parental rights is a grounding for the rights of biological parents to parent their children, then it seems Gheaus's account will not do the trick, since it fails to ground such rights for the non-gestational biological parent. It is, of course, open to Gheaus to bite the bullet on parental parity: to reject the claim that mothers and fathers (or gestational and non-gestational parents) are equally parents; and I have not given a robust argument to the contrary. For this reason, the non-gestational parent objection is by no means a knock-down objection to Gheaus's account. However, first, Gheaus's account isn't really an account of the rights of biological parents, tout court, in this case. And further, it seems to me that the parity principle is, even without argument, obviously a good starting point in crafting an account of parenthood: it's the sort of claim that, unless there is compelling theoretical soundness to be had by rejecting it—or compelling argument that, despite the intuitions we have, the principle is a bad one—we ought to accept.

My argument is that there is no such theoretical soundness to be had from Gheaus's account, since, even if we bite the bullet on parental parity, the account still does not work as an account of the rights of gestational parents. In the next section, I will argue that the real problem for Gheaus's account is with bonding. The claim that pregnant women bond with their fetuses in a morally-salient, rights-generating way simply does not stand up to scrutiny. Given this, the account does not work for mothers any better than it does for fathers.

Section 4: Maternal-Fetal Bonding

Gheaus's argument relies on two features of gestation: labour and bonding. Labour, according to the account, generates a right to the goods of parenthood, since the labour is sufficiently significant to justify compensation; and since the labour is undertaken towards the aim of enjoying the goods of parenthood. But the entitlements that can be derived from labour cannot generate a right to parent one's biological child in particular—cannot generate a right against baby redistribution—and thus cannot explain why good enough parenting is good enough. For this, Gheaus's account relies on bonding in pregnancy.

Because, Gheaus writes, the bonding that happens between woman and fetus during pregnancy constitutes a 'highly emotional' relationship, and 'a bond that is both physical and imaginative', that is 'already quite developed at birth', gestational parents have the right to retain the meaningful relationship with their baby that is already underway at birth (2012, 449). Thus, they have a right to parent their biological child, and as such, baby redistribution would violate their rights, and so good enough is good enough.

The problem with this step is that maternal-fetal 'bonding' simply doesn't hold water as a concept. Though it holds strong sway in the popular imagination,

the claim that pregnant women bond with their fetuses is simply a pop-claim. It has no good basis in science, and appears, indeed, to be primarily normative in nature: it is a concept that serves primarily to police women's feelings about maternity, rather than to describe healthy fetal development or indeed to describe a real and medically or socially salient relationship. Not to put too fine a point on it: maternal-fetal bonding is sexist junk science. It's not a real thing that could generate a real and enforceable right.

Maternal-fetal bonding is a popular notion that grew out of research (primarily in psychology and nursing) into 'Maternal-Fetal Attachment' (MFA). MFA was proposed as an extension of the 1950's developmental theory of Maternal-Infant Attachment (MIAt).²⁰ According to MIAt, infants have an evolutionarily selected drive to both cling to caregivers, and to stimulate caregiving from their primary carers. Further, MIAt hypothesized that the extent to which infants exhibited this cling-and-solicit behaviour was a good indicator of healthy infant development: infants who were properly 'attached' were likely to grow up to be well-adjusted adults. Brandon et al. (2009) write that

[John Bowlby, the originator of attachment theory] conceptualized human attachment as a system of evolutionary behaviors beginning at birth and persisting through adulthood, motivated by or toward fear, affection, exploration, and caregiving... Regulation of the dyadic attachment interactions of mother and infant, Bowlby reasoned, was solely biological; he posited that the infant's primary goal was to maintain a certain degree of physical proximity to the mother for survival. Bowlby later added to his stance that attachment would include psychological goals on the part of the developing child and mother. . . . Attachment, as Bowlby understood it, was a reciprocal behavioral process initiated by the neonate to ensure survival. (201)

Measures of attachment, on this picture, are both measures of proper biological functioning on the part of the infant (infant has the right innate drive towards attachment) and measures of biologically-good parenting (mother is stimulated appropriately by infant cues, thus perpetuating an attachment feedback loop). The classic measure of MIA is the Strange Situation test, in which infants are placed in (non-threatening, but) strange situations on their own, and then observed when they are reunited with their mothers. A child who quickly

²⁰ See, for example, Bowlby (1958).

and unreservedly goes to mother and clings to her exhibits what is taken to be a healthy attachment.²¹

Contrast this with MFA, which is pretty straight-forwardly a measure of ‘appropriate’ parental attitude alone. MFA is measured through self-report. Pregnant women are given a questionnaire asking them to rate the strength with which they agree or disagree with statements such as (a) I have the room all ready for the baby’s arrival and (b) there will be time enough after the birth to get clothes and things for the baby. Agreeing strongly with statements like (a) will get you a strong, good attachment score; whereas agreeing strongly with statements like (b) will get you a strong, bad attachment score.²² So in other words, pregnant women who exhibit the sorts of attitudes to their fetuses that we think ‘good’ get a good score.

MFA has been shown to correlate ‘modestly’ with later MIA (Muller 1996); but—and this seems key—only when the classic model of MIA investigation (observation of mother-infant interaction, importantly via Strange Situation) is replaced with maternal attitudinal self-report.²³ In other words, Maternal-Fetal Attachment is quantifiably related to Maternal-Infant Attachment only when maternal attitudes, and not mother-infant interactions are measured. So, the right feelings on the part of the pregnant woman are predictive of the right feelings on the part of the new mother (and only modestly so); they are not significantly related to the quality of the actual relationship between new mother and baby. This is no surprise, since MFA is a set of attitudes; not a relationship in the way that MIA is. Brandon et al. (2009) write that

²¹ From Brandon et al: ‘The Strange Situation is a 20-minute procedure composed of eight episodes of mother-infant separation and reunion. Infant behaviors are evaluated to examine attachment and exploratory behaviors under conditions of high and low stress, resulting in the classification of one of three attachment styles: A, B, or C (Ainsworth et al., 1978). Later studies have given these categories labels: A = avoidant, insecure- avoidant, or anxious-avoidant; B = secure; C = anxious, anxious- ambivalent, insecure-ambivalent, anxious-resistant, or insecure- resistant.’

²² I.e., ‘positive, preoccupied’ and ‘negative, preoccupied’; see Cranley (1981).

²³ Muller (1996) used the MAI (Maternal Attachment Inventory), which asks mothers to agree/disagree with statements like I feel love for my baby and I look forward to being with my baby; as well as the MSAS (Maternal Separation Anxiety Scale): I don’t enjoy myself when I am away from my child; and the HIFBN (How I Feel About my Baby Now): I feel giving towards my baby.

It has been proposed that prenatal attachment is more appropriately viewed as an “emotional bond” that bears similarities to attachment but is not the same as traditional infant and adult attachment . . . Along this line of thinking, it has been suggested that prenatal attachment inventories are no more than attitude measures that may be confounded by social desirability and adjustment. (208)²⁴

In other words, while MIA describes ‘healthy’ interactions between mother and infant²⁵—and quantifies a relationship between them—MFA quantifies an emotional attachment on the part of the pregnant woman to her fetus; and quantifies it in a socially-normative way. It measures whether pregnant women feel the ‘right’FPQ 1.1 X way, rather than measuring the extent to which they are in a good relationship.

The *raison d’être* of the literature on MFA seems to be a perceived predictive advantage: good MFA is predictive of good MIA (though, again, only when MIA is measured by maternal attitudinal self-report); and it is also predictive of good take-up of antenatal care (Lindgren 2001). The thinking, then, seems to be that by measuring MFA, clinicians can spot problems early on in a woman’s career as a gestator/mother, and intervene. But even as a mere predictor of later trouble, it isn’t clear what purpose MFA actually serves. Good MFA is positively correlated with stability of relationship with the future father, and with high socio-economic status, among other things; and is negatively correlated with depression and having previous children.²⁶ Since it is presumably

²⁴ Pollock and Percy (1999) actually use the acronym ‘MAEA’, rather than MFA—‘Maternal Antenatal Emotional Attachment’—thus removing reference to the fetus, and adding explicit reference to emotional state.

²⁵ Though, of course, there seems inadequate evidence that ‘good’ MIA really means anything necessarily for the future wellbeing of the child. While poor MIA may be predictive of future interpersonal shortcoming, there is no evidence that it is inevitable. In meta-analysis of research on attachment in adopted children, for example, van den Dries et al (2009) found that adopted children’s attachment security ‘catches up’ as years pass in the adoptive home (for children adopted after the age of 12 months; for children adopted before this age, there was no statistically significant difference in attachment quality). It’s not clear, then, why we should suppose that attachment in infancy is crucial, rather than simply desirable all other things equal.

²⁶ For example, in their study Condon and Corkindale (1997) tell us the following: ‘The findings confirmed these hypothesized effects. In particular, the subgroup of women having low attachment was characterized by high levels of

already known—or anyway, is just common sense—that an unstable economic, social or relationship status, additional children, depression might go hand-in-hand with things like missed antenatal appointments, it is not clear why testing whether pregnant women have good attitudes towards their fetuses should add anything to what is already known about them as patients. Nonetheless, MFA research has continued apace,²⁷ and has caught the popular imagination in its folk variant, ‘Maternal-Fetal Bonding’.

Bonding has so saturated our popular discourse on pregnancy and maternity that it seems to be taken as a given in contemporary western culture that pregnant women bond with their fetuses, and that this bonding is either developmentally or morally important. A quick scan of online pregnancy resources reveals a vast wealth of folk knowledge about bonding. For example, one website counsels that ‘it’s never too early or too late to start communicating and bonding with your baby. Parenting is a journey that really begins the moment you find out you are pregnant.’²⁸

Advice on bonding with your fetus is often mixed with findings from the empirical literature on MFA. For example, the My Virtual Medical Centre website informs the reader that failure to bond with the fetus ‘is associated with indicators of socio-economic status like income and level of education’ and

depression and anxiety, low levels of social support (outside the partner relationship) and high levels of control, domination and criticism within the partner relationship.’ Also Pollock and Percy (1999) report similarly.

²⁷ Though note that most of two decades ago, Mary Muller—a leading MFA researcher—cautioned against excessive focus on MFA. In her (1996) she writes that ‘until a conclusive body of evidence emerges supporting the promotion of prenatal attachment, nurses should continue to focus their care on the individual circumstances of each pregnant woman. Specific nursing activities include exploring with the pregnant woman her experience of carrying that particular baby, teaching women to avoid and/or cope with stress, promoting a woman’s feelings of self-esteem, reassuring women that attachment is a life-long process, and providing information about pregnancy and motherhood that will help to relieve fear and increase a woman’s confidence in her ability to be a good mother’ (165). To my knowledge, this conclusive body of evidence has not emerged in the interim.

²⁸ “How to Bond with Your Unborn Baby.”

<http://www.birthing.com.au/pregnancy/pregnancy-29-40-weeks/emotions-during-the-last-three-months-of-pregnancy/communicating-with-your-unborn-baby-how-to-bond-w#.VaXC2fIViko>.

suggests that race and ethnicity might also be factors.²⁹ Many pregnancy and parenting websites also offer 'tips' for how to successfully bond with your baby: play music or sing to your bump;³⁰ write letters to your unborn child;³¹ take time out to reflect on the person growing inside you;³² massage or in other ways make physical contact with the fetus;³³ do yoga;³⁴ and so on.

Maternal-fetal bonding is pop-science, and the science it is popularizing is not particularly coherent to begin with. Additionally, inasmuch as the Attachment version of the bonding story picks out any real phenomenon, the phenomenon it is picking out is attitudinal, or at best attitudinal/behavioural, and not relational. There is no suggestion in any of the literature that fetuses share in the good attitude. Indeed, beyond the predictive power of MFA as regards take-up of antenatal care, there is no indication that MFA has any causal effect on the developing fetus. More importantly, there is no indication that the fetus has any affective causal effect on the pregnant woman. Given that the woman's feelings aren't affecting the fetus, and the fetus's feelings aren't affecting the woman, it is implausible to suppose that the right way to characterize MFA (or 'bonding') is as a relationship. It isn't a relationship; it's an attitude.

What all of this means is that grounding a right to parent one's biological child on bonding doesn't work. Again, Gheaus argues that parents have a right against baby redistribution in the same way that parents³⁵ have a right against their children being taken from them later on, because at birth the parents are already in a morally-significant relationship with the baby, having bonded with it antenatally. She writes:

²⁹ "Bonding with Your Baby During Pregnancy."

<http://www.myvmc.com/pregnancy/bonding-with-your-baby-during-pregnancy/>.

³⁰ "How to Bond with Your Unborn Baby."

<http://www.birthing.com.au/pregnancy/pregnancy-29-40-weeks/emotions-during-the-last-three-months-of-pregnancy/communicating-with-your-unborn-baby-how-to-bond-w#.VaXC2fIViko>.

³¹ "Bonding with Baby-to-Be." <http://www.parents.com/pregnancy/my-life/preparing-for-baby/bonding-with-baby-to-be/>.

³² Ibid.

³³ "Bonding with Your Baby During Pregnancy."

<http://www.myvmc.com/pregnancy/bonding-with-your-baby-during-pregnancy/>.

³⁴ "How to Bond with Your Unborn Baby."

<http://www.birthing.com.au/pregnancy/pregnancy-29-40-weeks/emotions-during-the-last-three-months-of-pregnancy/communicating-with-your-unborn-baby-how-to-bond-w#.VaXC2fIViko>.

³⁵ Or anyhow, the gestating parent.

Other defenders of fundamental parental rights...have argued that it is impermissible to disrupt already established intimate relationships between birth parents and children, for reasons of both parents' and children's welfare. But no reason was provided for why such relationships are permitted to develop in the first place if better parents are available. If the same process which brings babies into the world also generates their first intimate relationships [with] adults, then relationships between birth parents and their babies need no justification: they are already there from the beginning. (451)

The plausibility of this claim rests on the popular belief that pregnant women 'bond' with their fetuses, and that this bonding constitutes an already existent interpersonal relationship. But the latter claim does not stand up to scrutiny. Insofar as pregnant women form 'attachments' with their fetuses, these attachments are one-way: they consist in the woman feeling attached to the fetus.³⁶ While being in a relationship with a child might plausibly ground a right to continue in that relationship, simply feeling attached to a child cannot. Feeling attached to something cannot generate a right to that something.³⁷ Feeling attached to something that is one's own might plausibly mean having a right to it; but if the claim is that a pregnant woman feels attached to her fetus and it's her own fetus, then the account collapses into a proprietary account—just the sort of account Gheaus set out to avoid. Since 'bonding' is additionally a socially pernicious construct—demanding not just perfect behaviour from future mothers, but indeed perfect thoughts—there is just no good reason to accept the claim that maternal-fetal bonding is what grounds parental rights.

Section 5. Should we Abandon Parental Rights?

Labour—even gestation—cannot ground parental rights on its own. As we saw in Section 1, simple genetic accounts are even more troubled. It is difficult to see how we can ground parental rights claims at all without claiming that, in some sense or other, parents own their children; and it seems that we shouldn't make this claim. A tempting way to respond to the problem is to reject parental rights altogether: parents just don't have rights; parents have obligations, and nothing more. If anyone thinks it unfair that parents labour towards the end of

³⁶ To be clear, pregnant women certainly are physically attached to their fetuses. Something more than this is being claimed in saying that the pregnant woman is in an 'intimate relationship' with her fetus.

³⁷ Compare with: I am fond of my neighbour's dog or I love Switzerland.

enjoying the goods of parenthood, and then have no right to it, well, no one forced them to, so they can hardly complain.³⁸

But this bullet-biting doesn't answer the question of why 'good enough' is good enough. Even if we bite the bullet on baby re-distribution—even if we accept the claim that parents rights would not be violated by having their children redistributed to more worthy parents—we are still left with a question to answer: why are we not violating children's rights by not redistributing them? Why is it okay to leave children with non-ideal parents? We need some account of what competing considerations are tempering children's rights to good care. Otherwise, most of us are violating the rights of our children daily.³⁹ What I would like to propose very briefly in this closing section, is that we would fare better explaining why good enough is good enough by building a deflationary account of parental rights, one that piggybacks on parental obligation.

A good starting point for such an account is Brennan and Noggle's (1997) stewardship account of parental rights. According to this account, parental rights are 'stewardship rights'. 'A stewardship right is a right someone has in virtue of being a steward—as opposed to an owner—of someone or something.' The owner of a thing has a right to dispose of it, neglect it, sell it on; and no obligation to care for it. The steward of a thing, on the other hand, has an obligation to care for it, and those rights necessary for doing so. Parental rights, then, including the right to continue to parent even in case of non-optimality, are 'necessary to allow the parents the freedom to effectively protect and nurture children', since the duty to promote the interest of the child is an imperfect duty, and as such, the parent must have 'the right to exercise her own judgment in carrying it out' (Brennan and Noggle 1997, 12-13).⁴⁰

It is not clear, however, that stewardship rights can explain why good enough is good enough. Sometimes it is perfectly clear that one's parenting is non-optimal, and yet we think that this is not a reason to reassign parentage, and nor is it a violation of the child's rights, so long as the parenting meets the 'good enough' standard, whatever that is. Even if our duties to our children are imperfect duties, multiply-realizable and multiply-fulfilled, it is easy enough to pick out clear 'better' or 'worse' parental decisions. So, although stewardship

³⁸ There are obvious exceptions to the claim that 'no one forced them to'.

³⁹ While I certainly have days when this feels true, I hope that it is not!

⁴⁰ I have obviously not done justice to the richness and complexity of Brennan and Noggle's account with this very brief run-through, but I hope it is sufficient for my purposes in this section.

gets us a fair way to explaining non-proprietary parental rights, it alone cannot answer the good-enough worry.

My very brief and speculative answer to this is that, in addition to being their children's stewards, parents—like all moral agents—have a (negative, defeasible) right to meet their moral obligations—either by meeting them themselves, or by actively ensuring that they are met—and this right competes with children's rights to best care.⁴¹ Because biological parents are causal parents (when they are)—that is, because biological parents make it the case that their children exist and need care in the first instance—biological parents have an obligation to make it the case that their children's lives are good ones, so far as they are able.⁴² And because parents have a right to ensure the fulfilment of their obligations, biological parents thereby have a limited right to parent their biological children. The limit to this right is (you guessed it) good enough.

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⁴¹ I take it that this right is agentic. That is, as an obligor, I have a right to steer my own moral ship, so to speak: taking decision and acting power, with respect to my doing morally right, away from me violates this right. As the moral agent with the obligation, my right is that I be given the opportunity to do the job that is mine to do.

⁴² A causal account of parental obligation will not always coincide with biological parenthood. For example, when a couple have a child using donor sperm, the non-gestational (social) parent is a causal parent but not a biological parent. However, causal parenthood coincides with most of what we take to be paradigm biological parenthood. See my (2012) and (2014) for more on causal parenthood.

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